The Alaska BAR RAG

VOLUME 25, NO. 5 | *Dignitas, semper dignitas* | $3.00 | SEPTEMBER - OCTOBER, 2001

Inside:

Lawyers launch annual Rabinowitz ferry cruise

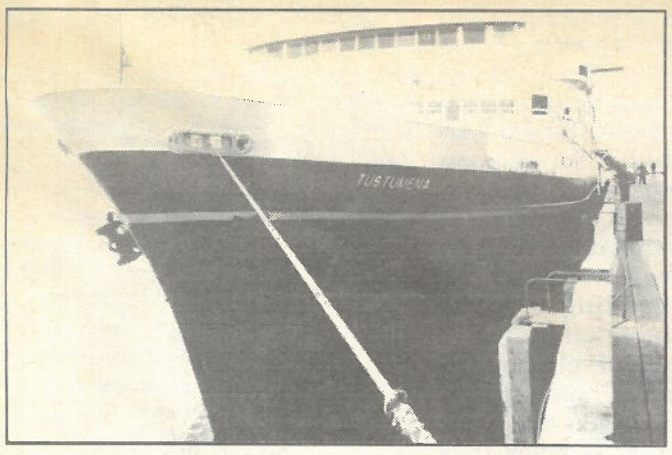
By Jon Katcher & Jim Kentch

GENESIS

One of Justice Rabinowitz' children, at his memorial service last summer, said that her father thought Alaskans underutilized the state ferry system. She told of a solo trip which he had taken on the ferry from Haines to Juneau—despite needing a walker to get around. This intrepid behavior inspired us to go on a ferry trip—to see Alaska.

THE DESTINATION

We decided to take the ferry from Homer to Dutch Harbor for several reasons. Neither of us had ever been to the Aleutians before. It was easy to travel to Homer. And the trip would be entirely within the Third Judicial District, a fact which for reasons still unknown is inexplicable. And yet while the Aleutians are subject to the jurisdiction of Presiding Judge Elaine M. Andrews, the region might as well be on the moon. The Aleutians are very far away - physically and culturally - a truly maritime environment unlike any other part of Alaska we had visited, with a very different breed of Alaskan. It is interesting to note that the region between Kodiak and Adak presently sustains about 14,000 people—the same number of Aleuts who lived in the region before the first Russian contact in the mid 1700s.



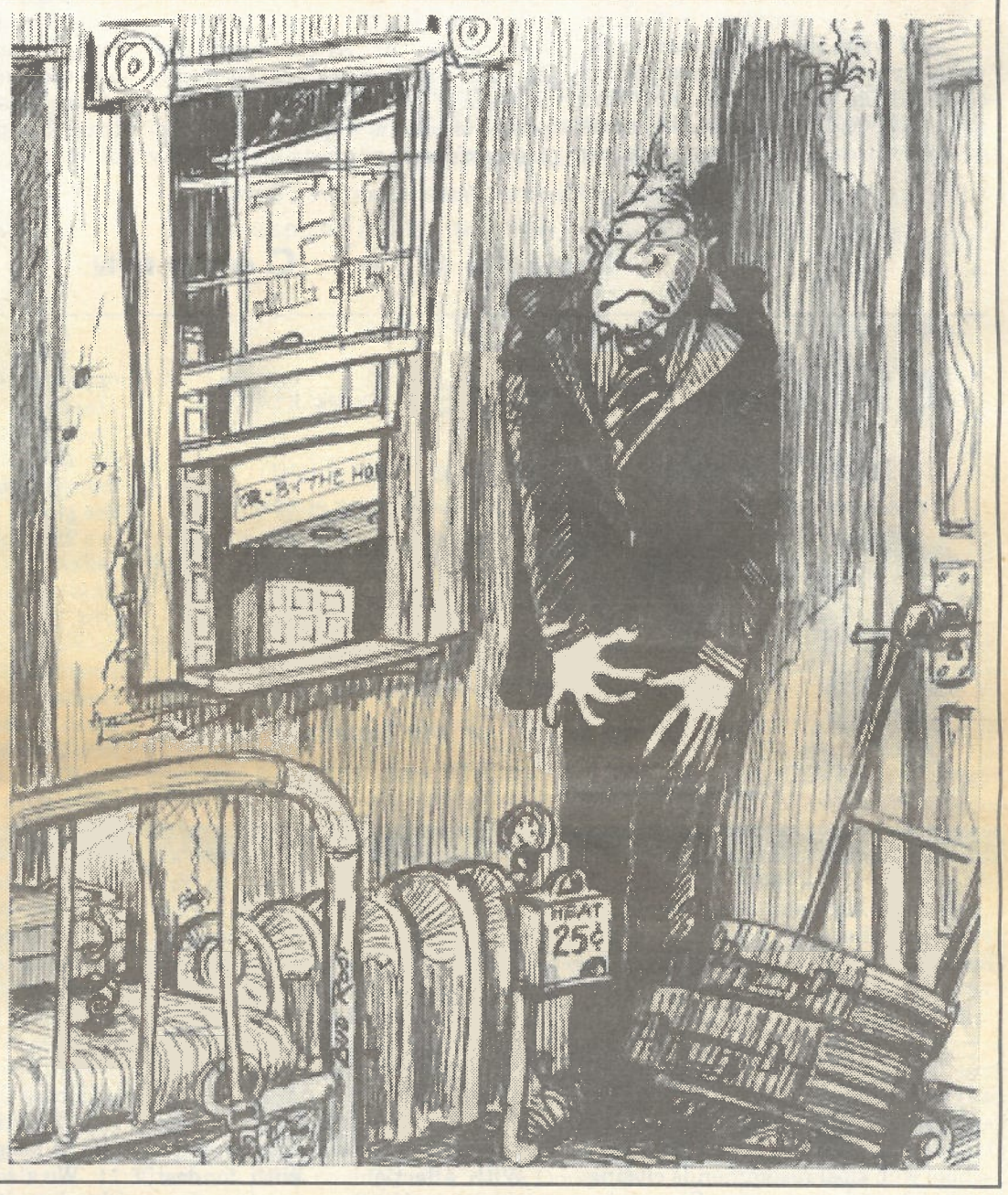
The Tustumena calls at port.

THE SHIP

Every epic involves a journey; every journey needs a mode of transport. We (and all other Alaskans) are blessed to own a fleet of magnificent vessels navigated by very competent crew. The *Tustumena* makes the run from Homer to Dutch Harbor five times each summer. The *Tustumena*, named after the Kenai Peninsula glacier and lake, was built in Wisconsin in 1964. Originally 242 feet long, in 1969 a 54 foot prefabricated mid body section was added, giving her now 296 feet with a beam of 59 feet. She can carry 42 vehicles and 220 passengers with 26 staterooms. Access for vehicles is from the sides of the ship via an ingenious elevator with a "lazy Susan" mechanism. The *Tustumena* has two diesel engines, each producing 2500 horsepower at 900 rpm, and generating a mellow hum that resonates throughout the vessel. It had a video game named "Cabal." Safety was very important, and the lifeboats' instructions read in part, "When outside the danger zone, heave to and operate radio equipment and pre-

Continued on page 28

A STEP ABOVE THE STREETS IN SAN DIEGO *P. 26*



Court proposes new 3rd District pretrial scheduling process

By Judge Eric Sanders

The bench and bar recognize that the pretrial scheduling order currently being used in Anchorage civil cases (non-domestic relations) needs to be revised. Consequently, during the past year a number of lawyers and judges have devoted a lot of time to compose a new and improved scheduling order to comply with Alaska Civil Rule 16(b). Anchorage judges handling civil cases will participate in a special CLE on Oct. 17; all lawyers who practice civil litigation should also attend.

Let me take this opportunity to briefly describe the important features of the proposed order. The main purpose of the new order is to streamline trial scheduling and adopt a uniform set of pretrial deadlines that will work in about 90% of all civil cases. Once all defendants file their Answers, an Initial Pretrial Order is issued. This does three things:

1) it requires the parties to submit potential trial dates;

2) it sets the date for exchanging initial disclosures; and 3) it requires a discussion of alternative dispute resolution.

After the parties submit potential trial dates, a Routine Pretrial Scheduling

Continued on page 25

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

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

Karen L. Hunt
1079 Potlatch Cir
Anchorage AK 99503-1779

President's Column

Time to concentrate on healing

☐ Mauri Long

Your Board of Governors was scheduled for a two-day strategic planning session on September 10 and 11. We made great progress on the 10th, but then the world intruded. The shock, the sadness, the frustration, the anger, and the grief overwhelmed our ability to concentrate and we adjourned to another day to finish this important work.

As I write this on September 14, virtually every conversation since has centered on the terrorist acts and their fall-out. I am saddened by some of our citizen's reactions to fellow Americans of Arabic descent. Threats and violence against people who are of Arabic descent and other people of color is wrong. These folks are our friends and neighbors. Many of them have fled the kind of terrorism and violence in their original homelands for a better life in America, just as did many of our forebears.

Lawyers are still community leaders. Most people look up to and listen to us, at least on an individual basis (you aren't like most lawyers...). So, if you hear someone generalizing negatively about Arabs or Middle Easterners or Muslims, don't let them get away with it. Tell them that painting people with a broad brush is un-American.

Let us do our best to nip further racism and religious zealotry in the bud. It can only lead to more terror and violence. Let us mourn the loss of our sense of invincibility and the tragic loss of lives. Let us concentrate on healing.

Editor's Column

Closing and other sweet sorrows

☐ Thomas Van Flein

What is the best way to end a letter to opposing counsel?

For years we have accepted, if not encouraged, the rather bland "sincerely" or "yours truly" or my personal favorite, "very truly yours." But then, lawyers were once required to wear powdered wigs and three-piece suits, and many still do in some of the more "traditional" jurisdictions, such as Juneau. Perhaps there is room for some improvement in our correspondence, now that we are in the new millennium.

How "sincere" or how "true" are our letters to opposing counsel, anyway? "Very" true and "very" sincerely, apparently. St. John's University (through its business school web site) recommends closing with "Sincerely yours, Sincerely, Cordially [or] Cordially yours." Some authors conclude their letters with "best wishes."

How much reliance can we put on this sentiment when our best wishes may be for opposing counsel's client to lose on every claim? The Small Business Administration posits that "Good letter writing is a lost art in our society today. With the onslaught of electronic mail, voice mail, and faxes, good letter writing has gone the way of the dinosaurs. And yet, a well-written, personalized business letter can do wonders for your business relationships." Since we all would like to see the "wonders" that will flow from better letters, let's start with our closings.

Some have suggested words of encouragement to close a letter, much like a celebrity autograph, such as "stay in school," or "stay off drugs." Thus, a typical letter could flow as follows: "Please tell your client that my client laughs at the latest offer. Stay off Drugs, Your Name, Attorney at Law."

Others believe we should show a friendlier side and try to humanize our profession, signing off with "all my love," or, according to my secretary, "hugs and kisses." This appears to wander into the area of love letters, which could have its own unintended consequences. As a sidenote, however, letter expert Mark Dovel recommends closing with the following: "Yours unconditionally, ... With heartfelt love, ... I long for your touch, ..." Closings of lesser impact may include, With warmest regards, ... With affection, ... With fondest memories, ... Until our next meeting, ... Yours truly."

THUS, A TYPICAL LETTER COULD FLOW AS FOLLOWS: "PLEASE TELL YOUR CLIENT THAT MY CLIENT LAUGHS AT THE LATEST OFFER. STAY OFF DRUGS, YOUR NAME, ATTORNEY AT LAW."

Of course, he was talking about love letters, but what would happen if you closed your next letter to opposing counsel by saying "with heartfelt love?" On second thought, perhaps that is not such a good idea. And closing legal correspondence with "yours unconditionally" could be construed as a contract offer, which, if accepted, could lead to unfortunate consequences, such as a lifetime of indentured servitude.

Not too long ago (100 years or so), some people signed off with more somber closings, such as "May the God of all peace comfort your hearts, is the prayer of your humble servant and brother in the Lord." In England of yore, you could close with "Thus indebted to you for your pains taken for me, I bid you farewell." (Of course, petty criminals could also be flogged. But that is the subject of next month's column.) But these archaic closings could prove worthy today. Perhaps you are asking for an extension of time for a pending deadline. How callous and indifferent would your opponent have to be to ignore your closing comment that you are "indebted to you for your pains taken for me." And if your request were denied, you would know for sure that the gloves were coming off.

The Europeans sometimes used "szervusz" (Hungarian) or the Austrian and German "servus" which was the shortened version for the Latin "servus humillimus" or "I am your most humble servant." This closing is appropriate today only when writing to the court or your firm's bookkeeper.

There are some clear lines of how not to close a letter—or at least things to avoid in a letter. For example, in *State v. Noriega*, 690 P.2d 775 (Ariz. 1984), the court noted that it "strongly disapprove[d] of the conduct of both the defense counsel and prosecutor engaging in the degrading public display of hurling obscenities at one another in court even after court had recessed. The accusatory letters sent by both attorneys thereafter did little to defuse the hostility." So, we know that "hurling obscenities" in court and in letters should be avoided.

We also know that it is not a good idea for a trial lawyer to insult the trial judge by sending a letter accusing the judge of being a racist..."I have never observed a white person in a position of power such as yourself apologize to a black person even when they know they are wrong, " and admonishing the judge to "re-read your statements with that thought in mind. Once you do this it should be apparent to you that your statements show no regard for me as a human being." *In re Guy*, 756 A.2d 875 (Del. 2000). This letter lead to a suspension.

The SBA notes that "business correspondence does not have to be dry and tedious." Easy for it say. Just try writing a status report regarding your expert economist's deposition testimony where the biggest issue in the case is a heated battle on what discount rate to apply. However, "dry and tedious" letters appear to be a wiser course, rather than insulting the judge or "hurling obscenities," so, like many things, there is some compromise that is necessary.

I close here with my new sign-off, which I plan to add to my letter template: "With all my love, and most obediently, and with my sincere hope that you stay in school, (and off drugs), I remain your humble Editor."

Disaster Displaces 14,000 New York Lawyers

More than 14,000 New York lawyers have not been able to get to their offices since a terrorist attack obliterated the twin World Trade Center towers Tuesday, according to data released by the Office of Court Administration Sept. 13.

OCA also reported that 1,343 lawyers had listed one of the two destroyed towers as their office address in their registration records.

The OCA data, which was based upon a search of OCA registration records for lawyers who listed office addresses below 14th Street, revealed a staggering amount of disruption in the ability of lawyers to function. The 14,000 displaced lawyers make up 10.3 percent of attorneys in the state and 19 percent of the lawyers in New York City.

A previous check with several of the largest firms with offices at 1 and 2 World Trade Center revealed only a few lawyers missing, perhaps because many lawyers do not begin their work days until after 9:30 a.m. The second plane slammed into 2 World Trade Center at 9:03 a.m. (The second tower was struck at 9:18 a.m.) The OCA also reported that three court officers who rushed to the disaster scene immediately after the attack are missing

From *The New York Law Journal*, Sept. 14, 2001, by Daniel Wise

The Alaska BAR RAG

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

Terrorist Aftermath

ATLA calls for civil lawsuit moratorium

America's trial lawyers join the nation in mourning the horrific loss caused by coordinated terrorist acts against America. Our profound condolences go out to the victims and to their families.

Today, we must enter a period of national unity that should set us on a course of comfort, care, and respect for the privacy and anguish of the families who have experienced this national tragedy in the most personal of ways. It should also be a course of renewal and resolve, where American ideals continue as our true guideposts and national security is pursued with vigor and purpose.

We, as a nation, must speak at this hour with a single voice, a voice of compassion for the victims and a voice of authority to those who would tear down our society.

For this reason, for the first time in our history, the Association of Trial Lawyers of America, in this time of national crisis, urges a moratorium on civil lawsuits that might arise out of these awful events. There are more urgent needs that must be served at this time. Let us support our government so it can fully gather all the evidence needed quickly to identify and prosecute the terrorists.

Let this instead be a time for healing, with our focus on bringing to justice the terrorists who perpetrated this tragedy. ATLA is prepared to work with Congress and the Administration to help assure unqualified justice and prompt relief for the thousands of innocent victims and their families.

Let us act as one in our support of the victims of Tuesday's tragedy, in finding those responsible who committed these heinous acts, and in taking the necessary steps to prevent its recurrence.

—Leo V. Boyle President of ATLA
Press release, September 12, 2001

Editor's comments: An attack on our values

Shortly before going to press with this issue, the twin towers of the World Trade Center in New York were attacked and destroyed, and the Pentagon was damaged. The *Bar Rag* is not a publication that focuses on world events, but the staff and members of the *Bar Rag* felt moved by this tragedy, as have all Americans.

We do note that the attack was as much a symbolic attack on our shared values, such as freedom of speech and expression, or our tolerance for opposing religious and political views, as it was an attack on some buildings and the people therein. In this regard, all of us, as attorneys, judges or other legal professionals, play a vital role in preserving and enhancing the freedoms we enjoy. No one can seriously dispute that our unparalleled economic prosperity, and the high standard of living most Americans enjoy, is directly related to a legal system that is fair and respectful of individual rights, whether they are contract rights, the right to compensation for injuries, or the right to a fair trial when the government has accused an individual of a crime. Americans fought for the right to be judged by our neighbors through a jury, not by a nameless government employee or administrative panel comprised of political ideologues. These are core values, and no amount of suicide bombers can threaten these values.

The real threat to these values comes not from the Middle East or some other part of the world, but from our internal response to such aggression. How we act when we are threatened is more of a test of our values than how we act in peace and prosperity. When it comes to protecting our fundamental values, only we can really hurt ourselves.

—Thomas Van Flein

Bar Letters

Reader takes exception

As a long-time arbitrator and mediator, I take strong exception to certain statements made by Drew Peterson in his article "Arbitration: How to save time and money and wish you hadn't" in the May-June issue of the *Bar Rag*. Mr. Peterson characterizes arbitration as the "bastard child" of alternative dispute resolution (ADR). He concludes that arbitration is often the least satisfactory form of ADR and "can result in arbitrary stupid decisions, based upon poor evidence misunderstood by thoughtless unqualified arbitrators, with no recourse whatsoever except for nullifying the decision based on outright fraud."

Mr. Peterson acknowledges that his feelings about arbitration stem from a recent unpleasant experience in which he was involved. But that is hardly a good reason to use his *Bar Rag* soapbox to tar-and-feather the entire arbitration process, which is one of the oldest and most widely-accepted methods of alternative dispute resolution. It is unhelpful to suggest that mediation is a "better" form of dispute resolution than arbitration. Arbitration and mediation are two separate and quite distinct procedures; comparing them is like comparing apples and oranges. Each method has its own advantages and disadvantages, and parties are well advised to consider the merits of both approaches depending on the nature and posture of their dispute. Interestingly, Mr. Peterson states that he probably would have agreed to the same result in mediation as that imposed on him in his unpleasant arbitration.

Mr. Peterson also complains about the qualifications of the arbitrators in his case. But in most forms of voluntary arbitration, as in mediation, the parties are in control of the selection of the neutral. Arbitrators are usually selected by mutual agreement of the parties or by striking names from a panel provided by reputable organizations such as the American Arbitration Association. Arbitrators listed with these organizations are typically well qualified and highly experienced, and advance information about their qualifications is provided at nominal or no cost from the listing organizations. As with other types of ADR services such as mediation, there is no guarantee that the neutral chosen will perform to the satisfaction of all parties. But it is unfair and misleading to suggest that mediation is inherently better than arbitration on the basis of a single unpleasant experience.

—Robert W. Landau

Response

Robert Landau is accurate that my arbitration article was a deliberately provocative response to my own sour experience. I admitted as much in the article. Calling arbitration the 'bastard child" of ADR was hitting below the belt, and for that I apologize.

I cannot but notice, however, that while Landau accurately points out that in many cases the parties have control over selection of an arbitrator, that this is often not so. A case in point is our own bar association's fee arbitration program.

As for Landau's criticism of my recommendation of mediation as the preferred method of ADR, I can only say that as for myself, I prefer to maintain the power over the ultimate resolution of my disputes. In any case where I am handing power over to someone else to resolve a dispute, I want an absolute right to appeal to a neutral and higher authority, which arbitration usually does not provide.

— Drew Peterson

Streams of heritage found in Europe & Ireland

By James C. Hornaday

As Mark Guldseth reminded us in his book, "Streams," humans and institutions are interwoven as their individual "streams" of experience meld into present and future rivers of experience. Global Volunteers service at the Glencree Reconciliation Center in the Irish Wicklow mountains and a week with 4000 World Methodists in Brighton, England expanded appreciation of the interlocking nature of our shared humanity. Ireland, England and the Methodists are shackled, sometimes literally, to each other in their respective histories.

A Hornaday family legend suggests we came to Ireland from Scotland with Cromwell to quell the Celts and then rebelled against the British resulting in yet another Irish defeat and brutal dispersion. The "Methodical" Wesley brothers brought moderation, humanity and compassion to the English and Irish islands and to America (great grandfather Hornaday was an early Methodist circuit rider in Nebraska). This writer was surprised to find the present day Irish very prosperous (a result of technology and tourism and the $billions poured into Ireland by the European Community), and paying little attention to the "troubles" in Northern Ireland.

Global Volunteers sent nine Americans to the Glencree Reconcilation Center, (lovely green mist covered hills, lakes and streams, great pub singing, and sheep, sheep, sheep!) as "servant learners" to assist in projects and participate in seminars.

We were housed in British army barracks built in 1800, after yet another Irish defeat, to deter Napoleon from invading England through Ireland. Money from Europe rebuilt the facility which emphasizes Catholic (nationalist) and Protestant (unionist) reconcilation in four programs for: 1. Victims of terrorism; 2. Politicians; 3. The Churches; and 4. The young people of Ireland.

In the secluded valley setting, discussions are held in relative security and allow for full and frank presentations of the differing points of view.

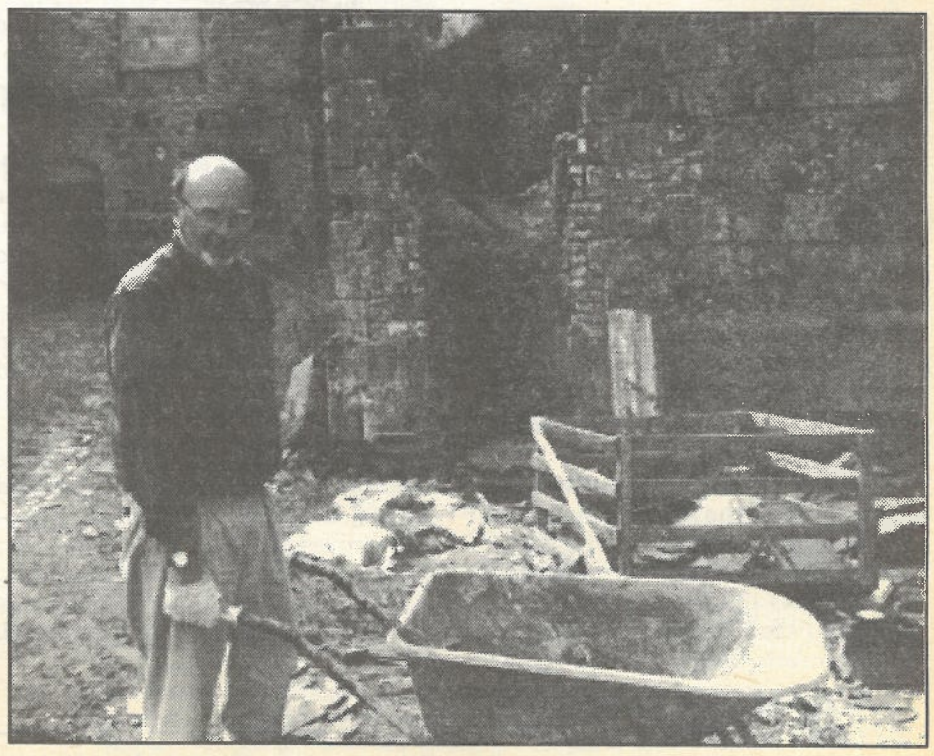
While working on our projects (our work team built a fence to keep the sheep out of the compound), we participated in seminars with teenagers from the North, Catholic and Protestant church representatives, and counsellors of victims of the terrorism and Burma exile group. Two days after the yearly parade riots in Northern Ireland, we traveled to Belfast where the fires were still burning and met with political representatives from the Irish Republican Army, and more moderate parties.

Following a tour of the Catholic areas (one street was still blocked off by kids trying to draw the police), we listened to the Rev. Ian Paisley, ultra Unionist member of Parliament, preach. To the Americans, the answer was simple—get rid of the guns and reform the Northern Irish police. However, Irish politics are very complex—we toured a cemetary where it appeared that the IRA had killed more of their own members than the Protestants. Several days touring in Dublin (The book of Kells, Trinity College, Molly Malone, Easter Massacre, Irish dancing and singing) and off to Brighton, England to participate in the World Methodist Conference.

Every five years World Methodists gather to agree and disagree, proving once again that "anyone can be a Methodist." The delegates participated in programs and seminars ranging from Welseyan economics to cloning, modern technology, ecumenism, evangelism, easing poverty, ethical investing, environmental issues, and messages and stories from and about world leaders (President Bush, Nelson Mendela, Koffi Aman, Sen. Clinton, Margaret Thatcher).

The Alaska Native Land Claims, the Alaska Permanent Fund dividend and the Homer Food Pantry found their way into justice and economic discussions. Wonderful choirs and singers from Africa, Korea, Denmark, England the U. S. kept the singing Methodist tradition alive.

Then off to Seattle to visit some of the kids and back to reality in Homer, our "cosmic hamlet by the sea." Streams.



Building a fence in Ireland.

ABA releases death penalty review

From statehouses across the country to the nation's highest court, there is growing concern that the death penalty is being administered unfairly. A new publication released July 30 by the American Bar Association Section of Individual Rights and Responsibilities is designed to assist those examining the fairness of a state's death penalty system.

Death Without Justice: A Guide for Examining the Administration of the Death Penalty in the United States" contains a series of protocols that are designed to help reviewers detect potential flaws within the criminal justice system that could lead to unfair imposition of capital punishment, and in some cases, wrongful conviction. The protocols also may be used by those who wish to monitor any review undertaken for that purpose.

IR&R Section Chair Michael S. Greco said that "every state that imposes the death penalty has a duty to determine whether its capital punishment system is flawed, and if so, to eliminate those flaws. It's our hope that these protocols will provide a starting point for capital jurisdictions to meet this obligation systematically and comprehensively."

"Our concern is that any opportunity to make the death penalty fair not be undermined by superficial, or otherwise inadequate examination, either intentionally or inadvertently. The protocols will help make both less likely," said James E. Coleman Jr., one of the drafters of the protocols.

The protocols address eight specific areas of concern: defense services; procedural restrictions; clemency; jury instruction; judicial independence; racial discrimination; and the sentencing of juveniles and mentally retarded or mentally ill defendants in capital cases. Each protocol contains a brief introductory overview of the issues involved, a list of questions to be considered in a comprehensive review, and a list of recommendations for improving administration of the system in a particular area.

