The Alaska BAR RAG

VOLUME 22, NO. 5 | *Dignitas, semper dignitas* | $3.00 | SEPTEMBER - OCTOBER, 1998

Inside:

Board sends MCLE Rule to Supreme Court for OK

The Board of Governors has recommended to the Alaska Supreme Court the adoption of a Mandatory Continuing Legal Education (MCLE) requirement for all active Alaska Bar members.

Highlights Page 13

The Board approved the recommended MCLE Rule by a vote of 7 to 4 at its meeting in Anchorage on August 27 and 28. The Rule would require 24 hours of MCLE credits, including 2 hours of legal ethics credits, in every 2-year reporting period.

Since 1992 there has been a Mandatory Ethics Requirement for new admittees to the Alaska Bar. Before being sworn in as Bar members, admittees must complete a 3-hour "Mandatory Ethics: Professionalism in Alaska" program taught by judges, attorneys, and Alaska Bar Counsel.

If the Alaska Supreme Court adopts the MCLE requirement, Alaska will join the 39 other states that currently have mandatory continuing legal education requirements.

Pilot project to create new court database

The Board of Governors has approved a CLE Committee recommendation that a searchable database of trial court opinions be developed for free use by Bar members and others who access the web site at www.alaskabar.org.

The CLE Committee strongly urged the Board to approve this project because of the tremendous value and usefulness to Bar members. With this database, Bar members can research previously unreported opinions that are relevant to current cases and issues.

The Bar is working with the Alaska Court System which recently decided to offer selected trial opinions on the Court home page. Only the texts of the opinions appear and are not searchable. Trial judges are being asked to voluntarily submit written opinions they feel will be of general interest. Opinions are to be removed

Continued on page12

No Subsistence Zone

STORY PAGE 3

Cliff Groh remembered: A distinguished path

Alaska lost one of its most distinguished members of the bar July 19, with the passing of Clifford J. Groh, Sr. after a lengthy battle with lung cancer.

Cliff Groh arrived in Alaska in 1952, and soon started on the path that would leave his imprint on Alaska for decades to come.

He organized and was the first president of Operation Statehood, a grassroots group that successfully lobbied Congress to make Alaska the 49th state. In the 1960s, Groh worked to advance land claims of Alaska's Native people, traveling to villages to work with Natives as the claims were moving through Congress. In 1967, the Alaska Federation of Natives named him honorary chief.

Clifford J. Groh, Sr. - 1980s.

Groh's work on the municipal level included terms on the Anchorage School Board and city council, and prepared the charter that would unify the City of Anchorage and Greater Anchorage Area Borough in 1970.

Serving in the Alaska Senate from 1971-1974, Groh remained active in the Republican Party on a state and national level. He worked to clear political barriers to the construction of the Alaska Pipeline in the 1970s and served with distinction as a presidential appointment to the Arctic Research Commission from 1991 through 1996.

He was awarded an honorary degree by the University of Alaska this year, and upon his passing, Gov. Tony Knowles ordered flags throughout the state to fly at half mast to honor this exceptional Alaskan.

The following is the memorial delivered by Cliff Groh's son, Cliff Groh, Jr., during funeral services in Anchorage on July 22.

•

Boyhood and Education

My father was born and raised in Ramapo, New York, a small town near the New Jersey state line. He drew his first breath not in a hospital, but in the house of a neighbor who doubled as a midwife, in 1926.

His parents immigrated from Poland, as did perhaps 90 percent of the adults in town. My father's original surname was Grochowski, which translates roughly as "son of the pea soup." He grew up poor: his father was a steel-mill worker and his mother cleaned houses.

My grandfather "Jaja" never could read or write anything beyond his own name. My grandmother "Bopshe," however, was literate in Polish before she came to America, and learned to read and write English while Dad did. Despite their own modest educations, the care my grandparents took in bringing up my father helped give him the ability and self-confidence to skip a grade in school.

Continued on page 22

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

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

President's Column

The Board, the Bar, and the Public Interest ☐ Will Schendel

The recent approval of Mandatory Continuing Legal Education by the Board of Governors is largely the result of the addition of public or lay members to the Board, a statutory change made back in 1981. The three lay members supplied the margin of victory in the 7-4 vote taken on August 27-28. Whether MCLE is implemented depends, of course, on the Supreme Court's response to the Board's action. As you know, our Court is hardly a rubber stamp for anybody, and that includes the Bar Association. The Court recently turned back the Board's proposals on certification of specialties and on the definition of the unauthorized practice of law, and is free to do the same for the MCLE proposal.

The Board's lengthy, agonized review of MCLE illustrates several vital issues concerning the regulation of the legal profession. First, who are the constituencies of the Board as a whole, and of the attorney and lay members of the Board? Are only the lay members properly concerned with the public interest, and are the attorney members beholden to the expressed views of the majority of attorneys in their area, as some argued during this debate? Given the numbers (9 attorneys, and 3 lay members on the Board), a "Yes" answer to these questions means victory for the short-term self-interest of a majority of the Bar. The answer, I think, is that the attorney members of the Board have a duty to the public, as well as to the profession, and a duty to promote the long-term as well as short-term interests of the Bar. Those dual duties are reflected throughout the Rules of Professional Conduct, in Bar Rule 9, and in the Supreme Court's various pronouncements on the appropriate standards for attorney discipline (applied, in the first instance, by the Board), such as the *Minor* and *Buckalew* opinions.

The recent MCLE vote was actually only one of several consumer-oriented actions taken recently by the Board. Other such acts include the requirement of a written fee agreement for any matter where the fees are expected to exceed $500 (new ARPC 1.5), and the duty to disclose absence or loss of $100/300 malpractice insurance (new ARPC 1.4), both of which have been approved by the Supreme Court and take effect January 15th of next year. There are also moves afoot to provide a "client's rights" pamphlet, and to re-draft a certification-of-specialty rule acceptable to the Supreme Court. Any renewed attempt to define the unauthorized practice of law in a comprehensive way may clash with moves by the Court and other groups to broaden (and make more affordable) "access to justice."

"Consumer rights" themselves have a cost. They undeniably have a financial impact on attorneys, the pressure to carry malpractice insurance imposed by the new disclosure rule being the most obvious. While the recommended MCLE rule may be satisfied without out-of-pocket cost (by attending Section meetings, for instance), there is still a time cost for attorneys. Not all of those costs may be passed on to clients. But to the extent that the costs are passed on to clients, the trend toward "consumer rights" may adversely impact some of the public, too. The marginally higher cost of legal services will deprive some potential clients of service, and will add to the trend toward restriction of non-public legal services to the wealthier strata of our society. The other side of the coin is that the public is properly upset at poor lawyering and, in the long run, the bulk of attorneys are probably not well-served by the activities of their marginal colleagues.

The current Board's emphasis on client protection presents political dangers to our Association, because it necessarily rejects a view of accountability restricted to the dues-paying and regulated electorate, at least for the attorney members. Once freed from a plebiscite-based form of governance, the regulators of a profession are sitting ducks for the kinds of accusations that have been lobbed at the Board the last six months, as we debated MCLE. Members of the public have accused us of protecting our attorney colleagues if we fail to enact MCLE. Members of the Bar have accused us of blithely ignoring the presumed (and perhaps actual) will of the majority (of lawyers), and have predicted that the Alaska Bar Association will go the way of the California Bar Association if MCLE is enacted. Proponents of MCLE have accused opponents of indifference to the quality of legal services, and opponents have accused proponents of elitism and an effort to starve out solo and small firm practitioners. The *ad hominem* nature of these arguments has been disturbing. It has also been inaccurate. Having the luxury of not having to cast a vote on this issue at the August meeting, because the vote was not tied (disclosure: I had proposed a 2 hrs/yr ethics-based MCLE before I became President), I could listen to the debate with a degree of dispassion. And my observation, for what it's worth, is that the Board members struggled honestly with the merits of MCLE, and that neither side was unduly motivated by self-interest, a desire to grandstand, or other improper considerations. Whether to adopt MCLE is, as is probably true of most public policy matters, not an open and shut case, with people of good will on both sides.

Whether MCLE becomes law is now up to the Supreme Court. What I hope to convey to you is my belief that Board members honestly wrestled with their dual duties to the public and the profession, and carefully considered the many letters and comments we received.

Editor's Column

Alaska's judges okay, even if lawyers are chopped liver ☐ Peter Maassen

More late-breaking news in the "What are we, chopped liver?" category has Representative Ramona Barnes, R-Anchorage, bowing down and kissing the good earth approximately 2,207 times, once for every active practitioner in the state of Alaska. The background to this story, as you may recall, is the Legislative Council's retention of Idaho lawyer Mark Pollot to challenge the rural subsistance priority in federal court. Reacting to requests by legislative Democrats that Pollot's fees be audited, Barnes told the *Anchorage Daily News*: "If you can get an attorney to take you to the United States Supreme Court for $175,000, you'd better bow down and kiss the good earth and thank God that you could get an attorney of that quality." While the *Daily News* apparently dropped the ball on the obvious follow-up question — what is "that quality?" — one assumes that it is a positive attribute, that it is not exclusive to Idaho lawyers, and that at least some of us backwoods bohunks have it, too.

•

On the national front, poll-takers and opinion-makers have been calling the *Bar Rag* daily to inquire about its editorial stance on the impeachment/resignation question, trying to add another chalk-mark to one column or another. The *Bar Rag* chooses to duck the question by diverting readers' attention to Alaska's own version of the Starr Report, the volume entitled "Survey Data and Juror Comments" compiled by the Alaska Judicial Council for the 1998 judicial retention election. While not quite as titillating as Kenneth Starr's bodice-ripper, and — being overwhelmingly positive — containing no apparent grounds for impeachment, it still has its share of quotable observations on our government at work.

First, the positive juror comments:

"All the women agreed her robes were great and she should keep shopping where she does."

"He is very good at hiding yawns and laughs under his moustache!"

"Her composure was as cool as an ice cube but her compassion was as warm as the same soup [sic] ."

"She was better than t.v. This is not funny. It is the truth."

"Tell her thanks for the donuts."

Next, the really positive juror comments:

"Is she married or spoken for?...She's wonderful!"

"Would have loved to have her during my divorce." (?)

"He is a quarterback of the courtroom. Go Packers!! G.B. Packers!!"

"Great guy — we need to go catch some halibut/silver salmon sometime. Seward — early August be there — great fun."

Then the constructive criticisms:

"Smile more and not pick her nose as much."

"I would suggest that it is inappropriate for the court clerk to be talking rudely about the judge during breaks."

And finally the bottom line for all of us: "She [the judge] is still an attorney and part of the problem in this country. They are too many and they contribute nothing to our system. They only take."

Give that juror another doughnut.

The Alaska Bar Rag

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

President: William B. Schendel
President Elect: Kirsten Tinglum
Vice President: Barbara Miklos
Secretary: Lisa Kirsch
Treasurer: Bruce B. Weyhrauch
Members:
David Bundy
Debra Call
Joe Faulhaber
Mauri Long
Barbara Schuhmann
Venable Vermont, Jr.
Michael A. Moberly
New Lawyer Liaison

Executive Director:
Deborah O'Regan

Editor in Chief: Peter J. Maassen

Managing Editor: Sally J. Suddock

Editor Emeritus: Harry Branson

Contributing Writers:
Dan Branch
Drew Peterson
Mary K. Hughes
William Satterberg
Scott Brandt-Erichsen
Michael J. Schneider
Steven T. O'Hara
Thomas J. Yerbich
Steven Pradell

Contributing Cartoonist
Mark Andrews

Design & Production:
Sue Bybee & Joy Powell

Advertising Agent:
Linda Brown
507 E. St., Suite 211
Anchorage, Alaska 99501
(907) 272-7500 • Fax 279-1037

Fed takeover: passing the subsistence buck

By Scott A. Brandt-Erichsen

The subsistence conundrum which stumped the governor and legislature this year will soon be passed to the federal government.

Setting aside, for the moment, the chafing which many feel at this prospect of federal landlords managing fish and game over much of the state, the underlying issue of how those fish and game resources are allocated between competing users is not magically resolved by the change in the governmental entity exercising management powers.

The management regulations to be utilized, located at 36 CFR § 242, rely on an urban/rural distinction. This classification may be subject to federal equal protection, privileges and immunities and due process challenges just as the state regulations were subject to similar challenges.

Perhaps a challenge may not be ripe until the federal government seeks to enforce these regulations, but obviously a challenge may be brought in due time. It may well be that the federal government will find drawing preferences between rural and urban subsistence users to be as difficult as the state has. Looking at some of the facts and real issues which the federal government may face, theirs is not an enviable task.

The subsistence management regulations for public lands in Alaska set out a clear preference for rural subsistence users. 36 CFR § 242.5(a) provides that: "The taking of fish and wildlife on public lands for subsistence use is restricted to Alaskans who are residents of rural areas or communities. Other individuals, including Alaskans who are residents of non-rural areas or communities listed in 242.23, are prohibited from taking fish and wildlife on public lands for subsistence uses under these regulations."

Rural is defined by the regulations as any community or area of Alaska determined by the Federal Subsistence Board to qualify as such. The criteria in 36 CFR §242.15 for a rural determination provides a presumption of rural for any community with a population of 2,500 or less, and a presumption of non-rural for communities with declared populations of 7,000 and more. Certain communities are automatically declared non-rural under 36 CFR § 242.23, thus disqualifying residents of those communities from subsistence hunting and fishing. Where this regulatory scheme runs into a problem is the bluntness of the tool (population) used to classify persons as urban or rural and thereby assign subsistence rights.

Denial of the ability to participate in subsistence hunting or fishing based upon status as a resident of an urban area arguably violates equal protection and due process rights under the United States Constitution. The general purpose behind these regulations is similar to that set out in 16 USC § 3112 and the definition of subsistence uses in 16 USC § 3113. To the extent these statutes form the basis for the rural preference in 36 CFR 242 they also may arguably violate due process and equal protection rights. However, that is beyond the scope of this article.

The U.S. Court of Appeals for the Ninth Circuit has held that the principle of equal protection applies to the federal government through the due process clause. Unless the government utilizes a suspect classification or draws distinctions bearing upon a fundamental right, the challenged classification need only by rationally related to a legitimate governmental purpose. Where a suspect classification is involved, a heightened scrutiny is applied requiring that the law be necessary to promote a compelling governmental interest. Suspect classifications are generally those such as race, national origin, sex or illegitimacy. Here the empirical data does not necessarily support the conclusion drawn by 36 CFR § 242, et seq. (1997). Applying the lower standard which requires a rational relationship to a legitimate governmental purpose, the regulations here arguably fail to meet that standard. The regulations assume that rural or urban residency is the measure of subsistence lifestyle. This is a demonstrably erroneous assumption. The classifications used in the regulations unfairly exclude some urban residents who have lived a subsistence lifestyle and desire to continue to do so, while needlessly including numerous rural residents who have not engaged in subsistence hunting and fishing. An appropriate party could claim, in other words, that the urban/rural criterion is both unfairly under-inclusive, because it excludes deserving urban residents, and over-inclusive, because it includes undeserving rural residents. And by doing so, violates both the right to equal protection and, through the privileges and immunities clause, the right to travel. As discussed by Justice O'Connor's concurrence in *Zobel v. Williams,* 72 L.Ed.2d 674,685 (1982), the privileges and immunities clause has been interpreted to create a "right to travel" (*Zobel* at 685) which precludes legislation which would negatively impact that right. In practical effect the regulatory definition of subsistence and the rural subsistence classification do just that. The rural criterion in the statute and regulations violates the right of residents to live in urban areas while traveling to other areas to maintain their subsistence lifestyle. Just as the privileges and immunities clause precludes a discrimination against individuals for crossing state lines, it precludes discrimination based upon crossing imaginary rural/urban lines. It may be argued that, contrary to the rural/urban criteria in the regualtions, the right to subsistence should depend upon individual needs and traditions, not on one's place of residence. Evidence supports the position that there are substantial numbers of urban subsistence users. A very insightful discussion of the case to be made against the federal regulations may be seen from the Alaska Supreme Court's treatment of the issues in *McDowell v. State*, 785 P.2d 1 (Alaska 1989). That case includes numerous relevant observations. For example, an Alaska state study of subsistence use patterns, by R.J. Wolfe and L.J. Ellanna, *Resource Use and Socioeconomic Systems: Case Studies of Fishing and Hunting in Alaskan Communities,* Technical Paper Number 61, Alaska Department of Fish and Game, Division of Subsistence, Juneau, March, 1983 (hereinafter "Study"), found that 20% of the 255 holders of subsistence salmon permits for the 1980 Tanana River fishery, exhibited the attributes commonly associated with a traditional subsistence lifestyle, even though they all resided in the urban Fairbanks area.

The Court wrote: "Despite their residence in or near populated areas of the Fairbanks North Star Borough, these households generally participated in the wage economy on a seasonal basis and had longer histories of participation in the fishery, lower cash incomes, and somewhat larger household size than the majority of users."

The Court also noted that in Homer, an urban area, 38.2% of the city residents obtained at least one-half of their meat and fish supply from personal hunting and fishing activities. *McDowell* at 5. At the same time the study showed that in a rural area, the City of Nome, some 5% of all households used no locally taken fish or game. *McDowell* at 5. The *McDowell* Court recognized that one purpose of regulations regarding subsistence usage is to "ensure that those Alaskans who need to engage in subsistence hunting and fishing in order to provide for their basic necessities are able to do so." *McDowell* at 10-11. It recognized that substantial numbers of Alaskans living in areas designated as urban have legitimate claims as subsistence users. Likewise, there are substantial numbers of Alaskans living in areas generally considered as rural who have no legitimate claims. *McDowell* at 10-11. Intrastate residential preferences in fish and game statutes, such as those set out in 36 CFR part 242 and rejected in McDowell, have been struck down in other jurisdictions. This is a recognition of the general rule: "Where the necessity or the preservation of the wild game and fish exists in certain territories of the state, that territory may be segregated for the purpose of regulating the right to taking game and fish therein; but the privilege of taking and using same must be extended to the people of the state outside of the territory upon the same terms that are given to those who are residents of the territory embraced in the legislation.... the question here involved was considered and determined in accord with the doctrine we have announced." *McDowell* at 11-12 (emphasis in original).

Separate from the rural/urban classification, the regulations provide for subclassifications. Where it becomes necessary to further limit subsistence hunting and fishing, the federal regulations prescribe criteria for individual allocations among rural subsistence users. These criteria include customary dependence, residency in the specific area and the availability of alternate sources. It is well known that many fishing opportunities are seasonal and of a limited duration. Further, the movement of game through areas of the state does not necessarily correspond with a single residence location as contemplated by the regulation. Often a traditional fish camp or hunting camp will be far from a residence. Thus, the system for ranking priority among those determined to have a customary and traditional use which relies in part on a single residence address may be problematic as well. I do not know whether there are any current challenges pending to the federal subsistence regulations. I have not heard of any decisions either upholding or rejecting the regulations. However, I would anticipate that judicial review of those regulations would follow closely on the heels of any federal enforcement activity. When that review is made, I suspect that the federal government may, like the state, find that allocating subsistence rights while complying with constitutional requirements is a heavy burden.

"Beyond Borders" event Oct. 3 in Anchorage

By Barbara Hood

The second annual "Beyond Bor ders" performance, sponsored by the Immigration & Refugee Services program of Catholic Social Services, will occur Saturday, October 3, 1998, at UAA's Wendy Williamson Auditorium. This evening of multicultural music and dance celebrates the many diverse cultures in Alaska, and will include performances by groups representing the Alaska Native, Russian, Polynesian, Hispanic, and Irish cultures, among others. The theme of *Beyond Borders* is "Building Bridges Towards A Community Without Boundaries," and the goal is to promote harmony between cultures and a greater understanding of the immigrant experience.

In honor of the I&RS/CSS commitment to the plight of refugees, *Beyond Borders* will also address the tragedies that occur when harmony between cultures breaks down and ethnic and racial prejudices take hold. Anchorage dancer Rona Mason will present a dance piece that interweaves the story of her own family's suffering and loss during the Holocaust with the stories of women who fell victim to the 1994 genocide in Rwanda. Mason's powerful piece illustrates how the horror of human rights abuse can cause refugees to flee for their lives from their homelands, and how the apathy of the world community can magnify the tragedy.

Immigration & Refugee Services Executive Director Robin Bronen invites the legal community to share in the evening's festivities and learn more about the program's efforts to provide free or low-cost legal assistance to immigrants and refugees across the state. I&RS/CSS is the only agency in Alaska accredited by the Board of Immigration Appeals to represent individuals in immigration proceedings and provide assistance in the naturalization process. With a staff of four, the agency receives about 600 calls for assistance each month.

The dramatic increase in demands for legal assistance can be attributed to 1996 and 1997 immigration reforms in Congress. As a result of new federal restrictions, many elderly and disabled lawful permanent residents lost Food Stamp benefits in August 1997. I&RS/CSS has since worked extensively to help them become U.S. citizens. Under other new legislation, immigrants who have suffered from domestic violence may apply for legal residence directly to the Immigration and Naturalization Service without waiting for an abusive spouse to file the paperwork. Bronen and her staff have helped several immigrant women avail themselves of the law's protections. One such client recently explained, "Robin helped me understand my rights, the immigration laws and process, and helped me find counseling to deal with being a battered spouse. Her guidance also made it possible for me to get my own green card and a work permit."