With the exception of its opposition to the use of the death penalty for the mentally retarded and for juveniles who committed their crimes when they were under the age of 18, the ABA has not adopted a position either for or against capital punishment. In 1997, however, because of its concern that the death penalty was not being carried out with due process principles, and did not adequately minimize the risk of executing innocent persons, the ABA called for a moratorium on the use of capital punishment in the United States.

The report's appendices include a copy of the ABA moratorium resolution and the accompanying report; a summary of death penalty-related state legislative activity from January 2000 through June 2001, and a compendium of state and local bar association death penalty moratorium proposals and resolutions from February 1997 - June 2001.

Copies of "Death Without Justice: A Guide for Examining the Administration of the Death Penalty in the United States" are available online at http://www.abanet.org/irr/pubs.html or by contacting the Section of Individual Rights at 202/662-1030.

ESTATE PLANNING CORNER

The gift tax is here to stay

☐ Steven T. O'Hara

There are two items that are particularly noteworthy in the tax law recently passed by the U.S. government (known as the Economic Growth and Tax Relief Reconciliation Act of 2001). The first is that the Act repeals *estate and generation-skipping taxes* for one year, the year 2010, and one year only. (This item was discussed in the last issue of this column.) The second is that the Act retains the *gift tax* and does so in a way that makes it a trap for the unwary.

Our current federal gift tax system was created in 1932. The gift tax was perceived necessary as long as there is an estate tax, because otherwise there would be a giant loophole from estate tax. To avoid estate tax, individuals could gift all property away before death. This loophole actually exists but has been limited, in general, to $10,000 per donee per year under the gift tax system (IRC Sec. 2503(b)).

Now it appears the U.S. government believes the gift tax is necessary as a backstop to the *income tax*. Apparently the fear is if wealthy individuals could transfer assets without incurring gift tax, they might try to avoid income tax by transferring low-basis highly-appreciated assets to individuals in a low tax bracket or who have offsetting losses. The donees might then sell the property, pay little or no income tax, and then perhaps transfer the proceeds back to (or for the benefit of) the donor or the donor's family.

THE GIFT TAX WAS PERCEIVED NECESSARY AS LONG AS THERE IS AN ESTATE TAX, BECAUSE OTHERWISE THERE WOULD BE A GIANT LOOPHOLE FROM ESTATE TAX.

Besides retaining the gift tax, how does the new law make the gift tax a trap for the unwary? Recall that the amount that may pass free of federal estate or gift tax is generally known as the unified credit equivalent amount or, more recently, the applicable exclusion amount. From 1987 through 1998, this amount was $600,000. Beginning January 1, 2000, the applicable exclusion amount was increased to $675,000. This exclusion was scheduled to increase to $1,000,000 in 2006.

Under the new law, the applicable exclusion amount will increase to $1,000,000 in 2002 for both estate tax and gift tax purposes. But beginning in 2004, the estate tax and gift tax systems part company. Specifically, the $1,000,000 applicable exclusion amount remains at $1,000,000 for gift tax purposes. On the other hand, for estate tax purposes, the new law is scheduled to increase the applicable exclusion amount to $1,500,000 in 2004, $2,000,000 in 2006, and $3,500,000 in 2009.

So, for example, if a client who has never made a taxable gift dies in 2006 with assets of $2,000,000, generally no federal estate tax will be triggered by reason of the client's death. By contrast, if the client in 2006 gifts his $2,000,000 in assets to his daughter immediately prior to his death, then approximately $300,000 in federal gift tax could be due and payable.

We have long considered the estate tax and gift tax systems as "unified," since the unified credit equivalent amount (also known as the applicable exclusion amount) has long been the same under both systems. Disunity is scheduled to occur January 1, 2004, and from that point on the gift tax will be a trap for the unwary.

LEGAL QUIZ

Who was the first justice to have formally graduated from Law School?

Answer: Benjamin Curtis, appointed in 1851, graduated from Harvard Law School in 1832.

Territorial Lawyers party on

By Margaret R. Russell

Photos by Cynthia Fellows

Lawyers in practice during territorial days joined their wives and other guests for a reunion held July 12 in Anchorage. No introductions were necessary. The well-acquainted "survivors" delighted in renewing old friendships and catching up on each other's lives and health, as well as sharing news or memories of their friends among the missing.

The group has gathered annually for the past four years, and many of those present said the reunions are the only time they see each other. This year's get-together was hosted by Russ and Betty Arnett, Lucy Groh, Priscilla Thorsness, Roger and Ghislaine Cremo, Ken Atkinson and Helen Williams.

The idea for the annual reunions was born in 1998 when Russ Arnett and Dave Thorsness met on the street and one of them commented about how seldom they saw each other. They got together with Gene Williams and organized the first reunion, which was held at the Arnett home. Other prior reunions were held at the homes of Roger and Ghislaine Cremo, and Charles and Betty Tulin. Photos from prior reunions were posted for this year's partygoers to enjoy.

This year the group gathered at the Mahogony House, 15th and Cordova. The house was built in the 1940's to house Japan Airlines crews, and later became the home of insurance and real estate businessman Louis Simpson, who added on to it. The large house is now operated primarily as a bed and breakfast.

The reunion began with an hour of greetings and photos, followed by a potluck dinner that was seasoned with reveries and war stories. Stories could be told without fear of correction. Roger Cremo expressed the guiding philosophy: "Stories were made to be embellished."

Most of the lawyers attending this year's reunion live in Anchorage. Some exceptions were Jamie Fischer of Soldotna and Charlie Cole of Fairbanks. Fischer said he was admitted to the bar in 1956, the same year as Jim Delaney. Delaney was also present and spent much of the evening swapping stories with Judge Seaborn Buckalew, who was admitted to the Alaska bar in 1953, and with Bob and Mildred Opland.

The self-proclaimed oldest practicing attorney in the state, Mahalia Dickerson, shared memories of her early years practicing in Florida and Indiana where Dickerson said she frequently faced racial discrimination. A sheriff in Alabama insisted she sit in the back of the courtroom, and Dickerson only managed to thwart that order with the help of two white friends. She also was denied admission to the American Bar Association, which was opened to African-Americans only gradually, following the states' leads.

After her first brief visit to Alaska, Dickerson returned to Indiana but found she woke up mornings "dreaming of mountains." Dickerson returned to take the bar exam and was admitted in 1959, "just before statehood." She found less discrimination here than she had faced Outside and after admission to the Alaska Bar, was admitted to the American Bar Association without comment. She remains active in the ABA and still attends annual conventions.

The presence of Priscilla Thorsness, Lucy Groh and Ruth McLaughlin inspired many recollections about their deceased spouses. Dave Thorsness and Cliff Groh both died within the last couple of years; George McLaughlin died in 1960. Also attending was LaRue Hellenthal, whose husband John was a delegate to Alaska's constitutional convention where he chaired the Suffrage, Elections and Apportionment Committee.

Dave Talbot recounted ruefully the time Stan McCutcheon and Buell Nesbett talked Talbot into running against George McLaughlin for city magistrate in 1958. Only after Talbot had lost by a landslide, winning no more than 12 to 15 percent of the vote, did McCutcheon and Nesbitt admit to Talbot that McLaughlin was "the most popular Democrat north of Seattle."

Talbot also recalled receiving a phone call from Magistrate McLaughlin telling him a man was being detained in the City Hall basement, without warrant or arraignment, solely on the basis of a telegram from the Denver police chief that the man was wanted there. McLaughlin asked Talbot "if he knew how to spell 'habeus corpus'." Talbot arranged for a hearing but the prosecutor convinced the judge to delay the proceedings until the following Monday, while the defendant remained in jail. Talbot was furious at the judge's reasoning that the defendant already had been in jail for 30 days and "three or four more won't hurt." Talbot described McLaughlin as a "true Christian" who would help anybody who needed it and had little care for money.

Talbot began his own career practicing admiralty law in New York with some of the top practitioners in that field. He came to Alaska because "it was too hot in Brooklyn" and proclaims that he has "never had a bad day here."

Lucy Groh shared stories with Frida Hartlieb Neher, Ghislaine Cremo and Betty Cuddy about their experiences as young wives and mothers in Anchorage's pioneer days. Groh was one of the founders of the Bar Wives Club, which met once a month for lunch at Club 25. Other active members included Betty Cuddy, Evelyn McCutcheon and LaRue Hellenthal.

Groh was in charge of planning activities for the wives of lawyers during the first bar convention to be held in Anchorage, in 1956. She was a bit over-enthusiastic, planning so many trips and functions that the women were complaining they were worn out by the time the convention was over. Groh recalled attending a coffee party held during the convention at the hillside home of Ralph and Marge Cottis. Ann Stevens arrived in the middle of the party as did Melvin Belli, who was in town to attend the convention.

One of the first bar convention parties, which was organized by Wendell Kay and Bill Renfrew, was particularly memorable for Betty Cuddy. To get the party rolling, each lawyer was asked to stand up and introduce his wife, who was asked to tell the others what she had been doing lately. When Dan Cuddy introduced Betty, who was many months pregnant at the time, she brought down the house by blurting out, "it's pretty obvious what I've been doing."

Lucy Groh said that when her husband Cliff had his office in the old federal building at 4th and G, he frequently would leave his car unlocked so homeless men could use it to get out of the cold. On occasion, he had to pay an entrenched sleeper a dollar to get him to leave the car so Groh could go home. Groh and Frieda Hartleib Neher also recalled that the offices of their husbands' early firm, Hartlieb, Groh and Rader, had no running water and no toilets, so attorneys and staff were required to cross the street to the city library to use the facilities.

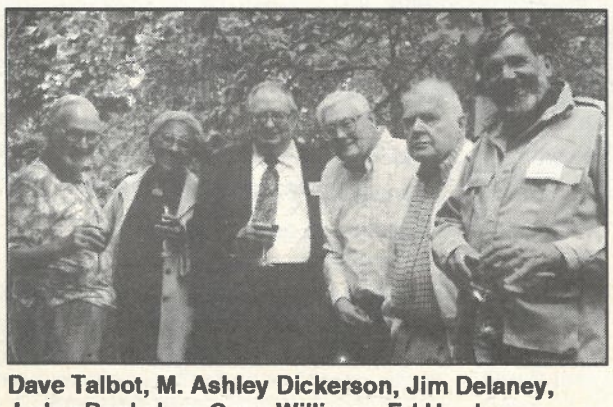
Virgil Vochoska and Russ Arnett remembered other challenges they faced during their early years in Nome. Arnett was a U.S. Commissioner in 1952, before the transition to statehood. Arnett recalls that, although the accused were duly advised of their right to counsel, there actually were no lawyers in private practice in Nome or the entire second division. As a result, Arnett said he found it necessary at times to cross-examine witnesses himself, which did not always go over well with a jury.

Senior Judge James von der Heydt, who was U.S. Attorney in Nome during the early 1950's, eventually did go into private practice there for five or six years. Virgil Vochoska took over the practice in 1960, when von de Heydt was appointed the first Superior Court Judge in Juneau.

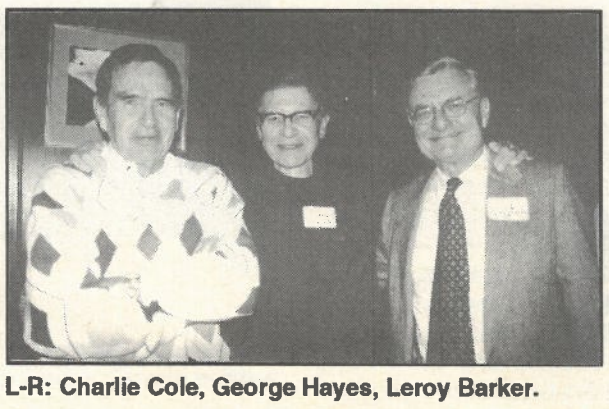
Vochoska described how divorce actions were held in Nome for parties who remained in their villages. Vochoska often never met his client. Instead, he interviewed the client by telephone and then sent the client a document called a "divorce by reference," which constituted the evidence for the divorce.

Arnett said Vochoska's experience was typical of how things had to be done in the Bush during the territorial and early-statehood days. To conduct a face-to-face interview or examination of a village resident would require a trip to Nome by Bush plane. Rural areas did not have a cash economy at the time and no legal aid was available. Parties wanting to hire a lawyer for a divorce or adoption often could not afford the going rate of $250. As a result, Eskimo children usually were moved into new families without any legal adoption proceeding. "Lawyers and judges had to do the best they could under the circumstances," Arnett said.

Arnett and Vochoska were among those who continued exchanging memories long after the reunion dinner had ended. Many seemed reluctant to leave. Maybe it just felt good to share some of the old stories with people who had been there and would understand them in a way that others, even other lawyers, cannot.



Dave Talbot, M. Ashley Dickerson, Jim Delaney, Judge Buckalew, Gene Williams, Ed Harris.



L-R: Charlie Cole, George Hayes, Leroy Barker.

L-R: Ruth McLaughlin and Jan Wilson.

INSURANCE LAWS

The cost of the CBR vote

☐ Sen. Dave Donley

The purpose of the State's Constitutional Budget Reserve Fund (CBR) is to provide funds for operation of state government when a particular year's revenues are not enough to pay for state operations that year.

As originally intended, withdrawals from the CBR could be made in two ways. If state revenues for the current year were less than state funds budgeted for the prior year, then the difference could be withdrawn by the legislature with a simple majority vote. Any additional money the legislature wanted to withdraw required a three-quarter super majority vote. For example, if the budget for one fiscal year was $1.5 billion and the next fiscal year state revenues were only $1 billion, then the legislature could withdraw up to $500 million with a simple majority vote of each house. Any amount over $500 million would require three quarters of each house to agree.

This intent was distorted by a 1994 Alaska Supreme Court decision. Because of the way in which the Alaska Supreme Court interpreted the constitutional provision, virtually all withdrawals from the CBR now require a three-quarter super majority vote. The court's interpretation has made a mockery of the budget process by allowing blatant budgetary blackmail by a small number of legislators. Because of the court's decision, each year small groups of legislators are able to hold the budget hostage until additional projects are funded and spending added to their satisfaction, at which time they agree to add their votes to allow the necessary withdrawal of funds.

This budget blackmail is resulting in substantially more spending each year than the majority of legislators wish. During the 2001 session, $148.8 million to fund projects and programs was added to the budget before the three-quarter vote could be obtained. This is a whopping 24 percent of the projected CBR draw.

Capital projects totaling $142.3 million made up the largest portion of these additional funds. This amount is 40 percent of total state spending approved for capital projects. In other words, the portion of state funds to pay for capital projects was almost doubled before enough votes could be obtained to access the CBR. Of that amount, $100.6 million was for projects originally put forth by the Democratic minority that were rejected by the Republican majority. However, in order to gain access to CBR funds necessary to pay for the operation of state government, the additional projects had to be approved.

This budgetary blackmail has to stop. Alaska is facing declining oil revenues and it is essential to exercise fiscal discipline. The Senate Finance Committee has introduced SJR 24, a constitutional amendment which restores the original intent, as evidenced by the voter's guide statements, of how the CBR should work.

Small groups within the legislature could no longer manipulate the three-quarter vote: the majority rule principal would be returned for at least the core of the budget process. Already approved by the Senate and under consideration in the State House, this provision is one of two constitutional amendments to pass the State Senate this year. Such prompt Senate passage states the obvious: the American principal of majority rule must be returned to the state budget process.

Alaska is the only state to have such a ridiculous three-quarter requirement. Majority approval of a budget in the American governmental process is difficult enough. The Republican Majority is committed to creating a more efficient government through reform and the reduction of non-essential services. By returning the American principal of majority rule to the bulk of the budget process, fiscal discipline can be maintained to protect Alaska's future.

APBP, Flying Pro Bono panel programs celebrate first year anniversary

By Maria-Elena Walsh

The Alaska Pro Bono Program, Inc. (APBP) celebrated its first year anniversary as a freestanding, 501(c)3 program on June 30, 2001. During this first year, members of the Alaska Bar Association have been kind enough to give the gift of time in the amount of 3,883.4 hours!

Low-income Alaskans statewide are the recipients of this generosity. As executive director of APBP, I am deeply honored to serve in this position. If my participation has aided this Bar's aspiration that every Alaskan regardless of race, ethnicity, power, status, or economic resources have the same rights and legal privileges, I am grateful for the opportunity.

APBP had a great first year and its repeated success can only happen if the Alaska Bar Association's (ABA) members continue to juggle their workloads to accept pro bono clients in the pursuit of justice. After all, APBP is sponsored by the ABA and it totally operates with volunteer attorneys willing to share the load of this program's enormous mission. It is only through the ABA's financial support, gift of time and pride in the ownership of this, their program that APBP is able to succeed. I believe that today, the Pro Bono Program has much more support from the Bar members than it did two years ago. Conceivably it's because attorneys now have a varied number of ways to donate their time and talents to their pro bono program. Perhaps they are much more aware of the social problems facing our great State of Alaska – racism and discrimination. Attorneys are quietly circling the wagons around our youth, elders, disabled including the mentally ill, immigrants and Alaska Natives that are being discriminated against by employers, landlord, auto dealers and many others. Pro Bono Panel members are thereby enabling disadvantaged Alaskans to regain their rights and dignity as human beings.

APBP's Flying Pro Bono Panel Program sponsored by the ABA's Board of Governors is a big hit among attorneys. This program enables attorneys to accept rural clients and to hold legal clinics and workshops in rural Alaska. During the past 12 months these are some of the super heroes that accepted rural clients. They are Anchorage attorneys John Havelock, Edie Zukauskas, Rebecca Copeland, and Thom Janidlo that accepted clients from St. Paul Island, Whale Island, Douglas and Togiak. Juneau attorneys Bruce Botelho and Michael Ford are representing clients from Wrangell and Hoonah. Fairbanks' attorney Michael MacDonald has a pro bono client from Nome and Nome attorney H. Conner Thomas has one from Teller, Alaska. Juneau attorney Jim Shine has traveled several times to Nome and Barrow to conduct Bankruptcy and Wills/Probate legal clinics and to meet with pro bono clients. Another Juneau attorney, Sheri Hazeltine, took time off from her busy work schedule to travel to Barrow to meet with a client and to conduct a workshop. Anchorage attorneys Patrick Rumley and Thomas Yerbich conducted a Consumer Finance/Bankruptcy legal clinic in Dillingham. Vanessa White traveled to Seward after two social service agencies requested a Family Law legal clinic.

However, by far the attorney that has put in the most flying miles during the last three months is Maryann Foley. Maryann traveled to Valdez, Bethel, Nome, Kotzebue, Barrow and Juneau to conduct 6-hour Family Law workshops. Most of the workshops' participants were advocates and/or social service providers that will go on to assist their clientele by giving them a better understanding of the court system and procedures in filing pro se documents. APBP is extremely beholden to Maryann for almost putting her law practice on hold while helping to pioneer the Flying Pro Bono Panel Program to serve others outside of the Anchorage area.

It seems that it is the busiest and the most successful attorneys that are willing to accept the challenge of accepting a pro bono client. However, the summer months and December are the most difficult months to place cases with attorneys. Most attorneys are out of their offices and the few that remain are working with skeleton office crews. Fairbanks attorney Rita Allee saved the day by accepting 3 family law cases in the month of June because everyone else was out of Fairbanks. The entire law firm of Dorsey & Whitney has genuinely placed itself at APBP's doorstep by pioneering our Attorney of the Day program. Their attorneys never fail to accept our telephone calls every time we call on them with a problem or question. Since October of 2000 Mary Jane Sutliff has been spending two days of the week at our office conducting intakes, giving brief counseling, placing cases and looking for grants. This is an attorney that has unequivocally taken ownership and is 100% vested in the success of APBP and in the goal of equal access of civil justice to all Alaskans. Other Attorneys of the Day have been Edie Zukauskas and Cindy Thomas.

The Disability Law Center's Executive Director, Dave Fleurant, attorneys and staff have supported APBP through all of its trials and tribulations during its start-up time. APBP's first year of operation has not been easy and at times quite difficult. Through Dave's mentoring, patience and vision that we must succeed we have completed the first year quite successfully.

It is unfortunate that it is impossible to list all of the attorneys that have accepted pro bono clients and have helped APBP in so many different ways during its first year of operation. But I do want to thank the entire Alaska Bar Association and say BRAVO to its members for their support and enthusiasm in which they serve others.

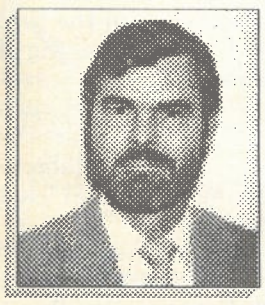
More help for Barristers' Ball

Among the many volunteers who helped make the Alaska Pro Bono Barristers' Ball fund-raiser a success over the summer was organizing committee member Edie Zukauskas, who was instrumental in obtaining more than a dozen gifts of time, along with selling tickets, securing entertainment, and recruiting volunteers. She also helped create the table decorations that were auctioned off at the evening's end. "She was a fun and wonderful hostess at the BB. APBP is extremely grateful for her contributions towards making the BB such a profitable and fun evening," said Marie-Elena Walsh. Bar Rag coverage of the ball in the July-August inadvertently omitted Zukauskas' contributions to the event.

BANKRUPTCY BRIEFS

Electronic case filing

☐ Thomas Yerbich



Paperless Court? It will happen (well, not quite entirely paperless) in the U. S. Bankruptcy Court for the District of Alaska this fall. Electronic Case Filing, which includes the filing of all pleadings, is in the process of being implemented.

The Administrative Office of the U. S. Courts developed, with the assistance of a number of pilot courts, and is implementing a national Case Management/Electronic Case Filing system ("CM/ECF") throughout the country. CM/ECF is currently used in four district and five bankruptcy courts. Since its inception, CM/ECF has handled over 40,000 cases and 400,000 documents and docket entries for a user community of 75 judges, 400 court staff, and 2,000 attorneys who use it to file documents. As a result of its initial success, CM/ECF service will be expanded throughout the federal courts over the next several years.

Hon. Donald MacDonald IV, Chief Judge and Wayne W. Wolfe, Clerk of the Court of the U. S. Bankruptcy Court applied for, and were granted, early implementation of the system after meeting multi-level implementation selection criteria. The court is in the second wave of national implementation and will join fifteen other courts with live CM/ECF this year.

The Case Management/ Electronic Case Filing system uses Internet technology to create a new mechanism for filing documents and processing information. Attorneys will have the capability to file pleadings from their offices via a Web browser; judges, court staff, and attorneys will have immediate access to new and historical documents; and case data and documents are managed electronically. Documents filed electronically will be available only in electronic format and paper pleadings filed with the court will be imaged creating a totally electronic court record. The electronic record will be the official court record and case files, as we now know them, will cease to exist. Document retrieval and case file review will be available at the Clerk's office or directly at your office through CM/ECF or the current Public Access to Court Electronic Records (PACER). [Both systems require court issued passwords.] For those who have used the RACER system to access documents, the process, although through a different portal, will be essentially the same.

FEATURES OF CM/ECF

- Next-generation case management, tracking of motions, answers, deadlines, and hearings.
- Up-to-date reports, queries, and docket sheets produced.
- Delivery of documents to, from, and within the court.
- Electronic retrieval of case documents and dockets by all users.
- Electronic document management, storage, security, and archiving.
- Automatic creation of docket entries from attorney filings.
- Almost instantaneous electronic notices of filing to other CM/ECF participants.

BENEFITS OF CM/ECF

- It is easy to use (ease of course, like beauty, being in the eyes of the beholder, or in this case, the technologically challenged).
- Electronic access to case files is available twenty-four hours a day, seven days a week (except when the system is down for maintenance or the Anchorage - Seattle - San Francisco-Seattle-Anchorage line ceases to function due to overload or other causes).
- The time it takes to file a petition or other document is reduced (except when the Cybergods/gremlins decide to wreak vengeance upon the technologically challenged user).
- The amount of paper used and the necessary storage space are greatly reduced.
- Copies of documents can be made from an office or home computer.
- All registered parties receive electronic notice of filings, eliminating the cost of handling and mailing paper notices, and speeds delivery.
- Docket and report generation is facilitated.
- File usage allows simultaneous access by the public, bench and bar.
- The cost for attorneys is low, compared to the costs incurred filing conventionally.

HARDWARE AND SOFTWARE NEEDS

- A personal computer (Pentium class recommended) with at least 128MB of RAM.
- A video card.
- A scanner and scanner software for documents not in electronic format.
- An Internet Service Provider (ISP) using Point-to-Point Protocol (PPP).
- Adobe Acrobat reader (found on Adobe website: www.adobe.com) or other PDF reader to read ECF documents.
- Adobe Acrobat writer or other PDF writer to convert documents from a word processor format to portable document format. For special law office pricing from Adobe, call (888) 502-5275. [Acrobat Reader is insufficient for this purpose.]

Attorneys wishing to register for an account to use CM/ECF must submit a Registration Form and User Agreement. This document, as well as additional information on CM/ECF, can be obtained by contacting the Court at (907) 271-2655 or (800) 859-8059, or visiting the Court's web site at www.akb.uscourts.gov.

Training will consist both of offsite (your office if deemed useful) and onsite at the Court's training facility. Those who register with the court now will be scheduled for training in preparation for the target start date of October 1, 2001. Training will involve hands-on entry of real cases in the training database, reference manuals and homework that can be done from your office or home. The Court plans to provide a help desk with ongoing offsite assistance and training for entire office groups. It is recommended that attorneys as well as any person who will participate in CM/ECF (including the actual filing, case research and document retrieval) in their office be included in all phases of the training.

The Court is developing rules, policies and training materials to implement CM/ECF. Court staff has been trained. Training of the United States Trustee Office, the panel trustees and their staffs is essentially complete. Several attorneys (including this erstwhile columnist) have volunteered ("selected" while absent from the room is a more correct depiction) to test the system from an exterior user standpoint for the purposes of feedback, suggestions and training input. Based on verbal inquiry and counter discussions, Wayne Wolfe expects seven to ten law firms and sole practitioners to be in the first group to participate in October.

Court creates committee to reduce appellate delays

The Alaska Supreme Court has created a new subcommittee of the Appellate Rules Committee to consider how to reduce appellate delay. This working group of prominent lawyers will concentrate on reducing the time between entry of the trial court judgment and submission of the case to the appellate court following argument or conference. Justice Robert L. Eastaugh will chair the group.

The court recognizes that appellate delay is detrimental to litigants and the public and to faith in judicial resolution of disputes. Consequently, the court in recent years has taken a number of steps to reduce appellate delay. The court first concentrated on accelerating publication of decisions in expedited cases. In the past year it has adopted appellate time standards and altered its internal procedures with the intention of significantly reducing the time between the date when the court first confers on a case and the date it publishes its opinion. The court has also adopted procedures to accelerate the handling of cases by the court's case managers.

The appellate delay reduction working group will consist of experienced and skilled members of the bar who can suggest ways to resolve appeals faster without diminishing the quality of decisions. Members include Justice Alexander O. Bryner, Court of Appeals Judge David Stewart, Clerk of Appellate Courts Marilyn May, Diane Alford, Mark Ashburn, Ruth Botstein, Dan Callahan, Bill Cotton, Chancy Croft, Pam Finley, Joanne Grace, Eric Johnson, Peter Maassen, Barb Malchik, Margi Mock, William Morse, Susan Orlansky, Mark Regan, Mark Sandberg, Doug Serdahely, Brian Shortell, John Tiemessen, Diane Wendlandt, and Robert Wagstaff.

If you have any comments or suggestions regarding reduction of appellate delay, please contact a committee member or Court Rules Attorney Barbara Hood, who will serve as committee staff. Ms. Hood's address is: 820 West 4th Avenue, Anchorage, AK 99501-2005; e-mail address: bhood@courts.state.ak.us; phone: (907) 264-8230.

Alaskan mystery writer to speak at Investigator's Conference

Alaskan mystery writer John Straley will be the featured speaker at the 8th annual Alaska Investigators Conference, to be held October 6th at the Marriott Residence Inn in Anchorage. The conference is an annual training seminar hosted by the Alaska Investigators Association, a group of public and private investigators representing the interests of private investigators statewide since 1993.

Novelist Straley has worked as a secretary, farrier, wilderness guide, trail crew foreman and millworker. It is perhaps less well known that John has also worked as an investigator for the Alaska Public Defender Agency, and as a private investigator, having worked on some of the more celebrated cases in recent memory. He moved with his wife, Janice, to Sitka, Alaska in 1977 and has no plans of leaving. His first book, *The Woman Who Married a Bear*, was published in 1993 and won the Shamus Award for the Best First Mystery of that year. His third book, The Music of What Happens, won the 1997 Spotted Owl Award for Best Northwest Mystery. Straley continues to work from his floating office on Sitka's waterfront. When he is not writing a new Cecil Younger book, or working on a case for some criminal defendant, John can be found around town catching up on the local gossip.

In addition, Del Smith, deputy commissioner of Alaska Department of Public Safety, will give a luncheon presentation on the controversial issue of the licensing of private investigators in Alaska. Other planned topics will include database research, computer security, accident reconstruction, crime scene investigation and the legal aspects of pretexting.

The conference is provided for the benefit of investigators statewide who wish to sharpen their skills in a wide variety of disciplines. It is also an opportunity for members of the Alaska Investigators Association to hold their annual business meeting and discuss issues of current interest. Cost of the conference, which is open to the public, is $120 at the door. For more information, visit our web site at http://akinvestigators.com or write to us at PO Box 202314, Anchorage, AK 99520.

Confrontation and integration

☐ Drew Peterson

Once again I have gotten in trouble for writing a deliberately provocative *Bar Rag* article (see Letters to the Editor).

In more than a decade of writing this column, the majority of feedback that I have received has been in response to the very few confrontational articles I have written. Except for controversies, it does not seem that anyone is paying much attention. When feedback does come, however, it is almost always appropriate, interesting, and productive to the very debate I had hoped to encourage.

Like most mediators (this is one of our well-kept secrets) I am terrified of conflict. Or at least I used to be. Learning to embrace conflict is one of the most important and difficult aspects of becoming a successful mediator. It is essential to successful mediation to bring the conflict front and center, so the disputants can deal with it, while still doing so in a safe and respectful way.

The best definition I have yet found for mediation—at least the kind of mediation that I enjoy and advocate—states that mediation is a structured method of collaborative negotiations, with the assistance of a neutral third party. Definitions are important in mediation, and also difficult, because mediation essentially requires a change to a new and different mindset, and our current language is often based on the old mindset and thus inadequate for the job.

I once did a workshop on collaborative negotiation at Fort Richardson, and a master sergeant in attendance noted that he "hated the word 'collaborative'. After all, you 'collaborate' with the enemy." Similarly, all of the words that we use to describe this collaborative negotiation process have other connotations that are different from what we are trying to convey

It is because of this difficulty with language, I believe, that so many different words and phrases have been used to describe the collaborative negotiation process. Some that I have heard used to describe the process, whether used with mediation or not, include "win-win negotiations," "collaborative problem solving," "integrative bargaining," "principled negotiations," "breakthrough negotiations," and "transformative bargaining." And there are many more.

One of the most thought-provoking definitions I have heard for this collaborative negotiation process was contained on a short organizational development tape on conflict resolution, with the definition attributed to a corporate trainer named Wayne Longfellow. Longfellow's definition of this collaborative problem solving process was "confrontation and integration." I have come to think often of mediation and collaborative negotiations in those terms since being introduced to the concept.

For indeed, that is what the successful mediation process does. The mediator helps the disputing parties to confront each other with each other's point of view. And not just with the stated positions of the parties; the mediator helps the parties go behind their positions to confront the wants, needs and interests underlying the positions they take in the negotiation process.

Once the parties have confronted each other with their respective points of view, the mediator then assists the parties to integrate the different perspectives – to seek for the so called "win-win" solution – or at least a solution that can best meet the needs of both parties.

Of course there is confrontation and there is confrontation. Mediators are trained for the most part to frame the confrontative part of the negotiation into a safe and respectful atmosphere, where parties can express their needs freely and openly. No "barracuda mediators" are allowed, or at least they are discouraged. Although in truth there are some barracuda mediators out there (especially among the retired judge mediators) and they often do a very effective job.

Indeed, the confrontation and integration model of problem solving goes a long way for me in explaining the prominence and success of the "barracuda lawyer" style of practice among some members of the bar.

While I remain convinced that such a barracuda lawyer style is not the most effective way of representing clients, it does have the advantage of confronting the issues of the parties directly (and often brutally), which is better than an avoidance style which might never bring out the underlying motives and issues of the parties. There is empirical evidence that such a "scorched earth" policy of litigation is not in the best interests of clients (to say nothing of the spiritual price paid by the barracuda lawyers, themselves). Yet such a style of litigating does support the "confrontation" side of the collaborative problem solving method, at least to a limited extent.

So while I continue to squirm, on a personal level, when I confront issues in this column or elsewhere, and earn the ire of colleagues, friends or family, I can blame the mediation process for teaching me how to become more confrontative in my professional life. For it is only by confronting our disputes fully, in the presence of our adversaries, and listening to each other as we do so, that we can truly integrate those solutions into solutions that will be mutually beneficial for both sides. The job of a mediator is to help us to do so.

Fourth Judicial District Superior Court Judges Niesje Steinkruger and Meg Greene flip burgers and hot dogs this summer during a picnic for Fairbanks convention staff commemorating the opening of the new Rabinowitz Courthouse. The courthouse was to be formally dedicated on Friday, September 21, 2001 at 3:00 p.m. A separate Fairbanks memorial tribute to Justice Jay Rabinowitz will follow at 5:30 p.m. at the nearby Chena River Convention Center.

Photo courtesy of Jan Short

YOUR HELP IS NEEDED

Many organizations are assisting in rescue, relief and recovery efforts from the Sept. 11, 2001 attacks by terrorists in New York City and Washington, D.C. Here are several that have been on the front lines of the effort and accepting contributions for this disaster.

Uniformed Firefighters Association Widow's and Children's Fund.
c/o Uniformed Firefighters Association
204 East 23rd Street, 5th floor
New York, NY 10010
http://ufalocal94.org

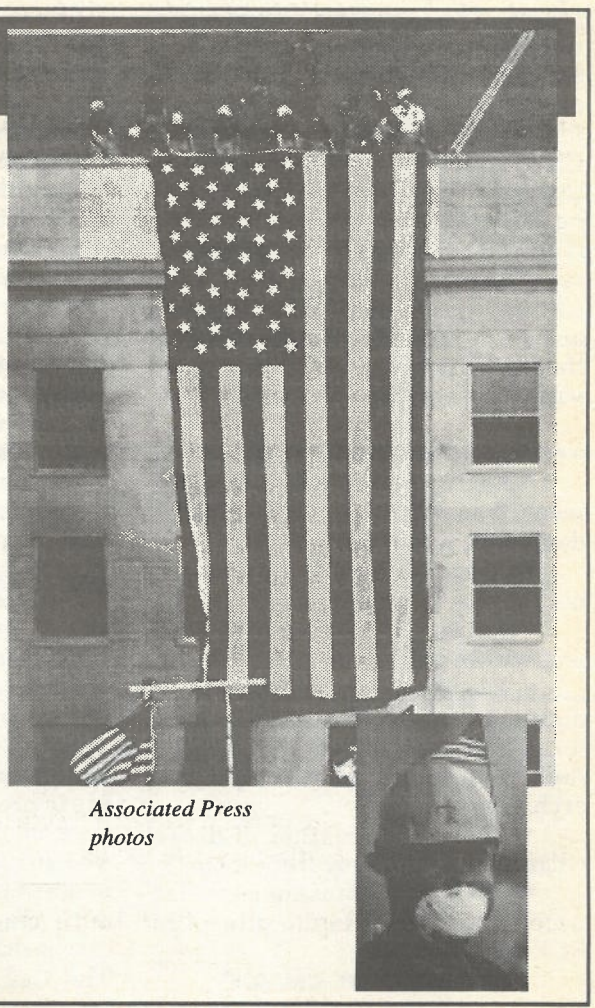
Salvation Army
615 States Lane
Alexandria, VA 22313-0269

Contributions specifically to the Salvation Army's efforts at the Pentagon may be sent to:
The Salvation Army National Capital and Virginia Division
P.O. Box 18658
Washington, D.C. 20036
800-SAL-ARMY
http://relief.yahoo.com/salvationarmy

United Way of New York City
September 11th Fund
2 Park Avenue
New York, NY 10016
https://www.uwnyc.com/epledge/sept11.cfm

New York Times
9/11 Neediest Fund
P.O. Box 5193 General Post Office
New York, NY 10087
http://www.charitywave.com

Red Cross of Greater New York
150 Amsterdam
New York, NY 10023
800-448-3542 (national)
http://store.yahoo.com/redcross-wtc/



Associated Press photos

Evaluating the child custody evaluators

By Daniel B. Lord

An objective child custody report from a qualified child custody investigator, one familiar with the development of children, is anticipated in the new Alaska Civil Rule 90.6. Specifically, it provides that "the court may appoint an expert . . . to investigate custody, access and visitation issues and provide an independent opinion concerning the child's best interests." Alaska R.Civ.P. 90.6(a). It also provides that the child custody investigator should "offer an informed opinion," one based on an understanding of development from infancy through adolescence, and of the effects of divorce and parental separation, domestic violence and substance abuse, on children. Alaska R.Civ.P. 90.6(b)(1)(A), (B) & (D).

Enter unto this scene the mental health professionals, whose involvement in the conduct of child custody evaluations is increasing, apparently because, in contrast to criminal law, which is primarily limited to psychiatrists and clinical psychologists, family law is open to a "wider range" of such professionals. Leland C. Swenson, *Psychology and Law for the Helping Professions* (2nd ed. 1997) 230-31; *cf.* Gary B. Melton *et al.*, *Psychological Evaluations for the Courts: A Handbook for Mental Health Professionals and Lawyers* § 16.01 (2nd ed. 1997) (claiming that such professionals are directly involved in only a small fraction of child custody cases). But, how open should family law be, particularly child custody in divorce?

There are concerns about the involvement of mental health professionals in child custody evaluations. One is that such professionals do not necessarily possess training in substantive areas appropriate to the task of conducting a child custody investigation. *See* Marion Gindes, *Competence and Training in Child Custody Evaluations*, 23 Am. J. Fam. Therapy 273-280 (1995) (recommending training and nine substantive areas to be mastered). Another concern is that their knowledge may transfer or be applicable to child and family issues arising from custody disputes. Kirk Heilburn, *Child Custody Evaluators: Critically Assessing Mental Health Experts and Psychological Tests*, 29 Fam. L.J. 63-84 (1995); *see* Melton *et al.*, *supra,* at 484 ("there has been remarkably little research meeting minimal standards of methodological rigor about the effects of various *custody arrangements* on children"). *Cf.* Alaska R.Civ.P. 90.6(b)(1)(C) (listing an understanding of "unique issues related to families in custody disputes").

Fortunately, the emphases of Rule 90.6 on understanding child development and the impact of different types of familial problems on that development can provide a framework through which mental health professionals and others who engage in child custody investigations or evaluations can be evaluated.

Mental health professionals who may possess qualifications to conduct a child custody evaluation can be grouped into three categories: (1) psychiatrists, and clinical (and forensic) psychologists; (2) educational or child, and school psychologists; and (3) master's-level practitioners in counseling, in marriage, family and child therapy, and in social work. Swenson, *supra*, at 231.

With respect to psychiatrists, their education and training is not concentrated, at least initially, on children. It is only after completing a psychiatric residency and an additional two years of post-training training in child and adolescent psychiatry when certification in child psychiatry may be awarded. *See* 2 Jeff Atkinson, *Modern Child Custody Practice* § 13-4 (2nd ed. 2000) (explaining the process for becoming a fellow in American Academy of Child Psychiatry). Moreover, psychiatrists are educated as clinicians, and a characteristic of that education is, oftentimes, a strong commitment to a particular theory of child development, which can limit the usefulness of information from their reports as it relates to the parents' relationship to children, and parental child rearing attitudes and capacities. *See* National Interdisciplinary Colloquium on Child Custody, *Legal and Mental Health Perspectives in Child Custody Law: A Desk Book for Judges* § 25:3 (2000) (explaining that differences from practitioner to practitioner come from different commitments to child development theories).

The same can be said of clinical psychologists. "Because clinical psychologists' training emphasize the diagnosis and treatment of mental illness," observed the National Interdisciplinary Colloquium on Child Custody, "their evaluations may give greater emphasis to individual pathologies than those of evaluators trained in other subspecialties." *Supra* § 27:4, at 347. Although there are some doctoral programs in clinical psychology with specialization in clinical child psychology, the focus of such training continues to be on assessment instruments and methods that answer clinical questions of psychiatric diagnosis.

Educational or child, and school psychologists would appear well qualified to conduct child custody evaluations, given their specialized expertise from working with children, at home and in the school setting. Vaughan Bevan, *The Legal Perspective: Court Reports and Appearances of Educational Psychologists*, 4 Ed. Psychol. in Prac.155-59 (1988); *see also* National Interdisciplinary Colloquium on Child Custody, *supra* ("Many psychologists who conduct custody evaluations are trained in subspecialty areas other than clinical psychology. . . . Child psychology, social psychology, and personality and developmental psychology, constitute legitimate areas of academic expertise where trained students can provide useful information . . . "). The drawback in the education and training of such psychologists is the reverse of that for psychiatrists and clinical psychologists: there may be a lack of clinical experience and competence in psychiatric diagnosis, thus limiting the usefulness of their reports when the presence of psychopathology is actually relevant.

Child custody evaluation is seen by many master's level practitioners as an emerging field for their expertise. *See, e.g.,* Theodore P. Remley & Judith G. Miranti, *Child Custody Evaluator: A New Role for Mental Health Counselors*, 13 J. Mental Health Counseling. 334, 341-2 (1991) (arguing that the unique ability of counselors to focus on relationships within the family system and to understand developmental and situational stresses are skills that enable them to make professional recommendations to judges regarding the placement of children). In terms of qualifications, the drawbacks may be a combination of those for the other two groups: they may lack education in psychopathology, and as well as expertise in the application of child development theory and research. Clearly, professional counselors, marriage and family therapists, and social workers that have obtained training and supervised clinical experience in psychopathology and child development are preferred as child custody investigators over those who have not.

The following is a non-exhaustive, but relevant, list of questions on whether a mental health professional is qualified, within the framework of Rule 90.6, to conduct a child custody evaluation:

IS THE CHILD CUSTODY INVESTIGATOR LICENSED AS A MENTAL HEALTH PROFESSIONAL?

Does s/he possess the appropriate certification, in medicine or psychology, or in marriage and family therapy or professional counseling, or in social work, from the state?

(If in medicine, is s/he a fellow of the American Academy of Child Psychiatry?)

Has s/he had practical experience in child custody cases?

If not a licensed mental health professional, does the child custody investigator possess academic qualifications?

Does s/he possess the appropriate academic credentials, such as a doctorate, or a so-called terminal master's degree such as a M.S.W., from an accredited institution?

Has s/he published research in the area of child custody, or presented papers to professional associations on child custody issues?

Has s/he had practical experience in child custody cases?

If qualified by professional credentialing or qualified academically, then

Is s/he familiar with the major theories on child development?

Is s/he familiar with the research literature regarding the effects of divorce and parental separation, and of domestic violence and substance, on children?

And if so, is the child custody evaluator objective, and therefore able to offer an informed opinion?

Does s/he rigidly hold to a particular theory of child development?

Does s/he have a history of almost always recommending custody for a mother or father? Atkinson, *supra* § 13-17.

Does s/he have a history of favoring clients for a particular attorney? *Id.*

Does s/he recognize the phenomenon as countertransference, or how thoughts and personal feelings s/he experiences toward the child and parent(s) may inadvertently bias the child custody evaluation? *See, e.g.* Michael R. Freedman *et al.*, *Evaluating Countertransference in Child Custody Evaluations*, 11 Am. J. Forensic Psychol. 61-73 (1993) (discussing several sources of counter-transference reactions when conducting child custody evaluations).

And . . . does s/he also recognize the limitations of her/his expertise in any aspect of the child custody evaluation?

Board of Governors action items

MAY 8 & 9, 2001

• Certified the 37 applicants who passed the bar exam and have a conference call on the 38th applicant.

• Approved the one reciprocity applicant (Mark Fucile).

• Approved two Rule 43 ALSC waivers: Gathright & McCullough.

• Postponed setting the VCLE dues discount until August.

• Voted to contribute $750 to the National YLS reception.

• Approved transferring the Alaska Bar staff pension plan to Wells Fargo.

• Approved the request to reactivate the International Law Section.

• Did not approve a stipulation for disicipline.

• Adopted the procedures (in the Personnel Policies) for the evaluation of the Executive Director & the Bar Counsel;

• Amended Standing Policies to set structure of Nominating Committee: president, president-elect, past president, outgoing board member(s), and senior public member.

• Nominated Board officers: Lori Bodwell – President-elect; Jon Katcher – Vice President; Larry Ostrovsky – Treasurer; Ana Hoffman – Secretary.

• Approved payment in the Lawyers' Fund for Client Protection matter.

• Voted to republish Bar Rule 45 regarding failure to pay a Fee Arbitration award since it was significantly revised.

• Decided to hold a strategic planning retreat in the fall.

• Directed Staff to simplify the VCLE form.

• Regarding the Unreported Opinions Database on the website: voted to have a disclaimer on the screen on the front end of the database and to send a letter to the submittee that they should keep the Bar apprised of modifications since we don't have the resources to follow up.

AUGUST 9, 2001

• Voted to approve 8 reciprocity applicants.

• Voted to approve Rule 43 ALSC waiver for Robin Wittrock.

• Approved increased hours for the CLE Library Assistant during the CLE Library high-volume time at the end of the year.

• Voted to accept the stipulation for a public censure for Respondent.

• Voted to send ARPC 1.5(d) to the Supreme Court (contingent fees in limited instances in domestic relations cases.)

• Tabled Bar Rule 45 until October meeting (failure to pay Fee Arbitration award may be referred to Lawyers' Fund for Client Protection Committee.)

• Voted to send Bar Rule 31(g) and Bar Rule 54 to the Supreme Court (regarding payment of Trustee Counsel from Lawyers' Fund for Client Protection.)

• Voted to amend the Bylaws (Article VIII, Seconded by. 1(a)(11) to create a standing Committee on Judicial Independence. The Bar President is to appoint the Committee members.

• Decided to hold off on Bar Rule 29 (re waiting period for applying for reinstatement after rejection of reinstatement request.)

• Run-off elections (Article V, Sec. 6 bylaw on whether ballots cast or votes casts should be counted to determine a majority of votes) will be on the October agenda.

• Voted to approve all Lawyers' Fund for Client Protection claims against Respondent subject to receiving no appeals.

• Approved the May 8 & 9, May 18 and June 15 Board meeting minutes.

• Reviewed the letter from Jeff Friedman on how the bar exam is graded, and directed staff to ask exam consultant Steve Klein to respond in writing and perhaps address the Board.

• Voted to approve the concept of a new Robert K. Hickerson Public Service Award, with details to be worked out.

• President to reply to John Strachan that memorials for lawyers would be more appropriately done by the local bars, rather than the state bar.

• Rejected the stipulation for discipline and listed conditions for a possible future stipulation.

• Suggested that Prof. Strait can make his proposal at the January meeting, for him to act as Special Bar Counsel with his law students working on discipline matters; would like to hear what Washington Bar Counsel says about the program.

• Voted to publish an amendment to Bar Rule 65 which would require the VCLE dues discount to be taken with the full dues payment or the first installment payment.

• Set the VCLE dues discount for 2002 at $45.

• Voted to pay Trustee Counsel $7,257 for his work in a matter.

• Confirmed that the Board subcommittee will be mailing out evaluation forms to Board members to evaluate the Executive Director and Bar Counsel, and that this will be discussed in October.

• Will ask the Ohio State Bar to make a presentation to the Board on the Casemaker program.

ALASKA BAR ASSOCIATION ETHICS OPINION 2001-1

Attorney's Duties When Advised By Custodian That Criminal Defendant Has Breached Conditions Of Client's Release

The Committee has been asked the following question: If a third party custodian of a criminal defense attorney's client advises the attorney that the client is failing to comply with the terms of release, does the defense attorney have an obligation to notify the Court? The Committee has concluded that Alaska Rules of Professional Conduct (RPC) do not require the attorney to report the information to the Court.

FACTS

A criminal defense attorney represents a client who has been released to a third party custodian pending trial. A court order defines the obligations of the third party custodian, but places no specific obligations on the attorney.[1] Later, the third party custodian calls the attorney directly and reports (a) the client is not complying with the conditions of release; and (b) the third party custodian no longer wishes to be a third party custodian for the client. No facts indicate that as a result of his conversations with the attorney, the third party custodian misunderstood the role of the attorney and who the attorney was representing in the case.

DISCUSSION

An attorney has a duty of undivided loyalty to his client. No specific rule of the Alaska Rules of Professional Conduct requires the attorney to voluntarily report the contents of the conversation with the third party custodian to the Court under the fact situation presented. Since the attorney represents only the client, and does not represent the third-party custodian, the attorney's ethical obligations are only to the client. Placing the third party custodian's interest ahead of the client's interest would violate ARPC 1.7.[2]

Additionally, there is no obligation to disclose the conversation to the Court under ARPC 3.3. This section states in pertinent part:

(A) A lawyer shall not knowingly:

(1) make a false statement of material fact or law to a tribunal;

(2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;

* * *

The duty to disclose does arise in a criminal case where the client insists on providing, or provides, testimony or evidence where the lawyer knows that the testimony is perjurious. For instance, in the face of a question from the court, if a client were to misinform the Court regarding or demand that a lawyer not inform the Court of his custodian's desire, the lawyer would be required to insist on being truthful to the court or withdraw as counsel for the Defendant. Under the circumstances of this case, the lawyer's failure to advise the Court does not constitute "assisting a criminal, or fraudulent act by the client."

The Committee distinguishes Ethics Opinion 95-3 on this basis. In 95-3, the Committee held that an attorney did have a duty to report a change in the client's financial status that affected eligibility for appointed counsel. However, Administrative Rule 12 (f) specifically requires an attorney to report a change in the Client's financial status and it is the existence of the reporting requirement of AdR 12(f) that triggers the duty under ARPC 3.3.

CONCLUSION

The Alaska Rules of Professional Conduct do not impose upon an Attorney the duty to inform to the Court where a third party custodian advises
the attorney that the attorney's client has violated the conditions of release. In recognition of the duty of loyalty[3] of an attorney to a client, the Committee declines to imply such a conflicting duty to inform the Court.

Approved by the Alaska Bar Association Ethics Committee on January 4, 2001.

Adopted by the Board of Governors on March 30, 2001.

[1] See AS 09.50.010 for the third party custodian's obligations to the court under these circumstances.

[2] The attorney must also be mindful of the obligations imposed under ARPC 4.3 (Transactions with Persons other than Clients). Therefore, if the attorney knows, or reasonably should know, the third party custodian does not understand the attorney's role in the matter, or the attorney knows, or reasonably should know, that the third party custodian expects or anticipates the attorney will advise the Court, the attorney cannot simply remain silent.

[3] Opinion 95-3 contains an extensive discussion of the balancing of the obligation of an attorney to the client with the obligation of the attorney to others, including the obligation of the attorney to "the law". That discussion emphasizes the narrowness of this Committee's opinion.

NEWS FROM THE BAR

Dues reduction rule proposed by BOG

The Board of Governors invites member comments concerning the following proposed addition to the Alaska Bar Rules:

This addition to Bar Rule 65 would clarify that a member shall take his or her dues reduction for compliance with the CLE rule at time the member pays full membership dues or at the time of the first dues installment.

Please send comments to: Executive Director, Alaska Bar Association, PO Box 100279, Anchorage, AK 99510 or e-mail to alaskabar@alaskabar.org by October 12, 2001.

BAR RULE 65

PROPOSED ADDITION RELATING TO TIME TO CLAIM DUES REDUCTION

(Additions are underscored; deletions have strikethroughs)

RULE 65. CONTINUING LEGAL EDUCATION

(a) In order to promote competence and professionalism in members of the Association, the Alaska Supreme Court and the Association encourage all members to engage in Continuing Legal Education (CLE). This rule is intended to set minimum standards for Continuing Legal Education.

(b) Every active member of the Alaska Bar Association should complete at least 12 credit hours of approved CLE, including 1 credit hour of ethics CLE, each year. An active Bar member may carry forward from the previous reporting period a maximum of 12 credits. To be carried forward, the credit hours must have been earned during the calendar year immediately preceding the current reporting period.

Commentary. The Alaska Supreme Court and the Association are convinced that CLE contributes to lawyer competence and benefits the public and the profession by assuring that attorneys remain current regarding the law, the obligations and standards of the profession, and the management of their practices. But the Supreme Court is not convinced that a mandatory rule is necessary and believes that a CLE program can become successful by using incentives to encourage voluntary participation in CLE rather than sanctions to penalize non-compliance with a mandatory rule. Accordingly, the Supreme Court and the Association have adopted this rule as a three-year pilot project. At the end of this pilot project, the Supreme Court will assess the project's results, including recommendations and statistics provided by the Association, and will determine whether a sanction-based mandatory CLE program is necessary.

(c) At the end of each year, each member will certify on a form, prescribed by the CLE Director and distributed with the invoice for bar dues, the member's approved CLE hours earned during the preceding year. The CLE Director will supervise the CLE program and perform the duties and responsibilities contained in these rules.

(d) Members who comply with this rule by completing the minimum recommended hours of approved CLE provided in section (b) of this rule will receive a reduction in their bar dues, in an amount to be determined each year by the Board. Only members who complete the minimum recommended hours of approved CLE are eligible to participate in the Alaska Bar Association's Lawyer Referral Service. If a member does not comply with this rule by completing the minimum recommended hours of approved CLE, that fact may be taken into account in any Bar disciplinary matter relating to the requirements of Alaska Rule of Professional Conduct 1.1. The Association shall publish annually, and make available to members of the public, a list of attorneys who have complied with this rule's minimum recommended hours of approved CLE. The Association may devise other incentives to encourage compliance with this rule.