Most recently, I&RS/CSS is attempting to meet the urgent legal needs of Central American and

The staff of Immigration & Refugee Services, a program of Catholic Social Services: (L-R) Mary Lee, Naturalization Coordinator; Robin Bronen, Executive Director & Attorney; and Maria Theresa Amaya, Intake & Assessment Coordinator. (photo by Barbara Hood)

former Soviet Bloc immigrants who are seeking political asylum. Pursuant to the 1997 Nicaraguan and Central American Relief Act (NACARA), immigrants from these regions who have previously applied for asylum have a one-time opportunity to seek relief from deportation. In Alaska, several hundred immigrants are eligible for NACARA relief, so the program is currently straining to provide direct representation and create a *pro bono* program to recruit and train attorneys willing to handle the cases. The *Alaska Supreme Court Task Force on Access to Justice* recently recommended that the Alaska Bar Association offer a free CLE program on political asylum to *pro bono* attorneys, and the ABA Board of Governors approved the request at its August meeting.

Given the number of immigrants and refugees residing in Alaska and the ever-changing landscape of immigration laws, Bronen believes it is critical that the legal community reach out to lend what assistance it can.

"Every day, I am reminded of the wonderful gifts clients bestow on me when they share their culture, their language, and their dreams of being able to live in the United States," Bronen says. "I am constantly reminded of how privileged I am to live in the United States, and how fortunate I am that the doors to freedom were open when my grandparents fled the pogroms in Eastern Europe and arrived at Ellis Island. It is imperative that those doors remain open because of the United States' international treaty obligations and, more importantly, because of our humanitarian obligations as citizens to provide a safe haven for those desperately wanting to live their lives free of violence and persecution."

Beyond Borders will take place at UAA's Wendy Williamson Auditorium on Saturday, October 3, 1998. Viewing of children's art banners entitled *"Our Bridge Has Many Colors ... and We're All On It Together"* will commence at 6:30 PM in the auditorium lobby. The performance will start at 7:00 PM. Refreshments will be provided. Tickets for *Beyond Borders* are available in advance at Great Harvest Bread Co., 570 E. Benson, Catholic Social Services, 225 Cordova; Catholic Social Services Center, 3710 E 20th Avenue; and Qupqugiaq Cafe & Eatery, 640 W. 36th Avenue or at the door. The cost of admission is $10.00/adults, $6.00/children 12 and over, students or seniors; or $25/family. For more information, please contact Catholic Social Services at 277-2554.

HELP WANTED

We need your help. As you all know, on September 28, 1994 Bonnie Craig was brutally beaten, raped and murdered. We are trying to raise $50,000 to offer as a reward to whomever supplies the Alaska State Troopers with the information necessary to get an arrest and conviction in this case.

Every day in the United States women as young as three and as old as ninety-three are beaten, raped and sometimes murdered. Bonnie's killer's next victim might he someone near and dear to you.

At the present time at National Bank of Alaska in the account named "Friends of Bonnie Craig" account # 2101507706 there is a balance in excess of $19,000. We want $50,000 by September 28, the fourth anniversary of Bonnie's death. At that time we will go public and announce the reward fund and replace all the old signs with new signs that basically say, "We are ready to pay if you are ready to tell."

If the 3200 members of the Alaska Bar Association would each contribute $5.00 we'd be $15,000 closer to our goal. $10 each and we'd reach our goal and Karen Campbell, Bonnie's mother would be able to get a better night's sleep.

Again, please help by sending or taking your contribution to any branch of National Bank of Alaska. Thank you kindly.

Sincere1y,
Dave Brown 248-2975
Janice Lienhart 278-0977

THE PUBLIC LAWS

Legal internment

☐ Scott Brandt-Erichsen

Interns have been getting a lot of attention in 1998. While the White House may be revamping its intern program, I have taken the opportunity to revitalize the Ketchikan Gateway Borough's legal internship program.

As have many other attorneys in the state, I began my legal career in Alaska as an intern. That experience had a profound effect upon my legal career. It led to a job with the same employer when I graduated from law school, and ten years later I am still practicing in the same field.

Recognizing the value of my internship and the benefits which it provided me, I believe that providing internship opportunities for law students performs a valuable service for the legal community. For a student, it provides practical experience and the opportunity to learn from more experienced attorneys. For the employer, it offers an opportunity to evaluate a potential future employee in much greater depth than is possible through an interview process. Interns can also help the offices in which they work with some projects which might otherwise be delayed or left undone.

Many professions require internships or practical experience courses as part of a degree program. Generally these on-the-job experiences are an integral part of learning the profession. This is not meant to imply that the legal profession should mimic other fields simply because others do it. However, it's doubtless that such requirements as continuing education, periodic recertification, or any of a number of other annoying or cumbersome occupational license requirements applied elsewhere would be unlikely to reduce the quality of service to the public.

Another consideration which is particulary relevant to Alaska is the fact that the legal profession is one which is much less portable than many others. Practitioners tend to develop clients and contacts from the very beginning of their careers. After several years of developing a client network, it is often difficult and disadvantageous to start fresh in a new location without existing clients. The same can be said for work environments. Once a person begins to develop contacts and a reputation in a particular community, all other things being equal, they are quite likely to remain in or return to that community upon completion of law school.

Hiring law students from Alaska as interns increases the likelihood of those students returning to Alaska upon completion of their studies. If students from Alaska attending law school perform internships, take summer jobs or serve judicial clerkships in other states, the likelihood of them returning to Alaska is reduced. Thus, providing opportunities for Alaskan students to apply their new skills in-state helps combat a "brain drain" of these students.

Prior to this year, I had not employed interns in my office. In about 1990 there was a rule change regarding interns and the ability to receive both pay and law school credit. This brought about a change in the long standing internship program utilized by the Municipality of Anchorage. Prior to that time, Anchorage would rely upon three interns to assist with misdemeanor arraignments and miscellaneous civil issues for six months at a time. The interns would be paid, and dependent upon their school, could also receive credit. Following the rule change, it was not possible to get year-around interns to fill this role. Accordingly, the program was discontinued. Prior to 1991, Ketchikan also had an intern program. However, that too was discontinued about the same time.

HIRING LAW STUDENTS FROM ALASKA AS INTERNS INCREASES THE LIKELIHOOD OF THOSE STUDENTS RETURNING TO ALASKA UPON COMPLETION OF THEIR STUDIES.

This year I had a particular project which seemed appropriate for an intern. Working with an intern has reminded me of how valuable that experience was when I was in school. It has also made me ask myself why I did not initiate a new intern program sooner. I suspect that I am not the only one who "just hadn't thought about it." I would encourage all practitioners who have an appropriate office environment to make internship or summer law clerk opportunities available to Alaskan students. Doing so provides both stewardship for the profession and some very practical benefits to the employer. Besides, it is preferable to mandatory indentured servitude or whatever else may be suggested as a method to improve the level of training, or the reputation, of lawyers.

FORMS REMINDER

The Bar office has been advised that some practitioners are using older forms for dissolution proceedings. Please check your office supplies to be sure that you have the new Form DR10, 1-98.

GETTING TOGETHER

Transformative mediation

☐ Drew Peterson

The book of greatest impact on the mediation movement in the past five years is *The Promise of Mediation - Responding to Conflict Through Empowerment and Recognition,* by Robert A. Baruch Bush and Joseph P. Folger (Jossey-Bass Publishers, 1994), winner of the International Association of Conflict Management 1995 Book of the Year Award. The book explores the transformative potential of mediation, based on valuing personal strength and compassion for others. It argues that realizing the full promise of mediation means giving such a transformative approach to mediation a central place in theory, policy and practice.

Bush and Folger assert that the mediation movement to date has focused on four diverging views. They characterize these as four different "stories" of the movement:

THE SATISFACTION STORY

According to this story, the mediation process is a powerful tool to reframe a contentious dispute into a mutual problem which can be solved. Because of mediators' skills in dealing with power imbalances, mediation can reduce strategic maneuvering and overreaching. Mediation can thereby produce creative "win-win" outcomes that satisfy parties' genuine needs in a particular situation. The emphasis of the story is on the satisfaction of the self-defined needs of all of the parties to the dispute.

The informality and mutuality of the Satisfaction Story can reduce both the economic and emotional costs of dispute settlement. This in turn has led to more efficient use of limited private and public dispute resolution resources, has reduced court caseloads and backlogs, and facilitated speedier disposition of those cases that cannot be resolved without trial in court. The Satisfaction Story is told by a great number of adherents of mediation, perhaps most notable by Fisher and Ury in their now classic book on collaborative problem solving: *Getting to Yes.*

THE SOCIAL JUSTICE STORY

According to this story, mediation offers an effective means of organizing individuals around common interests, thereby building stronger community ties and structures. By helping parties to solve problems for themselves, mediation reduces dependency on bureaucracies and encourages self-help. As a result, mediation can strengthen the weak by helping establish alliances among them. Legal rules are treated as only one of a variety of bases by which parties can frame issues and evaluate possible solutions to disputes. Therefore mediation can give groups more leverage to argue for their interests than they might have in formal legal processes. In short, mediation helps to organize individuals and to strengthen communities of interest between them.

The Social Justice Story of mediation also has many adherents, particularly in the community mediation movement, notably including Ray Shonholtz, founder of the Community Boards Programs of San Francisco.

THE OPPRESSION STORY

In great contrast to the positive stories of mediation told by its adherents is the story of the critics of mediation, which Bush and Folger call the "Oppression Story". According to this story, mediation has turned out to be a dangerous instrument for increasing the power of the strong to take advantage of the weak. Because of the informality and consensuality of the process, and the absence of procedural and substantive safeguards, mediation can magnify power imbalances and open the door to coercion and manipulation by the stronger party. Meanwhile, the posture of "neutrality" excuses the mediator from preventing this. Thus it is believed that mediation has often produced outcomes that are unjustifiably favorable to stronger parties. The overall effect of the movement has been to neutralize social justice gains achieved by the civil rights, women's and consumer's movements, and to help the privileged classes perpetuate their oppression of the weak.

The Oppression Story is told in different forms by many of the critics of the mediation movement, notably by feminist critic Martha Fineman and anthropologist Laura Nadar.

THE TRANSFORMATION STORY

Finally, the story of mediation which the authors advocate is that the unique promise of mediation lies in its capacity to transform the character of both individual disputants and society as a whole. According to the Transformation Story, mediation can support the parties' exercise of self-determination. Participants in mediation have gained a greater sense of self-respect, self-reliance, and self-confidence. This has been called the empowerment dimension of the mediation process.

In addition to empowerment, mediation can also provide disputants with a non-threatening opportunity to explain and humanize themselves to one another. Mediation thus engenders acknowledgment and concern for each other as fellow human beings. This has been called the recognition dimension of the mediation process.

In contrast to the other three stories, the authors assert that the Transformation Story is not widely told in the published literature of the field. A few prophetic voices in the movement, however, like Albie Davies and Leonard Riskin, have voiced the appropriateness of such an approach to mediation. And whenever the story is told, the authors assert, the transformation story generates a remarkably enthusiastic response, which suggests that it has more currency than would appear from publications in the field.

AND THE WINNER IS

While all four stories of mediation are in circulation, Bush and Folger assert that they are seldom recognized and contrasted. More commonly only one of the stories is told at a time, and presented as the "true" story of mediation. Placing the four stories side by side, however, reveals some important points about the mediation movement. First it demonstrates that the mediation movement is diverse and pluralistic. Different mediators follow different approaches, and apply different underlying theories of dispute resolution. Indeed, there is no one true story of mediation, but rather each is probably a valid account of the practices of some mediators working in the field today.

At the same time, contrasting the stories of mediation makes it clear that they are not all equally reflective of the actual state of the mediation movement today. Indeed, the authors assert that a dominant pattern of mediation practice has emerged, namely the Satisfaction Theory, which seeks satisfaction foremost, and pays little attention to building coalitions or transforming disputants.

While the authors assert that the majority of people currently working in the mediation field see the Satisfaction Story as the most convincing view of mediation, the premise of *The Promise of Mediation* is that mediation should instead be seeking the broader and more significant goals of engendering moral growth and transforming the moral character of its participants. In short, Bush and Folger assert that the Transformation Story offers the best prescription for the future of the mediation movement.

The goal of transformation, the book asserts, has a unique character compared to the goals underlying the other stories of mediation. Transformation involves changing not just situations but people themselves, and thus society as a whole. It aims at creating a "better world".

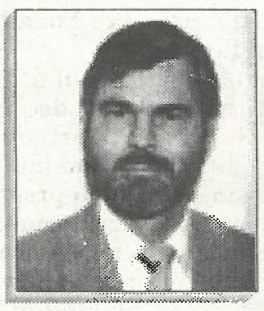
Not only is the goal of transformation uniquely important, it is also a goal that the mediation process is uniquely capable of achieving. Other dispute resolution processes, like adjudication or arbitration, can perhaps do as good a job as mediation in satisfying needs and ensuring fairness. But such processes are far less capable than mediation of fostering strength and compassion in disputing parties and thus of achieving moral growth and transformation. Adjudication and arbitration both disempower disputants, by taking control out of the parties' hands and necessitating the reliance on professional representatives. The goal of mediation should be to empower participants, not merely to satisfy them. Transformation matters, and mediation is unique in its capacity to be transformative.

After describing the four stories of mediation, the authors of *The Promise of Mediation* go on to analyze how the Satisfaction Story is increasingly being accepted by mediators as the proper view of mediation. The Transformation Story, together with the other stories of mediation, are losing sway in the field. Such a turn of events is unfortunate, Bush and Folger believe, and one which responsible mediators should try to overcome. Indeed, the majority of the book consists of describing the transformative approach to mediation, contrasting it to the satisfaction theory, and demonstrating how a more transformative approach can bring about more significant and desirable benefits for disputing parties. Only with such an approach, the authors assert, can the mediation movement fulfill its unique promise.

The Promise Of Mediation is a fascinating book, with a thought provoking and intriguing message for dispute resolution professionals. Although written in an academic style, it is fairly readable. The practical examples of mediation which it presents will ring true for practitioners in the field. I recommend the book highly to anyone in the appropriate dispute resolution profession, or interested in the field.

A tale of two attorneys and two cases

☐ Thomas Yerbich



In *In re 1441 Veteran Street Co.*, 144 F.3d 1288 (CA9 1998), a single-asset real property case, at the time the petition was filed, the debtor owed Gold Coast approximately $13.4 million secured by a deed of trust with an assignment of rents. During the pendency of the case the debtor paid Gold Coast approximately $265,000 in net rents generated by the property.

At the request of the debtor and for the purpose of establishing the value of the secured claim for confirmation purposes, the bankruptcy court valued the real property at $10.1 M. Subsequently, the court denied confirmation of the plan and granted Gold Coast relief from stay. After relief from stay was granted and before the foreclosure sale was completed, a receiver collected $332,000 in rents. At the nonjudicial foreclosure sale, Gold Coast purchased the property for $10 M.

Debtor's counsel moved for payment of its fees as an administrative expense to be paid from the funds in the receiver's hands. The bankruptcy court, over the objection of Gold Coast, awarded $100,000 to debtor's counsel, adopting the theory that Gold Coast's $10.1 M secured claim and had been satisfied by the $265,000 rents received during the bankruptcy and the $10 M bid at the foreclosure sale: the balance of the claim was unsecured. The court then dismissed the case. On appeal the Ninth Circuit reversed.

The Ninth Circuit held that when the purpose behind a particular valuation no longer exists, that valuation becomes irrelevant. Once the bankruptcy court rejected the plan, the valuation made in light of the proposed plan served no purpose under the bankruptcy code. Therefore, that valuation did not affect Gold Coast's rights to postpetition rents under § 552. The rents generated by the property constituted part of Gold Coast's collateral and were an improper source for payment of the attorney's fees. This holding is consistent with the § 506(a) requirement that the value of the property is to be determined "in light of the purpose of the valuation and of the proposed disposition of the property."

The Ninth Circuit also rejected the argument the lien could be stripped down under § 506(a) to pay the administrative expenses. Recognizing that strip down is permissible in chapter 11, the court held that the holding in *Dewsnup v. Timm*, 502 U.S. 410 (1992) proscribing strip downs in chapter 7 cases was equally applicable in a case where a plan of reorganization has been rejected. *Dewsnup* is inapplicable and strip down permitted only when a plan of reorganization has been confirmed.

1441 Veteran Street drives home a very important point that must be borne in mind when dealing with valuations under § 506(a): a valuation made for a particular purpose has no relevance to a subsequent value determination for a different purpose. As noted in *Veteran Street*, this applies even when the earlier value has been stipulated to by the parties. Moreover, a valuation does not freeze the secured interest at the judicially determined valuation; the creditor is entitled to the benefit of any increase over the judicially determined value during the bankruptcy proceedings. [*Dewsnup, supra*]

Veteran also highlights the risks that counsel representing debtors whose assets are fully encumbered of the problems inherent in representing such debtors regarding payment of fees. Cash collateral proceeds realized from collateral, absent consent of the creditor or the order of the court, are not available to pay administrative expenses, save to the limited extent permitted under § 506(c) (recovery of "the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the [secured creditor]"). In *Veterans Street*, 506(c) was satisfied by the fact that Gold Coast received only the net rents realized by the bankruptcy estate prior to termination of the stay.

In *In re Hines*, 147 F3d 1185 (CA9 1998), the Ninth Circuit blithely ventured where Congress failed: the legal posture of attorney's fees paid or payable by chapter 7 debtors. Whether fees are paid in full up front before filing or the parties enter into an agreement for payment of the fees after filing, potential conflicts with the Code exist.

In *Hines*, the debtor filed a chapter 13 case. Subsequently, the debtor fired the first attorney and hired a new attorney to convert the case to one under chapter 7. Debtor entered into a written agreement with attorney 2 to pay the fee in seven monthly installments of $125 each, supported by a promissory note and seven post-dated checks; one to be cashed before conversion and the remainder after. Attorney 2 properly disclosed the fee arrangement. In accordance with the fee agreement, attorney 2 cashed 2 of the post-dated checks post-conversion. The total received by attorney 2: $375.

Debtor then became dissatisfied with attorney 2 and returned to attorney 1. Acting on the advice of attorney 1, debtor stopped payment on the remaining four checks payable to attorney 2. In response, attorney 2 demanded payment of the remainder of the agreed upon fee from the debtor. Attorney 1 then filed a motion to hold attorney 2 in contempt for violation of the automatic stay seeking $250 in actual damages, attorney's fees and $50,000 in punitive damages.

The bankruptcy court denied the contempt motion and reduced the fee of attorney 2 from $875 to the $375 paid. The debtor appealed to the BAP, which reversed the bankruptcy court, holding (in an decision that sent chills down the spines of debtor's counsel) that the debtor's obligation to pay Attorney 2 for work to be performed in the future had to be treated as a prepetition debt discharged in bankruptcy, remanded the matter for determination of damages. [Section 1307 specifically provides that any obligation incurred between the date of the filing of a chapter 13 petition and conversion is treated as a prepetition claim.] Attorney 2 then appealed to the Court of Appeals.

The Court of Appeals reversed the BAP holding that an agreement to provide postpetition services in exchange for postpetition payment was not dischargeable in bankruptcy, and demand for payment for those services actually rendered did not violate the automatic stay. The court did recognize the right of a client to fire an attorney before services were completed. In such circumstances the attorney was not entitled to receive the full agreed upon fee, but must look to reasonable compensation under *quantum meruit*. The case was remanded to determine the reasonable value of the services actually rendered by attorney 2.

The majority took a round-about way to arrive at that result. It rejected as patently artificial having two separate agreements, one to perform prepetition services and then immediately after the petition was filed, another to provide postpetition services. Also pointed out was that attorneys would be faced with a clear conflict of interests if the right to receive payment for postpetition services was treated as a prepetition claim. To ensure payment, the debtor would have to reaffirm the obligation, and the fiduciary obligation of the attorney would compel the attorney to advise against reaffirmation with its obvious result: the attorney would not be paid. The court also pointed out that if agreements to perform postpetition services were treated as executory contracts, they would be subject to assumption or rejection by the trustee. That action affects only potential recovery from the bankruptcy estate whereas the attorney in chapter 7 cases is looking to the debtor for payment for postpetition services.

The upshot is that the majority found an "alternative" to which the concurring opinion subscribed: a right to receive payment for postpetition services only if and when the services are performed, although entered into prepetition, is not a claim against the debtor that arises prepetition. This appears, at least to this author, to be the more logical approach to the problem of postpetition payment.

Although *dicta*, the discussion of prepetition payments for postpetition services is also interesting. In the view of this panel, the prepaid right to legal services, because it exists at the outset of the case, is property of the bankruptcy estate. As property of the estate, it ought to be liquidated to satisfy creditor's claims against the estate. The trustee could liquidate the debtor's right to legal services by rejecting the contract with the attorney and demanding a refund of the unearned fees. Although superficially this appears plausible, it would render § 329 at least partially superfluous.

Section 329 provides for judicial review of fee arrangements between the debtor and debtor's attorney for services rendered *or to be rendered* in connection with the case. In particular § 329(b), providing for judicial cancellation of the agreement and disgorgement of excessive fees to the person who paid it or, if the payment would have been property of the estate, to the estate. [*See also* Rule 2017(a), FRBP] Fair reading of § 329(b) is indicative that Congress intended recovery of prepetition payments to be limited to excessive or unreasonable payments. The procedure for the trustee to follow is a motion seeking disgorgement of excessive fees; not unilateral rejection of the contract coupled with a demand for refund of all unearned fees.

Alaska Bar Foundation elects new trustees and new officers ☐ Mary Hughes

On May 28, 1998, the Trustees of the Alaska Bar Foundation elected two lawyers to fill the Third Judicial District seat being vacated by Mary K. Hughes and the First Judicial District seat being vacated by William B. Rozell. Both Ms. Hughes and Mr. Rozell served as Trustees since 1984.