Commentary. This rule contemplates a modest reduction in bar dues, to be determined annually at the Board's discretion, that will serve as an incentive for members who have voluntarily complied with the CLE standard; the reduction is not intended as reimbursement for CLE costs actually incurred by members.

(e) A member may file a written request for an extension of time for compliance with this rule. A request for extension shall be reviewed and determined by the CLE Director. A member who is granted an extension and completes the minimum CLE requirements after the end of the reporting period is not entitled to the discount on bar dues.

(f) The CLE requirement of this rule may be met either by attending approved courses or completing any other continuing legal education activity approved for credit under these rules. The following activities may be considered for credit when they meet the conditions set forth in this rule:

(1) preparing for and teaching approved CLE courses; credit will be granted for up to two hours of preparation time for every one hour of time spent teaching;

(2) studying audio or video tapes or technology-delivered approved CLE courses;

(3) writing published legal texts or articles in law reviews or specialized professional journals;

(4) attendance at substantive Section or Inn of Court meetings;

(5) participation as a faculty member in Youth Court;

(6) attendance at approved in-house continuing legal education courses;

(7) attendance at approved continuing judicial education courses;

(8) attendance at approved continuing legal education courses.

(g) The CLE director shall approve or disapprove all education activities for credit. CLE activities sponsored by the Association are deemed approved. Forms for approval may be submitted electronically.

(1) An entity or association must apply to the Board for accreditation as a CLE provider. Accreditation shall constitute prior approval of CLE courses offered by the provider, subject to amendment, suspension, or revocation of such accreditation by the Board.

(2) The Board shall establish by regulation the procedures, minimum standards, and any fees for accreditation of providers, in-house continuing legal education courses, and publication of legal texts or journal articles, and for revocation of accreditation when necessary.

(h) This rule will be effective September 2, 1999. The reporting period will be the calendar year, from January 1st to December 31st, and the first calendar year to be reported will be the year 2000. Any CLE credits earned from September 2, 1999 to December 31, 1999 may be held over and applied to the reporting period for the year 2000.

(i) Any dues reduction allowed under this rule shall be taken from the full dues payment or first installment payment.

PUBLIC NOTICE

APPOINTMENT OF PART-TIME MAGISTRATE JUDGE

The Judicial Conference of the United States has authorized the appointment of a part-time United States magistrate judge for the District of Alaska at Fairbanks, Alaska. This position is currently vacant.

The duties of the position are demanding and wide-ranging: (1) conduct of most preliminary proceedings in criminal cases; (2) trial and disposition of misdemeanor cases; (3) conduct of various pretrial matters and, evidentiary proceedings on delegation from the judges of the district court; and (4) trial and disposition of civil cases upon consent of the litigants. The basic jurisdiction of the United States magistrate judge is specified in 28 U.S.C. § 636.

To be qualified for appointment, an applicant must:

(1) Be, and have been for at least five years, a member in good standing of the bar of the highest court of a state, the District of Columbia, the Commonwealth of Puerto Rico, or the Virgin Islands of the United States, and have been engaged in the active practice of law for a period of at least five (5) years (with some substitutes authorized);

(2) Be competent to perform all the duties of the office; be of good moral character; be emotionally stable and mature; be committed to equal justice under the law; be in good health; be patient and courteous; and be capable of deliberation and decisiveness;

(3) Be less than seventy years old; and

(4) Not be related to a judge of the district court.

A merit selection panel composed of attorneys and other members of the community will review all applicants and recommend to the judges of the district court in confidence the five persons whom the panel considers best qualified. The court will make the appointment, following an FBI file check and an IRS tax check of the appointee. An affirmative effort will be made to give due consideration to all qualified candidates. The current annual salary of the position is *$33,633.00*. The term of office is four (4) years.

Application forms and more information on the magistrate judge position may be obtained from the Deputy in Charge at the U.S. District Court in Fairbanks:

Carolyn Bollman, Deputy in Charge
United States District Court
101 12 Avenue, Room 332
Fairbanks, Alaska 99701-6263

or the chairman of the selection panel:

The Honorable John D. Roberts
United States District Court
222 West 7th Avenue - No. 46
Anchorage, Alaska 99513

or by downloading from the "U.S. District Court" Web Page:

http://www.akd.uscourts.gov
(Click on the "Employment" link)

All completed applications must be received from potential nominees **on or before October 15, 2001**

All applications will be kept confidential, unless the applicant consents to disclosure, and all applications will be examined only by members of the merit selection panel and the judges of the district court. The panel's deliberations will remain confidential.

THE DISTRICT COURT IS AN EQUAL OPPORTUNITY EMPLOYER

In Memoriam

JAY A. RABINOWITZ

A MEMORIAL TRIBUTE BEFORE THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

Jay Rabinowitz died in a Seattle hospital from the complications of leukemia on June 16, 2001, at age 74. His wife Anne, and his children Judy, Mara, Sarah, and Max, were with him at the time.

He was the greatest legal personage in the history of Alaska – in length of public service, in the significance of that service, and in the quality of that service. It is the highest honor for me to present this memorial to you. But it is one for which I most earnestly wish the occasion would not have arisen for many, many years in the future.

In Alaska, eons ago, the land rose up to provide the North American Continent's highest mountain – officially, governmentally, called Mt. McKinley. Acknowledging its unsurpassed grandeur, the Alaska Natives in ancient times named it "Denali" – meaning the great one – the name most of us in Alaska use for it today. Retired Superior Court Judge Tom Stewart, of Juneau, has observed that "Jay Rabinowitz has been and will endure as the Denali of Alaska's legal horizons." That metaphor neatly sums up what others have said about Jay, and what I will say today.

Why do we offer a memorial tribute such as this one? I see four reasons: to honor a deceased member of our Conference, to remind the current members of the life that has left us, to inform future historians, and to softly convey our feelings to the family of the deceased. In this one, I will try to present a brief verbal photograph of this man.

Jay was born February 25, 1927 in Philadelphia, and grew up in Brooklyn. Following World War II service in the Army Air Corps, he received a bachelor's degree from Syracuse University in 1949, and an LL.B. from Harvard University Law School in 1952. He was admitted to the bar of New York in that same year, and practiced law in New York City for five years before venturing to Alaska to clerk for a U.S. District Court judge in Fairbanks, arriving on a beautiful, minus-50-degree day. He settled in Fairbanks, where he met and married Anne Nesbit in 1957.

Following service as assistant U.S. attorney for Alaska, and as the Alaska deputy attorney general, he was appointed to the superior court in Fairbanks by Governor Bill Egan, in 1960. Five years later, Governor Egan elevated him to the state supreme court, where he served for the next 32 years. Under constitutional mandate, he retired in 1997, at age 70, but he continued to serve as *pro tem* judge for the next four years. He was especially active as settlement judge during this period. In addition, he co-taught a constitutional law class, working right up to a couple of months before his death. He did not let his several-year battle with cancer stop him from devoting his brain, his wisdom, his wit, and his spirit to the law.

Alaska is a new state, achieving statehood in 1959. Many of the cases brought to the courts during Justice Rabinowitz's tenure on the bench presented issues of first impression. His outstanding abilities shaped the development of Alaska law and the Alaska court system.

On the superior court, he tried the first case after statehood. On the supreme court, he wrote more than 1,200 opinions, including almost 200 dissents. They set the course for Alaska's statehood.

Besides deciding cases, he served as chief justice for four three-year terms. Jay would serve a term; then someone else; then Jay; then someone else; etc. The Alaska constitution prohibited immediate succession. He proved to be a great judicial administrator and leader. He is credited with expanding the court system into rural Alaska, to help assure that all Alaskans would have access to the judicial system.

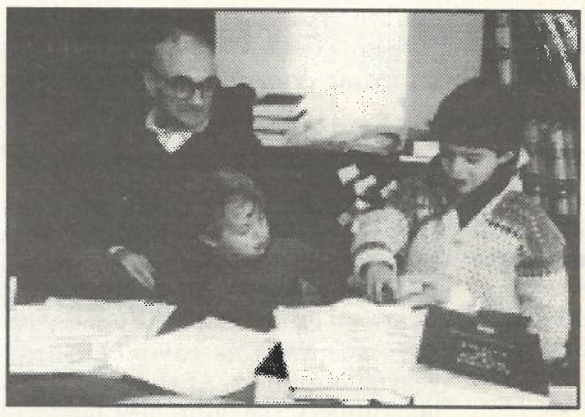
Twenty-year colleague on the supreme court, Justice Warren Mathews has mentioned that the four volumes of the Alaska Pacific Reporter in 1965 grew to 106 by 1997, when Jay retired. "The cases he wrote cover every conceivable subject of importance and his opinions were written in the grand style." Justice Mathews went on to say that Jay "was a leading figure in Alaska justice for each of the four decades of Alaska statehood. He became the dominant figure in the state court system in the early 70's and remained as such until his retirement in 1997."

Current Alaska Gov. Tony Knowles said that "Each day on the bench, he set the standard for Alaska's judiciary through fairness, impartiality and intellectual honesty. Jay staunchly defended that notion about which Alaskans feel so strongly – freedom. Whether freedom of speech, freedom of religion, freedom of privacy, or freedom to pursue dreams regardless of one's station in life, Jay was its protector."

In 1971, Governor Egan appointed Justice Rabinowitz to the National Conference of Commissioners on Uniform State Laws, and Jay became a life member of the Conference in 1996. The records of the Conference disclose that he chaired the Drafting Committee to Revise the Uniform Rules of Criminal Procedure, the Drafting Committee on the Uniform Pretrial Detention Act, and the Drafting Committee on the Uniform Post-Conviction Procedure Act. He also served on the Special Committee on the Uniform Extradition Act, the Standing Committee on Uniformity of Judicial Decisions, the Special Committee to Review the Uniform Rules of Criminal Procedure, the Review Committee on the Uniform Adoption Act, the Drafting Committee on the Uniform Transfer of Litigation Act, the Committee on Liaison with Native American Tribes, and the Scope and Program Committee. He was a firm believer in the value of the Conference and its work product.

So, those are the basic facts. Now, what kind of person was he?

To say that he was a pretty smart guy would be the wildest sort of understatement. He was brilliant – a quality readily acknowledged, even eagerly proclaimed, by his colleagues on the bench, by his law clerks, and by his friends both within and outside the legal profession. Former Superior Court Judge Douglas Serdahely, in Anchorage, has referred to Jay's "extraordinary intellect," and observed that "Jay's ability to define, understand and analyze complex legal issues was *truly unparalleled*." (Emphasis added.) And that his "reputation as the 'intellectual jurist' of the Alaska Supreme Court was well-deserved."



Jay Rabinowitz shares a moment with his grandchildren.

Jay's brilliance and humor, offered through a sometimes-curmudgeonly veneer, along with his friendliness and genuine concern about those he met, were evident qualities. Judge Serdahely concluded his remarks with the affirmation that "I shall always remember Jay as a gracious and charming person. To his professional colleagues, he was collegial, polite and earnest. To his friends, he was warm and personal. To all, he was witty and friendly."

For Juneau Attorney Mary Alice McKeen, especially compelling was the inspiration provided by Jay's perseverance in the face of his painful illness. She recounts his excusing himself from a settlement conference, for a few minutes, to get a transfusion. Just five weeks before he died, he spoke to the Alaska Bar Convention via telephone from his hospital bed in Seattle.

Former law clerk Lauri Adams said that "Jay's belief in his clerks often made us better than we were. He led by example, not by exhortation, but the example was unrelentingly clear. . . . Jay was intellectually incisive and exacting; . . . But Jay was equally quick to praise our work, . . ."

Several of his law clerks stayed in the wilds of "The Last Frontier" to pursue successful and influential legal careers because of Jay's enthusiasm for Alaska, and the personal, intellectual, and professional inspiration he provided.

A quotation from an opinion of Justice Rabinowitz's illustrates his understanding of some fundamental values:

"The United States of America, and Alaska in particular, reflect a pluralistic society, grounded upon such basic values as the preservation of maximum individual choice, protection of minority sentiments, and appreciation for divergent lifestyles."

People who knew Jay, such as Anchorage Attorney Mark Ashburn, have praised his "unyielding commitment to preparation and hard work"; his "deep sense of humanity and compassion"; and his "legacy of sound and scholarly judicial decision-making."

Dana Fabe, current chief justice of the Alaska Supreme Court, tells of "[t]he twinkle in Jay's eye and the humor behind the twinkle [which] often provided a graceful way out of a tense situation when we debated an issue, . . ." She adds that she "will always remember his kindness."

Justice Fabe continued, "I learned during my time with Jay on the Supreme Court that he [knew] how to work with a group. He was diligent in his search for common ground and a route down which all of us could travel to reach agreement. When he disagreed, it was always respectfully. In a manner almost courtly, he would depersonalize the debate, focusing always on the analysis of the issue. . . . And there was never a sense that any stance he took was based on ego. Jay was always willing to reexamine his views and change his mind, even after stating his position in the most definite manner."

Alaska Supreme Court Justice, and new Uniform Law Commissioner, Alex Bryner, in his contribution to the volume of prefaces that accompanies the *Collected Opinions of Chief Justice Jay A. Rabinowitz*, described him this way: "Rabinowitz: the constant contradiction. Urbanity in the midst of the last frontier. The *New York Times* . . . in a Fairbanks *News-Miner* world. Civilization and a warm cup of coffee amidst seeming desolation. Ceaseless work and constant readiness to play. Commitment to public service and devotion to family and friends. Abiding faith in government and profound distrust for its power. Dedication to openness and insistence on privacy. Trust in the rule of law over individuals and in the paramount right of individual liberty. Justice tempered with mercy; the hawk and the dove together; the lion living with the lamb. And none of it really all that serious; all with an ever-present sense of mischief. It's all there, somehow coexisting, somehow kept in balance. And balance, it seems is the essence. Enigma and revelation. Few people can do it like [he did] it."

Justice Rabinowitz's influence was not limited to Alaska. A scene that I'm fond of recalling occurred when the conference met in Atlanta, Georgia, in 1976. My wife Carolyn and I were riding a city bus there and got to talking with the young couple sitting next to us. When the man, a law student, heard that I was from Alaska and was a lawyer, he asked, with great excitement, whether I knew Justice Rabinowitz. I said I did and that, in fact, the justice was in Atlanta at that very moment, for the same meeting I was attending. The student was delighted, and went on to talk about some of Jay's decisions that he had read, voicing appreciation and admiration. He wanted to know where we were meeting and whether he would be able to talk with the justice. I told him where and told him yes (because Jay was always interested in meeting and talking with people).

For many of us who appeared before the supreme court, if we lost with Jay writing or joining a dissent, we definitely felt vindicated.

Jay enjoyed solving the puzzles created by the human condition and the rules governing it. He strove for fairness – for a just society, regardless of a person's poverty or lack of political power. He enjoyed playing and working with the English language – plumbing its distinctions, employing its subtleties, and reveling in its inherent humor.

Continued on page 15

In Memoriam

THOMAS E. FENTON JR.

The Honorable Thomas Edgar Fenton Jr., 67, passed away peacefully after a long battle with cancer, on Tuesday, Aug. 14, 2001 at his home in Fairbanks. His wife and other family members were at his side.

Born in Wood Ridge, NJ, and raised in South Orange, NJ, Tom was the third child of four born to Thomas Edgar Fenton and Maude Anna Fenton.

He served in the U.S. military during and after college and graduated in 1956 from Trinity College. He received his law degree in 1961 from New York University. Arriving in Alaska, he originally planned to drive directly to Nome. But upon finding there was no road to Nome, he somehow ended up in Juneau where he worked for the state department of transportation. In 1963 he was appointed as assistant attorney general in Fairbanks and taught business law at the University of Alaska.

From 1964 through 1967, he served as district attorney for the cities of Ketchikan and Fairbanks. Fenton entered private practice with Barry Jackson in 1967, joining David Call and Kenneth Haycraft in 1968 to form the law offices of Call, Haycraft & Fenton. He later opened his own law office on the corner of 10th Avenue and Noble Street, which allowed him the freedom and flexibility to accept a position as a part-time United States magistrate in 1991.

Fenton was very active in his church and the community, serving on the Fairbanks North Star Borough School Board, the Board of Directors for Hospitality House, the Food Bank and the Rescue Mission. He has assisted many new and young churches in establishing themselves by offering his legal services at no charge. His walk with Jesus included the following churches: the Episcopalian Church, the Evangelical Covenant Church, the Lighthouse Christian Center, and the Anglican Church of the Redeemer.

In 1965, Tom married Nancy Laea Ku, with whom he would share. the rest of his life. Nancy and Tom met in the halls of the Alaska State Building, where she was a probation officer for the State of Alaska. Together they raised six children: five daughters and one son. His daughter Marcia Del Vecchio preceded him in death.

Fenton is survived by his wife Nancy; his children, Tercia Ku, Portia Fenton, Jaylen Fenton Katzinan, Thomas Edgar Fenton, III, Helen Anna Hoffman; and his siblings, Elizabeth Adams, Barbara Pond and Richard Fenton.

Memorial services were held Aug. 21, with a "Celebration of Life" luncheon held Aug. 24, hosted by US District Court Chief Judge James K. Singleton Jr. In lieu of flowers and gifts, the family asks that contributions may be made to the Reap International, Inc. (Christian missions) P.O. Box 10972 Fairbanks, AK99710-0972, or to KJNP Christian Radio and Television, P.O. Box 56359, North Pole, AK 99705-1359.

JAY A. RABINOWITZ

Continued from page 14

Alaska Supreme Court Justice Walter Carpeneti has emphasized Jay's friendship. He said "I think it was because [Jay] cared about people. When you saw Jay, he asked about you, and your spouse, and your kids, and your dog. And it wasn't just polite chatter – he really wanted to know. And when he found out, he took steps to accommodate the needs of others that he had learned about."

Justice Carpeneti also told of the "sparkling humor that made Jay Rabinowitz such a friend." He described one situation – when he was sworn in to the court by Jay – saying, "[a]fter careful analysis, I have come to understand that I was his unwitting straight man. So, for example, when I earnestly asked him to administer the oath of office at my induction, I really did not expect that Jay, knowing my love of all things Italian [and ability to speak Italian] . . . would conspire with my wife to obtain an Italian translation *and administer the entire oath of office to me in Italian*!" (Emphasis in original.) Justice Carpeneti said that Jay's wife Annie told him that she had vetoed several of Jay's more outlandish plans for that day.

Commissioner Rhoda Billings, former chief justice of the North Carolina Supreme Court, reminisces that Jay chaired her first drafting committee. She says "I cannot imagine a better introduction into the work of the Conference. The quality of the discussions, the professional manner in which the committee did its work, the inclusiveness and respect that each member demonstrated for his or her fellows, and the wonderful camaraderie that has lasted over the years reflected the chairman and the very best that the Conference had to offer."

Rhoda recalls the time when she and her husband Don visited Juneau following the NCCUSL meeting in San Francisco. Jay arranged to come from Fairbanks to be in Juneau (some 500 miles away), to meet them when the ship docked, providing a tour of the court and the town, dinner with the attorney general of Alaska – Charlie Cole, a 36-year friend of Jay's – and stories of the fight for Alaska statehood. Rhoda says that it was almost like sitting down live with the "founding fathers."

Jay was also an athlete. In middle age, he took up running, and competed in marathons. He was a great tennis player and remained a fierce competitor until his illness finally sidelined him.

Rhoda and Don will never forget the tennis "event" in Milwaukee. No courts were available through the hotel, but the tennis diehards found some public courts – covered with water from a recent rain. Undeterred, they got towels and, on hands and knees, dried off one court and began playing. After only a few minutes of play, they were interrupted by two men who demanded that this was "their" court and that Jay, Don, et al., should leave. The intruders began to yell and make derogatory remarks, and one of them stepped onto the court and began to hit the ball with his racquet, completely interrupting the play. Jay insisted that a brawl at the courts was not the image the Conference wished to portray and convinced his fellows to abandon the court rather than engage in a fight. Then, as reported by some Conference spouses who arrived on the scene, just when the invaders were warmed up and started to play a game, the rains again descended and drove them off the court. So justice prevailed in Milwaukee!

I should add that Jay was justifiably proud of his kids not only for their academic and professional excellence – in law, social work, and medicine – but also for their athletic achievements. Judy is an outstanding skier, and former member of the U.S. Olympic Team; Mara is one of Alaska's finest runners, winning the Fairbanks Equinox Marathon at age 12, as well as an avid skier; Sarah won swimming meets as a child, and skied and ran cross-country in college; and Max is also a world-class skier.

Everybody who knew him has a story about the personal Jay, the compassionate Jay. One experience of my own, which touched me deeply, was when, shortly after my wife died, and I was working at a carrel in the Anchorage law library, Jay came along, offered words of comfort, and sat next to me to work at the adjoining carrel, thus expressing his friendship and giving silent support, as we pursued our respective legal tasks. He could have just said "hi" and sat anywhere else in that virtually empty library. But that would not have been the Jay Rabinowitz approach.

When someone we care about dies, part of us goes with him or her. The *mutuality* in the memory of conversations, debates, laughs, and other shared experiences is gone. Without the half that made it mutual, or made it shared, that package of events becomes a lonely recollection. With a public figure such as Jay, those who admired him, those who benefited by his having passed this way, can be thankful that he was here, as they express their sorrow and their admiration.

As humans, we are endowed with powerful brains, and, with them, we recognize the inevitability of death. Yet it hurts so much when death claims the ones we care about and admire.

Anne, and the rest of the Rabinowitz family: During these last few years, as health problems plagued him, we worried with you. Now, upon Jay's passing, we share your loss, and feebly try to offer solace. He was a great man. We will always remember Jay.

— Art Peterson, on behalf of Alaska's NCCUSL delegation
August 16, 2001

In Memoriam

A TRIBUTE TO CHARLES HAGANS

Charles Hagans was a talented and ethical trial lawyer. Charlie was a scrapper, a fighter, who never gave up. He told me: "When you are representing a client in trial you are their knight in battle. They expect you to fight and fight long and hard for them." Anyone who ever found herself on the other side of a courtroom battle with Charlie can attest to his tenaciousness and combativeness.

My good fortune was to be hired by the firm Charlie headed in 1979 (Hagans, Smith, Brown, Erwin and Gibbs) as the first woman lawyer in the firm and to have Charlie as one of my mentors in trial practice. Not that the experience of trying cases with Charlie wasn't gut-wrenching and nerve-wracking, but it was instructional beyond any trial practice course in the universe. In one trial, I sought refuge in Judge Souter's chambers during a break after a disagreement with Charlie about some trial procedure. Judge Souter wisely advised me that he thought Charlie was just trying to teach me trial practice in his own way. Charlie came into the chambers, and I heard him say: "Judge, I seem to have lost my associate (meaning me)." Judge Souter said, "Charlie, she's in my office, and I think you should go in there and talk to her." Charlie came into the judge's office, and we battled out our differences to emerge a united front for the rest of the trial. I always imagined Judge Souter and his staff with their ears to the door during my heated exchange with Charlie.

Charlie's demeanor was definitely more bark than bite as he always invited me to raise any differences of opinion with him, and we would work through them. I'm still amazed some 22 years later that Charlie not only agreed to hire me—a woman with a one-year-old child and only two years experience as a lawyer—but that he actually allowed me to try cases and help him try cases.

Once, after we lost a plaintiff's case, Charlie told me we just had to take our lumps and that was all there was to it. We were able to negotiate away the costs and fees judgment against our clients in the appeal, which was a relief to both of us. My recollection is that Charlie didn't charge those clients for our costs, either.

In another trial, while I was conducting redirect of our own expert physician, he changed his opinion fairly significantly on the stand. I took a big gulp and finished the examination. At the next break Charlie just said, "Weird things happen in trial, I think we are still okay." Charlie gave a superb, folksy, common sense closing in that trial. He told the jury: "You know what they are counting on? They are counting on you not doing your duty. Because if you do your duty, you know there is no evidence of negligence." The jury returned a verdict in our client's favor. What did the jury think of our expert changing his opinion on the stand? They thought we were in pursuit of the "real truth" and our witnesses were telling the truth.

Charlie was highly intelligent and loved to debate fine points of the law. He was creative in his legal analysis. You would walk into Charlie's office in those days and on his desk would be a long yellow legal pad and a few case reporters. He would be writing a brief with his fountain pen. He had beautiful handwriting and an organized and succinct legal writing style. He believed that you could say what really mattered in a few words. He wasn't one for long string citations. Like his office, his briefs and legal writings were always without clutter.

Charlie believed that the practice of law was an honorable profession, and that we must always hold ourselves to the highest, ethical standards. An incident in our practice confirmed Charlie's high ethical beliefs. In a large helicopter crash case, I discovered that there were two versions in existence of the last 100-hour inspection of the helicopter before its crash and we had produced the version that was allegedly "altered." In fear and trepidation I pondered alone in my office what was to be done. I knew I had to tell Charlie about it, and I knew I had to disclose the original version (damaging to our client) to the other parties. By this time I was a single mother of a two-year-old son and really needed my job. I had decided that I would quit, however, rather than hide the fact of the altered version. Upon consultation with Charlie, he first asked me what I wanted to do, and I told him I wanted to disclose immediately to all parties. He responded without hesitation: "Damn right! I'm not giving up my bar license for this or any other client and neither are you. What's more it's the right thing to do. Go write your cover letter, we are going to do it today." Happily I wrote the letter, proud to be in a firm where the senior partner had high ethical standards.

Charlie was not greedy. His hourly charges and the charges for all the attorneys in the firm were below the market value at the time despite some of our protests. Charlie believed in representing the clients fairly and never gouging. During the time I was an associate in the firm, I never was pressured to work ridiculously long hours or bill unreasonable hours. In fact, unless we were in trial or preparing for trial we could leave the office at 5:00 p.m. without incurring any criticism.

Charlie was always intellectually curious and had interests in many things. He was ahead of his time in becoming computer proficient and wasn't afraid of new technology. At various times I knew him to take up bread making, wine collections, coffee making, remodeling projects, and his ranch interests.

Most of the time I knew Charlie he was married to Joan Hagans and was a devoted husband. Joan's illness and subsequent death broke his heart. He then married a wonderful woman, Sally, and had a happy life with her. His last years were mostly spent at his ranch home in Oregon. He related to me how much he enjoyed spending time with their grandchildren and their extended family.

I haven't had much contact with Charlie in recent years. Ironically I had been thinking that I should visit Charlie in Oregon next time I went south and that at least I would write him on his birthday, November 10. Sadly, Charlie passed before I had these opportunities. Regretfully I never took the opportunity to thank him for his generosity of time and all he taught me.

Farewell, Charlie. In the trenches you always did what you thought was right. You were a Southern gentleman in the best sense of the phrase and a fine lawyer.

— Linda M. O'Bannon

Hagans held lifelong interest in law

Charles Hagans retired from the practice of law over six years ago, but he never lost his interest in the law. He retired to his farm in Oregon and enjoyed his horses and cattle and beautiful home, but when we spoke with him, he wanted to know all the news in the legal community that we could think to tell him. He would always ask about the judges and lawyers that he had known and his memory, as always, was prodigious. In fact, we have never known anyone in our lives with a better memory. He could recall case citations, the names of judges, other attorneys, parties, and issues, it seemed at will, from cases he had tried over the years.