Kenneth P. Eggers, a private practitioner with the firm of Groh Eggers, LLC, was elected as the Third Judicial District member. Mr. Eggers has practiced in Alaska for 25 years and has been very active professionally. He served on the Board of Governors of the Alaska Bar Association from 1986 to 1989 and on the Board of Directors of the Anchorage Bar Association from 1980 to 1982 and from 1989 to 1992. He was also elected Treasurer of the Alaska Bar Foundation.

William T. Council, a Juneau lawyer, was elected as the First Judicial District member. A twenty-six year Alaskan practitioner, Mr. Council was an Assistant Attorney General and Head of Litigation for the State of Alaska from 1975 to 1979 prior to entering private practice. He is a past member of the Alaska Judicial Council and the Alaska Supreme Court Rules and Time Standards and Discovery Abuse Committees.

Messrs. Eggers and Council join Leroy J. Barker, Winston S. Burbank and Judge Eric T. Sanders on the Board of Trustees. Mr. Barker was elected President and Mr. Burbank was elected Secretary of the Alaska Bar Foundation. The Foundation meets each May for its annual meeting. Its primary function is to distribute IOLTA funding to providers of legal services to the disadvantaged and to programs which improve the administration of justice. Both goals were supported by the Alaska Supreme Court in 1986 when it adopted then DR 9-102 (now Rule 1.15 of the Alaska Rules of Professional Conduct). Under the Alaska IOLTA program, attorneys' non-interest bearing trust accounts holding short-term or nominal funds are converted into interest-bearing trust accounts. The aggregate interest produced by these accounts is transferred to the Alaska Bar Foundation for distribution.

The recent *Phillips, et al v. Washington Legal Foundation* decision of the U.S. Supreme Court demonstrates the difficulty of maintaining IOLTA funding for worthy programs. The Trustees, as well as members of the Alaska Bar Association, have for years supported programs which provide necessary funding of legal services to an otherwise unserved segment of Alaska people and improvement of the administration of justice. Hopefully, the Fifth Circuit Court of Appeals will resolve this most recent challenge in a manner that IOLTA programs nationwide, and especially Alaska's, may continue to fund vital and necessary activities.

Excerpts from the JBA Minutes

JULY 17, 1998

Speaker: Joe Beedle, CEO and President of Goldbelt, Inc.

Goldbelt, Inc. is an urban Alaska Native Claims Settlement Act for-profit corporation headquartered in Juneau. January 4, 1999 will be Goldbelt, Inc.'s 25th year of incorporation.

The corporation operates tourism, cruise, and lodging business (domestic and international); secures and manages investment property (including commercial as well as residential); develops its lands; logs timber (scheduled to end in 1999); and manages portfolio investments for the benefit of their 3,000 shareholders.

Recognizable Goldbelt ventures in Juneau and southeast Alaska include Raven-Eagle Gifts, the Mount Roberts Tramway, Goldbelt Family Travel, Seadrome Travel Center, Auk Ta Shaa Discovery, Auk Nu Tours, and our second and fourth Fridays JBA host, the Goldbelt Hotel.

In 1994, the Goldbelt Board of Directors adopted a business plan called "Vision2000, setting benchmarks for Goldbelt investments. With minor exceptions, the benchmarks have been met.

Goldbelt has moved from primary revenue reliance on timber with passive investment income to primary revenue reliance on operating and start-up companies with less reliance on timber income. This has been important to the Corporation because of the extremely low timber prices. By 1999, Goldbelt expects to operate with very little revenue reliance on timber; and they hope to have doubled the Tourism, Cruise Operations, and Real Estate division earning assets.

In response to a question about shareholder employment, Mr. Beedle reported that about 1/3 of the corporate employees are shareholders.

In response to a question about the status of the golf course on Douglas Island, Mr. Beedle reported that it was slow going. Kake Tribal and CBJ are primarily working on the golf course. Goldbelt cooperated by aligning their road to accommodate access to a golf course. Originally, the net worth of the timber in the area was estimated to be $1.1 million dollars. With the collapse of the timber market, the estimated net worth is now approximately $-100,000 (the value of the timber itself is less than the cost to harvest the timber). It does not sound like we can expect a golf course any time soon.

AUGUST 7, 1998

Announcements: President Lach Zemp announced that the JBA officers recently met to discuss upcoming speakers and possible new procedures/guidelines for making charitable contributions. President Zemp also announced that he is expecting a call from the president of the Whitehorse Bar Association to see if we can set up some sort of trip/activity with the WBA.

Stories: Even though is was a rainy day, only eight members attended the meeting. Since none of us had any pressing business, we allowed ourselves to enjoy the various stories people had to tell: Shirley Kohls treated us to tales of the history of Tenakee and of the natural wonder of the hot springs. President Zemp entertained us with his adventures at the Haines Fair, including a harrowing adventure on the miniature train. Vice-President Hazeltine made us chuckle when she told us of the Satellite JBA meeting running concurrently at the Goldbelt by three members who forgot we were meeting at the Second Course. I don't know if they'll be providing minutes of that meeting. VP Hazeltine also passed along Mark Choate's regards. Apparently he said to tell us that he loves Hawaii, it was 82 degrees, and that he could see the palm trees blowing gently in the breeze. Hmmmm. Bet he didn't have scallops for lunch.

AUGUST 14, 1998

Announcements: Seth Eames (Pro Bono Program Guest) announced that there is a potential bankruptcy rule change that will abolish the ability to attend Chapter 7 hearings telephonically. Anyone with comments or concerns should contact the Assistant U.S. Trustee, Barbara Franklin, at her office in Anchorage, 271-7600. John Rice, who does a lot of bankruptcy law, commented that this rule change would be terrible for Juneau. Mark Regan announced that when the proposed rule is published or announced, he will propose that the JBA pass a resolution asking that the rule not be changed. Mark Regan announced that Sitka has a new process server. Although the process server isn't listed in a directory yet, the Sitka Court will give his name and contact information to anyone who calls.

New Business: John Rice brought up the topic of the JBA's web page. About a year ago, John set up a JBA page on his web site. He recently researched and found that the JBA can reserve the web address "juneaubar.org" for $100 per year. Anyone who is interested in pursuing the JBA web page should contact President Zemp or John Rice for more information. (John's JBA site is: http://www.realnet.org/juneaubar/).

The Good 'Ol Days.. President Zemp was giving us the low-down on *Saving Private Ryan*, which caused Gordon Evans to jump in with some skepticism about the movie. When asked if he had seen the movie, Gordon revealed that the last movie he had seen at the theater was *Tora! Tora! Tora!* After our laughter subsided, he added in his defense, "At least it was in color!" I checked the

Continued on page13

ESTATE PLANNING CORNER

The creation of Alaska community property

☐ Steven T. O'Hara

Alaska law now provides community property as an alternative form of ownership for married couples. In order to create community property under Alaska law, a couple must enter into a written "community property agreement" or a written "community property trust" (AS 34.75.030, .090 and .100).

Alaska law has specific rules that couples must follow when creating a community property agreement or trust. For example, the beginning of each community property agreement or trust must contain the following language in capital letters:

THE CONSEQUENCES OF THIS AGREEMENT [OR TRUST] MAY BE VERY EXTENSIVE, INCLUDING, BUT NOT LIMITED TO, YOUR RIGHTS WITH RESPECT TO CREDITORS AND OTHER THIRD PARTIES, AND YOUR RIGHTS WITH YOUR SPOUSE BOTH DURING THE COURSE OF YOUR MARRIAGE AND AT THE TIME OF A DIVORCE. ACCORDINGLY, THIS AGREEMENT SHOULD ONLY BE SIGNED AFTER CAREFUL CONSIDERATION. IF YOU HAVE ANY QUESTIONS ABOUT THIS AGREEMENT, YOU SHOULD SEEK COMPETENT ADVICE (AS 34.75.090(b) and 34.75.100(b)).

The other requirements to create a valid community property agreement or trust include the following:

(1) If the instrument is a community property agreement, both spouses must be domiciled in Alaska (AS 34.75.060(a)). There is no such requirement for a community property trust (AS 34.75.060(b)). Regardless of the domicile of the couple, the situs of the property (intended to be affected by the agreement or trust) will need to be considered.

(2) Both spouses must sign the community property agreement or trust (AS 34.75.090(a) and .100(a)).

(3) The community property agreement must classify some or all of the property of the spouses as community property (AS 34.75.090(a)). If the instrument of creation is a trust, at least one of the spouses must transfer property to the trust, and the trust must declare that some or all of the property transferred is community property under chapter 75 of title 34 of Alaska Statutes (AS 34.75.100(a)).

(4) The trustee of a community property trust must maintain records that identify what trust property is community property and what trust property, if any, is not community property (AS 34.75.100(h)).

(5) The community property trust must have at least one trustee who is a "qualified person" (AS 34.75.100(a)). This term is defined as an Alaska resident or an Alaska bank or trust company (*Id.*). The Alaska trustee's powers must at least be to maintain records for the trust and prepare or have prepared any trust income tax return (*Id.*).

(6) No community property agreement or trust may adversely affect a child's right to support (AS 34.75.90(c) and .100(c)).

(7) No community property agreement or trust may reduce or eliminate a spouse's duty to act in good faith with respect to the other spouse in matters involving community property (AS 34.75.010).

(8) No provision in a community property agreement or trust may adversely affect a creditor unless the creditor has actual knowledge of the provision when the obligation to the creditor is incurred (AS 34.75.070(h)).

(9) No community property agreement or trust may vary the following rule: If a couple owns community property, if one of them has a right to manage and control that property (under AS 34.75.040) and if that spouse sells the property to a bona fide purchaser, the property is acquired by the purchaser free of any claim of the other spouse (AS 34.75.080(b)).

(10) In order for a community property agreement or trust to be enforceable by one spouse against the other:

(A) The agreement or trust must not have been unconscionable when made (AS 34.75.090(g)(1), (h)(2), and .100(f)(1)). Whether or not the document was unconscionable is determined by a court as a matter of law (AS 34.75.090(i) and .100(g));

(B) The spouse against whom enforcement is sought must have signed the agreement or trust voluntarily (AS 34.75.090(g)(2), (h)(1), and .100(f)(2)); and

(C) Before signing the agreement or trust, the spouse against whom enforcement is sought must have had, or waived access to, information regarding the other spouse's assets and liabilities. This requirement is satisfied if the spouse against whom enforcement is sought had notice of the property or financial obligations of the other spouse (AS 34.75.090(g)(3)(C), (h)(2)(C), and .100(f)(3)(C)). The statute defines "notice of a fact" as "knowledge of it, receipt of a notification of it, or reason to know that it exists from the facts and circumstances known" (AS 34.75.900(14)). If the spouse against whom enforcement is sought did not have notice, then he or she must have (1) been given a fair and reasonable disclosure of the property and financial obligations of the other spouse or (2) must have voluntarily signed an instrument expressly waiving the right to any disclosure beyond the disclosure provided (AS 34.75.090(g)(3)(A) and (B), (h)(2)(A) and (B), and .100(f)(3)(A) and (B)).

Alaska law allows optional provisions, such as those concerning management of the community property and its disposition on the death of either or both spouses (AS 34.75.020, .090(d), and .100(d)).

Each community property agreement and trust will be as different as the parties' circumstances. As always, the estate planner's job is not to try to fit the parties into a "form" document, but rather to assist in the design of a community property agreement or trust that serves the particular circumstances of the parties.

Matrimonial lawyers launch campaign

The 1,500-member American Academy of Matrimonial Lawyers, the nation's top divorce and matrimonial law attorneys, has launched a national public awareness campaign to counter the effects of divorce on children.

The effort includes distribution of a free booklet for divorcing parents, "Stepping Back from Anger: Protecting Your Children During Divorce."

The public awareness effort features 30- and 15-second public service announcements, the "how-to" booklet, and an instructional video - all aimed at parents in the throes of divorce.

"Much of the emotional and psychological damage suffered by children who come from a so-called broken home can be avoided if only parents would be more sensitive to their children's needs," says Mike McCurley, AAML president.

Callers to the AAML's toll-free number, 1-877-4-THE-KIDS, will receive the free booklet on how they can help their children during a divorce or separation.

The booklet provides parents with both a Children's Bill of Rights that parents should respect when getting a divorce as well as tips for divorcing parents.

Among the provisions of The Children's Bill of Rights are;

- You have the right to love both your parents and the right to be loved by both of them.
- You're entitled to all the feelings you're having.
- You don't belong in the middle of your parents' breakup.
- You have the right to be a child.

Tips for divorcing parents include:

- Never disparage your spouse in front of your children
- Do not use your children as messengers between you and your former spouse.
- Reassure children that they are loved and that the divorce is not their fault.

The American Academy of Matrimonial Lawyers is composed of the nation's top 1,500 attorneys who are experts in the field of matrimonial law, including divorce, prenuptial agreements, legal separation, annulment, custody, property valuation, support, and the rights of unmarried cohabitors.

LawBooks

BOOK FOCUSES ON PSYCHIATRIC EVIDENCE

The law regarding the admissibility, assessment, and use of psychiatric and psychological evidence and testimony in the courtroom is often a source of controversy, particularly in criminal cases. The American Bar Association's Commission on Mental and Physical Disability Law, with support from the State Justice Institute, has compiled a National Benchbook on Psychiatric and Psychological Evidence and Testimony, focusing on questions of civil and criminal competency, dangerousness to self or others, and criminal responsibility. The publication is the first-ever national benchbook on these issues, and is a resource for state court judges to adapt the national guidelines to the laws in their jurisdictions.

The role of mental health experts in both criminal and civil judicial proceedings has increasingly been a source of great controversy, raising questions of responsibility and admissibility. This ABA publication provides judges, lawyers and experts with a valuable resource that offers practical answers to complicated questions. ABA immediate past President Jerome J. Shestack writes in the foreword, "This remarkable volume ... is designed to aid decision-making and to enhance courtroom diagnosis and assessment regarding admissibility of evidence, problems of minors and the many critical standards of commitment, incompetency, dangerousness and responsibility, in both civil and criminal cases."

The *National Benchbook* is divided into four parts. The first is an executive summary of each chapter. Part two presents judges' checklists on the admissibility of psychiatric and psychological evidence and testimony, as well as the existence of mental disorders, issues of civil and criminal competency, criminal responsibility, and evaluation of dangerousness to self or others. Part three includes nine substantive chapters on the clinical dimensions of judicial decision-making, including: diagnosis and assessment; admissibility of evidence and testimony; civil incompetency; involuntary civil commitment; special issues involving minors; criminal incompetency; criminal responsibility; and dangerousness in criminal commitment and sentencing matters. Part four contains the appendices of relevant books, articles, case decisions, and statutes for each chapter, plus a compilation of admissibility standards in each state.

For more information on the National Benchbook, or to order a copy, contact the ABA Commission at 202/662-1570 or mail: 740 15th Street NW, 9th floor, Washington, D.C. 20005.

BNA UPDATES KEY PATENT REFERENCE

BNA Books, a division of The Bureau of National Affairs, Inc., has published the Fourth Edition of Patents and the Federal Circuit by Robert L. Harmon. This new edition covers all the important patent decisions handed down by the Court of Appeals of the Federal Circuit through the end of 1997.

Patents and the Federal Circuit is the most comprehensive analysis available on Federal Circuit cases. It distills the opinions issued by this primary source of governing law on patents into one convenient source of controlling case law. Major topics in the volume include substantive patent law, infringement, ownership and enforcement, remedies, procedures of the Patent Trademark Office and the Federal Circuit, and jurisdiction and judicial method of the Federal Circuit. In addition, the treatise includes the author's expert commentary on trends and tactics. The reference also has an appendix on validity and infringement statistics, a table of cases, and an index.

Patents and the Federal Circuit, Fourth Edition, (1,064 pp. Hardcover/ISBN 1-57018-126-8/Order #1126-PR8/$225.00 plus tax, shipping, and handling) may be purchased from BNA Books, P.O. Box 7814, Edison, NJ 08818-7814. Telephone orders: 1-800-960-1220.

BNA Books' home page and online catalog are at "http://www.bna.com/bnabooks".

LIMAN MEMOIR TO COME

LAWYER: A Life of Counsel and Controversy is scheduled for publicatiion this fall, from Public Affairs publishers and Yale Law School.

In this memoir, written in the months before his death, Arthur L. Liman reflects upon his life in the law from the moment Roy Cohn's performance at the McCarthy hearings inspired him to become a lawyer, to his influential investigation of the 1971 Attica prison uprising, through his role as special counsel to the United States Senate Committee in the Iran-Contra hearings. Full of lively portraits of the moguls, financiers, politicians, judges, lawyers, and criminals with whom Liman worked, and grounded in his insightful, provocative opinions on the practice of law and on today's legal issues, *Lawyer* is an absorbing look inside Liman's high-profile practice and at the progress of law and politics over the last half-century.

Arthur L. Liman was a partner at the law firm of Paul, Weiss, Rifkind, Wharton & Garrison in New York City. He died in 1997.

Planning guide for practice management advisory programs now available

Drawing on the experience of currently operating U.S. state bar and Canadian law society practice management advisory services, the American Bar Association Law Practice Management Section (LPM) and Center for Professional Responsibility have developed a *Planning Guide to Starting A Bar-Sponsored Practice Management Advisory Program (PMAP)*. The Guide was written by the LPM Practice Management Advisors Task Force, composed of individuals who are employed by state bar associations to help lawyers manage their practices more effectively, and who are committed to the process of increasing the quality of legal services through improved management.

A PMAP is a program that provides free or low-cost practice management assistance to lawyers, on a, not-for-profit basis, sponsored by a state, county or local bar association in the United States or a law society in Canada. PMAPs share common objectives to: 1) assist lawyers in improving efficiency and effectiveness in the delivery of legal services; 2) assist lawyers in implementing systems and controls to reduce risk and improve quality in the delivery of legal services; and 3) assist lawyers in client relations.

Topics discussed in the Planing Guide include initial considerations; confidentiality and duty to report ethical violations; leadership support; liability; services and resource allocations; staffing; office and equipment; financial considerations; marketing and referrals; and monitoring program process. The guide is available free of charge for downloading from the Internet at http://www.abanet.org/lpmlguide.

ATLA meeting offers education & networking opportunities

The Association of Trial Lawyers of America (ATLA) will hold its 1999 Winter Convention January 23-27 at the San Antonio Marriott Rivercenter in San Antonio, Texas. The five-day agenda will feature two concurrent tracks with topics including "The Law, Your Practice, and the Year 2000," "Persuasive Proof of Damages in Professional Negligence Cases," "The Effect of HMOs on the Quality of Health Care," and "Preserving Justice for Children," which includes presentations on developing damages in the child case and trial and settlement strategies.

Other highlights include the popular Litigation at Sunrise program—a series of rapid-fire CLE presentations of developments in new areas of litigation—and meetings of some of ATLA's more than 70 Litigation Groups, which share information about specific cases in areas such as automatic doors, breast implants, Fen-Phen, and Redux.

In addition, the ATLA Exposition offers attendees a preview of new legal products and services, plus demonstrations of *ATLA NET* the Association's online service.

ATLA members may register for the convention by calling 800-424-2725 or 202-965-3500, ext. 613, or on *ATLA NET* at www.atlanet.org.

West Group Publications

ACCA & WEST PLAN PARTNERING BOOK

The American Corporate Counsel Association has entered into an agreement with West Group to produce a major new book, *Successful Partnering Between Inside and Outside Counsel* in 1999.

This book will be an analysis of the most recent innovations of legal departments and law firms that are focused on improving the effectiveness of legal representation of corporations. Chapters will be authored by leading inside counsel from across the country, who may also partner with their outside counsel in drafting text to describe solutions.

The book will include chapters on pre-engagement planning; requests for proposals, bidding, presentations and beauty contests; fee arrangements; engagement letters; cost-benefit and risk-benefit analysis; the planning process; budgeting and controlling costs; department management; law firm structure and compensation systems; local and specialized outside counsel; national, regional, and other types of coordinating counsel; unbundling legal and ancillary services; billing; shared law office technology; benchmarking and evaluation; communication methods, ethical issues; alternative dispute resolution; settlement; discovery and information gathering; trail preparation and presentation; corporate governance; transactions; opinion letters; corporate investigations; and other relevant topics.

If you are an in-house lawyer and have suggestions for material to be included in the book, please contact Bob Haig: 212/808-7715; rhaig@kelleydrye.com.

WEST LAUNCHES FEDERAL SUPPLEMENT 2ND SERIES

West Group has introduced the new Federal Supplement® Second Series and is closing the Federal Supplement First Series at Volume 999.

For more than 65 years, Federal Supplement volumes have been recognized as the legal community's primary source for published federal district court opinions. Beginning with Volume One, published in 1933, the 999 volumes of the First Series contain more than 200,000 opinions covering some 1.3 million pages.

The Federal Supplement series serves as an important chronicle of the evolution of American case law.

Today, West's Key Number system is the master classification tool for American case law, serving as the index for West Group published primary law plus electronic search and citator tools like Westlaw, westlaw.com and KeyCite.vance.

NEWSLETTER ADDED TO WESTLAW

Mergers and acquisitions attorneys can now access The *M&A Lawyer* on Westlaw®. This publication from Glasser LegalWorks gives law firms and corporate legal departments regular monthly coverage and analysis of corporate transactions.

The M&A Lawyer supplies current information on issues and trends in the rapidly changing area of mergers and acquisitions law. The newsletter contains business news and features the insights of legal counsel who are shaping deals for the year 2000 and beyond.

The *M&A Lawyer* is written and edited by more than 20 leading practitioners from firms in the U.S. and abroad.