We spent 10 years watching him practice law and learning, as many others, a great deal from him. There is no question but that he was a great litigator, but even more so, he was a true intellectual and a great thinker. He would ponder legal issues always looking for new ideas and new approaches. He was the unusual trial lawyer in that he knew how to and did prepare the trial record for appellate review. The issues on appeal were always at the back of his mind in any trial.

Charlie, unlike many lawyers, truly loved the law. He enjoyed litigation. We never once heard him say a disparaging remark about a jury, even when losing. He had great faith in the system, particularly in a jury, and we think his ability to communicate with them was one of his greatest assets.

Another of his litigation skills was his knowledge of the rules of evidence. We doubt there was any lawyer in the state of Alaska that was more familiar with the rules of evidence and could call them forth when needed at any particular moment.

Charlie was a credit to the Alaska Bar because he was scrupulously ethical. His clients always came first. There are, no doubt, many among us who can tell various Charlie Hagans stories and look back on times when he appeared to be difficult and unbending. However, we do not believe that these moments were born out of malice or contrariness but, rather, his constant effort to do his very best for the client.

Charlie was the ultimate gentleman and a gentle man.

—Meredith A. Ahearn & Linda A. Webb

Paralegal Association News

The Alaska Association of Paralegals (AAP) has had a productive summer. Our name change was official in July. Our web site is now on line, although it will be undergoing final stages of construction through the end of August. Visit us on the web at www.alaskaparalegals.org and keep in touch with current events such as CLEs and membership meeting speakers. Our job bank will also be on line. There is also a link from our home page to a salary survey being conducted nationwide. Please encourage your paralegals to participate in the survey. Your best resource for filling a paralegal position at your firm is through the AAP job bank. Contact Deb Jones at 770-8094 if your office has an opening for a paralegal.

MONTHLY MEETINGS

AAP's membership luncheons are held the second Thursday of each month from noon to 1:00 p.m. at the Fourth Avenue Theater. Luncheons are open to the public. The cost is $18 for non-members. Mark these dates on your calendar and treat yourself and your paralegal to lunch and listen to one of many informative speakers. Steven Van Goor from the Alaska Bar Association will discuss ethics at our September 13 luncheon. Speakers for October and November include Stephani Green from Downtown Legal Copies, who will discuss issues concerning document imaging in litigation, and Charlene Dolphin, Clerk of Trial Courts in Anchorage.

MEMBERSHIP DRIVE

Our 2001/2002 membership drive is in progress. Sponsoring your paralegal's membership in the association has many benefits for you, your paralegal and your office. Your paralegal will keep up-to-date on law office technology, have access to other paralegals knowledgeable in a variety of fields of law, and be kept current on national issues in the legal field. For membership information, please contact Peggy Hand at 263-8284.

PRO BONO AWARD NOMINATION

Many of you know Maria-Elena Walsh, executive director of the Alaska Pro Bono Program. AAP nominated Maria-Elena for the Affiliates 2001 Pro Bono Award. The Affiliates, together with the National Federation of Paralegal Associations, Inc., (NFPA), created the award to recognize and support pro bono legal work among paralegals. A $1,000 contribution will be directed to a pro bono project designated by the winner. In addition, the winner will receive a plaque and an-expense-paid trip to the Fall NFPA convention in Rochester, New York, where the award will be presented. Best of luck to Maria-Elena.

Amendments to the bankruptcy rules to become effective December 1, 2001 unless Congress acts

By Wesley H. Avery

On April 23 the U.S. Supreme Court adopted proposed amendments to the Federal Rules of Bankruptcy Procedure and ordered that they be transmitted to Congress. The period for Congressional review lasts until December 1st. If Congress makes no change to the proposed amendments during the review period, the amendments are to become effective as of December 1, 2001.

The most significant changes will be new rules designed to give parties in interest adequate notice of proposed actions by the bankruptcy court. A summary of the proposed amendments to the bankruptcy rules follows.

Rule 1007: Lists, Schedules and Statements. Rule 1007(m) shall be added to provide that if the debtor knows that a creditor is an infant or incompetent person, the debtor must include in his schedules and master mailing matrix the name, address, and legal relationship of any representative upon whom process would be served in an adversary proceeding. This will enable the clerk of the court and potential litigants to mail notices to the appropriate representative.

Rule 2002: Notices. Rule 2002(c)(3) shall be added to ensure that parties entitled to notice of a hearing on confirmation of a plan are given adequate notice of any injunction that would prohibit conduct not otherwise enjoined by operation of the Bankruptcy Code. Said notice must include in conspicuous language (viz. bold, italic or underlined text) a statement that the plan proposes an injunction, that describes briefly the nature of the injunction, and that identifies the entities that would be subject to the injunction. The notice requirement of subdivision (c)(3) is not applicable to an injunction contained in a plan if it is substantially the same as an injunction provided under the Code. For example, if a plan contains an injunction against continuing a suit against a reorganized debtor, Rule 2002(c)(3) would not apply because that conduct would be enjoined under Section 524(a)(2) of the Code after the discharge. On the other hand, if a plan provides that creditors will be enjoined from asserting claims against persons who are not debtors in the case, the notice of the confirmation hearing must include the information required under amended Rule 2002(c)(3) because that conduct would not be otherwise prohibited.

Rule 2002(g). This rule will be completely rewritten. It now clarifies that where a creditor, equity security holder or indenture trustee files a proof of claim or interest that includes a mailing address, and files a separate request designating a different mailing address, the last paper filed determines the proper address for service of process. Rule 2002(g) will also feature a new paragraph to complement Rule 1007(m) discussed above.

Rule 3016: Filing of Plan and Disclosure Statement. Under the new Rule 3016(c), any plan of reorganization that prohibits conduct that would not otherwise be enjoined by operation of the Bankruptcy Code must describe in specific and conspicuous language (viz. bold, italic or underlined text) in said plan and its requisite disclosure statements the acts to be prohibited and identify the entities that would be subject to the injunction. Like the proposed amendment to Rule 2002(c), the requirement that the plan and its disclosure statement identify the entities that would be subject to the injunction will be interpreted under a reasonability standard. If the parties in interest that would be subject to the injunction cannot be identified by name, the plan and disclosure statement will have to describe them as a class in a reasonably succinct manner.

Rule 3017: Court Consideration of Disclosure Statement. Rule 3017(f) will be added to ensure that entities whose conduct would be enjoined under a plan, rather than by operation of the Code, and who would not ordinarily receive copies of the plan and disclosure statement, are afforded due process by being provided with adequate notice of the proposed injunction, the confirmation hearing, and the deadline for objecting to confirmation of the plan. If an identifiable entity would be subject to such an injunction, and the notice of confirmation hearing, plan, and disclosure statement could be mailed to that entity, the bankruptcy court may require that they be served at the same time all others are regularly served under Rule 3017(d). If service by mail is not feasible because the entities subject to the injunction are described in the plan by class and cannot be identified individually, the bankruptcy court may require that notice be effected by publication.

Rule 3020: Confirmation of a Plan. Rule 3020(c) shall be amended such that if a plan contains an injunction against conduct not otherwise enjoined under the Code, the order confirming the plan must describe in detail all acts enjoined, be specific as to the terms of the injunction, and identify the entities subject to the injunction. The amendment also requires that notice of entry of the order of confirmation be mailed to all known entities subject to the injunction.

Rule 9006: Time. Under the present Rule 9006(f), when there is a right or requirement to do some act within a prescribed period after service of a notice, if that notice is served by first class mail three days are automatically added to the prescribed period in which the recipient must act. Fed. R. Civ. P. 5(b), which is made applicable in adversary proceedings by Rule 7005, is being changed to authorize service by electronic means if consent is obtained from the person served. In response, Rule 9006(f) shall be amended to expand the 3-day mail rule so that it will apply to any method of service except for personal delivery.

A problem has arisen in that the proposed amendments to Fed. R. Civ. P. 5(b) do not provide additional time when service is accomplished electronically. The Bankruptcy Judges for the Northern District of Illinois have publicly commented that they strongly support service by electronic means and believe that such service should be allowed even in the absence of the consent of the party to be served; in any event they oppose applying the 3-day rule to service by electronic means. In contrast, the general counsel of the Executive Office for United States Trustees supports the adoption of the 3-day rule as a means of encouraging electronic service while avoiding prejudice to recipients of those notices due to electronic transmission errors or incompatible message formats. The Bankruptcy Rules Advisory Committee of the Judicial Conference of the United States, which advises the Supreme Court on rule changes, considered these comments, and even though the Committee strongly believes that the bankruptcy and civil rules should be consistent, the Committee concluded that applying the three-day mail rule to electronic transmission would be best.

Rule 9020: Contempt Proceedings. This rule, as amended in 1987, delayed the effectiveness of an order of contempt for ten days from its service and rendered it subject to de novo review by the district court. This limitation on contempt power was added to Rule 9020 in response to the Bankruptcy Amendments and Federal Judgeship Act of 1984, which provided that bankruptcy judges are judicial officers of the district court but did not specifically grant them contempt power. As explained in the committee note to the 1987 amendments to this rule, no decisions of the courts of appeals existed at that time concerning the authority of a bankruptcy judge to punish for contempt under the 1984 Act and, therefore, the rule as amended in 1987 recognized that bankruptcy judges may not have this power. Since 1987, courts of appeal have consistently held that bankruptcy judges do have the power to issue civil contempt orders. See, e.g., Matter of Terrebonne Fuel and Lube, Inc., 108 F.3d 609, 612-613 (5th Cir. 1997); Cox v. Zale Delaware, Inc., 239 F.3d 910, 917 (7th Cir. 2001).

To the extent that Rule 9020 as it is presently written delays the effectiveness of civil contempt orders and requires de novo review by the district court, the Bankruptcy Rules Advisory Committee believed it to be unnecessarily restrictive in view of decisions recognizing that bankruptcy judges have the power to hold parties in civil contempt. Rule 9020 therefore shall be changed to delete the provisions that delay for 10 days the effectiveness of an order of civil contempt issued by a bankruptcy judge and that render the order subject to de novo review by the district court. Other procedural provisions in the rule are replaced with a statement that a motion for an order of contempt made by the United States Trustee or a party in interest is a contested matter to be governed by Rule 9014. The amendments to this rule cover a motion for an order of contempt filed by the United States Trustee or a party in interest. This rule, as amended, does not pertain to a contempt proceeding initiated by the court sua sponte.

Whether the court is acting on a motion filed by a party in interest or is acting sua sponte, this amendment to Rule 9020 is not intended to affect either the contempt power of a bankruptcy judge or the role of the district court with regard to contempt orders. The general counsel of the Executive Office for United States Trustees in Washington, D.C. stated strong opposition to the proposed amendments and advocated retention of the existing rule. The basis of her objection is that she is unpersuaded that the judicial developments governing the contempt powers of the bankruptcy courts justify the deletion of the more elaborate system of contempt actions in place under the current rule. The Chief Bankruptcy Judges of the Ninth Circuit have also expressed concern that this proposed amendment could be read to undercut the court's authority to exercise its contempt power sua sponte. In response to these comments, the Bankruptcy Rules Advisory Committee has recommended that the amendment should be accepted as proposed, as issues relating to the actual contempt power of bankruptcy judges are substantive and best left to statutory and judicial development.

Rule 9022: Notice of Judgments. Rule 9022(a) is amended to authorize the clerk to serve notice of entry of a judgment or order of the bankruptcy court by any method of service, including service by electronic means, if the person served consents.

Adequate notice of legal proceedings has always been the hallmark of due process. If the proposed amendments promote the efficient transmission of information regarding the upcoming hearings and actual rulings of the bankruptcy court, all parties in interest will surely benefit.

The author is an attorney in Los Angeles.

What law school never taught you about forgery

By Hannah McFarland

Mark Twain once said there are three kinds of lies: lies, damned lies, and statistics. Ironically, the eminent writer forgot a fourth: forgery. Handwriting analysis is not just the domain of graphologists who interpret personalities for employers. There is also a separate profession called document examination, the stuff of which successful lawsuits are made.

Truth is, fraud by forgery is not foolproof. No two people sign their names the same way. Nor, for that matter, does one single person—your own signature varies. A document examiner determines the author of a given writing or printing sample by identifying a combination of handwriting traits that are unique to one person only.

Document examiners generally come from one of two backgrounds. Many document examiners, especially those in private practice, studied graphology prior to obtaining training in document examination. While graphology provides eye training that is helpful in document examination, graphology study by itself is not sufficient to qualify one as a document examiner. Specific training in document examination is needed. Other document examiners are government trained by the U.S. Secret Service or F.B.I. It is important that an examiner have specific document examination training and not just a background in forensics, fingerprints, DNA or a related field. Document examiners from both backgrounds testify in court on a regular basis.

Because nobody ever writes exactly the same way twice, a document examiner needs to determine how much a person varies his or her handwriting. Doing this requires a sufficient amount of authentic or "known" writing— to compare against the questioned handwriting. A document examiner's wish list includes the following:

First, we prefer original documents. Photocopies do not reproduce the finer features of handwriting such as pressure, ductus, and line crossing. Use of originals also eliminates the possibility of a forgery by cutting, pasting, and copying an authentic signature onto a document. Indeed, the absence or loss of an original can itself be suspicious—especially if the destruction or loss of an important document is out of character for the situation. Even so, originals are not always available. In such cases, it is common for document examiners to give qualified opinions of identification when examining photocopies.

Second, document examiners need a sufficient amount of known writing, called exemplars, which we compare with the questioned writing. Many cases involve questioned signatures. In such cases, five to twenty-five known signatures suffice.

Third, a person's handwriting or handprinting habits can change over time. Consequently, the exemplars and questioned writing should be contemporary with each other. Ideally, both bodies of writing should be written within a year or two of each other.

ILLUSTRATION EXPLANATION

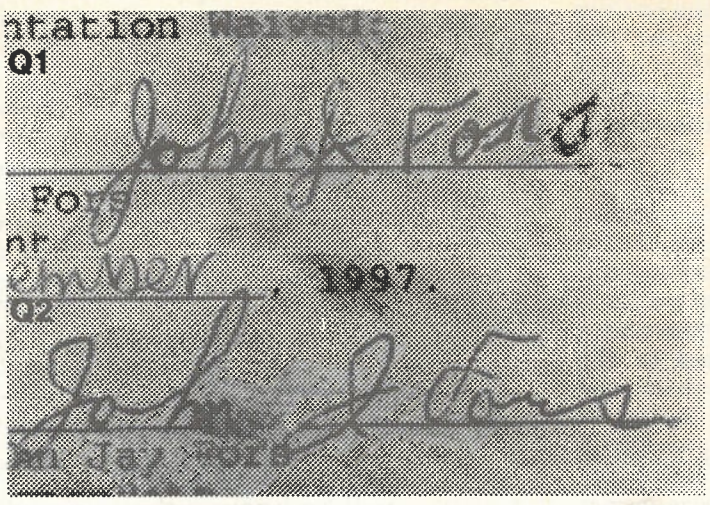
John J. Fors disputes that he signed Q1 and Q2, which appear on family law documents. Undisputed signatures, K1 and K2, are also from the court file and used for comparison against the questioned signatures.

The overall form or shape of the letters in Q1. and Q2 are similar to Ki and K2. The flow or movement of the pen is very awkward and tremor like. This is consistent with one attempting to imitate another's signature. Normal writing is smooth and fluid as seen in Ki and K2. The slow, tremor like movement in Qi and Q2 is a dead give away that the signatures are not genuine. As well as the patching, tracing and erasing. The background of Qi. and Q2 are blemished due to coffee having been spilled on each signature.

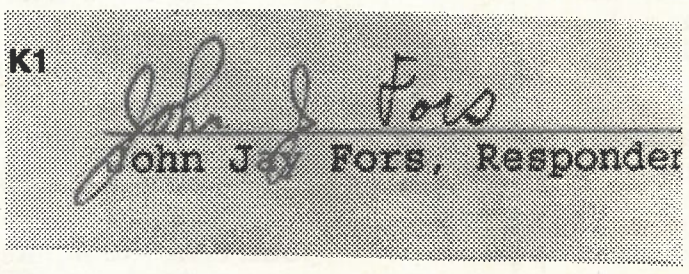
The upstrokes in each J of Ki and K2 are darker than the downstrokes due to increased pressure. This is an unusual pressure pattern not seen in the questioned signatures. It is typical of a forger to imitate the gross features of a signature. But to observe and imitate the subtleties such as pressure is extremely difficult.

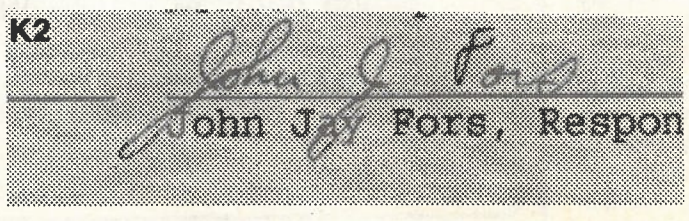
The author is a consultant in Seattle.

QUESTIONED



KNOWNS





Legal profession urged to act on behalf of children

The president of the American Bar Association has challenged American lawyers to undertake an all-out effort to "act, represent, advocate, and collaborate" on behalf of America's children.

A new report, America's Children Still At Risk, says that although the lives of America's children have improved over the past few years, much more remains to be done to help children in need.

The report, released at the opening of the ABA's annual meeting Aug. 3, noted glaring areas of unmet legal need for America's most vulnerable children, and found that both the quantity and the quality of representation for children needs improvement.

"Children are going without representation in situations where rational adults would retain lawyers," said ABA President Martha Barnett, who released the report at a news conference during the ABA's annual meeting. " In divorce proceedings, in determinations about foster care, in immigration proceedings, and even in criminal matters, vital decisions affecting children's lives are made without their interests being fully acknowledged or represented. American lawyers can make a difference in the lives of these children - and they should." Jamie Forman, chair of the ABA Steering Committee on the Unmet Legal Needs of Children, which produced the report, said, "Lawyers are uniquely committed to protecting the rights of Americans. That commitment must extend to America's children. We must act not only as legal representatives, but as public advocates for their well-being."

"From the day they enter law school, aspiring lawyers should begin to focus on the special needs of children. They should be offered courses and clinical programs that teach them the nuts and bolts of representing kids, and they should have opportunities to work across disciplines to gain a fuller picture of children's issues," said Ron Cohen, chair of the ABA Litigation Section, one of the key sponsors of the report's Recommendations Summit. America's Children Still At Risk is an in-depth examination of both the legal issues confronting children, and the efforts of lawyers nationwide to address them. Building on the landmark 1993 report America's Children At Risk, this new study offers comprehensive information on the unresolved legal issues facing children today.

THE REPORT EMPHASIZES THE NEED FOR LAWYERS TO REACH OUT TO CHILDREN WHO ARE ENMESHED IN THE LEGAL SYSTEM, USUALLY AGAINST THEIR WILL AND TO THEIR CONFUSION AND DISTRESS.

The report emphasizes the need for lawyers to reach out to children who are enmeshed in the legal system, usually against their will and to their confusion and distress. Although the ABA has long called for independent legal representation for children in all judicial proceedings that affect their lives, the reality falls far short of the goal. In courtrooms and in the broader community, lawyers should dramatically increase their pro bono work, not only as representatives for children but also as their advocates, says the report.

THE REPORT NOTES SOME UNUSUAL APPROACHES THAT ARE REAPING POSITIVE RESULTS.

The report notes some unusual approaches that are reaping positive results. Children's Advocacy Centers bring a multi-disciplinary approach to cases of child abuse, sparing children the trauma of multiple interviews and ensuring better coordination of medical, psychological and legal help. Teen Courts afford an alternative to overcrowded juvenile courts, and allow teenagers to prosecute, defend, and judge their peers for minor offenses. School-based legal clinics bring help to children where they might not expect it - on their own turf.

The report focuses not only on the legal needs of children in the juvenile justice system and the welfare system, but also on their needs in schools, in rural and Native America, in the worlds of entertainment and the Internet, in their transition into the adult world, and in the health care system. It suggests that programs that place lawyers in non-traditional settings such as schools may help children navigate the legal system and protect their own interests more effectively.

The Steering Committee on the Unmet Legal Needs of Children undertook a collaborative effort to reach out beyond the legal profession to those who work with children on a broad range of issues.

The report's recommendations have not been presented to the ABA's policy-making House of Delegates and so do not represent official policy of the American Bar Association.

The Alaska Court System's new model parenting agreement

☐ Steve Pradell

In April of 2001, the court released form DR-475, a 24 page Parenting Agreement designed by Fairbanks Superior Court Judge Steinkruger. All Alaska family law practitioners should become familiar with the new form, which has a page containing six paragraphs of "instructions" stapled to the front of the document.

Favorably, the form is detailed and covers many important custody related issues. It is much more thorough than the 1/2 page "Visitation Agreement" section of the DR-105 Petition for Dissolution of Marriage (With Children) which contains the deplorable paragraph "We do not want to state specific visitation times here. We agree that we will be able to amicably decide in the future on reasonable visitation times." This sentence alone has probably caused more litigation than any other in the document.

The new parenting form is written in understandable language and could be completed by *pro se* parties, to be reviewed by counsel if requested. Completion of the form by a client before a consultation could save time and attorney's fees, and allow the client to think about the issues prior to the meeting. A version of the form should be incorporated into the dissolution packet. The form provides parties with alternative answers to custody questions, which can be chosen by checking off a box. The format of the document addresses issues with parents living in the same and different communities, and has separate provisions for younger and older children. Numerous issues are addressed, including school year and summer schedules, holidays, transportation, vacations, decision making, child care, taxes and Permanent Fund Dividends.

The model parenting agreement is a good start and a much-needed addition to the set of family law materials provided by the court system in Alaska. However, apparently the form was not distributed in advance to all members of the family law section for input before finalization. The form should be reviewed by practitioners and revised once input from the legal community is received.

The model agreement allows for the parties to choose their own alternatives to the selections provided, by giving a box marked "Other" and a blank space. Unfortunately, the blank spaces are generally only one line long and are too small to be of much use to parties who create detailed solutions. Some areas do not have the "other" choice and it should be included with all of the selections.

There is a spelling error in the middle of page 5; "awav" should be "away." There is no reference in the form to who is to purchase medical insurance, how it is to be provided, and how uninsured costs are to be split.

Although there are references to Alaska law in the form itself, the laws are not provided. The 2/3 page of "instructions" is insufficient to explain to lay parties the implications of their decisions. Dissolution form (DR10 ANCH) contains 16 pages of instructions. For example, although reference is made to what Alaska Law and Federal law requires concerning federal taxes, the statutes themselves should be accessible to the parties completing the form.

THE 2/3 PAGE OF "INSTRUCTIONS" IS INSUFFICIENT TO EXPLAIN TO LAY PARTIES THE IMPLICATIONS OF THEIR DECISIONS.

Moreover, the form suggests that children ages 3 and above have Christmas Eve visitation until 10:00 p.m., clearly a late hour for young children. All times set forth in the agreement should be left blank or otherwise allow the parties to select their own times.

The model agreement provides a harsh alternative for those who neglect to give timely annual summer visitation notice by April 1, providing, "If the parent has not given notice of their intention to exercise summer visitation, the parent the child(ren) are with may assume there shall be no summer visitation and make other plans with the child(ren)." How is this notice to be given? The form needs to be specific. What proof is necessary for the parent providing notice? Does the notice need to be sent or received by the custodial parent by the agreed upon date? With such a harsh penalty, details must be given to avoid disputes. Does a parent who provides notice one day late miss the entire summer visitation period? Does this alternative give too much power to the custodial parent, or incentive to indicate that they never received any notice?

The dispute section provides for arbitration, but only indicates that either parent "may initiate dispute resolution..." However, if the other parent refuses to attend arbitration there is nothing in the document which requires attendance. The appeal process from unsuccessful dispute resolution is undefined.

• If the parties have more than one child, there is no option which allows one parent to claim one or more child's PFD and the other parent to claim those of the other child(ren).

• The forms do not have places for the parents to initial each page, as they do in a Dissolution Petition. Given the possibility of argument as to which were the agreements of the parties, or to otherwise make unilateral modifications to the agreement, it makes sense to require parties to initial each page.

The Parenting Agreement form can be used for initial custody determinations or modifications to existing custody orders. At the beginning of the form or on a separate "notice of filing" document, there should be an indication for the approving judge of the status of the case, (i.e. divorce, dissolution, custody matter involving unmarried parties, etc.) and as to whether this is an initial determination or a modification. The dissolution agreement has a section that the parties complete as to whether or not either party is represented by counsel or whether either party received legal advice. A similar provision should be inserted into the Parenting Agreement. Finally, since the court can approve certain changes without a hearing and other types of modifications may require a hearing, the parties could advise the court on the form whether they believe that a hearing is necessary, so the court has this information in determining whether or not one should be set.

None of the above-suggested changes are earth shattering. The document is a useful tool, which will benefit lawyers, represented and unrepresented parties, as well as judges in settlement negotiations to flush out the positions of the parties and attempt to narrow the issues in dispute.

ABA groups recommend court 'best practices' for disabled

The American Bar Association on July 30 released four new publications to assess and respond to he needs of the disabled in court proceedings.

The reports were compiled by the bar's Commission on Legal Problems of the Elderly and the Center for Children and the Law should help state courts better serve the needs of adults and children who receive benefits from Social Security Administration (SSA) and who cannot manage their own income and resources.

The publications deal with the representative payment (RP) system, through which benefits are paid to over 6.5 million people, more than half of them children. Representative payees, designated by the SSA, have guardian-like duties to manage and pay out benefit funds for incapacitated beneficiaries.

Two of the publications focus on courts exercising guardianship over adults, and two focus on juvenile and family courts. In each case, a short pamphlet provides an overview of the RP system and recommended "best practices" that would help courts improve coordination with the SSA, while additional curriculum guides offer more in-depth information, including specific training materials. All four publications are intended to strengthen judicial decision-making and oversight in cases involving incapacitated adults and juveniles who receive benefits through SSA.

The project grew out of a 1995 review of the RP system conducted by an advisory group appointed by the Commissioner of Social Security and led by Nancy M. Coleman, director of the ABA Commission on Legal Problems of the Elderly. The review found poor coordination and little information sharing between SSA and state courts. The federal State Justice Institute and SSA provided funding to produce the publications, which are a joint effort of the American Bar Association's Commission on Legal Problems of the Elderly and Center on Children and the Law.