Westlaw is accessible through WESTMATE®, West Group's proprietary software, or through the Internet at www.westlaw.com or at 800-762-5272.

OSHA RESEARCH HANDBOOK

West Group has published the OSHA Compliance Handbook with coverage of all vital OSHA topics.

The OSHA Environmental Compliance Handbook condenses OSHA and EPA data into a single volume that contains information about common OSHA and EPA regulations that every environmental attorney or professional needs to know. The new 1998 edition also includes an exclusive interview with the new head of OSHA, Charles N. Jeffress, focusing on how Jeffreess intends to change OSHA and will give attorneys and professionals insight into new directions and priorities for the administration.

The OSHA Environmental Compliance Handbook is a part of West Group's Environmental Law Series. For more information, call West Group at 1-800-328-9352, or visit www.westgroup.com.

NEWS FROM THE BAR

Board of Governors invites member comments

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

The amendment to **ARPC 7.4** would permit lawyers to indicate that they have been certified as a specialist in a field of law by a named organization or authority but only if that certification is granted by an organization or authority whose specialty certification program is accredited by the American Bar Association.

The revisions **Bar Rules 40 (t) and (u)** contain technical corrections to the references to "superior" court since a statutory change now permits district courts to consider these matters. The reference in these rules would simply read "court".

Finally, the change to **Article IV, Section 8(b)** of the Alaska Bar Association Bylaws would change "special" meetings to "emergency" meetings of the Board, update the means by which notice can be given to Board members, and provide for a uniform notice period of three days.

Please send comments to: Executive Director, Alaska Bar Association, PO Box 100279, Anchorage, AK 99510 or e-mail to alaskabar@alaskabar.org by October 19, 1998.

ARPC 7.4

PROPOSED AMENDMENT TO ALASKA RULES OF PROFESSIONAL CONDUCT: COMMUNICATION OF FIELDS OF PRACTICE AND CERTIFICATION.

(Additions italicized; deletions bracketed and capitalized)

Rule 7.4. Communication of Fields of Practice and Certification.

(A) *A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.* A lawyer shall not state or imply that the lawyer [HAS BEEN RECOGNIZED OR CERTIFIED AS] *is* a "specialist", *"certified", or words of similar import* [IN A PARTICULAR FIELD OF LAW] except as follows:

[(1)] *(a) A* lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "patent attorney" or a substantially similar designation[;].

[(2)] *(b) A* lawyer may communicate the fact that [THE LAWYER] *he or she* has been certified as a specialist in a field of law by a named organization *or authority*[, PROVIDED] *but only if* that [THE COMMUNICATION CLEARLY STATES THE ALASKA BAR ASSOCIATION DOES NOT ACCREDIT OR ENDORSE CERTIFYING ORGANIZATIONS] *certification is granted by an organization or authority whose specialty certification program is accredited by the American Bar Association.*

COMMENT

This rule permits a lawyer to indicate areas of practice in communications about the lawyer's services; for example, in a telephone directory or other advertising. If a lawyer practices only in certain fields, or will not accept matters except in such fields, the lawyer is permitted to so indicate. All communications are, however, subject to the "false and misleading" standard of Rule 7.1 in respect to communications concerning a lawyer's services.

A lawyer may not communicate that the lawyer is a specialist or has been recognized or certified as a specialist in a particular filed of law, except as provided by this rule. Recognition of specialization in patent matters is a matter of long established policy of the Patent and Trademark Office, *as reflected in paragraph (a). Paragraph (b) recognizes that the designation of admiralty practice has a long historical tradition associated with maritime commerce and the federal courts.*

Paragraph (c) permits a lawyer to communicate that the lawyer has been certified as specialist in a field of law when the American Bar Association has accredited the organization's specialty program to grant such certification. Certification procedures imply that an objective entity has recognized a lawyer's higher degree of specialized ability than is suggested by general licensure to practice law. Those objective entities may be expected to apply standards of competence, experience and knowledge to insure that a lawyer's recognition as a specialist is meaningful and reliable. In order to insure that consumers can obtain access to useful certification, the name of the certifying organization or agency must be included in any communication regarding the certification.

See, Peel v. Attorney Registration and Disciplinary Commission of Illinois, 496 U.S. 91, 110 S.Ct. 2281, 110 L.Ed.2d 83 (1990).

BAR RULE 40(t) & (u)

PROPOSED TECHNICAL AMENDMENTS CHANGING "SUPERIOR" COURT TO SIMPLY "COURT"

(Additions italicized; deletions bracketed and capitalized)

Rule 40. Procedure.

(t) **Confirmation of an Award.**

Upon application of a party, and in accordance with the provisions of AS 09.43.110 and AS 09.43.140, the [SUPERIOR] court will confirm an award, reducing it to a judgment, unless within ninety (90) days either party seeks through the [SUPERIOR] court to vacate, modify or correct the award in accordance with the provisions of AS 09.43.120 through 140.

(u) **Appeal.**

Should either party appeal the decision of an arbitrator or panel to the [SUPERIOR] court under the provisions of AS 09.43.120 through AS 09.43.180, the appeal shall be filed with the clerk of the [SUPERIOR] court in accordance with Appellate Rules 601 through 609, and notice of such appeal will be filed with bar counsel. If a matter on appeal is remanded to the arbitrator or panel, a decision on remand will be issued within thirty (30) days after remand or further hearing.

BYLAWS, Art. IV, §8(b)
PROPOSED AMENDMENT
REGARDING
SPECIAL MEETINGS

(Additions italicized; deletions bracketed and capitalized)

Section 8(b) [SPECIAL] *Emergency* Meetings.

The President, may, or upon the written request of three governors filed with the Secretary shall, call [SPECIAL] *emergency* meetings of the Board of Governors. If the President, for any reason, fails or refuses to call a [SPECIAL] *emergency* meeting for a period of five days after receipt of the request for the [SPECIAL] *emergency* meeting, the Secretary, or some other person designated by the three governors joining in the request, may call the [SPECIAL] *emergency* meeting. The date fixed for that meeting shall not be less than five days nor more than ten days from the date of the call. Notice of an [SPECIAL] *emergency* meeting shall be signed by the Secretary or by the person designated by the three governors in their call. The notice shall set forth the day and hour of the [SPECIAL] *emergency* meeting, the place within the State where the meeting shall be held, and the purpose for holding it. [SPECIAL] *emergency* meetings may consider only those matters that are specifically set forth in the call of the meeting. Written *or electronic* notice of the [SPECIAL] *emergency* meeting call shall be given to each governor unless waived by him or her. Notice shall be in writing and may be communicated by telegraph, *facsimile, e-mail* or by mail, addressed to each governor at his or her law office or business address. Notice by telegraph, *facsimile, e-mail or regular mail deposited with the United States Postal Service* shall be sent to the governor at least three days[, AND NOTICE BY MAIL SHALL BE DEPOSITED WITH THE UNITED STATES POST OFFICE AT LEAST FIVE DAYS] before the date fixed for the [SPECIAL] *emergency* meeting. *Public notice of the emergency meeting shall be published in the public press at least three days prior to the date of the emergency meeting.*

Board requests examples of unauthorized practice

So how would you define "the practice of law"? How about "that stuff that lawyers do." Or perhaps, "I can't say for sure, but I know it when I see it?" Well, if no easy explanation comes immediately to mind, you've arrived at the same stage the Bar Association has been mired in probably since statehood. While the practice of law for nonlawyers is defined in Bar Rule 63 for misdemeanor purposes (basically you can't say you're a lawyer when you're not), it remains undefined for the purpose of seeking injunctions against those who are practicing it without a license or accountability.

A subcommittee of the Board wrestled with the issue for a number of months before submitting a proposed Bar Rule 33.3 to the Board of Governors. The Board, after further review, sent a proposed rule to the Court. In an administrative conference in August, the Court asked the Board to come back with a more narrowly crafted rule for a problem which one justice described as fairly "intractable."

While increasing access to justice is the focus of a on-going bench bar committee, the Board is still very concerned about the impact unlicensed and unsupervised individuals are having on the legal rights of people who perhaps can't afford a lawyer or may not know the risk they're taking with an untrained person. So, in the process of coming up with a more narrowly crafted rule, the Board would like to hear from you. Do you know of persons or organizations who have been harmed by unsupervised or unlicensed persons? Have you been on the opposing side of a party represented by one of these people?

If so, please take a moment and write the Board a brief letter about it. Please send your remarks to Deborah O'Regan, Executive Director, Alaska Bar Association, PO Box 100279, Anchorage, AK 99510 or e-mail to <oregand@alaskabar.org>. The Board will take this matter up again at its October 30-31, 1998 meeting, so your comments would be appreciated by October 19, 1998.

Pilot project to create new court database

Continued from page 1

after 3 months.

The Alaska Bar Court Opinions Database Project, chaired by CLE Committee members Jim DeWitt and Gail Ballou of Fairbanks, will download the opinions from the Court home page and place them in a searchable database. Key search fields will be date, case name, judge's name.

In addition to opinions from the Court home page, the Alaska Bar Database will also be designed to accept trial court opinions that are public record and submitted by Bar members. To insure the success of this project, it is hoped that judges and bar members will cooperate by identifying and submitting trial court decisions. On the Alaska Bar Database, opinions would be archived, rather than deleted. The full text of the opinion will appear with case name, judge name, and a dropdown menu.

The project will be on-line later this fall and Bar members will receive information on how to use the database. If you have any questions or suggestions regarding this project contact Barbara Armstrong, CLE Director, at armstrongb@alaskabar.org.

Supreme Court adopts mandatory malpractice insurance disclosure and written fee agreement rules

On the recommendation of the Board of Governors, the Alaska Supreme Court has adopted amendments to the Alaska Rules of Professional Conduct (ARPC) and the Bar Rules that require written disclosures to clients if lawyers don't have malpractice insurance coverage in certain amounts and that require lawyers to have written fee agreements with their clients for fees more than $500.00. The amendments are effective January 15, 1999.

Under amended ARPC 1.4, lawyers must advise their clients in writing if they do not have malpractice insurance of at least $100,000 per claimant and $300,000 total. Lawyers must also notify clients in writing if, at any time, their insurance drops below those amounts or if their malpractice insurance is terminated. That disclosure must be contained in the lawyer's written fee agreement with a client which, under amended ARPC 1.5 and Bar Rule 35, will be required in all cases where the fee to be charged is more than $500.00. This disclosure is also required in contingent fee agreements, which are also required to be in writing.

Records of these disclosures must be maintained by the lawyer for six years from the date the lawyer no longer represents the client. Sample language for disclosures to clients is included in the "Alaska Comment" to be published with the revision to ARPC 1.4. The definition of "client" in ARPC 1.5 has been expanded to include the definition of "client" under the fee arbitration rules, which is "any person or entity legally responsible to pay the fees for professional services rendered by a lawyer." In practical terms, this means that the disclosure must be made to whoever is actually paying or responsible for paying for the lawyer's services, which may be someone other than the client.

Finally, lawyers in government practice or lawyers employed as in-house counsel are not required to make these disclosures.

JBA Minutes

Continued from page 9

release date on the Internet—apparently the last time Gordon was at the movies was when I was one year old. Gordon's revelation took us into another category: when Alaska, and Juneau specifically, first started getting live television. Way back when (actually not that far back) we got the news a day late (or later, depending on if planes got in). The news was taped then flown up the next day. Juneau's first live television was in the mid-seventies. The program? The Super Bowl.

August 21, 1998

Old/New Business: None.

Killing Time... In addition to two guests, a whopping five members attended today's meeting. I personally blame it on the Salmon Derby. Without any real agenda, we discussed good movies, where to sit in the theater during *Saving Private Ryan* (sitting near the front will make you nauseous because of the cinematography), Supreme Court Justice candidate ratings in the Anchorage Daily News (Judge Carpeneti got the highest rating at 4.6 on a scale of one to five), and other topics I said I wouldn't put in the minutes. To that end, Tony Sholty complained about my being too discrete in the minutes. He recommended past President Gerry Davis's minutes as models of enjoyable reading. I explained that though most people enjoy receiving the minutes via e-mail, technology makes it waaaayyyy too easy to respond or complain. I invite all JBA members to demonstrate this to Tony by sending him an e-mail at asholty@faulknerbanfield.com. (Tony—Gerry liked this part of the minutes.)

September 4, 1998

... President Lach Zemp discussed the fundraising effort on behalf of ALSC. Their goal for lawyers in Southeast Alaska to raise $20,000. They will be calling and asking lawyers to each donate the value of two billable hours. A donor can choose how the donation is distributed. The default is that 20% goes into a trust fund that won't be touched for 10 years and the rest goes directly to ALSC.

Board of Governors: The Board of Governors's report follows these minutes. Bruce Weyhrauch said that the Board of Governors adopted mandatory CLE. Seven for, four against. Bruce voted against, Lisa Kirsch voted for.

Summary: Alaska Board of Governors Meeting, September, 1998

The Board of Governors met in September. Among the issues discussed: 1. Mandatory continuing legal education. On a fairly close vote, the board adopted mandatory CLE for the active bar. The public's support for MCLE was resoundingingly and unanimously in favor of MCLE. The supreme court must still approve this CLE requirement. 2. The board will review and revise a policy dealing with harassment issues affecting bar staff. 3. The supreme court adopted a number of amendments to the rules of professional conduct. Look for them in future publications from the bench or bar. Some of the subjects of the amendments were procedures affecting disabled lawyers, conflicts of interest, confidentiality, malpractice insurance disclosure, and written fee agreement requirements. Additional work will be done on rules related to advertising fields of experience and litigation expenses borne by an attorney. 4. The next form you get regarding payment of dues will allow payment by credit card. 5. Robert Hickerson gave a report to the Board on Alaska Legal Services fundraising efforts. My thanks to Mary Guss of Ketchikan, and Ron Lorensen and Vance Sanders of Juneau for helping ALSC lead the charge on this effort in the first judicial district. Please call or write if you would like to discuss these or other issues.—Bruce Weyhrauch whyrock@ptialaska.net 114 S. Franklin St. Suite 200 Juneau, AK 9980. (907) 463-5566 or (907) 463-5858 (fax)

—Dawn Collingsworth, JBA Secretary

PROPOSED MCLE RULE AT A GLANCE

- ✔ All active members must complete 24 hours of approved CLE credit over a 2-year reporting period, including 2 hours of ethics.
- ✔ The requirement can be fulfilled by attending or participating in a variety of activities in addition to live CLE and live CJE (continuing judicial education). See examples below.
- ✔ All active members must report every 2 years via affidavit provided by the Bar.
- ✔ All active members will be notified of reporting dates, sent an affidavit, and sent notice of non-compliance.
- ✔ A member can request extensions of time to report.
- ✔ An active member will be suspended for non-compliance and must pay a $50 reinstatement fee and any dues accrued during suspension before reinstatement will be completed.

WAYS TO COMPLETE MCLE CREDITS

1. Attend a live CLE approved course. A course may be presented by the Alaska Bar or by other CLE providers, including law schools, national CLE providers, private companies, etc.
2. Prepare for and teach an approved CLE course (in person or by videoconference or teleconference).
3. Study an audio or videotape or technology-delivered (computer/on-line) approved CLE course.
4. Write a published legal text or article in a law review or a specialized professional journal (up to a total of 15 hours per reporting period).
5. Attend a substantive Section meeting or Inn of Court meeting. Section meetings may be attended telephonically.
6. Participate as a faculty member in Youth Court or Moot Court.
7. Attend an in-house approved CLE course.
8. Participate as an appointed member of a Court System committee.
9. Complete a special project approved by the CLE Director.
10. Attend an approved continuing judicial education (CJE) course.

WHAT ABOUT TIME AND MONEY TO COMPLETE THE MCLE REQUIREMENT IF IT IS ADOPTED BY THE COURT?

"Time is the currency of the future." It will take time to complete the MCLE requirement. However, given the great flexibility of the Rule, the impact on your schedule and pocketbook can be minimized.

You can satisfy the MCLE requirement by completing programs given by the Alaska Bar or other number of other CLE providers.

1. You can attend any Alaska Bar section meeting live or telephonically for free. Section meetings normally last one hour and would be approved for one hour of CLE credit.

   There are 14 sections that meet regularly each month. The remaining sections meet periodically.

   You can call the Bar office to be hooked into a section meeting by telephone conference call — *at no charge to Bar members.*
2. You can attend a live Alaska Bar CLE in Anchorage, Juneau or Fairbanks. The Bar will offer more live CLE outside of Anchorage. Most CLEs are half-day — 3-3-1/2 hours. The usual half-day Alaska Bar live CLE registration fee is $90 — a full day program runs $110 - $145.

   Other CLE providers' costs vary, but Alaska Bar prices are in the usual range of fees.
3. The cost of attending an Alaska Bar videotape replay is $45. Alaska Bar group videotape replays of CLEs are now available in 12 cities statewide:

   Barrow, Bethel, Dillingham, Fairbanks, Juneau, Kenai, Ketchikan, Kodiak, Kotzebue, Nome, Sitka and Valdez.
4. You can listen to audiotapes or view videotapes at a time convenient to you. Alaska Bar videotape rentals are $55 per person. A number of other CLE providers also offer videotapes and audiotapes on a broad range of topics.
5. The CLE Committee is working on a pilot project for an approved on-line CLE. A number of other CLE providers already have on -line CLE and other technology-delivered programs available.
6. You can satisfy the requirement by participating as an appointed member of a Court System committee, completing a special project approved by the CLE Director, attending continuing judicial education (CJE) programs, by preparing for and teaching an approved CLE course, writing published legal texts or articles, attending Inn of Court meetings, participating as a faculty member in Youth Court or Moot Court, or by attending in-house approved CLE courses.

Call Barbara Armstrong, CLE Director, for further information.

Data backup options for the law office

BY JOSEPH L. KASHI

In the last issue of the BAR RAG, we discussed general approaches to backing up and archiving important law office data. Now, I'll discuss some hardware and software that will held accomplish that purpose.

Zip drives and other removable media: One of the simplest ways to back up small amounts of data, or to transport it to computers off premises, are the various removable media, including our old friend, the 1.44 megabyte floppy disk, and newer variants such as the high capacity Zip and LS-120 "floptical" drives. The LS-120 drive can be used both as a standard floppy disk drive and as a somewhat higher capacity Zip drive equivalent. However, the LS-120 does not have widespread support at this point among computer BIOS manufacturers. This is unfortunate because using a single drive that combines standard and high capacity floppy disk capabilities saves cost, complexity and computer space.

Iomega's Zip drive is another suitable means for moving small and medium amounts of data, such as a large computer slide presentation, between different computers or backing up, for example, your time and billing data. Because of the limited 100 megabyte capacity of a Zip drive or of the 120 MB LS-120 drives and their relatively slow read/write speed, they provide relatively limited backup capabilities in the era of multi-gigabyte large hard drives and operating system/office suites that consume 600 megabytes before you even start loading data. Such drives are obviously inadequate for a complete system backup. Portable Zip drives plugging into the parallel printer port are available and work well, but they tend to be somewhat fragile, at least in my experience. Portable Zip drives can work with several different computers, but they're not as fast as IDE or SCSI, by any means.

There are some removable hard drives on the market, including the Iomega 1 gigabyte and 2 gigabyte Jaz drives, and the SyQuest 1.5 gigabyte removable media. The industry consensus is that the SyQuest drives seem to be a more reliable, better option but Iomega's products have greater market share . Either drive will work, however. These are a fast, quite useful means of backing up your entire hard disk, so long as their capacity, which is somewhat limited by current hard disk standards, is not exceeded. I know many people who take this approach and are generally happy with it.

As with internal Zip drives, you can get internal Jaz drives that use either the IDE or the SCSI interfaces. SCSI is always a reliable approach to take, but the required SCSI adapter card and potentially troublesome installation limits the appeal of SCSI to the more technically adept.

IDE variants of these drives make more sense for the average user. Almost all modern computers have an available IDE output, used primarily for hard disks. The IDE interface is quite fast enough and is much easier to install. Simply be sure that the cables are properly aligned with the red stripe facing header pin number one, and that you do not have two IDE master devices on the same cable. The boot hard disk must be set as the master device on the first IDE output.

Tape drives: Tape drives are also undergoing a significant metamorphosis.

Most older low end desktop computer tape drives, such as those made by HP's Colorado Memory Systems division, use the floppy disk interface. Floppy controller drives are essentially obsolete because they are quite slow and often completely preempt multitasking operating systems, bringing to a halt any other tasks. An even more significant problem is that floppy-based tape drives cannot readily support the larger capacity tape drives now needed for today's large hard disks. About two years ago, 3M's Travan tape cartridge became quite common. Travan capacities stretch anywhere from 1 to 20 gigabytes. The TR-1 and TR-2 drives are low capacity basic systems and, again, are obsolete.

TR-3 and TR-4 drives from any number of manufacturers provide from 2 to 4 gigabytes uncompressed storage space and from 4 to 8 gigabytes compressed storage, although these higher program and data compression rates are rarely achieved in practice. Generally, I determine the size of my tape drives based upon uncompressed size as a matter of good, conservative practice. TR-3 and TR-4 drives require either a high speed IDE (ATAPI) or a SCSI interface unless they come with a proprietary interface card. I strongly recommend against the use of proprietary interface cards because they use one of the few available computer expansion slots and because of potential configuration problems.

The most sensible tape drive approach for the average desktop computer is a TR-4 drive using the IDE interface. There are many such drives on the market. Among the more common brands that I have found satisfactory are Exabyte, Aiwa, and Seagate. I have used the Aiwa TD-8000/8001 IDE tape drive, and both the IDE and SCSI versions are quite suitable. Remember, though, that there are numerous tape drives on the market that are quite suitable. Be sure that your drive comes complete with appropriate tape backup software.