THE NEW PUBLICATIONS ARE:

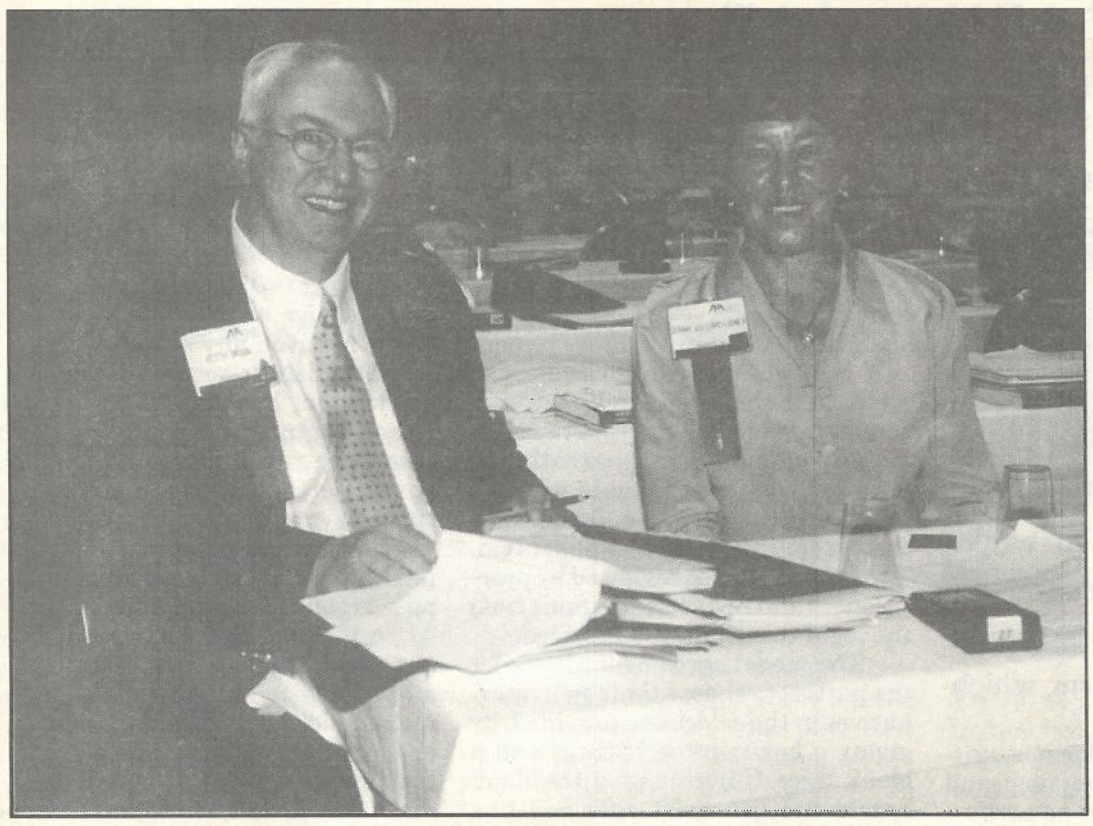
• State Guardianship and Representative Payment - Orientation/Best Practices Pamphlet for Courts Exercising Guardianship Jurisdiction

• State Guardianship and Representative Payment - Model Curriculum for Courts Exercising Guardianship Jurisdiction

• Representative Payment and Kids - Orientation/Best Practices Pamphlet for Juvenile and Family Courts

• Representative Payment and Kids - Model curriculum for Juvenile and Family Courts

The recommendations in these publications in many instances have not been presented to or adopted by the ABA's policy-making House of Delegates, and so do not represent official policy of the American Bar Association. Single copies of the publications may be obtained without charge, as long as supplies last, through the ABA Commission on Legal Problems of the Elderly, 740 15th Street N.W., Washington, D.C. 20005, phone 202/662-8688. The full text of "Representative Payment and Kids" is also available on the Web at http://www.abanet.org/child/home2.html.



Keith Brown and Donna Willard celebrate Brown's last day as State Delegate, finishing his second nine-year term on the American Bar Association House of Delegates. Brown said farewell to the ABA during its August annual convention in Chicago..

Quote of the Month

"There are not enough jails, not enough police, not enough courts to enforce a law not supported by the people."

— *Hubert Horatio Humphrey*

TOP 10 MALPRACTICE TRAPS

1. Missed deadlines
2. Stress and substance abuse
3. Poor client relations
4. Ineffective client screening
5. Inadequate research and investigation
6. Conflicts of interest/matter
7. Inappropriate involvement in client matters
8. Lack of adequate documentation of work
9. Zealous efforts to collect fees
10. Turning a blind eye to the threat of malpractice

—American Bar Association Standing Committee on Legal Malpractice

They never taught me office management

By William A. Schwab

Going to Temple University's Beasley School of Law, trial advocacy was an integral part of the school's curriculum. Every year we had pass/fail courses that we had to take to prepare us to go into the courtroom, or at least to know what occurs in a courtroom.

One of the items that was missing from my law school education (and I believe is the norm in legal education), is that while I may have learned how to think like a lawyer; I may have learned how to read like a lawyer; and I may have learned to act like a lawyer in the courtroom, I never learned how to manage a law office. No courses were offered.

My sole experience in practice management has been one of trial and error and reading. Some things work, some things don't. I didn't realize for the longest while what was at the cost of doing a will. I found out for a number of years I charged less than what it cost me to prepare one.

I didn' t go through an exercise of seeing what it actually cost me each year to operate, and then from there decide what my hourly rate should be in order for me to pay the bills and to take something home. I didn't know who to contact to look at buying a telephone system or a computer system or how to attract business. These are things I should have thought about, but I didn' t. I've gotten better, but I still get caught napping.

Practice management should not be a trial and error process like I experienced. Vast resources are available through in-state and local bar associations. Our general practice section has a committee on practice management which is great resource. A number of private companies run one-day seminars that are geared for office management which is something an attorney may wish to consider.

Most important for practice management, you must be aware of your office and how it runs. Your secretary should not be the one who manages the office. She doesn't have the vested interest in it. You do. Take an active role, know your vendors, know why you use a particular vendor, know about your service contract for the copiers. I have one copier that is so old that the amount of the service contract is such that I am seriously looking to replace the copier with a newer machine which will only cost me several hundred dollars more than the annual maintenance contract. Does having an annual maintenance contract make sense? It may for some equipment like copiers, but not for computers and dictating machines, etc.

In essence, practice management is all about being aware of your office and your practice and your needs and your clients' needs.

The author is the editor of GPLink, the newsletter of the American Bar Association Solo, Small Firm and General Practice Section.

Anchorage Clerk of Court retires after 30 years of service

Charlene Glynn (Dolphin) during her early years with the Alaska Court System, circa. mid-1970's.

When Charlene Dolphin first came to work for the Anchorage legal community in the late 1960's, Jimmy Hendrix and the Beatles still had new hits on the radio. Most phones were rotary-dial, desktop computers were far in the future, and you couldn't perk up a slow afternoon with a fresh-ground latte. "Velcro" and "digital" were not everyday terms. Speaking at Dolphin's recent retirement party honoring her 30 years of state service, Justice Robert Eastaugh used these examples and others to help the many friends, colleagues and family members in attendance appreciate just how long it's been since Dolphin began leaving her mark on Alaska's justice system.

During her early years with the state, Dolphin worked for the Anchorage DA's office. Seaborn Buckalew, Jr., and Hal Tobey were the District Attorneys, directing a group of Assistant DA's that included Justin Ripley, Edmund Burke, Gail Roy Fraties, and Justice Eastaugh. Eastaugh remembers Dolphin then as someone who quietly and effectively took charge, "accepting no nonsense, and tolerating no foolishness or sniveling."

After Dolphin joined the Alaska Court System in the early 1970's, she became a tireless advocate for efficient and fair court procedures. She served in a number of capacities over the years—from Rural Court Training Assistant to Anchorage Clerk of Court to Assistant Area Court Administrator for the Third Judicial District. Throughout, she was responsible for many efforts to streamline and clarify court processes.

Eastaugh particularly remembers Dolphin's "passionate defense of court premises" from the warehousing of post-trial exhibits. In the long-running debate about how long trial exhibits should be retained by the court, Dolphin always argued for their release as soon as possible after trial. Despite much resistance from those in the appellate world who urged longer retention, Dolphin held firm for many years. According to Eastaugh, he has seen "no signs of mellowing" in Dolphin's passionate approach to her work, but at least the debate over exhibits is now resolved: "Charlene has graciously agreed to store all trial exhibits in her basement until all appeals are concluded," he said.

Presiding Judge Elaine Andrews, who worked with Dolphin for over 20 years, credits her with many fundamental improvements in the way the court system functions. Dolphin served on countless committees, implemented innumerable court policies and procedures, and brought boundless energy to her work for over three decades. According to Andrews, Dolphin's analytical skills, administrative acumen, and legendary tenacity will make her shoes very hard to fill.

"I don't know how we're going to do it without you," Andrews said to Dolphin at the close of her remarks. From the size and warmth of the crowd, it was apparent that many others were wondering the same thing.

Long-time Anchorage Clerk of Court Charlene Dolphin, L, and her husband, Dale, enjoy the festivities at her recent retirement party in the Jury Assembly Room of the Nesbett Courthouse.

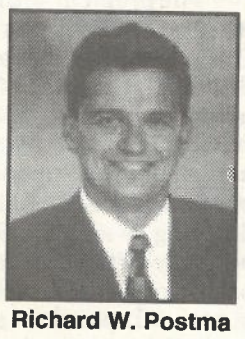
Charlene Dolphin at her June 31, 2001, retirement party in the Nesbett Courthouse in Anchorage.

by Barbara Hood

Photos courtesy of Dale Chavie and the Alaska Court System

Bar People

Postma joins Lane Powell



Richard W. Postma

Richard W. Postma has joined the law firm of Lane Powell Spears Lubersky in the Anchorage office as an associate. He concentrates his practice in the area of litigation.

Prior to joining Lane Powell, Postma practiced defense litigation at Delaney Wiles, Hayes, Gerety, Ellis & Young in Anchorage. He also practiced as a special assistant U.S. Attorney for the U.S. Army JAG Corps, primarily in a criminal practice.

Postma received his J.D. from the University of Denver College of Law in 1994, where he was a member of the University of Denver Law Review. He received his Bachelor of Science in Business Finance from the University of Colorado in 1991. Postma currently resides in Anchorage.

Justice Bryner appointed as Uniform Law Commissioner

Justice Alex Bryner was recently appointed as a uniform law commissioner for the State of Alaska to the National Conference of Commissioners on Uniform State Law (NCCUSL). The NCCUSL is comprised of commissioners from each state, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. The purpose of NCCUSL is to promote uniformity in state law on all subjects where uniformity is desirable and practical. The Uniform Commercial Code is a product of the NCCUSL.

Justice Bryner just attended the 2001 annual meeting of NCCUSL, which was held in White Sulfur Springs, West Virginia, in August of 2001.

Bob Bundy joins Dorsey & Whitney LLP

Robert C. Bundy has joined the international law firm of Dorsey & Whitney LLP as a Partner in its Anchorage office.

Bundy comes to Dorsey after serving as the United States Attorney for the District of Alaska since 1994. In that capacity, he directed criminal prosecutions and civil litigation for the federal government in Alaska. Bundy's work included matters related to civil and criminal environmental enforcement, fisheries enforcement, health care and bank fraud, Qui Tam/False Claims Act, personal injury and medical malpractice defense.

Bundy was selected by Janet Reno to serve on the 19-member Attorney General's Advisory Committee, where he also served as chair of the Environmental Issues Subcommittee and as a member of the Civil Issues and Native American Issues Subcommittees.

Prior to his public service, Bundy practiced in the Anchorage office of Bogle and Gates, where he focused on complex civil and criminal litigation, including commercial, toxic tort, aviation, products liability, antitrust, personal injury defense, professional malpractice and environmental matters. Bundy has also held several positions within the public sector in Alaska, including Chief Assistant District Attorney, Assistant Attorney General, Assistant District Attorney and District Attorney.

"Bob's familiarity with Alaska and his substantial experience with complex commercial litigation in these areas make him a valuable asset to our office," said Jim Reeves, Partner-in-Charge of Dorsey's Anchorage office. "His skills blend well with the existing practice areas we emphasize in this office. Bob also has specific knowledge and experience that give him unique value to clients served by other offices throughout the firm."

Bundy will be a member of Dorsey's trial group, focusing his practice in several industry-specific sectors. "Dorsey gives me a great opportunity to practice in multiple areas, and I'm excited to translate this benefit to my clients who will rely on the firm for a range of legal services," said Bundy.

Bundy has received several awards for his outstanding professional and civic leadership. He graduated *cum laude* from the University of Southern California in 1968 and received his law degree from Boalt Hall, University of California, Berkeley in 1971. Bundy is a member of the Alaska, California and Anchorage Bar Associations, currently serving as Chair of the Alaska Bar Association Rules of Professional Conduct Committee, Co-Chair of the Gender Equality Committee and member of the Ethics Committee. He has served on the faculty of the National Institute for Trial Advocacy since 1986. Bundy is admitted to practice before the U.S. District Court for the District of Alaska and the Ninth Circuit Court of Appeals.

— Press release

The problem of 3G wireless internet standards

3G Wireless Internet: Not ready for prime time

BY JOSEPH KASHI

Current methods of accessing the Internet through wireless connections have two major drawbacks: narrow bandwidth and slow speed, combined with a real lack of advanced features. These drawbacks are inherent in our current wireless telecommunications standards.

True high speed Internet access requires the development and implementation of entirely new telecommunications equipment and generally accepted communications protocols to facilitate the connection between a remote Internet unit and the wireless carrier, commonly termed 3G, an acronym for Third Generation Internet.

Unfortunately, there are no universally accepted 3G standards and none are in sight; the result is a modern equivalent of the Tower of Babel. Consequently, 3G deployment is still several years away in the United States, with 2002 being the earliest projected deployment in the U.S., although Japan and Europe will probably begin initial 3G deployment before then.

MANY SERIOUS PROBLEMS LOOM

There is not enough demand to assure financial success (*Infoworld, March 26, 2001*) and that has delayed the entry of some major carriers into the market. Remember the Iridium satellite phone network that cost billions to launch, obtained hardly any customers and was sold off in bankruptcy for next to nothing?

The wide microwave frequency bandwidth needed for 3G Internet may not be available: other military, governmental and commercial users are already using most of the proposed bandwidth. The FCC is unlikely to evict them for a variety of economic, technical and national security reasons and has further determined that there is no readily available alternative bandwidth. (*New York Times, March 31, 2001*).

THE PROBLEM

In addition to the well-known demise of many Internet companies, major trunk telecommunications carriers themselves are suffering from cash flow problems, slower than expected growth, and over-capacity, causing them to delay implementing the expensive new, and possibly incompatible, equipment upgrades necessary to implement any form of 3G wireless Internet.

An agreement upon universal standards for wireless electronics is obviously crucial: Unless devices and the telecommunications infrastructure speak the same electronic language, then no communication is possible. Further complicating 3G is a strong disagreement, with no sign of resolution, between North American, Asian and European telecommunications carriers about which 3G technical protocol to implement. Without agreement upon a single world-wide 3G protocol, handsets sold in North America will not work in Europe or Japan and vice versa. In any event, there are few 3G handsets even available at this time and broad disagreement about what physical form a 3G device should even take.

OLD ISSUES

The problem with divergent wireless technologies is not new: The United States currently has three different versions of wireless technologies in place, even though Europe and most of the rest of the world primarily rely upon the GSM cell phone standard. Early attempts at devising a single 3G standard met not only with international political problems but also technical disagreements: Japanese and European manufacturers focused upon a WCDMA (Wideband Code Division Multiple Access standard), which differs substantially from many current U.S. ventures.

Europe tends toward developing a single universal standard to be implemented by International Telecommunications Union (ITU) regulation. The ITU is trying to create an umbrella "super-standard" that would allow not only CDMA and WCDMA to operate, but also make room for TDMA wireless technologies but it's an open question whether such a standard can be devised and generally accepted, even if technically possible.

The United States, on the other hand, has enunciated a policy of letting the market decide which 3G protocol makes the most technical and commercial sense. Aside from the risk of continuing incompatibility with the rest of the world, such a policy delays widespread 3G service. Yet, it does have a major potential advantage: delay may result in technical leapfrogging where US customers may eventually see a long term technological solution. Most of us recall when a 64/128 Kpbs ISDN line was highly sought, particularly as Americans became aware of "fast" ISDN lines becoming widely available in Europe as a result of governmentally mandated standards. Yet, ISDN had its drawbacks—its speed was relatively slowed and inflexible rather than scalable, and ISDN was expensive to install. Much faster and less expensive DSL services soon overtook ISDN, rendering the substantial investment in ISDN obsolete.

THE TECHNO POLITICS

International commercial politics clearly plays a role in the dueling 3G standards along with honest disagreement about which 3G protocol makes the most technical sense. However, even within North America, different carriers are trying to implement incompatible protocols, jockeying for position and trying to extend existing equipment investments. Thus, 3G's foreseeable future looks similar to the initial implementation of cell phones in the late 1980s and early 1990s where cell phones would connect only to the home carrier's limited network, roaming was not an option, the range of workable cell phone models was quite limited and the overall situation was not very far from chaos.

Given that the whole point of wireless Internet is to be connected wherever you might go, the current lack of standards bodes ill for truly mobile high speed connectivity. Without substantially greater bandwidth, many promising 3G features, such as Texas Instrument's security scheme using wireless transmission of user fingerprints, may not become practical for many years.

Initial 3G implementations proposed for the United States propose an initial speed of 144 kilobits per second (Kbps), not quite three times as fast as current 56K dial up modems and slightly faster than ISDN. Over the next few years, proposed 3G performance will increase to 384 Kbps, somewhat faster than the slowest DSL speeds now available. 384 Kbps would provide quite useful performance for a handheld unit. Near the limits of technological foreseeability, vendors are extrapolating 3G performance to speeds as high as 2.4 gigabytes per second, and perhaps beyond.

Initial plans for major U.S. telecommunications carriers are:

Sprint: CDMA2000 network with initial speed of 144 Kbps, data rates of 307 Kbps by 2003, and eventual speed of 2.4 megabits per second.

Verizon: CDMA2000 network but no initial performance released.

Cingular: GSM network with GPRS (Global Packet Radio Service) in some markets. No initial performance released.

AT&T: Network based upon WCDMA and UTMS standards which, at least in their initial implementations, are not compatible with other carriers' CDMA2000 networks.

CURRENT STANDARDS

In order to understand where 3G standards may converge, let's examine current standards. First generation mobile systems were analog devices, akin to your home voice telephone, and used a form of cellular digital packet data. These CDPD phones were essentially a handheld but old fashioned telephone without any significant data or computing capacities. Because analog CDPD phones occupied an entire wireless channel, overall infrastructure capacity was more limited and thus analog phone service was, and remains, more expensive per user minute.

Many current second generation mobile cellular/PCS technologies, particularly in Europe, use an international standard known as GSM (Global System for Mobile communication). This is one of several digital mobile telephone standard using TDMA (time division multiple access) multiplexing, where a particular digital phone channel is subdivided into several very short time slots, each on the order of 40 milliseconds. Each of these time-multiplexed subchannels can be used by separate devices for a short period of time before yielding to other traffic, with this time division cycle repeating on a consistent basis. Current TDMA protocols, accordingly, may limit the time, and thus the bandwidth, available to a particular device, thus reducing wireless Internet performance. GSM systems can operate at either 900 megahertz or 1800 megahertz. Some of the implementations of GSM include the following current standards:

1. SMS (short message service).
2. WAP (wireless application protocol).
3. Blue Tooth.

GSM is primarily a European standard rather than an American standard and has been advanced particularly by Nokia.

D-AMPS/NADC TDMA (IS-54, IS-136 and TIA/EIA-136) is an American implementation of TDMA (time division multiple access), a current standard widely used in America. D-AMPS (digital-American mobile phone service) was originally an interim standard (IS-54) for digital cellular service using the 850 megahertz band. IS-136 is similar but provides for both digital service in the 850 megahertz band and personal communications services in the 1.9 gigahertz bands. Using the higher frequency band allows for greater bandwidth, and hence allows greater band width or alternatively more channels per system.

The current TDMA IS-54B standard allows caller authentication, calling number ID, message waiting and voice privacy. One advantage of extending current TDMA protocols might be backward compatibility to existing cell phone structures. However, TDMA is also extensible to a range of new features including broadcast short message service and packet data. TDMA uses a 40 millisecond frame divided into six small slots, two of which are used for full-range voice cellular service. Current versions of TDMA, though, are primarily concerned with providing efficient, high quality voice communications with a decreased number of dropped calls, and the ability to hand off between digital and analog channels in areas of poor reception. Current TDMA protocols are not particularly optimized for wireless computing.

PDC (personal digital cellular) and PHS (personal handyphone system) are other current systems based upon a form of TDMA used in Japan.

CDMAOne (IS-95) refers to a "code-division multiple access wireless protocol". CDMAOne operates at either 800 megahertz or 1.9 gigahertz with relatively slow data speeds.. A further CDMA development, IS-95D, bundles together to 8 separate channels, if available during periods of low demand, and thus provides faster data speeds. CDMAOne can be considered a progenitor of maturing third generation CDMA systems.

Because current cellular wireless standards do not efficiently work with data, despite jury-rigged attempts to make current digital phones more useful for wireless computing, there has been a great deal of debate about the most appropriate form of third generation mobile systems. No single standard has yet appeared, although it appears that some form of CDMA may become widespread in North America along with TDMA networks. Among the vying CDMA standards, the technical capabilities of CDMA2000 and WCDMA are indistinguishable, resulting in a choice which is driven fundamentally by commercial and political considerations.

It's all so reminiscent of Beta versus VHS.

OTHER WIRELESS STANDARDS

WAP (Wireless Application Protocol) is a defacto application programming standard to facilitate the

Continued on page 23

Trust account refresher

☐ Kenneth P. Eggers

Recently, I have received a number of telephone calls from lawyers concerning their trust accounts. Most of the questions can be answered by referring to Rule 1.15 of the *Alaska Rules of Professional Conduct*.

Funds of clients or third persons that are in a lawyer's possession in connection with a representation must be kept in a separate account maintained in the State where the lawyer's office is situated, or elsewhere with the consent of the client or third person.

I have been asked if lawyers can earn interest on their trust accounts. Although trust funds can be put into interest-bearing trust accounts, the lawyer cannot personally benefit from any interest earned on these funds. In fact, Rule 1.15 requires lawyers to have an interest-bearing trust account, unless the lawyer affirmatively elects not to do so. These are the so-called IOLTA (Interest On Lawyers' Trust Accounts) accounts which are provided for in Rule 1.15. Rule 1.15(d) and (e) provides as follows:

(d) Unless an election not to participate is submitted in accordance with the procedure set forth in paragraph (e), a lawyer or law firm shall establish and maintain an interest bearing insured depository account into which must be deposited funds of clients which are nominal in amount or are expected to be held for a short period of time, but only in compliance with the following provisions:

(1) No earnings from such account shall be made available to the lawyer or law firm and the lawyer or law firm shall have no right or claim to such earnings.

(2) Only funds of clients which are nominal in amount or are expected to be held for a short period of time may be deposited in such account. Funds which reasonably may be expected to generate in excess of one hundred dollars interest may not be deposited in such account.

(3) The depository institution shall be directed by the lawyer or law firm establishing such account:

(a) To remit earnings from such account, net of any service charges or fees, as computed in accordance with the institution's standard accounting practice to the Alaska Bar Foundation, Inc., at least quarter-annually, and

(b) To transmit with each remittance of earnings a statement showing the name of the lawyer or law firm on whose account the remittance is sent and the rate of interest applied, with a copy of such statement to such lawyer or law firm.

(4) The lawyer or law firm shall review the account at reasonable intervals to determine if changed circumstances required further action with respect to the funds of any client.

(e)A lawyer or law firm who elects not to maintain the account described in paragraph (d) shall make such election on a Notice of Election form provided by the Alaska Bar Association. If a Notice of Election is not submitted, the lawyer or law firm shall maintain the account described in paragraph (d). A lawyer or law firm who wishes to change a previous election may do so at any time by notifying the Alaska Bar Association.

THE ALASKA BAR FOUNDATION IOLTA PROGRAM FUNDS HAVE BEEN DESIGNATED TO BE USED SOLELY FOR THE FOLLOWING PURPOSES: SUPPORT OF LEGAL SERVICES TO THE ECONOMICALLY DISADVANTAGED AND PROGRAMS TO IMPROVE THE ADMINISTRATION OF JUSTICE.

Almost all of the banks and credit unions in Alaska offer IOLTA accounts which comply with the requirements of paragraph (d)(3).

While the Alaska Bar Foundation is the recipient of the interest that is earned on IOLTA accounts, it is the Rules of Professional Conduct which require lawyers to have these accounts. Accordingly, questions concerning the interpretation of this Rule should be directed to Bar Counsel Steve Van Goor, at (907) 272-7469.

The Alaska Bar Foundation IOLTA program funds have been designated to be used solely for the following purposes: Support of legal services to the economically disadvantaged and programs to improve the administration of justice. Questions about the Foundation should be directed to me, at (907) 562-6474. The Alaska Bar Foundation IOLTA program funds have been designated to be used solely for the following purposes: Support of legal services to the economically disadvantaged and programs to improve the administration of justice. Questions about the Foundation should be directed to me, at (907) 562-6474.

3G Wireless Internet: Not ready for prime time

Continued from page 22

transmission of information to handheld digital devices. WAP has its own text markup language, similar to HTML, and its own bit map images for displaying relatively crude graphics. Most current wireless offerings use some form of Wireless Application Protocol, but WAP by itself does not provide the increased bandwidth required by serious 3G services - that requires new hardware and new hardware standards.

Bluetooth is an emerging technology that allows short-range communication and data exchange between comparatively equipped equipment. Although Bluetooth is not yet available as standard equipment for notebook computers, it will become increasingly common in the near future. Bluetooth is an always-on technology, which means that it's always available for contact by other short-range Bluetooth transmitters. Therein lies a potentially problem: Because Bluetooth operates in the same frequency range as emerging 802.11b wireless Ethernet, there is a high probability that radio frquency interference will prevent you from using your wireless Ethernet connection if you're within about 30 feet or so of a Bluetooth-equipped device.

802.11b wireless Ethernet is a wireless implementation of standard Ethernet technologies. As a result of its adoption as an IEEE standard, 802.11b wireless Ethernet is becoming quite popular. It's primarily a means of connecting mobile full-function notebook computers to a private network, not a means of connecting personal communications devices to the Internet. However, wireless Ethernet has the potential for significantly easing connection between central office networks and a few outlying users. It is not a go-anywhere wireless standard at this time. 802.11b wireless Ethernet is relatively fast: on the order of 11 Mbps, slightly faster than the 10Base-T Ethernet that remains common in many law offices, entirely adequate performance for most mobile users.

Confused? So are we.

L to R, U.S. District Court Chief Judge James Singleton, 9th Circuit Judge Barry Silverman, Chief Judge Mary Schroeder, Judge T.G. Nelson, and Judge Andrew Kleinfeld (moderator at the Fairbanks program), lead discussion.

9th Circuit panel visits Alaska

The 9th Circuit's Chief Judge Mary Schroeder, Judge T. G. Nelson and Judge Barry Silverman traveled to Anchorage and Fairbanks for oral argument and were panelists in both cities for the 6th Annual Informal Discussion with the US Court of Appeals for the 9th Circuit.

US District Court Judge James Singleton moderated the program in Anchorage while 9th Circuit Judge Andrew Kleinfeld moderated the program in Fairbanks.

In addition, Chief Judge Schroeder took time from her vacation to appear as a panelist in Juneau for a CLE on appellate practice with Alaska Supreme Court Justice Walter Carpeneti, Chief Bankruptcy Court Judge Donald Mac Donald, US District Court Chief Judge James Singleton, and US Magistrate Judge Phillip Pallenberg, moderator.