If you're a bit more technically adept, then SCSI versions of the same tape drives work well. For example, I use the Aiwa TD-8001 SCSI tape drive. This 4 gigabyte uncompressed, 8 gigabyte compressed drive works well with Windows NT for backing up both our local work stations and our Internetware 4.11 network. However, when you first install this drive under Windows NT, you'll need to select, oddly, the Windows NT QIC-157 IDE tape driver even though the drive uses a SCSI interface. Once that information was provided to me, the drive installed smoothly under NT. Models from Seagate/Conner should be comparably good.

The above drives typically work either come complete with included tape software or use tape backup software already included in some later Windows 95/98 and NT versions, usually Seagate Backup Exec. This software is generally adequate. However, some low end versions will not back up a network hard disk, so you will need to make sure that you have the network backup capability in the event that you intend to use one of these drives to backup your network from your desktop. Otherwise, you'll usually be able to buy an upgraded version of Seagate Backup Exec or other comparable software. Backup Exec, by the way, is by far the most common general purpose tape backup software now available, although Colorado Memory Systems

Continued on page 24

ALASKA BAR ASSOCIATION 1998 CLE CALENDAR

(NV) denotes No Video

Program #, Date & CLE Credits	Program Title	Program Location	In Cooperation With	Section
#27 September 23 5.5 CLE Credits Full Day	The Do's & Don'ts of Complex Deposition Practice	Anchorage Hotel Captain Cook		
#20 October 1 3.25 CLE Credits Half Day (a.m.)	1998 Probate in Alaska	Anchorage Hotel Captain Cook		Estate Planning & Probate
#55 October 1-2 10/1: 5.25 CLE 10/2: 6.25 CLE	Issues in Advanced Investigations and Forensics (NV)	Anchorage Days Inn Conference Center	AIA	
#42 October 2-3 8.0 CLE Credits	Defense Counsel Seminar	Louisiana	NCMIC	
#52 October 9 2.75 CLE Credits Half Day (p.m.)	Domestic Relations Update: New Legislation & Rules Affecting Domestic Relations Cases	Fairbanks Westmark Hotel		Family Law
#45 October 13 4.0 CLE Credits	Maximizing Your Ministry & Minimizing Your Legal Risk (NV)	Anchorage Baptist Temple	Christian Law Association	
#05 October 14 5.0 CLE Credits Full Day	11th Annual Alaska Native Law Conference	Anchorage Hilton Hotel		Alaska Native Law
#38 October 30 CLEs tba Morning	Probate/Mediation Rule Update	Anchorage Hotel Captain Cook		Estate Planning & Probate
#50 November 2-3 14.5 CLE Credits 2 Full Days	43rd Annual Estate Planning Seminar	Seattle, Washington	WSBA	
#29 November 5 CLEs tba Half Day	Real Estate Issues	Anchorage Hotel Captain Cook		Real Estate Law
#47 November 13 6.75 CLE Credits	How to Investigate & Litigate Cases Involving Multiple Sex Allegations, Victims & Suspects	Tukwila, Washington		
#28 November 19 CLEs tba Full Day	1998 Nonprofit Seminar: Tax & Legal Issues for Nonprofits	Anchorage Hotel Captain Cook		
#53 December 2 2.75 CLE Credits Half Day (a.m.)	Alaska Community Property Act	Juneau Centennial Hall		Estate Planning & Probate
#06 December 4 CLEs tba Morning	Off the Record -- Anchorage (NV)	Anchorage Hotel Captain Cook		
#30 December 11 CLEs tba Half Day	The Most Important -- and Misunderstood -- Evidence Rules for a Trial Lawyer in Alaska	Anchorage Hotel Captain Cook		

Touch N' Go Systems and Lawex announce distribution agreement

Anchorage-based Touch N' Go Systems, Inc. (TNG), a premier developer of Windows- based software, announced in September that it has reached an agreement with Lawex, to distribute *Touch N' Go® — The Desktop In-and Out Board* to the legal community. The company is the first Alaska-based software developer to distribute a legal product nationally.

Touch N' Go is a modern replacement for the old-fashioned in and out boards found in many offices. It enables all company employees to know the whereabouts of their colleagues at the touch of a button without leaving their desks. *Touch N' Go* allows instant access to "Who's In," "Who's Out," and "Who Doesn't Want to be Disturbed" and it can eliminate the need for publishing telephone extension directories, by posting extension numbers along with employee names.

Conveniently tailored to fit the needs of companies with anywhere from 20 to 4000 employees, Touch N' Go is available in three versions and installs easily on either local or wide area networks. Lawex will be distributing an upgraded version of the product, introduced last month, which features the unique capability of supporting Windows 3.x, Windows 95/98, and Windows NT users running on the same network.

Touch N' Go's CEO, Jim Gottstein, said, "We are pleased to be able to enhance Lawex's portfolio of legal productivity software. *Touch N' Go* already has a strong presence in legal offices and, with Lawex's extensive marketing capabilities, we will be able to make more law firms aware of the increased productivity they can have with Touch N' Go ." Lawex President and Trial Lawyer, Joe Matthews, added, "We try to represent the highest quality software that allows law offices to improve their efficiency. *Touch N' Go* fits the bill perfectly, and we are excited to add *Touch N' Go* to our offerings."

Lawex Corporation is the developer of the highly-regarded *TrialWorks99* case management and litigation support software system for the legal community. In addition to *Touch N' Go* and *TrialWorks99*, LAWEX also markets the renowned accounting product PCLawJr., BankruptcyPlus, *TrialPro* Presentation Software, *GhostFill*, *NetLizard for Law*, *NetLizard for Tax*, and *NetLizard* for Government Contracts. All of the above products are contained on the new LAWEX CD and can be obtained by calling 800-377-5844 or from its web site at www.lawex.com. The LAWEX CD will be available on September 21, 1998.

In addition to its acclaimed software, TNG also has two of the most popular websites in Alaska. Their *Alaska Legal Resource Center* at http://www.touchngo.com/lglcntr/index.htm publishes, without charge, over 33,000 web pages of Alaska legal materials, and their world-famous *AlaskaCam* at http://camera.touchngo.com/ provides a window on Alaska to the world.

Law firms continue to seek new technologies, Internet

1998 Technology Surveys Show Migration Towards Higher-End Hardware and Increased Use of Internet

Law firms are still exploring the Internet's possibilities as a business tool, but this year's statistics from the American Bar Association's *1998 Large Law Firm Technology Survey* show that large firms have also continued to seek out other new technologies.

Thirty percent of firms responding have an intranet, and 64 percent of those without an intranet plan to create one in 1998.

In addition, 28 percent of responding large firms reported using voice recognition software, and 43 percent reported having personal digital assistants. The *1998 Large Law Firm Technology Survey* was sponsored by LEXIS-NEXIS, Matthew Bender, and West Group.

The ABA has surveyed technology use by the legal profession since 1988. Conducted for the second year by the ABA Legal Technology Resource Center (LTRC) under the guidance of the ABA Standing Committee on Technology and Information Services, the 1998 survey explores the current state of technology in the 500 largest private law firms in the United States.

Also newly released is the *1998 Small Law Firm Technology Survey,* which surveys law firms with 20 or fewer lawyers. This survey was sponsored by CCH, Inc., LEXIS-NEXIS, Matthew Bender, Microsoft Corporation, and West Group.

Both surveys show that advances in hardware performance, continuously declining prices, and the system requirements of advanced software programs and World Wide Web access, continue to drive a migration towards higher-end hardware at both small and large law firms across the country.

In small law firms, 78 percent of respondents reported purchasing or leasing hardware during 1997, and more than 65 percent reported that most of their computers feature Pentium-class processors or faster. In firms of more than 75 lawyers, all survey respondents reported purchasing or leasing hardware in 1997 and more than 70 percent reported using Pentium-class processors or faster.

Use of the Internet as a marketing tool continues, with 58 percent of large law firms reporting having a firm home page, up from 50 percent in 1997, and 11 percent of small firms reporting a home page, up from 6 percent in 1997. Almost all large law firms (99 percent) and 80 percent of small firms report providing full Internet access to at least some people in the firm.

Although many lawyers communicate via the Internet, the relative lack of privacy causes more than three-quarters of small firms and 60 percent of large firms to choose not to transmit any sensitive information via this medium. The firms that reported using the Internet for sensitive communications use encryption software or client releases and waivers to help preserve confidentiality and create awareness of this problem.

In addition to Internet trends and findings, both survey reports include detailed information on other technology issues, such as specific software and hardware products in use, the procurement process, and future technology purchasing plans.

In October, LTRC will release its *1998 Corporate Law Department Technology Survey* as the newest addition to its market research projects. The survey focuses on issues unique to law departments, as well as trends in the hardware, software, and legal research resources used by this segment of the legal profession.

Both surveys are available from the ABA Service Center at 1-800-285-2221.

The ABA Legal Technology Resource Center (LTRC) coordinates technology-related information and market research for legal professionals. LTRC also develops and manages the ABA's "virtual" office - ABA Network℠ at http://www.abanet.org/. (www.abanet.org

New technology program for ABA members offers discounts on hardware and software products

The American Bar Association Standing Committee on Membership and IBM have announced a new ABA member benefit offering discounted hardware and software through the ABA Member Advantage Program.

A broad range of technology products will be offered through the program, including ThinkPad® laptop computers, ViaVoice™ 98 software with the Legal Vocabulary add-on, and WorkPad®, an IBM customized PalmPilot® produced by 3-Com.

Via Voice 98 with the Legal Vocabulary module is a voice dictation product that includes recognition of words used in general legal documents, including legal abbreviations, citations and Latin terms.

Other offerings will include products from the Aptiva® computer series, Lotus SmartSuite®, scanners, printers, backup drives and educational software.

For additional product and pricing information on the IBM program, call 1-800-426-7235, ext. 5242.

The ABA Member Advantage Program includes discounts on products and services lawyers use at home and in the office. For additional information on the ABA Member Advantage Program, contact the ABA Service Center at 1-800-285-ABAl.

Martindale-Hubbell launches new web site

Martindale-Hubbell, publisher of its definitive guide to the American legal profession since 1868, has launched a new initiative that will help law firms leverage the power of the Internet and increase their exposure to consumers and small businesses in need of legal assistance.

NEW CONSUMER-ORIENTED GATEWAY

At the center of this initiative is a new consumer-oriented Web site (http://www.lawyers.com) with a scarchable database of lawyers and law firms. All lawyers with detailed professional biographies in the 27-volume Martindale-Hubbell® Law Directory are included on the new site.

The powerful search capabilities featured on this new website make it easy for consumers to find the right lawyer for their specific needs. For example, users can identify an attorney by searching criteria such as location, lawyer or law firm name, areas of practice specialty and fluency in particular foreign languages.

Cooper said the new initiative from Martindale-Hubbell was the result of feedback from solo practitioners and small law firms that indicated a need for more cost-effective client development tools at their end of the marketplace. So in conjunction with the debut of lawyers.com, the company has also introduced Lawyer HomePage™

Lawyer HomePages are designed specifically for small law firms seeking an effective new channel to present their abilities and qualifications to the general public on the Interne. Using flexible Web site kits of up to 10designed pages, lawyers can create a professional and persuasive online presentation of their practices.

For firms that reserve a Lawyer HomePage, Martindale-Hubbell is offering a limited-time introductory rate of $195 for firms of 1-2 attorneys and $295 for firms with 3-5 attorneys.

TimeTracker

Blumberg Excelsior, Inc., now offers a new product for attorneys: TimeTracker. This compact, easy-to-use, easy-to-carry, personal time-keeping system, enables the attorney to record all billable time quickly and conveniently. The check book-style, two-part carbonless time slip pads fit into a check book-size holder. TimeTracker also fits into a pocket or briefcase.

TimeTracker is available for $17.95 for a starter pack that includes four time slip pads and the holder. Replacement pads are just $4.50.

New software

SAGE U.S., INC.

In a second joint development project with Sage U.S, Inc., iambic® Software today announced it is shipping a Microsoft Windows CE version of its TimeReporter for Timeslips. This follows a Palm Computing version of iambic's TimeReporter for Timeslips released in May 1998. The software directly integrates with Sage's Timeslips Deluxe time and expense-tracking software program.

TimeReporter for Timeslips works by automatically transferring data—such as lists of clients, projects and activities—when the handheld device is placed in its cradle attached to the computer and the link activated with a button push. The seamless link is automatic, with no setup required. TimeReporter for Time slips supports single and multiple users, as well as multiple databases. The suggested retail price of TimeReporter for Time slips for Microsoft Windows CE is $119.95.

BLUMBERG EXCELSIOR, INC

BlumbergExcelsior, Inc., announces the development and launch of a new software product for law offices: imAZE!–a digital document management program. Digitally scanned documents can be managed easily, smartly, and cost-effectively, with this new software.

Developed by attorneys, for attorneys, imAZE! is software that manages all of a firm's digital documents on CD-ROM. It gives you masterful control of your digital documents with powerful search and retrieval, annotating, indexing, viewing, page numbering and labeling functions. Create and retain search queries for repeated use. With a capacity to manage over 4 billion records per case, up to 999 cases, imAZE! offers unlimited benefits to any size firm.

The database supports field indexing, full text retrieval and drag and drop coding. And it supports a variety of black and white and color image file types, including JPEG, BMP, PCX, GIF, and TIFF (the legal industry standard). The database document file structure reflects the usual law office setup: case, source, folder, document and page. The built-in and user-defined index fields encoded into each document allow greater organization and retrieval capability. And the imAZE! Viewer displays, flips, magnifies, pans, prints, faxes (with Windows drivers) and e-mails documents. It also displays the images for both retrieval and indexing on screen.

The user can also generate comprehensive reports with the report writer, and migrate any imAZE! database to the World Wide Web.

imAZE! runs on Windows 3.1, Windows 95, Windows 98 and Windows NT; available in both 16-bit and 32-bit versions; stand-alone or network. On-the-Fly compression maintains lean data-bases.

At $499, a 30-day free trial demo of imAZE! can be downloaded from www.blumberg.com. For further information about the product, call 800 221-2972, ext. 616.

PERSONAL INJURY SOFTWARE

The Personal Injury Loss Calculator© is a Windows-based software program that lets the practitioner express a client's economic losses in two ways: the standard present value method or the offset method.

The Personal Injury Loss Calculator program generates comprehensive results for such damages as lost wages, fringe benefits, reduced worklife expectancy, and lost hedonic pleasures, as well as injury-related expenses such as retraining, rehabilitation, household services, child care, transportation and medical expenses.

The loss calculator uses the new industry-standard "Ceicka. et al" tables for its work life expectancy calculations. Its present value and future value formula are based on the work of leading forensic economist, Gerald D. Martin, Ph.D, whose landmark work — Determining Economic Damages — has become the industry bible. For the offset method, the Personal Injury Loss Calculator© allows the user to choose either "Ceicka, et al" tables for work life expectancy or Bureau of Labor Statistics median age to labor force separation.

The Personal Injury Loss Calculator© offers a wide range of reporting options and also readily exports data into 16 different file formats, including formats compatible with such leading software as Microsoft Excel, Iotus 1-2-3, and QuatroPro.

The program is available to many personal injury practitioners at a professional discount. You can download a free 30-day trial copy off the Internet at www.staubassociates.comor by calling (850) 913-8488.

LEXIS-NEXIS

LEGISLATIVE LINKS

Researchers can retrieve the full text of legislation referenced in a newspaper or legal publication article as the result of another enhanced linking feature from LEXIS-NEXIS.

Legislative Links on the company's online services allows a researcher to link from news articles containing references to a public law or federal bill to the actual language of the specific law or the bill's tracking report.

News sources containing these links include Associated Press, Federal News Service, major daily newspapers such as The New York Times and legal and legislative periodicals.

Likewise, this new feature provides similar links that take the researcher from the text of the bill or public law directly to related news stories that reference the legislation.

In addition to links to and from news articles, linking is provided for Federal Register cites in case law, U.S. Code cites in Federal Bill Text Documents and Congressional Record cites in Bill Tracking Reports.

LEGAL RESEARCH

The company also enhanced its Web-based legal research service by bringing more of the core features and functionality of its traditional searching tools to www.lexis.com.

Unveiled at the American Bar Association annual exposition in Toronto in July, the enhancements include receiving automatic updates from a saved search, searching the LEXIS®-NEXIS® services using the natural language option, transforming simple searches to yield more pinpointed results and e-mail or fax delivery of retrieved documents.

Included among the Web enhancements is the "ECLIPSE" feature which enables a legal professional to stay up-to-date on a topic by automatically receiving daily, weekly or monthly e-mail updates based on the user's predefined search.

Legal professionals can now more closely restrict a search to a specific part or segment of a legal document, such as the court that heard a particular case or the attorney or firm who appeared as counsel.

By clicking the Enhanced Search tab, an attorney can insert segments and terms into a search string to pinpoint opinions written by a particular judge, cases involving a specific party or court decisions before or after a particular date.

The other search enhancement includes the new option to construct a search using natural language searching. By clicking on the "Freestyle" button, the user can enter a search query in plain English in the form of a sentence or question.

After the documents and articles are retrieved from a search, the user can deliver all or selected documents not only to a printer, but now to a fax number or e-mail address as well.

CORE TERMS, SELECTED TEXT

LEXIS-NEXIS New Core Terms and Selected Text features automatically provide an at-a-glance overview of the major legal terms appearing within a particular case or agency opinion and enable a researcher to highlight important passages and automatically launch a search to find related materials.

"These new features provide attorneys with a superior alternative for scanning and filtering legal materials quickly to find applicable cases and agency decisions vital to their legal research," said Paul Brown, chief operating officer.

Generated by innovative computer algorithms, Core Terms provides a quick snapshot of a case by displaying the significant legal terms and phrases that appear within the text of a particular case or agency opinion.

The Selected Text feature enables researchers to use a relevant passage within a case as the basis to retrieve additional documents that closely resemble that passage.

INTRANET LINKS

Law firms can now have customized links on their intranets enabling attorneys and legal professionals to gain immediate access to the LEXIS-NEXIS data warehouse via their Web browsers, along with delivery of specific news and information to a firm's various practice groups.

This new service allows a firm to tailor its access to services by providing links to cases, law reviews and statutes and delivering daily news that impacts their practice areas and clients, all from the firm's intranet.

Links available at www.lexis.com/enterprise can be cut and pasted directly to a firm's intranet to organize the firm's access to the LEXIS-NEXIS services.

Working with a firm's webmaster or librarian, LEXIS-NEXIS' Enterprise Solutions Group provides technical assistance with building links from a firm's intranet.

PUBLISHER JOINS FRAUD CENTER

LEXIS-NEXIS and the National Fraud Center (NFC) have formed a strategic alliance to collaborate in the development and delivery of fraud prevention, investigation and recovery solutions.

In the United States alone, fraud losses across multi-sector industries are increasing at an annual rate of more than 20 percent. The NFC estimates the annual cost of fraud in the United States will reach $800 billion by the year 2000.

Fraud touches all industries including financial, insurance, utilities, casino, and retail. LEXIS-NEXIS and NFC first will target the insurance industry.

Insurance fraud — health care, property and casualty, and workers compensation — is a staggering $140 billion a year problem. The National Fraud Center (www.nationalfraud.com), headquartered in Horsham, Pa., was founded in 1982.

PROGRAM TO PARTNER WITH LAW FIRMS' WEB DEVELOPERS

Internet technology developers at a law firm can now work directly with LEXIS-NEXIS to build customized user interfaces linking a firm's internet directly to the data warehouse.

The new Third Party Solution Provider Program, provides a formal channel for Web integrators to work closely with the company to create their own unique applications, such as custom-tailored forms on the firm's intranet home page for quick searches of the LEXIS-NEXIS data.

Via the program, a developer can tailor the firm's intranet to link to over 23,000 legal, news and business sources based on the specific information needs of the firm.

The program offers members toll-free telephone support, access to a secured Web site for intranet "tool kits," certification training and an opportunity for integrators to showcase their work.

Web developers can contact LEXIS-NEXIS at 1-800-227-9597, ext. 7072 for more information about the program.

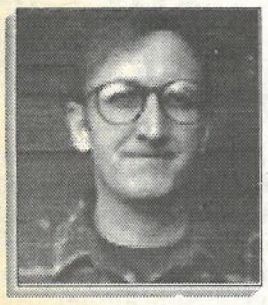
FREE REFERENCE BOOK AVAILABLE TO ATTORNEYS

A limited number of the 1998 Campbell's List is still available at no charge to attorneys who need out-of-town counsel, court reporters or process servers.

Lawyers included are selected for their ability and willingness to offer a wide variety of legal services to other attorneys and prospective clients outside their immediate geographic area. Entries represent all 50 states, Canada and 60 foreign countries.

Attorneys may request a complimentary copy of the 1998 directory and/or obtain listing information at no obligation. Phone 800-249-6934, fax 407-740-6494, or E-mailcamplist@sprynet.com.

Base Camp Limbo ☐ Dan Branch



Limbo: (noun) Abode of just or inno cent souls excluded from beautific vision but not condemned to further punishment; a region of oblivion or neglect.
(See, The American Heritage College Dictionary, 3rd Edition, near the definition for lily-livered, lima bean, and limburger. See also Juneau)

They dug up downtown Juneau this summer with big machines removing payment while engineers redirected the secrets of water flow in the capital city. It rained too, which added to the excitement of negotiating the 5th Street ditch and the muddy zone on Glacier Highway in front of the high school.

While skirting dump truck droppings on my way home from work one day, I stumbled upon an ambulance-green sign with the word, LIMBO written in bold black. An arrow pointed up Main Street toward my house. Later in the week, other signs provided directions to BASE CAMP LIMBO and LIMBO CATERING.

It was official. Juneau had become Limbo, a place with no risk and no possibility for advancement. It was a Catholic grade school nightmare.

I should have seen it coming. We'd seen clues for months. It was a strangely warm dry April. Then May came with the first cruise boats of the year. When they tied up at the Steamship Dock, 50% off signs already decorated some tee-shirt shops on South Franklin.

The tourists came in their usual force—people from foreign nations, including New York, pouring down gangplanks. Most were snagged by company tour buses and whisked away from downtown in ship transfer buses. Those who pushed on to South Franklin became ensnared in the gillnets of commerce near the new tram.

Every day a few cruise ship passengers would escape the downtown flesh pots and climb Chicken Ridge. They would pause at the top of the Cope Park Stairs and search the sides of Mt. Juneau for the face of God. Then, sure that He was near, they made their way back down Main to the fast food stores on Front Street.

Like the end scraps of a dying salmon run, the tourists who climbed Chicken Ridge were admired for their spunk and the humor they brought into our lives with questions like, "Do you know where we could buy some Alaska stamps, to send post cards to America?" or, "At what latitude does a deer turn into a moose?" These are words that could come only from the mouths of innocent souls.

Innocent souls don't go to Heaven or Hell. They float in Limbo. That's what Juneau, Ketchikan, Sitka, Haines and Skagway have become, Limbo.

Juneau is a cruise ship transfer point so it must be basecamp—Basecamp Limbo. We, the year-long citizens of Southeast, are the attendants of these drifting souls brought to our green shores by Carnival, Princess, Galaxy and the Dam boats. They come to see a whale or glacier and leave weighed down with tee shirts in brightly colored carrier bags.

Among the floating souls in town this summer, pretty-big-time director, John Sayles, and a crew of his underdressed professionals made a movie. By some remarkable coincidence, they called it, Limbo. Sayles' film tells the story of Mr. Limbo (a guess), who has given up trying to make a living selling fish. The poor guy watched the honest little fishing town of his birth turn into a tourist trap. I am guessing that he is a power troller who couldn't make his boat payments when the king salmon season was shortened to a 15 minute opening in January.

Now, (this is also a guess), Mr. Limbo, unwilling to take a tour bus driving job offered by his fiance's far-sighted father, spends his days in the equivalent of a Franklin Street bar, drinking Alaskan Amber while carving cruise ship replicas for sale in the trinket trade.

So far, it's looking more like a National Geographic special, than a Hollywood film but it gets better. According to reports in the Limbo (nee Juneau) newspaper, Mr. Limbo goes to a wedding, falls in love, does bar time, is involved in some sort of scary but survivable sea disaster, and spends time in a fox farm shack. This sounds more like everyday life in Ketchikan, where everyone knew the commercial fishing industry was in trouble when the Sons of Norway sold their hall and moved into a condominium.

If Mr. Sayles had asked me, I would have had Mr. Limbo living on one of those cool, old, double-ended trollers in Wrangell or Craig. Instead,Hollywood has him living in the Douglas Boat Harbor in a real beamy trimaran named, Chewbaccah. I guess that's how things are in Hollywood, even when an artist like John Sayles is pulling together all the strings.

It's been fun watching the Hollywood folks fiddle about with our realities, but we have to get back to our real jobs—as attendants for the innocent. The last cruise ship out of Limbo is still a month away.

Problems with Chemical Dependency?

CALL THE LAWYERS' ASSISTANCE COMMITTEE

FOR CONFIDENTIAL HELP

John W. Abbott	346-1039	*William K. Walker*	277-5297
John E. Reese	264-0401	*Nancy Shaw*	243-7771
Brant G. McGee	269-3500	*Michael J. Lindeman*	245-5580
Valerie M. Therrien	452-6195		

A GIFT OF 31 VOLUMES

The membership of the Alaska Bar Association gave retired Justice Jay A. Rabinowitz a gift of 31 leatherbound volumes of his opinions and dissents. The volumes, which were hand bound by Anchorage artist and bookbinder Artemis BonaDea of Northbound Books, were presented to Justice Rabinowitz in Juneau in April. Pictured at the presentation of the books are, from left to right: Lisa Kirsch, Alaska Bar Association Board of Governors; Annie Carpeneti; Judge Larry Weeks; Doug Wooliver, Alaska Court System; Senior Justice Jay Rabinowitz. (photo by Judge Bud Carpeneti).

The following firms and people contributed to this project:

Anchorage Bar Association
Angstman Law Office
George Arango
Ashburn & Mason, P.C.
Atkinson Conway & Gagnon, Inc.
Bankston & McCollum, P.C.
Birch Horton Bittner & Cherot, Inc.
Bogle & Gates, PLLC
Artemis BonaDea
Bundy & Christianson
Burr Pease & Kurtz, P.C.
Walter Carpeneti
Choate Law Firm
Theodore Christopher
Cook Schuhmann & Groseclose, Inc.
Copeland Landye Bennett & Wolf, LLP
William Council
Davis Wright Tremaine LLP
Delaney Wiles Hayes Gerety Ellis & Young, Inc.
DeLisio Moran Geraghty & Zobel, P.C.
Dillon & Fundley, P.C.
Robert Ely
Dana Fabe
Faulkner Banfield Doogan & Holmes, P.C.
Feldman & Orlansky
Cynthia Fellows
Roberta Folz
David Freeman
Guess & Rudd
Jan Hansen
Hartig Rhodes Norman Mahoney & Edwards
John Havelock
Hedland Brennan Heideman & Cooke, P.C.
Hicks Boyd Chandler & Falconer
Barbara Hood
Hughes Thorsness Powell Huddleston & Bauman, LLC
Jermain Dunnagan & Owens, P.C.
Juneau Bar Association
Susan McLean
Brent Matheny
Perkins Coie, LLP
Petersburg Bar Association
Rice Volland & Taylor, P.C.
Robertson Monagle & Eastaugh, P.C.
Schendel & Callahan
Tanana Valley Bar Association
Tindall Bennett & Shoup, P.C.
Deborah Traver
Frederick Triem
Jessica Van Buren
Winner & Associates, P.C.

Bar People

The law firm of Jamin, Ebell, Schmitt & Mason, with offices in Kodiak and Seattle, is pleased to announce that former Kodiak District Attorney **Stephen B. Wallace** has become associated with the firm effective July 15, 1998.

Anchorage business lawyer **Richard M. Rosston** has joiNed Bogle & Gates P.L.L.C. as a member of the firm's Anchorage office.

Rosston was a summa cum laude graduate of Dartmouth College in 1973. He received his law degree from Boalt Hall School of Law at the University of California, Berkeley in 1977. Rosston has practiced in Anchorage for 20 years, with a practice focus on general business, state securities, business and real property transactions, commercial finance, and Alaska Native law.

Bogle & Gates P.L.L.C., is a multi-disciplined law film which assists clients in pursuing business interests in local, national and international markets The firm's other offices are in Seattle, Bellevue, Portland, Tacoma, and Vancouver, B.C.

Christine Johnson, Court Rules Attorney, and **Sandy Mapes** are the proud parents of a baby boy, Taylor John Mapes, 8 lbs. 7 ozs., born September 2, 1998.....**Deborah O'Regan**, Alaska Bar Executive Director, and **Ron Kahlenbeck** are the proud parents of a baby boy, Ryan O'Regan Kahlenbeck, born June 9, 1998, 8 lbs., 1 oz.

Alaska lawyer pens spy story

Anchorage practitioner **Roger McShea** has written a spy-spoof thriller, *The Last Great Spy Story*, published by the RAM Press. According to the book's jacket, the novel's hero, "swashbuckling secret agent" Richard Brandal, "cuts a wide swath across four continents, drinking martinis, wooing wild women, and saving the world, in his own inimitable secret style." The paperback is available for $7.95 at Anchorage stores, including Cook Inlet Books, Borders Books, Carrs, Safeway & Fred Meyer. Roger is at work on another novel.

Anchorage attorney to oversee WorldPlus investigation

Former prosecutor to review possible violations of state law, employee conduct

A long-time private Alaska lawyer and former prosecutor has been appointed by state Attorney General Bruce Botelho to supervise the Department of Law's investigation of the World Plus investment matter.

Leroy Barker, with the Anchorage firm Robertson, Monagle & Eastaugh, will supervise state attorneys in the Office of Special Prosecutions and Appeals in their review of the World Plus situation. Barker will direct the investigation because at least five Department of Law employees were direct investors in the World Plus travel agency.

"While I have complete confidence in the department's ability to evaluate the case fairly despite employee involvement with World Plus, there must be no question about our impartial administration of justice," Botelho said. "Mr. Barker will determine whether any criminal acts have occurred and evaluate the conduct of Department of Law participants in World Plus."

The appointment follows completion of the federal investigation of World Plus, which culminated in the June 1998 conviction of World Plus owner Raejean Bonham of Fairbanks who plead guilty last month to mail fraud and money laundering. Bonham was charged with running a "Ponzi scheme" in which investors were promised huge returns for investing in the sale of airline mileage award tickets. Hundreds of investors lost money, while a few reportedly received huge payouts. Last week three World Plus investors were indicted on tax fraud charges after they failed to report large amounts of income earned from the investment scheme.

In early 1996 the Attorney General agreed with federal prosecutors to defer to the U.S. Department of Justice in taking over the case because of the legal problems caused by parallel state and federal investigations, and because Department of Law employees had been investors in World Plus. Botelho said then and repeated to legislators this past session that a separate state investigation would begin as soon as the federal probe was completed.

Barker has been an Alaska attorney since 1963 and has worked as a prosecutor in Juneau, Ketchikan, Anchorage and California, including trying several high profile murder and fraud cases. He is a law graduate of the University of California at Berkeley and a recipient of the Alaska Bar Association's Professionalism Award.

Alaska's first approved consultant in the Academy of Family Mediators

Drew Peterson, Attorney at Law and Mediator, has been accepted as Alaska's first Approved Consultant by the Academy of Family Mediators

The Academy of Family Mediators, an international organization with headquarters in Lexington, Massachusetts, is the world's largest organization of neutrals engaged in the mediation of family disputes. Qualifications for acceptance as an Approved Consultant for the Academy include a combination of Academy approved training programs and verified experience in the field, as approved by the Academy's Consultation Committee. There are currently less than 150 Approved Consultants in the world, and Mr. Peterson is the first mediator in Alaska to receive such a designation.

Mr. Peterson's offices are located at 4325 Laurel, Suite 235, Anchorage, phone number 561-1518. He has been a practicing attorney since 1972, engaged in private practice in Anchorage since 1980. His current practice emphasizes family mediation, including divorce and child custody mediation, employment mediation, mediation of small business disputes, alternative dispute resolution systems design, and consultations and training on dispute resolution alternatives. Mr. Peterson is particularly interested in the use of mediation to resolve unusual and complicated disputes.

Sandra Stringer of Fairbanks named to Judicial Council

Sandra Stringer of Fairbanks has been appointed to the Alaska Judicial Council, Gov. Tony Knowles announced. Stringer fills a vacancy left by Mary Matthews of Fairbanks, who is stepping down due to a change in employment.

"Sandra's familiarity with Alaska's legal process and history of public service make her extremely qualified to fill this important position," Knowles said.

From 1991 to 1997, Stringer worked as Special Assistant to the Fairbanks North Star Borough Mayor. In addition, she was an assistant ombudsman for two years, a non-attorney member of the Alaska Bar Association's Board of Governors, and a member of the Borough Assembly from 1982-88. Stringer is presently a member of the Fairbanks Memorial Hospital Board of Directors and the Tanana Valley League of Women Voters.

"It is an honor to be appointed to the Judicial Council," Stringer said. "I will work hard to help insure that the process of the selection and evaluation of judges continues to be a fair one for all concerned."

The Alaska Judicial Council was established by the Alaska Constitution in the judicial branch of state government. Its duties are to select new judges, evaluate and retain current judges, and to conduct research into the administration of justice. Stringer's term ends May 18, 2003, and her appointment is subject to legislative confirmation.

Automatic divorce discovery: Civil Rule 26.1

☐ Steve Pradell

The purpose of discovery in Alaska is to bring things into the open for settlement purposes, not play "hide the ball" for trial. *See, e.g. Miller v. Harpster* 392 P.2d 21 (Alaska 1964). To this end, the discovery process has been streamlined in all criminal matters and in most civil proceedings. Recently, the Alaska Supreme Court has extended this process and amended the Alaska Civil Rules to require that certain discovery automatically occur in divorce cases. Civil Rule 26.1 became effective July 15, 1998, and requires that both parties provide the following initial disclosures within 45 days after the filing of the answer:

A. the legal description and street address of all real property, wherever located, in which either party has an interest, together with all appraisals, tax assessments, and broker's opinions regarding each such property obtained within the last two years;

B. a signed release authorizing the other party to obtain all earnings and employee benefit information (including but not limited to health insurance, cashable leave, stock options, and perquisites or in-kind compensation such as employer provided housing or transportation benefits) from the party's current employer;

C. a signed release authorizing the other party to obtain all pension, retirement, deferred compensation, and profit sharing information from any plan in which the party is a participant or has accrued benefits;

D. a listing of all accounts in banks, credit unions, brokerages, and other financial institutions on which the party has been a signatory within the past two years and in which the party has a personal or business interest, together with a signed release authorizing the other party to obtain all information regarding such accounts, and copies of account statements for the past three months for all such accounts;

E. a listing of all outstanding debts together with written documentation or an account statement from each creditor indicating the principal balance currently owed and the payment terms;

F. a listing by description and location of all personal property with a current fair market value over $100 in which either party has an interest, together with all appraisals, tax assessments and broker's opinions regarding each such property obtained within the last two years;

G. the most recent statements and reports from financial institutions or other sources pertaining to investments in which the party has an interest (including but not limited to stocks, bonds, certificates of deposit, IRA's life insurance, and annuities);

H. federal tax returns filed by the party or on the party's behalf, including all schedules and attachments (W-2 forms, 1099 forms, etc.) for the past three years, together with all year-end tax documentation (W-2 forms, 1098 forms, 1099 forms, extension requests, etc.) for the most recent tax year in the event that return has not yet been filed;

I. pay stubs, vouchers, or other similar proof of income from all sources for the past two months, including but not limited to salaries and wages, overtime and tips, commissions, interest and dividends income derived from self-employment and from businesses and partnerships, social security veterans benefits, worker's compensation, unemployment compensation, Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI), disability benefits, Veteran Administration benefits, income from trusts or from an interest in an estate (direct or through a trust), and net rental income;

J. an itemized list by description and location of all items listed above in (A) through (G) which the party considers non-marital and the basis for the non-marital designation; and

K. any other information or documentation required by local order.

A party shall make its initial disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosure or because another party has not made its disclosures. Civil Rule 26(b)(2). Pursuant to Civil Rule 37(c), a party that without substantial justification fails to disclose information required by Civil Rule 26.1(b) shall not be permitted to use as evidence at trial, at a hearing, or on a motion any witness or information not so disclosed, unless such failure is harmless. Additionally, the court can impose other appropriate sanctions including attorney's fees.

Hopefully, the new rules will eliminate many of the discovery disputes which clog the court and prevent parties from unnecessarily objecting to production and disclosure of essential information needed by counsel to assist the court in making informed decisions regarding the issues. ©1998 by Steven Pradell. (Steve's recent book, *The Alaska Family Law Handbook,* (1998) is available for family law attorneys to assist their clients in understanding domestic law issues).

ACCA speaks out on unauthorized practice ruling

ACCA filed an *amicus* brief with the Indiana Court of Appeals seeking to overturn the ruling of a lower court that held that insurance staff counsel (and, by extending the logic of the court, all corporate counsel practicing in Indiana) were involved in the unauthorized practice of law. *Cincinnati Insurance Company V. Wilis* (Indiana Court of Appeals, No. 79AO2-9806-CV-50)

Indiana, like many other states, outlaws the practice of law by corporations. In this case, the lower court misinterpreted Indiana agency laws in its finding that the actions of lawyers employed by a corporation constitute the corporation's practice of law. In part, ACCA argues in its brief,

The Indiana Supreme Court has never held that a corporation engages in the practice of law simply because it employs attorneys to perform legal work.... To the contrary, the Indiana Supreme Court has held that a corporation which allows its employee-attorneys to perform certain legal tasks is not engaged in the practice of law.

ACCA's brief is available online (www.acca.com/vl/amicus/cinn/print.html). *Amici* who joined ACCA's brief were the Indiana Chamber of Commerce, the Indiana Legal Education Foundation, Cinergy Services, Inc., the Indiana Manufacturers Association, the Insurance Institute of Indiana, Inc., and the Association of Indiana Life Insurance Companies.

MEETING NOTICE

The Board of Directors of Alaska Legal Services Corporation will hold its quarterly meeting on September 26, 1998, in Anchorage. The meeting will convene at 9:00 a.m. in the law library of the Anchorage office, 1016 West Sixth Avenue, Suite 200. A portion of the meeting will be closed for an executive session.

The public is invited to attend.

IN-HOUSE CORPORATE ATTORNEYS: A PROFILE OF THE PROFESSION

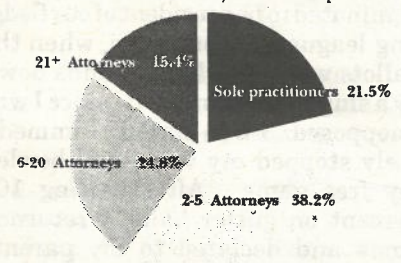
A recent survey by the American Corporate Counsel Association (ACCA) reveals the following about in-house attorneys:

- they have become more diverse: the number of women and minorities practicing in-house increased significantly since 1993;
- cost control is their most pressing strategic issue;
- nearly 60 percent practice in legal departments of 5 or fewer;
- they have significantly increased their participation in pro bono service since 1993; their most significant personal challenges arc time management and keeping up to date with the flow of new information;
- 95 percent have or anticipate having internet access by the end of 1999.

Legal Department Facts and Figures

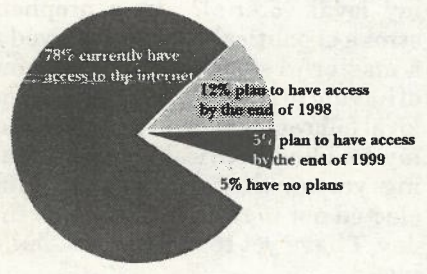
Size of Department

Legal department size ranged considerably, from one to 300 attorneys at the respondents' site and one to 617 attorneys at all company sites. Over 21 percent of in-house counsel are their clients' sole in-house practitioner; departments of 2 to 5 attorneys comprise about 38 percent; nearly 25 percent represent organizations employing 6 to 20 in-house counsel; 15 percent practice in departments of 21+ attorneys.



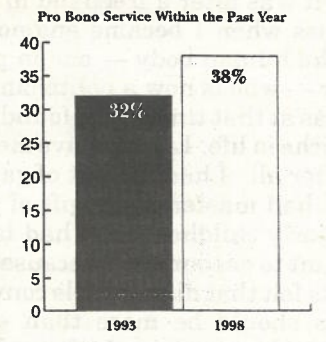
Technology

Ninety-five percent of in-house counsel have internet access or plan to within the next year.



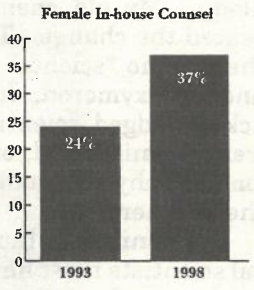
Pro Bono Publico

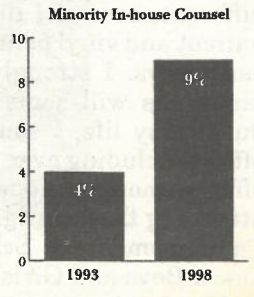
Pro bono service by in-house counsel is up: thirty-eight percent provided pro bono service within the past year, an increase over the 32 percent reported in ACCA's 1993 survey. Size of department — and presumably amount of resources — does make a difference in the rate of pro bono service provision: Practitioners within larger departments (21+ attorneys) participate in providing pro bono service by nearly 10 percent over the average.



Diversity

Although survey results indicate an upswing in the proportion of female and minority in-house counsel (up to 37 percent from 24 percent in 1993 and up to 9 percent from 4 percent in 1993, respectively), the typical in-house counsel is male. He is also 43 years old, a 17-year graduate from law school, and works for a public for-profit company with seven attorneys in the legal department.





The making of the precedent ☐ William Satterberg

Most lawyers study political science in undergraduate school, which they often like to call, more auspiciously, "pre-law." "Pre-law" sounds better, impresses members of the opposite sex, and convinces parents to send even more money to stave off financial doom.

Pre-law types can usually be recognized in college because they belong to Key Club in high school, wear an earring through some unassociated body part, have long hair, and hang around the student union buildings, philosophizing about nothing in general.

By contrast, "pre-med" types are those nerds who study biology. Moreover, "pre-meds" have short hair, and, when I went to college in the 60s & 70s, wore a K&E slide rule hung on their belt and had a Van Waters and Rogers white vinyl pencil holder placed proudly in their shirt pocket.

Although it may be surprising, I actually studied chemistry for a number of years in college. I won't disclose the exact number of years, since that would deflate my ego. What I will say is that I started out as a chemistry major during a time when my "hippie" friends actually respected and occasionally sought me out. Then again, they also admired those students who studied botany.