Bar members in all three cities turned out for the opportunity to talk to the judges in an informal setting. Topics discussed included motion practice, brief requirements, excerpts of record, 28J Letter, *en banc* procedures, resources to improve practice, and the state of the 9th Circuit.

These CLEs were presented in cooperation with the US District Court, the Tanana Valley Bar Association, and the Juneau Bar Association.

'Diversity' enriches small firm's practice

By Mary Ann R. Baker-Randall

It's hard to open a legal periodical lately and not see an article on "diversity." In the past few years, the legal profession—and the American Bar Association in particular—has been making a concerted effort to reach out to persons of color, age, various socioeconomic backgrounds, genders, and sexual preference.

Gone are the days when "lawyer" automatically translated to being a white male from an upper income family. Large firms, in-house corporate counsel, and government agencies increasingly have specific programs dedicated to recruiting "diverse" lawyers, but what can solo and small firms do?

I have a small firm that focuses on family law. A smile comes to my face when I hear about "diversity initiatives" or campaigns to make the legal profession more inclusive. The smile does not connote humor or belittle the need to make lawyers more reflective of society as a whole. I smile because, while my area of the law struggles with more contemporary definitions of "family," so too is the legal profession undergoing an effort to define "lawyer."

Being a domestic relations attorney means I mostly deal with people whose families are in crisis—divorce, grandparents raising grandchildren (voluntarily or involuntarily), same-sex couples adopting children, or parents with serious substance abuse and/or domestic violence problems battling the state to keep their kids. Dealing with such issues day in and day out makes many family law attorneys jaded and sometimes judgmental of other people's behavior. One reason I can continue in my field is a surprising level of optimism and perhaps naivete. To me, people are people. We all have strengths and weaknesses. We all make mistakes. We bring expectations, however unrealistic, to our relationships—at home, at school and at work.

When I hire staff, I look for three qualities: common sense, excellent organizations skills, and a courteous, professional attitude. Over the years, I have found these qualities to be unteachable, whereas I know I can train someone on procedures and basic legal concepts. Whether the person possessing such skills is male or female, gay or straight, young or old, white or of color matters not to me.

My current office staff consists of a four women and one man. Among us, two are married (and three previously divorced), one is in a long-term commitment same sex relationship, one is a single parent, and one is single without kids. Our ages range from 27 to 48. Our ethnic backgrounds are mixed. Our religious beliefs span fundamental Christianity to agnosticism to a propensity for Zen philosophy. We grew up all over the country and have traveled all over the world. Our educations range from high school diploma to doctoral level.

My previous associate attorney was gay, with significant Native American ancestry. My current and two previous receptionists are male. I never set out to hire a person with the goal of breaking stereotypical roles or implementing a "diversity initiative;" I hire based on the key qualities. As a small firm, I made the decision that it's okay if some potential clients choose not to hire the firm because we don't fit the perception of a traditional law firm. I know, for a fact, some clients hire me specifically because I am a woman, and others go shopping for a male attorney, because they have told me so.

I do not know, however, whether any potential clients have looked elsewhere once they realize how "diverse" we are. Fortunately, I have a strong client base and I believe my revenue is not hurt by who we are. To me, having such a rich perspective of life in the office helps me to keep an open mind to my clients' needs and wishes. When I brainstorm with my staff, I get perspectives that I never would have thought of myself. I gain a broader understanding of what "family" means and what it does not mean.

Frankly, I know few people in or out of the office that fit the Father Knows Best model from the 1950s or 1960s. My clients certainly don't fit that mold. The bottom line on diversity for solo and small firms is not a buzzword or hot trend, it's a reality. Take a good look at the people around you. Take a good look at your clients. How similar or diverse are they? I suspect there are more diverse characteristics than you may realize.

Value this diversity and view it as a strength in your practice. When considering hiring staff, focus on the person's skills and attitudes, not on his or her race, age, gender, or sexual preference. Do the same when interviewing prospective clients. To me, that's the crux of effectively accomplishing diversity in the legal profession.

The author is founder of a small firm in Albuquerque, NM. Reprinted from the ABA General Practice, Solo and Small Firm section publication, GPLink.

Small utilities for simple computer tasks

Forget clicking through scores of drip-down menus and searching those "tips and tricks" articles to accomplish a simple little task on the desktop. For some software developers, smaller and simpler is better, and one of these programs can be found right here in Alaska.

Why complicate the "who's in and who's out" process through a robust time management program? Touch N' Go is attorney Jim Gottstein's application that posts the board a click away from everyone in the office network. Its friendly—and old-fasioned-familiar—graphic interface is simple, straightforward and intuitive to use for legal and other offices around the globe. (www.touchngo.com).

Other desktop enhancements on the market solve a variety of other mundane by convenient tasks, working alongside other programs like word processors, e-mail clients, document management, and databases.

Workshare Technology's DeltaView has a single function: comparing an early draft of a document against a subsequent draft and redlining the changes. DeltaView can compare two 300-page documents in less than a minute, without the bugs found in other programs that attempt to build in the document comparison function.

Like Gottstein's software program, Expert Ease was designed by an attorney. Expert Ease's most popular utility is Deal Proof, a document proofreader. It's programmed to flag errors that are easy to miss—not simply words that are misspelled or phrases it considers awkward. It proofs case citation errors, the typical "there" vs. "their" errors, and will even return "smart summaries" of arguments—formatted in a similar fashion to Westlaw's headnotes. And the company's QuickSift utility is a search engine within a specific group of documents. It's good for matters that involve a large number of documents, and uses Boolean (common phrase) language searches.

Law firms are most certainly aware of the numerous online 'bots and subscription services that search the Web for the latest case filings, SEC activity, and other data of public record. But how do you know what your competition's up to? Ozmosys Software developed a utility that will put that information on your desktop. For $50 a month, Ozmosys will search all of the leading legal Web sites, including Yahoo, Greedy Associates and the universe of SEC filings, for information and law-related press releases. The daily service is provided by e-mail, with links to the sources.

And finally, Omtool's offering in the niche utilities market is LegalFax. Launch the software and it will grab documents sent as e-mail attachments and also send the document automatically by fax.

Comments on a Bar Rag article?

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

Court proposes new civil pretrial scheduling process

Continued from page 1

Order is issued. This new order differs from the existing order in several ways:

ALMOST AUTOMATIC TRIAL SCHEDULING

The parties confer and submit potential trial dates, one of which becomes the scheduled trial date. All pretrial deadlines are automatically set based on that trial date. The goal is to set all trials for approximately 12 months from the date of the Initial Pretrial Order. It is recognized that because of vacations and other conflicts, the actual trial date probably will be set in 10 to 14 months. Judges will continue scheduling several cases during the same week with the understanding that more than 96% of civil cases settle prior to trial. Attorneys with heavy trial schedules may have to double book, with the understanding that no lawyer will be required to do two trials at the same time.

PARTY PLANNING MEETING

The Planning Meeting and Report of Parties' Planning Meeting are eliminated.

WITNESS LISTS

The initial disclosures already contain the names of most potential witnesses. Thus, the preliminary witness list is eliminated. A "final" witness list is served 22 weeks before trial. After that date, no new witness may be added without good cause.

EXPERT WITNESSES

The time for expert identification, disclosures, and reports is moved closer to trial. There has also been an attempt to resolve the continual debate over whether disclosures should be simultaneous. A party can add an expert *before* reports are due in response to the decision of the opposing party to have an expert on a particular subject matter. In addition, a party can identify a purely rebuttal expert to point out problems in an opposing party's expert report. While there will be some difference of opinion as to what is proper rebuttal evidence, it is expected that limits will be placed on what these critiquing experts will be permitted to present.

***DAUBERT* QUESTIONS**

A new deadline is included for filing motions to limit or restrict the use of testimony under Evidence Rule 702.

EXHIBIT LISTS

A procedure for creating a Joint Exhibit List has been established.

TRIAL BRIEF

The trial brief is limited to five pages. Most significant issues will already be addressed through motions in limine, jury instruction objections, and other pretrial briefs. The trial brief should be a short summary of the key facts and legal issues.

NON-ROUTINE CASES

The court will issue a Routine Pretrial Scheduling Order in all civil cases. Only after this occurs may a party request, for good cause shown, a variance in the routine deadlines. An example of a non-routine case is one requiring extensive discovery, or one where the trial will last more than ten days.

STIPULATED EXTENSIONS OR MODIFICATIONS

The court will not routinely grant requests to modify the pretrial order or grant extensions to file opposition or reply briefs. Stipulations will not be automatically approved. This will be especially true during the three months prior to trial.

You will soon receive a copy of the proposed pretrial order with the CLE program notice that is being sent to bar members. The bench looks forward to hearing your comments on October 17.

Tan comments on order

Over the past year, the Anchorage bench and bar have been involved in a joint effort to improve the administration of justice in our courts. In part, a committee was formed to update the Domestic Relations Procedural Order. This is the first order entered in most divorce and custody cases. The proposed procedural order is the result of many hours of hard work and dedication by members of the committee.

On October 17, there will be a CLE program for members of the bar to discuss, critique, and comment on the changes that have been made. Members of the bar, especially family law practitioners, are cordially encouraged to attend. The changes will certainly effect how cases are processed and moved through the system.

There are a significant number of changes worth noting. The proposed order provides clear direction on the filing requirements, setting out the documents that must accompany pleadings and motions. It states specifically what documents are required, and what forms are available for use. In part, this new order recognizes the reality that a substantial number of litigants are now *pro se*. Hopefully, this will allow parties to use the order as a checklist, so that the court will have the information to make decisions quickly.

Section IVF is a new Notice of Compliance/Inability to Comply provision. It requires a party to explain the failure to provide necessary documents in support of a motion as required by the order. It also set out the procedure for parties to enforce compliance with the order.

The provision governing expedited consideration requires certification of efforts by the parties to resolve the issue without motion. It also requires actual notice of the expedited motion to the opposing party.

Changes have also been made to the section governing expert witnesses. Some of the changes concerning Custody Investigators and Guardians ad Litem result from the recent revision of Civil Rule 90.6. The financial eligibility for the court custody investigator has been raised. Also, the parties have to explain why appointment of a custody investigator is necessary.

The proposed order will be distributed to the members of the bar, and should be available on the court system web page. We look forward to an opportunity to receive comments and suggestions from all interested persons at the October 17, 2001 CLE.

— Judge Sen K. Tan

3RD JUDICIAL DISTRICT NEW PRE-TRIAL ORDERS

To look at the Proposed New Pre-Trial Orders go to the Alaska Bar website – www.alaskabar.org – click on Links and Resources – then click on Proposed Pre-Trial Orders.

There will space on the website to note your comments to the Proposed New Orders. These comments will be sent to Presiding Judge Andrews, Superior Court, Third Judicial District.

Want to Know More About the New Pre-Trial Orders? Don't miss this CLE!

Changes in Pre-Trial Orders:
Civil and Domestic Relations

Wednesday, October 17, 2001
8:00 a.m. – 11:30 a.m.
Hotel Captain Cook, Anchorage

CLE No. 2001-032
3.25 General CLE Credits

Presented in cooperation with the Alaska Court System

Faculty:
Judge Eric Sanders, Chair, Civil Pre-Trial Orders Committee, Moderator
Judge Sen Tan, Chair, Domestic Relations Pre-Trial Orders Committee
Judges of the Anchorage Civil Division
Member of the Pre-Trial Orders Committees

8:00 a.m. – 10:15 a.m.	Part 1: Civil Pre-Trial Orders
10:15 – 10:30 a.m.	Break
10:30 a.m. – 11:30 a.m.	Part 2: Domestic Relations Pre-Trial Orders

Registration Fees:

Parts 1 and 2	$65 – 3.25 General CLE Credits
Part 1	$50 – 2.25 General CLE Credits
Part 2	$25 —1.00 General CLE Credits

To register for this CLE, go to www.alaskabar.org. Click on *Event Calendar,* follow the instructions to find this CLE, then follow the steps to register. Or call us at 907-272-2932/e-mail info@alaskabar.org

Beneath the bridges

☐ William Satterberg

I was on another trip to an exotic destination. Judge Wood now calls this my "busy travel schedule." This time, it was San Diego. I was to attend a convention of physicists extolling the technological virtues of fiberoptics.

A seasoned traveler with Alaska Airlines, I was once again riding in the first class section of the aircraft. I was safely separated from the great unwashed who occupied over one hundred seats behind me, desperately tearing open skimpy bags of peanuts to find meager sustenance, while spilling juice drinks offered in genuine plastic cups over each other each time they tore off the tin foil covers.

In contrast, I dined elegantly on roasted cashews. I drank my wine out of real glass goblets. I had cloth napkins and, once again, my seat reclined. I was flying the high style to which I had become accustomed.

In my earlier years, I would have given anything to ride first class. When I was a state worker, I used to save per diem when traveling to Juneau by sleeping on the floor of Bruce Botelho's Douglas apartment. I would bed down in an old orange sleeping bag. I had taken the bag to Juneau specifically for that purpose. Wisely, I had previously salvaged it from my fishing camp on the Egegik River in Bristol Bay. Years later, when I asked for the return of the bag, Bruce told me that he had given it to his dog. Bruce suggested I probably did not want to have it back. Although it was a close decision, I finally relented after a vicious mental tug-of-war with a determined canine. I let Bruce's pet keep my traveling bed.

When I used to travel to Nenana, I was honored to sleep on Nenana attorney Marc Grober's couch. Mark lived in a cabin at Mile 297 on the Parks Highway. Marc, who was the only attorney in Nenana at the time, was of Jewish descent. Marc prided himself on offering me breakfast in the morning consisting of bagels, eggs, smoked Alaskan salmon lochs, and bacon. When I once asked Marc how he came up with such a strange concoction of bacon, bagels, and lox, given his proud Jewish heritage, Marc told me that he liked to keep the locals happy. He figured that it was best to cover all bases. This was my first experience with a bed and breakfast type of arrangement.

Those stays were years ago. They were at a time when I felt special if I would find a motel toilet seat wrapped in a green paper band which said "Sanitized for your Protection." Things have since changed, although I still do steal the little bottle of shampoo when I check out, in the remote chance that God seeks to restore my hair someday.

For my San Diego trip, a purported friend had utilized an Internet service known as "Travelocity" to arrange my hotel reservations. I was told that a nice, little hotel, conveniently located in the center of San Diego's financial district, had been secured. Although it was an older hotel, it had been undergoing refurbishment like many of the hotels are now doing on the West Coast. It was reported to be a hotel with "European charm." It was within easy walking distance of the San Diego Convention Center, and on the edge of the famous Gas Town District of San Diego. Gas Town is now to be one of San Diego's premier attractions, consisting of numerous trendy nightclubs, restaurants, and other establishments rescued from what was once San Diego's infamous skid row. My friend told me that San Diego was short on hotel rooms. Fortunately, I had been lucky. She had located the room at a special rate of $59 per night. My reservations had wisely been guaranteed for a late, midnight arrival.

The Alaska Airlines jet arrived in San Diego on time, only one hour late. Rather than rent an automobile, I hailed a taxicab, due to the lateness of the hour. As I climbed into the back of the taxi, I announced to the driver in my best Oxford accent that I wanted to go "To the Pickwick Hotel, please."

The cab driver, like most big city taxi drivers, did not speak much English. (I am beginning to think there is a language conspiracy developing in the taxi industry on that issue.) Still, he managed to tell to me in broken English/Lebanese that he was not sure if I had the correct hotel. I impatiently explained to him, once again, that I wanted to go to "*The* Pickwick, on Broadway," whereupon he indicated to me, "Okay, Sir, I tink I know the one."

As we drove down Broadway Avenue in San Diego, I marveled at the development of the city. Since my first visit, San Diego had blossomed with high rises, a beautiful wharf, and elegant hotels such as the Westin, Wyndham, Hilton, Grant, and . . ."What's that! The Pickwick?"

The driver pulled up outside of a definitely older looking brick building, complete with external black metal fire escapes. The sign advertised it as "The Pickwick." This was definitely going to be a new experience.

At one end of the hotel was a Greyhound bus depot. Two bums were sleeping comfortably outside on the sidewalk, complete with their shopping carts. At the other end was a bail bondsman and a tattoo parlor. In the middle of the first floor was a bar called, "The Piccadilly," and a laundromat. I was impressed with the British atmosphere. There were also two newspaper racks outside, advertising various sexual pursuits, and an all night speedy store that was closed. (Unfortunately, I was out of quarters, and had to settle for a television show instead of my usual reading material.)

THIS WAS DEFINITELY GOING TO BE A NEW EXPERIENCE.

I turned around to ask the cab driver if I had the right location. In response, he quickly locked the doors of the taxi. He drove off without looking back, leaving his well-dressed fare abandoned at the hotel's entrance.

In a panic, I drug my roll-on and briefcase to the front entrance of the hotel. I attempted to enter. The doors were locked. From behind the wire-embedded glass doors, I saw a wizened Oriental lady curiously looking at me with sleepy eyes. Since she was behind the counter and appeared to be a receptionist, I knocked politely on the glass. After several more seconds of desperate beating on the panes, she eventually pointed to an intercom to my left. I pushed the talk button and requested entry. She answered in broken English that, "We're full."

I reminded her that I had a reservation. She declared, even more loudly, "I said we're full!"

I then pleaded that I had a guaranteed reservation. After another few seconds, the entry buzzer briefly sounded. To the apparent dismay of several bystanders, I had obtained sanctuary. I went to the front counter. I again explained to the clerk that I had a guaranteed room reservation. I needed a place to stay for the night. The clerk acknowledged that the reservation clearly was guaranteed. Still, the clerk had given away my room, regardless. After all, since I had not gotten there earlier, it was obvious that I did not intend to use the room. When I complained, I was told that many people often did not rent the rooms for the entire evening, but only for an hour or two. This was especially true for the travelers wearing business suits.

I certainly was not happy with this latest turn of events. Nevertheless, I wisely decided not to push the issue. After all, the clerk might throw me back outside to a certain death.

The clerk made two phone calls, with no results. After all, it was after midnight. The manager of the hotel was most likely either asleep or drunk again. Eventually, the clerk told me that I could have a room, if I really wanted it. I would only be charged half price. Moreover, if I decided to stay in the hotel for the following night, she would even give me the room "for free." I told her I would take the room. Before letting me complete the registration, she cautioned me that I should first look at the room, to determine whether it would be to my liking. Perhaps it was my suit and tie which caused her to be on the formal side.

Not particularly worried that I would steal the furnishings, the clerk gave me a key and pointed to the elevator. The shaky elevator ride, alone, qualified for an E-Ticket at Disneyland. The trip up was even scarier than the trip down, since I decided to take the hallway stairs on the return.

I entered the room. I was greeted by the immediate smell of old sweat, cigarette smoke, and a faint odor which reminded me of apartment stairwells of a friend's building in Russia, which was the best place for the drunks to relieve themselves on a cold winter's evening. What was left of the threadbare carpeting had suspicious dark stains and burn marks. The baseboard heating covers had fallen onto the floor. The paint was flaking and peeling in chunks. The bed was a chiropractor's delight. Fortunately, the room had a telephone. I checked the bathroom, and immediately saw a pile of brown rust globs in the bathtub. The sink was one of the old white porcelain sinks with the four-handled faucets. To my surprise, there was a mirror on the bathroom wall. I was relieved to see that the toilet had the old, familiar, "Sanitized for Your Protection" paper band wrapped around the lid, even though it did appear to have been reused. Finally, I was impressed by the room's nice view of the parking lot of the Greyhound Bus Station, and the nightlife which occasionally stirred below.

I returned to the front desk. I asked if the clerk if she knew of any other rooms available in San Diego. As far as she knew, all rooms were sold out. In fact, she was even receiving referrals from some of the "better hotels."

Stifling a yawn, the clerk then asked if I wanted to take the room or not. Clearly, the decision point was at hand. A wrong choice on my part could have very well meant that I would have been sleeping outside. Unfortunately, all of the good heating grates had already been long since taken. Applying a healthy dose of common sense, tempered by

Continued on page 27

Articles Welcome: *Guidelines*

- Ideal manuscript length: No more than 5 double-spaced pages, non-justified.
- E-mail and .txt: Use variable-width text with NO carriage returns (except between paragraphs).
- Format: Electronic files should be in text, Word, or Word Perfect format. Please use single spaces between sentences.
- Fax: 14-point type preferred, followed by hard copy or disk.
- Photos: B&W and color photos encouraged. Faxed photos are unacceptable. If on disk, save photo in .tif format
- Editors reserve the option to edit copy for length, clarity, taste and libel.
- Deadlines: Friday closest to Feb. 20, April 20, June 20, Aug. 20, Oct. 20, Dec. 20.
- ***A Note on File Nomenclature*** (i.e. filenames): Use descriptive filenames, such as author's name.doc. Generic file names such as "Bar Rag September" or "Bar Rag article" or "Bar article 09-03-01" are non-topic or -author desriptive and are likely to get lost or confused among the many submissions the Bar Rag receives. Use, instead, filenames such as "Smith letter" or "Smith column" or "immigration_law."

Defend yourself *before* you are sued

By Paul D. Georgiadis & Paul A. Sinclair

Realizing that claims against law firms arise primarily from their clientele, it should be self-proving that client qualification—the process of carefully selecting clients and cases based on a well defined client and client matter or practice profile—should be a significant preemptive weapon in a law firm's risk management defense arsenal.

Notwithstanding the apparent simplicity of this proposition, many firms have not implemented a carefully defined procedure by which prospective clients move into the elite category of paying clients. "Know Thyself"

As the Delphic oracle pronounced, every firm should examine its strengths and weaknesses. Even prior to the development of a client qualification process, every firm—whether one attorney or hundreds—should go through the process of identifying its core practice area or areas and likely areas for expansion.

Any client seeking the firm's assistance in handling a legal matter should first be qualified against these practice areas. If a client's legal needs do not fall within the firm's recognized practice areas, the firm either should decline the representation and refer the client to other counsel or explore associating counsel that focuses in the practice area. Exceptions to this general rule exist, of course; most commonly where a law firm has specifically targeted a crtain practice area for expansion. When should the firm associate counsel and continue representation ? The sole measure must be whether the firm's continued presence adds benefit as compared to any additional cost of having two firms representing the client. A firm could make the case for association if it has previously represented the client and therefore has expertise and knowledge of the client's affairs. Of course, the client should be informed and must give its consent to association of counsel. Otherwise, a simple referral would present a greater benefit to the client.

IF A CLIENT'S LEGAL NEEDS DO NOT FALL WITHIN THE FIRM'S RECOGNIZED PRACTICE AREAS, THE FIRM EITHER SHOULD DECLINE THE REPRESENTATION AND REFER THE CLIENT TO OTHER COUNSEL OR EXPLORE ASSOCIATING COUNSEL THAT FOCUSES IN THE PRACTICE AREA.

ATTORNEYS AND COUNSELORS

Even if the matter fits within the firm's practice expertise, should the firm take on the matter ?

First, attorneys are officers of the court. Attorneys are quick to recognize the duties of making legal services available and of zealous representation. At times practice exigencies such as the need for revenue also appear. Yet these considerations must be trumped by the duty to proceed only in matters warranted in fact or law and not proceeding for an improper purpose. Moreover, as counselors, we should instruct and lead our clients toward the right decision, if one is clear.

Matters that fall into gray areas should be taken on, so long as the client understands the risks, benefits, and costs of the undertaking as set forth either in an engagement letter or subsequent letter. Careful setting of the client's expectations, orally and in writing, can eliminate later client disputes.

MATTERS THAT FALL INTO GRAY AREAS SHOULD BE TAKEN ON, SO LONG AS THE CLIENT UNDERSTANDS THE RISKS, BENEFITS, AND COSTS OF THE UNDERTAKING AS SET FORTH EITHER IN AN ENGAGEMENT LETTER OR SUBSEQUENT LETTER.

CLIENT SELECTION — "...FOR BETTER OR WORSE...'TIL DEATH US DO PART..."

Escaping the bounds of the attorney-client relationship, once entered, can be a difficult feat. Matters in litigation are particularly difficult given the courts' concerns for potential docket delays caused by a withdrawal of counsel. Therefore, careful client selection should be employed, including a thorough interview of the client. A 30-minute screening interview of the client is far cheaper than a stormy and generally unrewarding attorney-client relationship.

What are some of the clear warning signs of a problem client ?

• The comparison shopper. Unless you run a high volume practice, you probably do not want the comparison shopper who has interviewed attorneys looking for the lowest absolute cost of legal services. Be sure to be paid in advance, in full, and to give a detailed fee agreement that the client signs.

• The restless wanderer. The restless wanderer has employed a number of attorneys in the past and will employ others in the future. He believes he understands the legal issues far more clearly than the attorney and will not be bothered with complicating legal details. Be prepared for micro-managing and demands to "just do it. " Be extra wary of this client, who will very quickly blame you for any real or perceived legal set-backs.

• The procrastinating client. This client comes to you just days before the deadline for the notice of claim, the complaint, or the closing and demands your immediate and full attention from other clients and your personal life. One personal injury client demanded and received a Christmas Eve appointment, was late for the appointment, and then failed to respond to certified letters reminding of the January 2 filing deadline and requesting authorization to file the complaint. From this client the attorney must collect fees and costs in advance and include a strongly worded paragraph on client responsibilities in the engagement letter. This paragraph should set forth the attorney's right to withdraw in the event of client non-cooperation.

THE GATE KEEPER

The self-interest of the profit motive is a powerful and proven motivator for rain-making. However, all firms need some mechanism for tempering the near-term interests with the firm's longer term interests. One mechanism for this is to have a gate-keeper attorney. In firms with three or fewer attorneys, this function can be accomplished less formally with a hands-on approach of each of the attorneys. In this smaller setting, they should maintain a vigilant if less formalized oversight of new clients, new matters, and client management.

Careful qualification of clients and client matters is an essential and profitable activity for a firm. It will help the firm avoid client disputes that turn to malpractice and ethics claims. It will also force the firm to better manage its resources.

Paul D. Georgiadis is Assistant Bar Counsel of the Virginia State Bar. Reprinted with permission from the Spring-Summer Issue of GPLink, the newsletter of the American Bar Association Solo, Small Firm and General Practice Section.

Beneath the bridges

Continued from page 26

desperation, I told her that I would take the room. I profusely thanked her for her kind attention and courtesies.

After I entered the room, I did my best to block the doorway by extending the touring handle on my rollaway suitcase and propping it up against the inside of the doorknob. I called my wife, Brenda, and announced the latest developments. I told Brenda that she should contact me on my cell phone since the rotary dial phone in the room seemed to have problems. According to the hotel clerk, the phone system was "down for repairs." Laughing hysterically, my sympathetic wife advised me that it would probably be best if I slept in my clothing. She mentioned something about crustaceans living in my bedclothes. (I have enjoyed sleeping outside these past few weeks in Fairbanks. Fortunately, the weather has not been too bad, as of yet. As an aside, does anyone out there have some extra lighter fluid, razor, and a spare ice pick?)