After a number of years of getting nowhere in chemistry, except for the one time that my lab bench caught on fire from a neglected and overheated oil bath, I switched to political science. It was after a freehand drawing class when I became enamored with the human body — one in particular — who is now a politician. It also was at that time that I found my true niche in life. Life did have meaning, after all. I had the gift of gabby lips. I had mastered the gift of gab since early childhood, but had been reluctant to encourage it because my parents felt that dinner table conversations should be more than one-sided, as they explained to me when I would finally stop to inhale (in my pre-Clinton years).

It was when I became a "political scientist" that I realized that I had actually been a political scientist all along. My old chemistry pals resented the change. This is because there is no "science" to "politics" – another oxymoron. In fact, the only acknowledged scientists back then were chemists and, of course, those smarter physics students, who were the real nerds.

By definition, all successful political scientists must have had a political career. In that regard, I was no different, even if I did have a nerd haircut and vinyl pencil holder in my early days. I strongly suspect that historians will someday note that, during my life, I sought numerous offices including even the principal's office on more than one occasion when attending the prestigious Woodland Park Elementary School, which is now a Boys and Girls Club.

My first candidacy for political office was when I was drafted for president of a new youth bowling league at the Center Bowl in Anchorage. The Center Bowl is located at the intersection of Minnesota Drive and Spenard Road. Actually, Minnesota Drive did not effectively exist at that location in the early sixties, but you could reach the Center Bowl from Spenard Road. Close enough.

It was a cold Saturday afternoon. Like the other kids, I had responded to a handout given at my elementary school, encouraging students to take up the exciting sport of bowling, accompanied by my first bribe - a free game.

Although none of us were particularly interested in bowling, we still did like the idea of getting some free bowling on a Saturday and quickly succumbed to the temptation. After all, it sure beat shoveling snow. What we didn't know at the time was that the alley's management had greater goals in mind, specifically to include trapping our unsuspecting parents into paying for bowling classes, bowling shoes, bowling balls, bowling shirts, and eventually cigarettes and beer when we grew older. There clearly was to be no free babysitting.

On the very first day, (which would turn out to be my only day), we selected team captains. I lost, but being the true politician, I took it like a man. Still, it was unfortunate that I was not elected team captain, since I was as qualified as anyone else.

Apparently, someone must have heard my sobs, since I was quickly nominated to be president of our fledgling league. Surprisingly, when the ballots were cast I won hands down by a single vote – my own - since I was unopposed. I was elated! I immediately stopped my wails and bowled my free game. After batting 100 percent on gutter balls, I returned home and declared to my parents that I had been elected league president. El Supremo.

In a rare, unified response, my proud parents quickly announced that I was allowed only the one free day of bowling. The walks needed shoveling. I quickly realized that I would have to resign my office. Although this event was long before the days of Richard Nixon, I, too, was deeply saddened. How would I tell my loyal voter(s)? In a prophetic stroke of political genius, I arrived at a masterful solution to the dilemma of having to resign in front of all of my loyal follower(s), which truly revealed my budding political acumen. Facing yet another election, I simply elected not to return. In fact, to this day, I have yet to re-enter the building.

My next bid for office was when I ran for student council at my elementary school. In our class of 30, I campaigned heavily. Yet, when the ballots were counted, I received only one vote to my opponent's 29. Once again, at least someone out there was loyal enough to vote for me. Probably the same person who so strongly supported my candidacy for league president. Certainly, the handwriting appeared to match on the ballot. During a rare moment of thought at recess, I realized then that my hopes for a political career as an elected leader were doomed. I vowed then to become the first dictator of a student class. I just would await the proper opportunity.

For the next several years, I did not seek public office. Elections seemed to be the only method of selection, and I now had a documented history of resignation and defeat. Instead, I burrowed into my mathematics, chemistry, biology texts, and Playboys stuffed underneath the mattress of my bed. I was depressed. There seemed to be no justification for the elective process, since no one would have me. It became obvious that, to win, one needed a gimmick. But gimmicks were hard to find. The positions of both president and vice-president of our high school class were won by a pair of identical twins. No luck there, for sure. The secretary was a cute girl, and the treasurer was the shortest kid.

I just didn't seem to have what it took to be elected to any office in high school. In addition, I didn't have a motor scooter. I didn't have a car. I quickly washed out of football when a junior lineman broke my foot. Athletics clearly were not my bag. I allegedly didn't have much in the way of looks, either, although my mother still said she loved me. Moreover, when the other popular kids were at pep rallies, I was raking the yard. Dating was a distant concept — girls didn't do those things.

In short, I quickly was becoming a political co-dependent. But that was okay. (Don't worry about me — I'm fine, really.) Then again, I did have a unique use of sorts. During high school, I voluntarily backed a number of candidates. Generally speaking, I was used as a decoy. If I backed an individual candidate, it virtually guaranteed a win to the other side. I soon began to realize that I had developed a marketable commodity – known later as the "aversion factor." Not everything was lost.

My undergraduate college years were not any different. I attended the famous University of Alaska in Fairbanks (UAF), during the turbulent 60s & 70s. UAF had a reputation as one of Playboy's top party schools. I had researched the topic well. At least that's what I told my mom I was doing when she asked about my bumpy mattress.

UAF was a cool school — about 40 degrees below. In trying to identify with the California schools, it also had a Students for a Democratic Society (SDS) branch, which actually was more of a "twig" than a branch. In support of its SDS, UAF even had a student protest during my freshman year. In a fit of passive rage, a large group of five of us occupied Bunnell Hall. The administration, initially, apparently was rather surprised, since hardly anyone ever attended classes at 40 below. I still believe that the rebellion would have worked rather well, in retrospect, if the administration had not made it so obvious that it left the doors open for us. The final giveaway was the coffee, punch, and cookies thoughtfully placed on a table.

During the short-lived occupation, the leader of our little rebellious group, now a respected businessman, tried vainly to incite us to even greater degrees of revolt. In a fit of exasperation, he reminded us we were revolting. All five of us agreed. But, when no one would pay attention, we simply quit and drifted back to our rooms. As usual, there was more fun to be had in the dormitories, and some of us might even try to study a little. Besides, it was bitterly cold out and, more importantly, it was a Tuesday night. Tuesdays were always good nights for a party at Stevens Hall, even if Wednesdays, Thursdays, Fridays, Saturdays, Sundays, and Mondays were better.

Eventually, I did become involved in college student government, but not via elective office. My entry into college politics came at the request of the student union president, a short kid (now an attorney in Juneau) who wore trademark yellow rubber boots. Despite his efforts, he simply could not find anyone to fill two of his five administrative positions. As it turned out, no one would sober up long enough to apply, and the boots could get a little strong on a hot day.

But I was an exception. When I realized that these positions each paid the sum of $40 per month, I inhaled deeply. To my delight, I could have both positions simply for the asking. In a moment of financial desperation, I cheerfully accepted the jobs and immediately doubled my yearly income. Like all good bureaucrats, I worked diligently at looking busy. At the end of the year, I even received an award for my contributions to the student union body. The award didn't really mean much, but it did look good on my law school application. I am told that my name still is on a plaque somewhere in the basement archives of the University of Alaska. Right next to the Ark of the Covenant.

What was important was that my political career was beginning to recover. My disastrous bowling league days were finally becoming a thing of the past. And, not unlike lawyer Bill Clinton, I, too, was diligently working on my qualifications. I even learned to play an instrument. I allegedly experimented with other presidential pursuits, although I will deny it. In time, I am told, I graduated and went on to law school. Not that I distinctly remember walking the aisle.

It was in law school that I again became successful in elective politics. I ran for president of my second year law school class. The basis of my platform was rather ingenious, I must modestly admit, and may some day form the basis for future campaigns. I pointed out to the student body that I did not have much of a career in law. Neither of my parents were lawyers. My grades were abysmal. I came from Alaska. I was still a recovering nerd. I was lower than worm doo-doo. Lower than the lowest bar applicant. The student body agreed with me. Now, all I had to do was to convince the rest of the class! During my campaign, I pointed out that, if I were elected, I could put it on my resume and maybe get a job. As with my first election to bowling league, the result was overwhelming. Hands down (it was a secret ballot), I was elected president of the second year class with the same tally of votes as in my bowling league class. My follower had not left me, after all.

Like all good politicians, I offered something to my supporters. Even better than a gallon of gas! Anyone who claimed they supported me could have the politically-appointed office of their own choice to list on their

Continued on page 21

Let's rethink the tax rules for rich

By Joe Sonneman

A noted Alaska trial lawyer recently established offices in other states, because Alaska's tort law has been reformed (deformed) too far and injured Alaskans can no longer find fair redress in courts here. Public members of the Board of Governors pushed the BOG into voting for mandatory CLE, repeatedly voted down by Alaskan attorneys.

Clearly, Alaskan attorneys are under attack, but they are not alone. Almost everyone is under attack, except big business. It's time for a change.

Government exists to help people in need, yet "welfare to work" programs operate even in Alaska, where few jobs exist in winter or in the Bush.

Newt Gingrich, a skilled organizer misusing his talents, has sent taped pro-flat tax messages by phone to me and to other Alaskans, yet Citizens for Tax Justice cites a U.S. Treasury study showing that only the highest-income 2.5% of Americans would benefit from a flat tax. Because low-income Americans remain exempt, the flat tax really means an increase on middle- and high-income Americans in order to give a tax break to the very richest.

Since early July, I've called for higher tax rates on the rich and corporations. Now even America's most-respected TV news anchor Walter Cronkite agrees; "We who have it [lots of money] ought to be paying a lot more (in taxes)" (*Modern Maturity,* Sept-Oct. '98, at 40).

Some in Congress propose "privatizing" Social Security, yet Alaskans know from Permanent Fund experience that when people are given control over additional money, about one-third need to spend it all and save none. The National Council of Senior Citizens give only *one* U.S. Senator — Alaska's incumbent — a "zero" rating. No fair to put Social Security Trust funds into the country's general fund and call the result a "surplus;" there is no surplus.

Business groups want to prevent unions from using union dues to help workers' interests. Some in Congress even propose ending overtime pay for overtime work, under the guise of employer-determined flextime. Others want to cut back on "Safety FIRST" rules by requiring cost-benefit analyses of OSHA rules, even though it was cost-benefit thinking that led to Pinto problems. The AFL-CIO is said to be critical of Alaska's incumbent Senator.

So it's time for a change. We should instead see new labor laws requiring equal pay and, pro-rata, equal benefits for part-timers and temps (many of whom are women) as for full-time regular workers, so that companies can no longer play off one kind of worker against another. We should now insist on instant vesting of retirement benefits, so that even workers who bounce around from job to job end up with pensions — from many employers — because it's a downsizing, project-oriented, temporary world out there.

I heard several Governor candidates debate subsistence at the Tanana Valley Fair. Most were wrong: here's why.

One Republican said "everyone should have subsistence." The U.S. Constitution in Art. VI makes federal law supreme, even over contrary state constitution or state law. So when Congress in ANILCA required a rural preference to protect this way of life since time immemorial, that is the supreme law, which even governors cannot set aside. Congress in setting up the reindeer program said it wanted to protect a means of subsistence for Alaskan natives. 25 USC 500.

Another Republican governor candidate said, "equality" was important — and so it is. A third Republican governor candidate said "don't amend Alaska's Constitution." They were wrong because (a) everyone has an equal right to move to a rural area and get subsistence preferences and (b) Alaskans already voted in Limited Entry, which (i) established "more equal" rights for some fishermen than for others and than for non-fishermen, and (ii) already amended Alaska's Constitution.

So it's time for a change, time to vote subsistence in and vote "no" on those who stand in the way of the rural preference that both Congress and a majority of Alaskans want.

Research of federal Indian law shows that tribes that create constitutions ratified by the Secretary of the Interior already get government-to-government negotiating status. 25 USC 476. This open door to sovereignty seems easier than frustrating and expensive court suits.

Rural Alaska needs $1+ billion in water and sewer, a D.E.C. staffer reports. President Harding in 1923 said the National Petroleum Reserve-Alaska should be saved for a time of "pressing national need." But Secretary Babbitt wants to give NPR-A away, apparently in order to save ANWR. Well, Alaska only gets 50% royalties on NPR-A, instead of the 90% we get on other federal lands within Alaska, because Alaska does not have the Federal water reclamation projects (dams) that other states do. So *if* NPR-A is pumped now. Alaska should insist that the Feds pay up for rural Alaska water and sewer, in lieu of water reclamation projects here.

Alaska still has a colonial economy, exporting mostly raw-or partially-processed commodities, and importing finished goods. Alaska should be transforming itself into a CLEAN processor of finished goods. Yet Alaska's incumbent Senator seems to want even more clearcutting in the Tongass, even though it is the low world prices for pulp that's led to pulp mill closures, not alleged Forest Service or environmental restrictions on timber supply. It's time for a change.

Alaska's incumbent Senator also wants to legitimize Internet spam, provided spammers offer an "opt-out" provision and use real addresses. But Internet users should not have to opt-out of dozens of messages, nor should Internet Service Providers (ISPs) have to carry millions of extra messages for advertisers who pay no income to the private ISP companies. Congress already banned "junk FAXes" in 47 USC 227 and should do the same here, as the Smith bill, H.R. 1847, proposes.

The incumbent raised over $1 million, enroute to an announced goal of $1.5 million. But the *Anchorage Daily News* reports that only 7% of the money is from Alaskans. Are you surprised at that, when the export of raw or partially-processed commodities means major profits from the Outside or Overseas firms — and high wages for the non-Alaskan workers — that produce finished goods sold back to Alaskans? The myth of "independent voters" leaves scattered Alaskan voters at the mercy of well-organized and well-financed outside interest who contributed to Alaska's Congressional delegation. After a brief Alaska visit, organizer Newt Gingrich also called for cutting Tongass timber and pumping NPR-A. That's three strikes, Newt (Flat Tax was #1)!

It's time for a change. It's time for more lawyers to run for office, because the non-lawyers now in office are making life too hard for ordinary Alaskans, and for Alaskan lawyers. I apologize for so short a discussion here, but space is limited. You can hear three issue messages FREE by calling (888) 412-8152 x93, x94, and x95. Please see my Web page at www.ptialaska.net/~senator. Remember to vote November 3.

Joe Sonneman, U.S. Senate nominee, D-Alaska

Tales from the Interior

Continued from page 20

resume, just like me. My minions were ecstatic. But, before I could put my plan into effect, I had to abdicate my throne. I traveled to England to study law for a one-year program overseas, where I met Roger Brunner. In the end, it was probably a better choice for the class and myself as well, even if Roger did suffer. I still like to think that I was the reason he moved to Alaska, as distant as it is from England. Having selected foreign studies over the presidency, I left with my head held high in the same year that Nixon was almost impeached. Unfortunately, the sabbatical spelled the end to my law school political life.

Predictably, my political career fizzled. After law school, things were quiet. Lacking a Wall Street resume, I had returned to Alaska. As for politics, I had tasted success at the political well, and thus found Alaskan politics to be both boring and, for the most part, anticlimactic. Besides, I didn't have a southern accent, the lack of which was an immediate liability. To boot, it was small town stuff. I was used to the bigger league. I decided to practice law, instead.

In fact, until only recently, I have had no political aspirations. Bar Association president is beyond me, and I lack the intelligence quotient to enter the judiciary. Besides, I couldn't keep my mouth shut.

But, to be governor is a recently intriguing concept. In fact, lawyers seem to be running for that position again. Don't laugh. One lawyer who was previously a governor of a small state even became President! I've studied that person's qualifications and am convinced that he couldn't even hold a candle to me. Moreover, as my father once wisely told me "faint heart never won a fair maiden."

Clearly, there are certain inherent benefits to the governor's position, even if it is low paying. For example, in the chance that I do happen to get elected, I can use it on my resume. All of my loyal voters can again have a self-appointed, non-paying position. And, if the Alaska Supreme Court disagrees, I'll simply fire them all — once I find a willing attorney general. Anybody interested?

Cliff Groh remembered: A distinguished path

Continued from page 1

My father also benefited from the advice and counsel of his half-brother Al, who was nine years older. My Uncle Al disliked the name "Clemens" given to my father by his mother. My uncle picked out the name "Clifford" for my dad, took my father to school on the first day of first grade, and told the teacher that "Clifford" was Dad's name. This was one of four name changes my father had in his life, only one of which was made legal in those more casual times.

My father worked hard in school and was proud of his membership on a county championship basketball team. This was particularly notable given that there were only 12 boys in his graduating class. My father also learned to play the accordion, a feat magnified by his lifelong inability to read music. Later, my family often engaged in rollicking renditions of popular songs with my brother Paul playing the piano.

World War II and Meeting Lucy

Even before the attack on Pearl Harbor pushed the United States into World War II, my father wanted to fight the Nazis who had invaded his parents' original country and brutalized much of the rest of Europe. In the summer of 1941—when he was only 15—he considered running away to Canada so that he could join the British Royal Air Force. With the horrendous loss of pilots suffered during the Battle of Britain, my father thought he would be accepted despite his age, but my grandmother talked him out of that plan.

On April 2, 1943 recruiters for the U.S. Navy came to my father's high school. They offered officer training to any graduating senior who had passed his 17th birthday and passed the qualifying test. My father was graduating that spring and had turned 17 the day before. He passed the test and entered the training program for officers called "V-12."

Sen. John Butrovich, Sen. Cliff Groh, Sen. Terry Miller, Rep. Oral Freeman, and Sen. Kay Poland of Kodiak are among those in a legislative committee session with staff in the early 70s.

The "V-12" program was intense, and he would often rig up a system so he could keep studying after lights-out was announced.

The Navy sent him to several college campuses to be trained as an intelligence and communications officer. It was at Cornell University where he met my mother, a freshman from Florida named Lucy Bright Woodruff. A mutual friend introduced them while my mother was reading Plato under a tree.

The officer training program consumed two years, and World War II ended just before my father would have taken part in the invasion of Japan. Instead, he visited occupied Japan as an ensign on a destroyer mine sweeper.

College, Law School, Marriage and Korean War

The V-12 program allowed Dad to be the first person in his family to go to college. After the war ended, another federal program—the G.I. Bill—helped my father graduate from St. Lawrence University with a degree in mathematics. That day in 1943 the Navy recruiters came to my father's high school now looks like the turning point in my father's life. He later said that without officer training and the college education that came with it he probably would have enlisted, gone immediately into the war as an enlisted man, and—if he had survived—returned to Ramapo to work in the steel mill.

Instead, my father headed south to the University of Miami Law School in 1948. There he supplemented his income from the G.I. Bill with money he made driving a taxicab as well as catching rattlesnakes and water moccasins to sell them to a snake farm.

After many letters, my parents married in the summer of 1949, more than four years after they met back at Cornell. My father converted from his parents' Roman Catholicism to my mother's Episcopal faith. Mom and Dad immediately moved west to Albuquerque, where my father enrolled at the law school of the University of New Mexico. When the Korean War broke out, my father was called back into the Navy during his third and final year of law school. He was able to get his law degree without finishing the full curriculum, and passed the New Mexico bar examination while on a 15-day shore leave.

My father served as the operations officer on a destroyer escort off the coast of Korea. His ship shelled enemy positions on the shore, and faced shells fired from shore batteries. The shelling went on around the clock for months, and he always attributed his tendency towards deep sleep to his combat experience.

Coming to Alaska

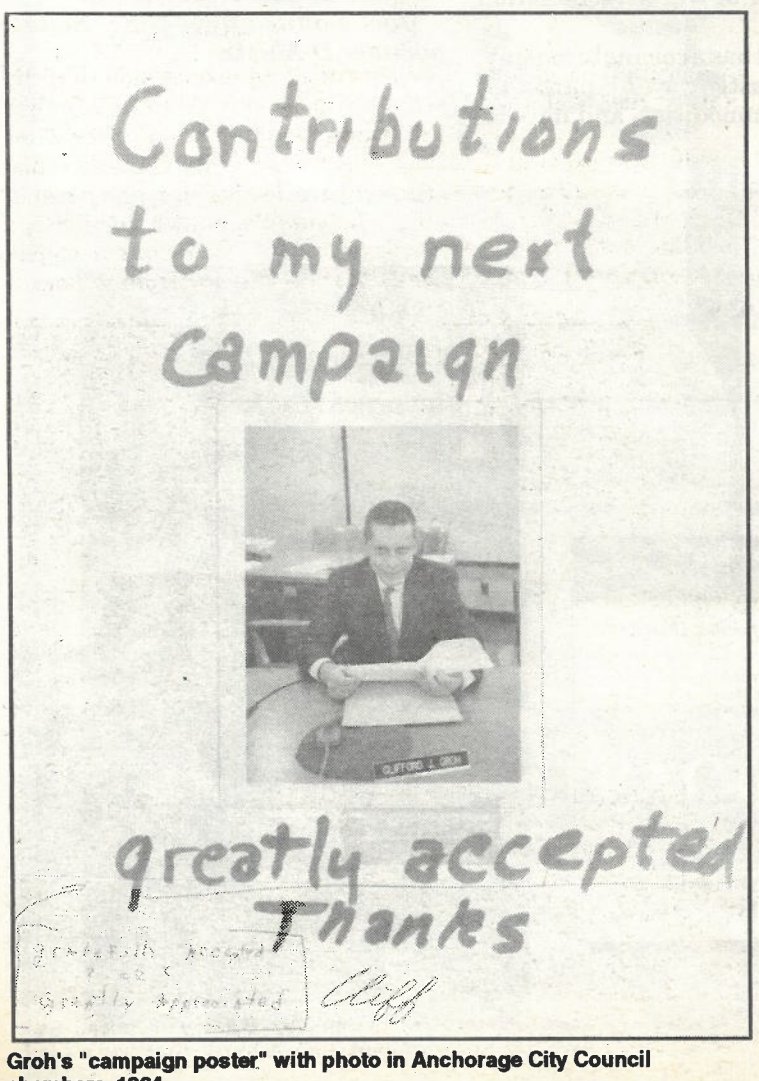
My father was discharged from the Navy near the end of the war. My father had a law degree, but had never practiced. He wanted to make his way somewhere where there might be opportunity for someone without the advantages of a famous name or a wealthy family. My father decided to go to Alaska based on the recommendation of Roger Cremo, my father's good friend since high school. Roger had moved here after graduation from law school and sent my father glowing letters about Alaska. Dad convinced Mom that the trip to Alaska was just a vacation—which probably makes my parents the first people ever to leave New Mexico in November to vacation in Alaska. Mom once said that she knew it was no longer a vacation when she got to know the staff at the laundromat by name.

It was the bold move of a pioneer to come to Alaska back in 1952. Alaska was still a territory then and very much of a political, economic, and social frontier. It was years before the pipeline, daily jet service, and live TV eroded the differences between Anchorage and other cities Outside. My parents came to what must have seemed a dark and cold land far from all their family and almost all of their friends. In this new environment, my father made friends and took up causes quickly. Within six weeks of his arrival he had plunged into the statehood movement, serving as the co-founder of Little Men for Statehood and later as the first president of Operation Statehood.

Lessons of Law, Politics, and Business on the Last Frontier

After working for Roger for a year, my father was appointed Assistant United States Attorney at Anchorage. At that time, it was a challenging position since the United States

Continued on page 23



Groh's "campaign poster" with photo in Anchorage City Council chambers, 1964.

Cliff John Groh, Clifford J. Groh, Sr., Kevin Groh, Connie Sipe - 1994.

Lucy Groh, Clifford J. Groh, Sr., February 1983 Fur Rendezvous.

Clifford John Groh, Sr., March, 1991.

Cliff Groh remembered: A distinguished path

Continued from page 22

Attorney's office prosecuted not only federal crimes but territorial crimes as well. My father became an outstanding trial attorney, and during his time in the U.S. Attorney's office, he tried one case after another. One of the former Assistant Attorneys in the office with my father told me that my father was very well thought of because he not only tried cases assigned to him, but always offered to help others in easing their caseloads.

Upon leaving the U.S. Attorney's office, my father opened his own law practice with John Rader and the late Gordon Hartlieb. There he handled a great run of cases and matters, almost anything that came in the door: personal injury lawsuits, contract disputes, fights over property, criminal defense and domestic relations. His experiences gave him sharp insights into the best and worst things people could do to each other, and tended to make his view of the world less judgmental. Early on, he found the divorce cases more draining than the murder cases, and he resolved to give up the former before the latter.

Even towards the end of his career, when he did much of his work for large corporations, my father often took cases from individual clients for free or a low fee if he believed in the rightness of the cause or had sympathy for the client. He would see clients in his house as well as in the office. My father often had them stay in his home while visiting Anchorage, particularly during the several years he represented Native villages and associations in the struggle to resolve Native land claims.

His particular strengths as a lawyer ran to trial work. He had a deep understanding of how jurors tended to see cases and told them simple stories on which they could feel comfortable basing their verdicts. His other main secret was preparation—he would never try a case without going over the evidence exhaustively. In a homicide case, that meant looking at the scene of the death over and over again until he knew the details better than anyone else.

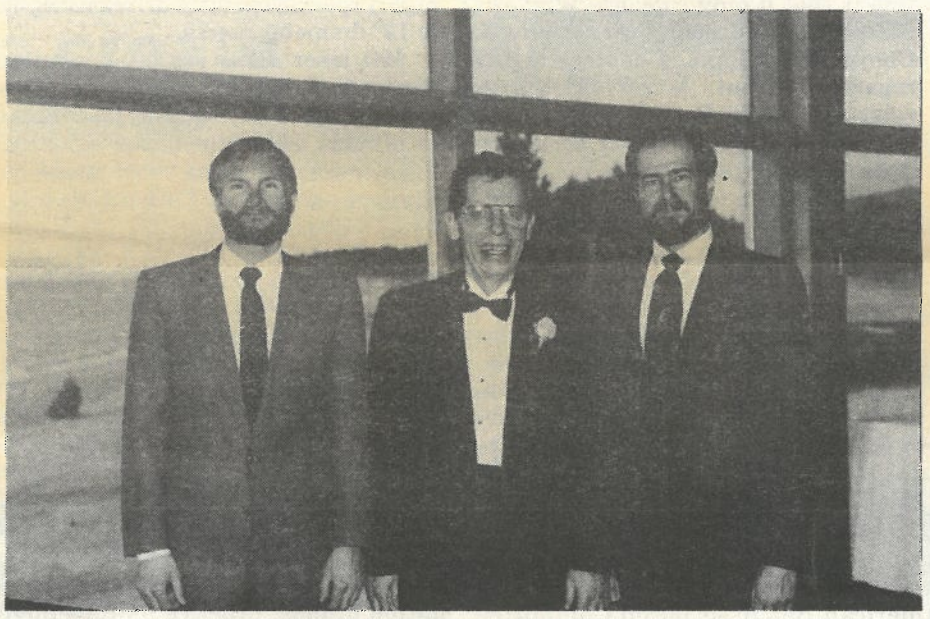
If his cases were varied, so was his compensation. Many of his clients were hard-pressed and could not pay fees with money, so my father accepted various pieces of raw land and even—in one memorable case—a giant theatre-size sound speaker.

My father combined compassion with a sense of the practical in his law practice as well as the rest of his life. As he became better known throughout the state, my father would often try to find jobs for people he met who were unemployed.

If my father taught lessons to his clients and others he met in the rough-and-tumble growing community, he also learned some. Dad often told the story of a prominent local businessman who had become involved with a crooked partner who had misappropriated some funds borrowed from a bank and then fled. The businessman attended a meeting with the banker about the substantial loan on which the businessman had co-signed. After hearing the bad news, the businessman looked down and then looked up at the banker. He said "I always pick up my markers." So did my Dad.

My father's career in public service, law, and business was impressive. But the most important things about him cannot be captured in any listing of accomplishments. What made him special were his human qualities: his pioneering spirit, his warmth, his compassion, his courage.

L to R: Roger Cremo, Clifford J. Groh, Sr., John Rader, March, 1991.



L to R: Ken Eggers, Clifford J. Groh, Sr., Mike Price - March, 1991.

Both in the practice of law and in political pursuits, my father had a sense of justice and fair-mindedness that led even his opponents to admire his gentlemanly qualities. If—as is sometimes said—both politics and the practice of law were less competitive in the 1950s and 1960s than they are today, it is also true that both were more civil. My father was a major contributor to that more friendly spirit in Alaska.

Loves and Losses

Since his days in the Navy, my father was passionate about the sea. He loved boating—sailboating in his 20s, and boats with bigger and bigger engines as he got older. In the last 15 years, he particularly loved going out on his 48-foot vessel "My Way" to the rural subdivision he and my mother developed in coastal Alaska. I want to scotch one rumor right now: There is no truth to the story that my father made my sister Betsy promise to name any children she had Ellamar, Cordova, and Valdez. As she pointed out, however, this would be better than naming them Prince, William, and Sound.

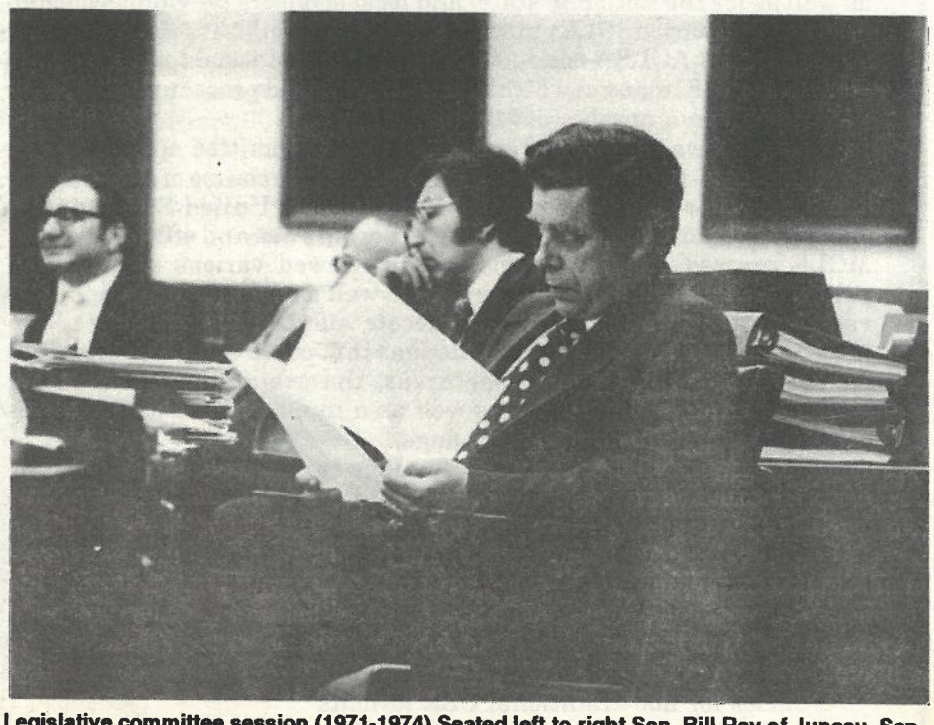
My father needed the peace and serenity he found on the water, because he had to face personal difficulties and even tragedies on land, both in his own family and those of his close friends. My father had a lot of courage, a positive outlook on life, and a sense of humor, too, and that was good, because those qualities were frequently and severely tested. Many of you know that Dad battled two different kinds of cancer—one starting in his eye, and the other in his lung—and that the first left him legally blind and the second killed him. He traveled on his journey toward death with a clear-headed rationality and a calm equanimity.

What many of you might not know is that my father suffered much longer with a much more painful problem—trigeminal neuralgia. This neurological condition—also known as tic douloureux—first hit Dad in 1988. A nerve running down his left cheek would frequently but unpredictably turn into a river of fire. The trigeminal neuralgia hammered him with what some think is the most intense pain known to the human race. He dealt with these waves of vicious pain with a stoic persistence that was a source of wonder to those few who understood what he was going through. My father took substantial amounts of medication to deal with the pain, but the incomplete relief given by the pain-killers led him to undergo two major surgeries on his head in the past four years. In one of them—when he was 68 years old—he had brain surgery on a Wednesday at the Mayo Clinic in Minnesota and was back at work on Friday in Anchorage.

My father's longest and most successful struggle, however, was with alcoholism. He drank heavily for close to 20 years, but he was very proud that he was sober for more than 14 years before his death. He always gave much of the credit for his sobriety to Alcoholics Anonymous, and treated his "AA birthday"—the first day without drinking—very seriously. AA was a major part of his life—even a religion—for the last decade and a half. The expressions of gratitude he got from numerous AA members for his role in maintaining their sobriety is one of his most important legacies.

Conclusion

A friend of mine once said that the reason she lived in Alaska was that the young people did not know what they could *not* do. My father's sense of adventure, love of fun, and passion for public involvement helped shape Alaska for more than four decades, even after he was far from young.



Legislative committee session (1971-1974) Seated left to right,Sen. Bill Ray of Juneau, Sen. George Hohman of Bethel, Sen. Willie Hensley of Kotzebue, Sen. Clifford J. Groh and behind, Sen. John L. Rader, the latter two from Anchorage.

Backups

Continued from page 14

and Iomega and Exabyte tape drives come with their own useful proprietary software. The Colorado Memory Systems software will typically work well with backing up a network.

Larger capacity tape drives, particularly those used for network file servers and those used in high capacity autochangers and tape libraries, almost universally use the SCSI interface. These drives must be installed by a professional. Most of them will not concern you, although you should at least be aware of their various models. DAT tape drives use digital audio tape. These were an early favorite because of their relatively high speed. DDS 2 and DDS 3 tapes are the most common. DDS 2 tapes have a several gigabyte capacity while I believe, but I'm not sure, that DDS 3 tapes can store as much as 24 gigabytes when used with an appropriate tape drive. DAT tape drives are not widely used on office desktops, but are still quite common in network file servers. Hewlett Packard DAT tape drives are quite well regarded and remain quite popular, although other good brands remain on the market.

Sony's new AIT "intelligent" tape drives are making quite a splash in the corporate market. These are, again, high capacity tape drives most suitable for relatively large file server environments. Initial reports are highly favorable.

The speed champ among currently available tape drives are those drives based upon Quantum's DLT technology. Many different companies rebrand the DLT technology, but it's fundamentally the same: fast, reliable and expensive. These are high end corporate products. DLT drives are often used in tape autochanger libraries featuring very high capacity.

The foregoing are the most common mid-range to upper mid-range tape drives. You can spend anywhere from $1,500 to $30,000 for one of them. When deciding among competing tape drives of this nature, there are several important factors to consider: firstly, how well known is the vendor? Quantum, Hewlett Packard, Exabyte, Tandberg, Wangtek and others are well established with a long, solid track history.

Secondly, first decide which tape software you'll buy and then choose a tape drive that is specifically supported by that software. High end tape backup software tends to be very specific and picky about the tape drives that it will support. One size does not fit all. Only a few models are generally supported, mostly tape drives that have been on the market long enough for model-specific software drivers to be written by the software vendor. Unfortunately, such drives tend to be off the market by the time that upgraded high end tape backup software is released. This is essentially a chicken and egg situation: you'll firstly need to choose the tape backup software and then purchase a relatively recent tape drive supported by that software. I personally have found this circular situation to be troublesome on more than one occasion.

High end tape software: Unlike the desktop market, there are only a few company-level tape backup programs that are widely available. At the highest level, Legato Networker is widely used, but may require quite a bit of knowledge to set up and configure. Seagate Backup Exec 8, Enterprise Level, offers similar capacities along with add-on packages that allow you to back up multiple file servers, even remote file servers connected by the telephone infrastructure. Yosemite Technologies produces a similar product, Tapeware, which installs easily and runs reliably. Tapeware's limitation is that it only supports Windows 95/98 and Windows NT workstations. Cheyenne Arcserve is another highly regarded entrant. Arcserve is comparable to Seagate Backup Exec and offers either single server or company-wide versions that are quite comprehensive. Stac's Replica offers easy disaster recovery but I found earlier versions to be unstable and I have not tried the most recent releases.

My preference for a single server computer network would be Yosemite Tapeware, all other things being equal. I found it easy to set up and run. Seagate Backup Exec likewise is relatively straightforward but is difficult to reconfigure when, for example, you change to a different model tape drive. Cheyenne Arcserve is rather more difficult to learn and use but runs reliably once installed.

Your choice among these competing products will probably revolve around whatever version is most comfortable for your vendor. All of these packages begin at about $500 or more for a single server version.

Our own office currently uses Seagate Backup Exec, Version 7.11, now superseded by Version 8, along with a Conner CTMS 3200 tape drive. I wanted to use either Tapeware or Backup Exec with the large capacity, reasonably priced Aiwa TD-8001 SCSI tape drive, but this drive was not supported by any network tape program that I could find. That's my own experience illustrating why we need to be very careful in matching supported devices with high level tape software.

Laser disks: There are several "magneto-optical" laser disks on the market, some of the more common ones storing up to 5.2 gigabytes. These MO drives, however, tend to be more fragile, expensive and relatively proprietary compared to fast hard disks. Although I own an HP MO drive, I find that it does not take the place of a good tape drive for day-to-day backup, although the MO drive is an appropriate means of archiving data on removable media and taking that data to a safe off-premises location. Hewlett Packard, Plasmon, Maxoptic, Pinnacle Micro and others make 5.25" MO drives that work well. If you're willing to pay the price, you can find even larger capacities in highly specialized laser drives using up to 12" diameter media.

MO laser disks are often used in mechanical "towers" which mechanically change a series of MO laser disks to provide you with higher capacity. Such towers, such as those made by Plasmon and Hewlett Packard, are relatively expensive and require very specialized, expensive control software. MO drives are increasingly relegated to situations where the need for blazing speed (the mechanical disk changer is quite slow) is not necessary and where huge amounts of data, such as vast online image archives, are required. I own a Hewlett Packard 23 gigabyte tower that I use primarily for optical imaging at the office. However, I found that I could achieve essentially the same capabilities at about one fifth the cost, with much greater reliability and speed, by purchasing an 18 or 23 gigabyte IBM or Seagate Ultra Wide SCSI hard drive. Thus, unless you need huge storage capacities, I recommend against MO drives.

CD-ROM recorders: For archiving relatively small amounts of data, on the order of 650 megabytes or less per disk, CD-ROM recorders work quite well. They are now very common and there are too many models and manufacturers to enumerate here. After careful consideration, I purchased a "Smart and Friendly 4012" 4X CD-ROM recorder that also functions as a 12X CD drive. The SAF 4012 recorder costs about $400 wholesale and comes with Adaptec's Easy-CD software, the current standard for CD recording. Although the SAF 4012 recorder is capable of writing "packets", the necessary Adaptec Direct-CD software is not included with the SAF 4012 package. You will need to buy the software separately.

The intricacies of recording CDs are beyond the scope of this article, but it's worth noting that the better CD recorders almost always use the SCSI interface, which I continue to recommend.

If you need larger capacities, however, the newer DVD drives will ultimately provide a large capacity replacement for SCSI. At this time, though, DVD read drives are uncommon and DVD recorders are in their infancy. This continues to be a technology to watch, though.

My recommendation: Use a variety of data backup strategies. Your first line of defense is always a good high capacity tape drive. Backup using both your office desktop and automatically scheduled backup in your file server.

If you need to move relatively small amounts of data between different locations, then a Zip drive, particularly a portable Zip drive, works well. Long-term archiving of important data is best reserved to recordable CD disks, which have a much longer life than backup tapes.

Report on Mandatory CLE Released by ALI-ABA and ACLEA

The American Law Institute-American Bar Association Committee on Continuing Professional Education (ALI-ABA) and the Association for Continuing Legal Education (ACLEA) (an association of continuing legal education sponsors) are pleased to announce the release of ***MCLE: A Coordinated Approach***, the findings of a nine-month study of mandatory continuing legal education (MCLE) in the United States.

Mandatory (or minimum) continuing legal education has been adopted in three-quarters of the United States. The requirements are designed and administered on a state-by-state basis and governed by each state's Supreme Court or legislature. Although state MCLE rules share many common features, jurisdictional differences create complexity and can cause confusion for the many lawyers who practice across jurisdictions, as well as for the national, state, and local sponsors providing continuing legal education (CLE) to those lawyers. To address this situation, ALI-ABA and ACLEA conducted this study and issued recommendations for MCLE, many of which reflect policies and procedures currently in operation in a number of MCLE jurisdictions.

The study was conducted by an advisory committee appointed and funded by ALI-ABA. This committee met over the course of nine months to examine the current status of MCLE in the United States and to develop recommendations to enhance coordination and efficiency in the MCLE process. Committee members reviewed various state MCLE policies to identify common threads, as well as differences, among the various state MCLE rules and to locate effective policies already in place in one or more MCLE jurisdictions that could serve as prototypes for other jurisdictions. In some areas, the committee found strong consensus among the states, as well as a number of existing policies that could serve as models for change.

Any potential changes in MCLE policy can be made only with the approval of each state's court system, and some changes are currently being reviewed by MCLE commissions across the country.

MCLE: A Coordinated Approach reviews the current status of MCLE in the United States in the following six areas:

- •Accreditation procedures
- •Reporting procedures
- •Inter jurisdictional recognition policies
- •Policies for non-traditional CLE formats
- •Special content requirements (e.g., ethics, substance abuse, elimination of bias, practice management)
- •Quality control procedures for CLE activities

In each of these areas, the report offers a series of recommendations intended to make MCLE function more smoothly for lawyers, MCLE accrediting agencies, and CLE sponsors alike. The report recommends that states not doing so should consider the following:

Ellen A. Hennessy of the District of Columbia chaired the study. Advisory Committee members were Janis E. Clark of the Kentucky Bar Association; Elise A. Geltzer of the New York State Unified Court System; Frank V. Harris of Minnesota CLE; Richard Diebold Lee of San Francisco; Cynthia J. Lilleoien of Nebraska CLE, Inc.; Nancy Mulloy-Bonn of the Pennsylvania Trial Lawyers Association; Patrick A. Nester of the State Bar of Texas; and Alan Ogden of the State of Colorado Supreme Court Board of Continuing Legal and Judicial Education.

The release of ***MCLE: A Coordinated Approach*** is intended as a first step in a continuing dialogue on the subject of MCLE. Since its release, members of ACLEA have met with members of ORACLE to review the report jointly and to discuss the status of MCLE and methods to improve service levels to lawyers and the quality of CLE offerings. With the shared goal of collaboration, the two organizations will meet again in January 1999. In the meantime, ORACLE is developing its own recommendations to submit to CLE sponsors. The report also has been issued to chairs of the MCLE boards and commissions of the 38 MCLE states.

MCLE: A Coordinated Approach (1997, softbound, 140 pages) consists of three parts. The first part is the text of the report and recommendations; the second part contains comprehensive tables of the policies and procedures of the 38 MCLE jurisdictions (totaling over 1,700 line items); and the third part comprises eight appendices which illustrate and offer examples of many of the concepts introduced in the text.

The report's text and recommendations can be found on the Web sites of ACLEA and ALI-ABA at www.aclea.org and www.ali-aba.org, respectively. A free copy of the full report (all three parts, including tables and appendices) may be obtained by contacting either ACLEA at (512) 451-6960, e-mail: aclea@aclea.org or ALI-ABA at (800) CLE-NEWS (253-6397), ext. 1613, e-mail: lbelasco@ali-aba.org.