Eventually, that evening, I succumbed to sleep. It was a fitful sleep, interrupted regularly by the sound of bellowing drunks, arriving and departing buses, clanging elevators, slamming doors, and approaching ambulance sirens. The wailing sirens always stopped at the street directly below the hotel.

The next morning, I awoke, destined to take my hard-earned savings and spend them lavishly on any hotel which would have me in San Diego.

Exercising a certain degree of intelligence, however, I went room shopping before I made any commitments. Ultimately, I located a Clarion Hotel near the Convention Center. I then told the Pickwick desk clerk, who was still on duty, but now much wider awake, that I would be changing rooms. Clearly disappointed at losing her upscale guest, she reminded me that she was still willing to give me the room for free if I stayed for an extra night. I kindly insisted that I felt that a change in location closer to the Convention Center would be in my best interest. The battle over, she sweetly smiled and remarked that last night "must have really been an experience." I thought about telling her that it was just a notch above sleeping on Bruce Botelho's floor, but then realized the insult that such a comment would carry to her.

Noticing that a changing of the guard was apparently occurring with the external street life, I made the break quickly to the Clarion Hotel. I dashed from the Pickwick to a lonely cab parked outside the Greyhound Bus Depot. The driver was deeply engrossed in a newspaper from one of the nearby racks. Initially, his eyes brightened when he saw me. He jumped out and opened the trunk and politely loaded my bags, probably figuring that I was a prime candidate for the airport, given my suit and tie. Only after I was seated safely inside did I announce that I wanted to go to the Clarion Hotel, just down the street. To my surprise, he muttered some rather graphic profanity, complaining that he had been at that taxi stand "all day, and *this* is what I get." The cab ride cost $4.75. Feeling genuinely sorry for the driver, I gave him a five-dollar bill. I told him he could keep the change. Because I was coming from the Pickwick Hotel, I suspect the cab driver did not really expect much more than that.

In the end, I probably did not have to take the cab, after all, to the Clarion. The Clarion was actually not that far away. Furthermore, there was more than one available shopping cart outside of the Pickwick when I left that morning. In fact, one benefit I did notice about San Diego during my stay was that the downtown financial district had an abundance of shopping carts, even though there was not a supermarket in sight.

The remainder of my trip was uneventful. Although I certainly chuckled at my experience at the Pickwick, I must say that it gave me a better appreciation for my progress in life. In fact, when I was born, I did not even have a set of clothes. Moreover, after sleeping on the floor of Bruce Botelho's Douglas apartment, I had promised that I would never sink that low again. That promise was almost broken, however, on a hot July evening in San Diego.

WE SHOULD REMEMBER THAT THERE ARE PEOPLE SLEEPING IN THE STREETS THAT MAYBE WOULD HAVE GIVEN THEIR EYETEETH TO HAVE HAD MY LUXURIOUS ROOM AT THE PICKWICK THAT NIGHT.

My dear, departed father used to say, "The best thing about beating your head against the wall is that it feels so good when you stop." My brief evening at the Pickwick was similar to the beating of one's head. It gave me a glimpse of what things could have been like, and how things actually are for many people. For many, a night of the Pickwick would have been a step up. I think that it is important that we all acknowledge that, as much as we look ahead of ourselves and try to become even more successful with the years, most of us have also covered a substantial amount of distance from where we once were. And, any time that we are bemoaning the fact that our shirts weren't pressed just right by the hotel laundry, we should remember that there are people sleeping in the streets that maybe would have given their eyeteeth to have had my luxurious room at the Pickwick that night. But, then again, maybe not.

A Rabinowitz cruise travelogue (with parenthetical footnotes)

Continued from page 1

pare pyrotechnics for use." [1] ([1] The instructions were presented in a series of 11 panels, comic book style. No. 2 and no. 8 were puzzlingly blank.) During the voyage we took note of those with whom we would want, or not want, to share a lifeboat. One great disappointment was the short bar hours: only five hours a day! [2] ([2] Governor Knowles has been notified of this travesty. It is quite possible that these short bar hours are a big reason why the ferry system is underutilized.)

HOMER

Because the Homer ferry dock is being renovated, the departure dock was some two miles from the ticket office; passengers must take a school bus to the ship. Waiting for the bus we met four fellow passengers from Guadalajara, Mexico. [3] ([3] They were not favorably impressed with our efforts to speak Spanish.) We also met Adam, an economist from Chapel Hill, North Carolina. He never did tell us his last name, but we figured it was "Smith" because one of his hands was invisible. In a lyric moment in this epic voyage, the ship steamed down Kachemak Bay at midnight as the moon rose over the icy mountains.

KODIAK

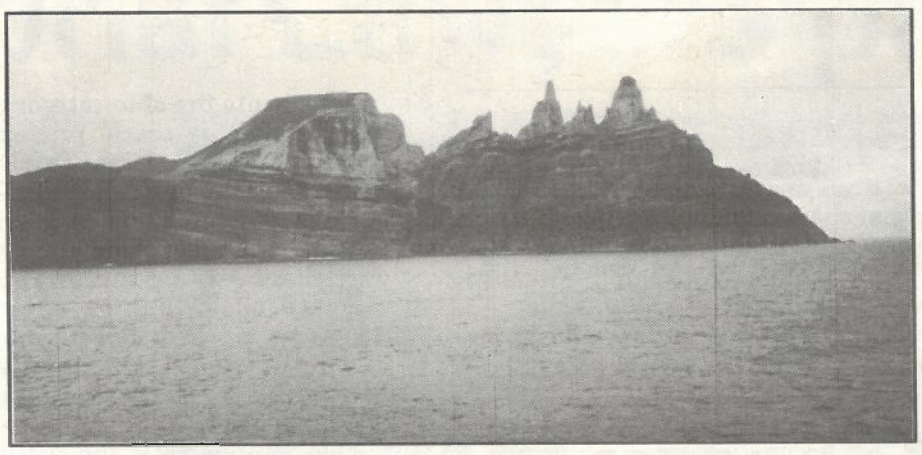
The next morning found us in Kodiak, the only site of a permanent Superior Court Judge which we were to encounter on our trip. The courthouse appeared prosaic, even tame. But we wanted the real story on Kodiak, so we visited Matt Jamin, U.S. Magistrate Judge. He related the story of a legal services lawyer from prehistoric days who was dispatched to Attu for a month. When he didn't return on the monthly barge, Jamin telephoned him to inquire of his failure to return. "The lawyer claimed the weather prevented the operation of the regularly scheduled transport for his return trip. Turns out he had fallen in love," said Jamin. The course of true love never running smooth, Jamin dispatched a plane to retrieve him. [4] ([4] This star-crossed lawyer shall remain anonymous.)

After seeing an excellent exhibit on local native history and art at the Alutiiq Museum, including a terrifying Joe Hazelwood mask, we rented a 1992 Olds Cutlass from Rent-A-Heap, and drove out into Russian America. [5] ([5] It had 88,139 miles on the odometer and handled like a dream.)

Salmon spawned in each stream; magpies, gulls and eagles hovered. From Pilar Mountain we could see the world's largest Coast Guard site below us. Adam Smith's camera seemed to float as he photographed it all. [6] ([6] Adam also found a piece of "Tigger chaff," perhaps dropped by Russian bombers during the Cold War in an attempt to foil U.S. radar. It unfortunately did not survive the trip.) This was the venue where we burned a dollar bill to test Adam Smith's definition of money as "A shared fictional construct." The rocket launch site was too far for us, so after walking the shore of Pasagshak, we sped back to the ship.[7] ([7] En route we saw a "Tsunami Evacuation Route" sign. It was not a joke.) A gentleman who witnessed the 1964 tsunami in Kodiak Harbor related his experience to us. We were afraid. About an hour out of Kodiak the ship turned around and returned to the dock to deposit a passenger who was having seizures.

COMRADES

Our newly met comrades assuaged our fears. In addition to Adam of the invisible hand, Rachel (a lawyer from Dublin)[8] ([8] She is a solicitor, and hence we called her "The Solicitor." She thought we were biologists en route to Izembek Wildlife Refuge,



Castle Cape, near Chignik, looked like the Home of the Evil Sorcerer.

a totally undeserved compliment. It also (foot)note worthy that The Rachel was the ship which rescued Ishmael at the end of Moby Dick.), Marcus (a real estate economist from Bayreuth, Germany, home of Richard Wagner), Pam (a gold miner from Australia),[9] ([9] Her knowledge of knots, evident in the guy lines of her tent, rivals that of Melville in Chapter 60 of Moby Dick, "The Line.") an Italian fellow[10] ([10] Con molto sprezzatura.) and a woman from Lebanon (who had graduated from Duke with a degree in English Literature), all contributed greatly to the ambience of ongoing learning on board. Cruising with these folks was a high point of the trip. We are not sure what they made of us, particularly with Jim and his quotes from Moby Dick and Homer, and his insistence that we be referred to as "Ahab" and "Rabbi".

CHIGNIK

After a night of very smooth sailing and a very bad cheeseburger,[11] ([11] The salmon and halibut entrees were much better.) we arrived at Chignik. Our inquiries to locate the courthouse or a magistrate were met with suspicion. "Why do you want to know where the magistrate is?" demanded a citizen. Upon hearing that we were lawyers she said, "Boy, are you lost! We had a VPSO, but she left!" So we walked along a water pipeline and gorged on fresh abundant salmonberries.[12] ([12] Chignik is also where we learned that "lexis" is ancient Greek for "diction in poetry.")

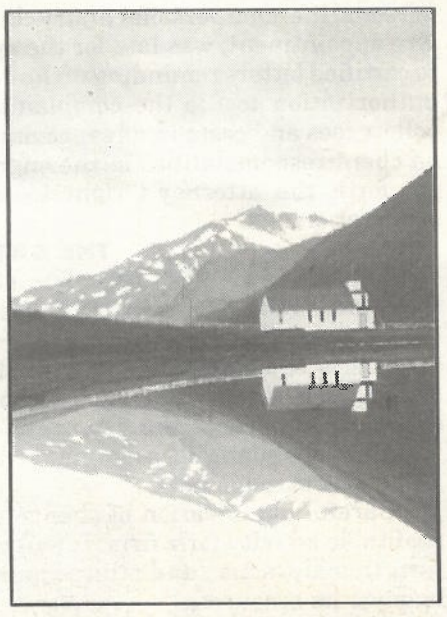
Leaving Chignik we passed Castle Rock, a huge promontory reminiscent of the Home of the Evil Sorcerer. We also passed Mt. Veniaminof,[13] ([13] This volcano is only 3,700 years old, yet is 8,200 feet tall and has 200 feet of ice in its caldera.) named after "The Enlightener of the Aleuts," a Russian Bishop of the Aleutians later canonized as Saint Innocent.

SAND POINT

We stopped at this locale only long enough to offload passengers and cargo, as the ferry was a bit behind schedule. Since it was midnight, we did not complain.

KING COVE

The dawn's rosy fingers found us in King Cove near Mt. Pavlov, an active volcano.[14] ([14] When the ship's bell rang, the volcano erupted, just like Pavlov's dog.) The bay's still waters reflected the moon as we walked across a bridge over the estuary. Starfish lay scattered across the "deep's untrampled floor, like light dissolved in star showers, thrown."[15] ([15] Shelley, Lines Written in Dejection Above Naples.) The Russian Orthodox Church with seven brass bells hanging outside and its Cemetery reminded us that we were still in Russian America.[16] ([16] Our study of the map informed us that in the night we had passed Pavlov Bay and Cape Tolstoi.) Officer Gould, of the King Cove police force, informed us that there was no magistrate there.[17] ([17] King Cove does have a VPSO in addition to the Police Department.) All court hearings are done telephonically out of Cordova. King Cove is a charming community of about 800 who appear to be of Scandinavian and Native mix. The feel of competence about the people and the place makes sense as, despite its overwhelming beauty, this is a very challenging environment. No roads to anywhere. Terrible weather for aviation. This a land of mariners where mistakes are not an option



The Russian Orthodox Church in King Cove.

COLD BAY

Unlike the other villages at which we stopped, Cold Bay is an all but abandoned military site. Frosty Peak, over a mile high, majestically guards Cold Bay. We headed out across the long causeway toward land, when Steve very kindly gave us a ride in the back of his Real Alaskan Vehicle.[18] ([18] Bruce sat on Jim's foot for the entire truck ride.) The subject of most compelling interest was a large trash fire. As we approached it, a worker in a Citadel shirt informed us very kindly, calling us "gentlemen," that we were trespassing.[19] ([19] It remains an open question whether this trespass was on the case or vi et armis.) He explained that he was doing remediation work for the "Thirteenth Nation."[20] ([20] Further inquiry revealed that he was referring to the Native Regional Corporation whose members live Outside.) He was building a "dirt burner" to burn up dirt contaminated with diesel fuel. The public phone near the dock was very dusty; numbers 7 through 0 did not work. We saved our breath and did not even ask anyone about a magistrate, VPSO, or courtroom. Cold Bay is also the spot where it was recognized that Joseph was the Alan Greenspan of ancient Egypt.

THE WEATHER

This is a good spot to describe the weather, for as we left Cold Bay the sun came out in full force. There was no wind, and we lay on the deck in our shirtsleeves. *This weather stayed with us for the entire remainder of the trip.* Dutch Harbor is as far South as Prince Rupert, and we got sunburned. Big time. Our weather experience was a total anomaly. We came prepared for four days of seasickness - Dramamine patches and pills. None was needed. Nevertheless, prepare for and expect the worst because most likely you'll get it.

FALSE PASS

After enjoying several hours of magnificent coastal mountain scenery [21] ([21] The Lonely Planet guide to Alaska describes this trip as "This is truly one of the best bargains in public transportation. The scenery and wildlife are spectacular.") we arrived at False Pass. Up to this point we had been cruising along the Alaska Peninsula; False Pass is on the east side of Unimak, the easternmost Aleutian Island. Despite the village's name, there really is a pass between the Pacific and the Bering at False Pass. The stunning location and amazing weather prompted the realization that it was the Worm Hole to the Gamma Quadrant. A dock worker pegged the weather as a twelve on a scale from one to ten. Adam Smith toured the fish processing plant and marveled at a machine nicknamed "The Muffin Muncher." We set off in search of the courthouse, but got no further than a nearby patch of luscious salmonberries.[22] ([22] We had also hoped to investigate the local church to determine whether False Gods (e.g., Baal or interleague play) were worshipped there.) Captain Krumm (no relation to R. Crumb) navigated us very smoothly through the Worm Hole. As we cruised along the passage, sun blazing, landscape scintillating, water coruscating, Adam Smith exclaimed, "We are kings! Pharaohs!"[23] ([23] He was right.)

THE UKASE [24] ([24] "A law or ordinance made by the Czar of Russia." Black's Law Dictionary, at 1691, (4th Ed. 1968).)

Superior Court Judge John Reese telephoned one author and issued a ukase commanding him to read *Where the Sea Breaks its Back*, by Corey Ford, an account of Bering's 1741 expedition from Kamchatka to what is now Alaska. Ford is an excellent writer and his tale of Bering's almost unbelievably tragic journey makes fine shipboard reading. Captain Commander Bering died of scurvy, but not early enough to spare him and his crew much hardship later. Noteworthy events of the voyage include Steller's discoveries [25] ([25] All resulting from one ten hour stay on shore!), the finesse of the ukase forbidding gambling, and intrepid foxes' biting the sailors' penises as they urinated. Not a book (or an expedition) for the squeamish. We made sure to avoid scurvy by eating much fruit on the ship, and looked carefully for lurking foxes before urinating. [26] ([26] Vice-President Katcher dissents from this datum, calling it "scurrilous.")

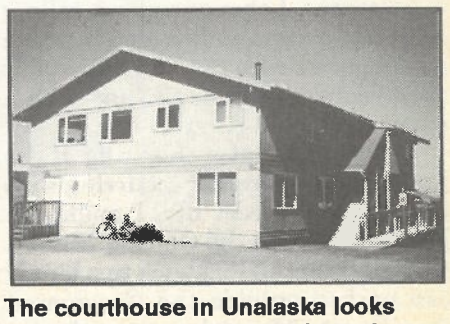
THE TRAGEDY OF RACHEL, THE SOLICITOR

A sudden wind sprang up and scattered her diary's sheets to Poseidon. Heroic efforts, particularly by Marcus, did not prevent major loss. This was the low point of the voyage. For everyone.

THE VOLCANOES

The Alaska Peninsula and Aleutians are where the North Pacific tectonic plate meets and dives under

Continued on page 29

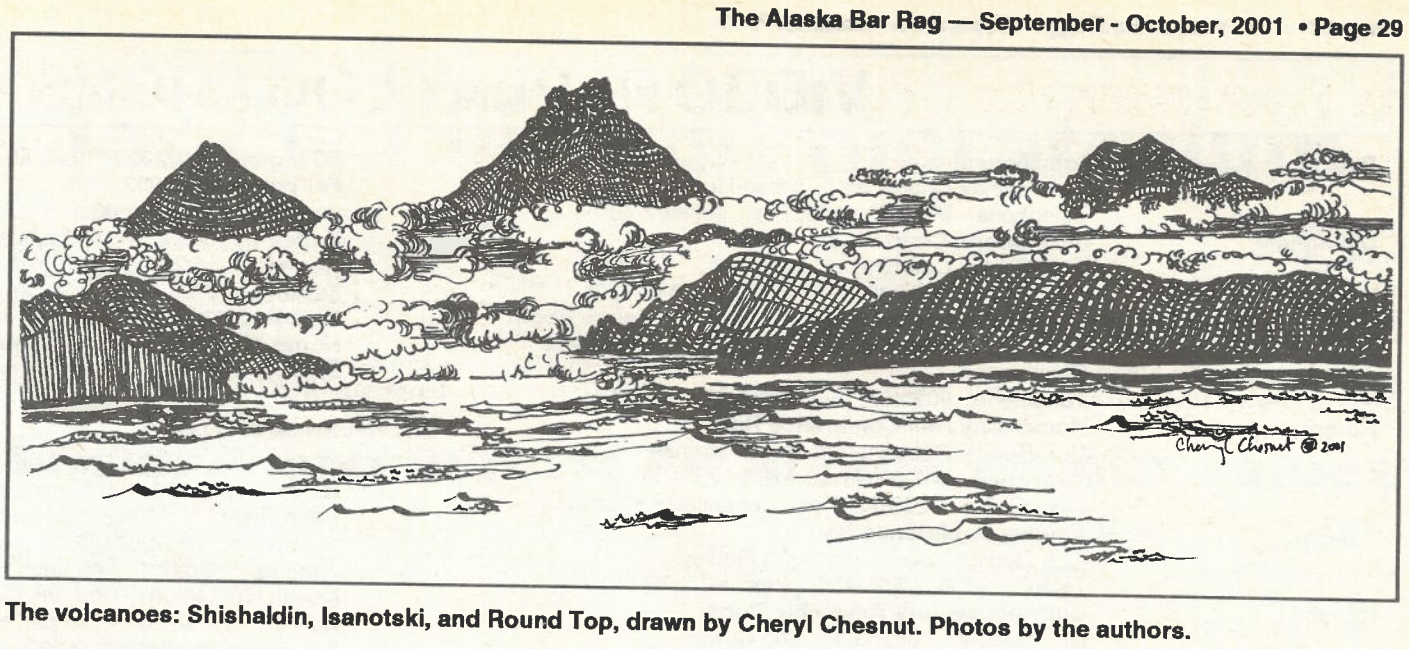


The courthouse in Unalaska looks very similar to a Muldoon four-plex.

Rabinowitz ferry cruise

Continued from page 28

the North American Plate. The result is a complicated landscape of spectral beauty and significant geology: earthquakes and volcanoes. For the better part of a day we cruised along three active volcanoes: Shishaldin, Isanotski, and Roundtop. All were heavily glaciated; Shishaldin rose Fuji-like 9,400 feet, directly from the sea, continually steaming. Wreathed by clouds in the setting sun, they were a landscape of primordial fantasy. It was some of the best Alaskan mountain scenery we had ever seen, perhaps the best ever. Wooly mammoths, dinosaurs and The Ancient Mariner, had they appeared, would not have been out of place.



The volcanoes: Shishaldin, Isanotski, and Round Top, drawn by Cheryl Chesnut. Photos by the authors.

DUTCH HARBOR/UNALASKA

6:40 a.m. A citizen met us on the dock and gave us information on her cities. We asked her where the courthouse was. She replied, "Why do you want to know where the courthouse is? What are you, from some reality TV show? Some unreality TV show?"

Our experience in this community convinced us that the latter approach was far more appropriate—examples of unreality abounded. Relics from WW II are everywhere—pillboxes, bunkers, gun emplacements, a shipwreck, abandoned Quonset Huts. At Amelia's, a most excellent restaurant, we notice that our table for four has seven ashtrays on it. The bus driver on the airport shuttle is from Somalia. Dutch Harbor is so named because when Captain Cook arrived in1778, he was informed that a Dutch frigate had been there earlier. His efforts to ascertain the precise identity of this Dutch ship proved unsuccessful.[27] ([27] We concluded this was the ship of the legendary Flying Dutchman, Captain Van der Decken, condemned because of his blasphemy to sail until Judgment Day unless he finds salvation through the love of a faithful woman. Cf. Honus Wagner, aka "The Flying Dutchman," one of the first five members of the Baseball Hall of Fame.)

A cruise ship, the Odyssey Clipper, is tied up next to the Tustumena. It is hosting a Smith College tour retracing the Harriman Expedition of a century ago. We note that its Zodiacs are named Penelope, Laertes, Poseidon, Ulysses, Calypso and Circe.[28] ([28] Men are well advised NOT to ride in the one named "Circe." And in keeping with this classical theme, Nestor (Iliad, Book I, 247 ff.) is commemorated in a memorial near the Russian Orthodox Church.)

The excellent museum relates the forced evacuation of the Aleuts during World War II. A marker outside the museum wisely states that "Eternal vigilance is the price of liberty," quoting an abolitionist. This marker is right next to one which ironically prohibits skateboarding in the parking lot.

The museum also has an exhibit on Aleut Mummy Caves, in which hundreds of mummies were found.[29] ([29] Cf. Kochutin v. State, 813 P.2d 298, 300 (Alaska App. 1991). Adam Smith and Rachel the Solicitor go aboard a Chinese ship. Sign language is the only form of communication between them and the crew. Soon Rachel the Solicitor says, "Adam, I want to leave." They leave.

Bunker Hill[30] ([30] Not to be confused with Breed's Hill, in Massachusetts, where the Battle of Bunker Hill was fought.) has a series of lines etched into it, lines that meet at right angles and march across the slope. None of the locals knows their origin; the best guess was "extraterrestrials."

Finally, amidst this oxymoronic pastiche, we find the courthouse! Painted dark blue, it looks like an Anchorage four-plex from the pipeline days. Truly a Palace of Justice.

Mission accomplished!

SOME PONTIFICATING BY YOUR VICE PRESIDENT

We did not have the privilege of knowing Justice Rabinowitz. But his final ferry voyage contains a mandate—we owe a duty to ourselves, our loved ones, and most of all, the citizens of this state whom we are honored to serve. We all need to venture forth into this great, wondrous and varied land, and interact with its people so that we may be better persons, better public servants, and better lawyers.

CONCLUSION

It was a trip of superlatives: fantastic scenery, smooth sailing, interesting comrades, great weather, yummy and superabundant salmonberries, and continual exhortation of Justice Rabinowitz' ukase: Alaskans, utilize your ferries. Next year is the second annual Justice Rabinowitz Memorial Ferryboat Trip. Be there.

VIDEO REPLAY LOCATIONS

Barrow — **Barrow Courthouse**
CLE Replay Coordinator: Karen Hegyi
Telephone: 907/852-4800, Fax: 907/852-4804

Dillingham — **Jury Room, Courthouse**
CLE Replay Coordinator: Joe Faith
Telephone: 907/842-1200, Fax: 907/842-1201

Fairbanks — **Cook Schuhmann & Groseclose Conference Room**
CLE Replay Coordinator: JoAnna Claxton/Barbara Schuhmann
Telephone: 907/452-1855, Fax: 907/452-8154

Homer — **Homer City Hall Conference Room**
CLE Replay Coordinator: Ron Drathman
Telephone: 907-235-8121 ext. 2222
Fax: Call 907-235-7207 and get faxing instructions

Juneau — **Dillon & Findley Conference Room**
CLE Replay Coordinator: Tom Findley
Telephone: 907/586-4000, Fax: 907/586-3777

Kenai — **Courthouse Jury Assembly Room**
CLE Replay Coordinator: Bob Cowan
Telephone: 907/283-7187, Fax: 907/283-4753

Ketchikan — **Borough Attorney's Conference Room**
CLE Replay Coordinator: Scott Brandt-Erichsen
Telephone: 907/228-6635, Fax: 907/228-6625

Kodiak — **Law Office of Jamin, Ebell, Schmitt & Mason**
CLE Replay Coordinator: Matt Jamin/Linda Brown
Telephone: 907/486-6024, Fax: 907/486-6112

Kotzebue — **Kotzebue Courthouse**
CLE Replay Coordinator: Judge Richard H. Erlich
Telephone: 907/442-3664, Fax: 907/442-3974

Nome — **Lewis & Thomas.**
CLE Replay Coordinator: Conner Thomas
Telephone: 907/443-5226, Fax: 907/443-5098

Sitka — **Pearson & Hanson**
CLE Replay Coordinator: Brian Hanson
Telephone: 907/747-3257, Fax: 907/747-4977

An Informal Discussion with the 9th Circuit
CLE #2001-019; CLE Credits 2.0, Live — Anchorage, August 9th
Barrow, 10/12/2001, 10:00 am, Law Library
Dillingham, 10/26/2001, 10:00 am, Jury Room
Fairbanks, No replay – see live program info.
Juneau, No replay – see live program info
Kenai, 9/14/2001, 1:00 pm, Cowan, Gerry & Aaronson
Homer, 9/28/2001, 1:00 pm, Homer City Hall Conference Room
Ketchikan, 9/8/2001, 9:30 am, Borough Attorney's Conference Room
Kodiak, 10/20/2001, 10:00 am, Jamin, Ebell et al.
Nome, 9/21/2001, 9:00 am, Lewis & Thomas, P.C.
Sitka, 10/5/2001, 9:00 am, Pearson & Hanson

ALPS Professional Responsibility
CLE #2001-027; 3.0 Ethics CLE Credits, Live – Anchorage, September 6th
Barrow, 11/2/2001, 10:00 am, Law Library
Dillingham, 11/2/2001, 10:00 am, Jury Room
Fairbanks, No replay – see live program info.
Juneau, No replay – see live program info
Kenai, 10/12/2001, 1:00 pm, Cowan, Gerry & Aaronson
Homer, 10/12/2001, 1:00 pm, Homer City Hall Conference Room
Ketchikan, 10/27/2001, 9:30 am, Borough Attorney's Conference Room
Kodiak, 10/27/2001, 10:00 am, Jamin, Ebell et al.
Nome, 10/19/2001, 9:00 am, Lewis & Thomas, P.C.
Sitka, 10/19/2001, 9:00 am, Pearson & Hanson

Powerpoint Workshop
CLE #2001-025; 6.25 General CLE Credits, Live – Anchorage, September 12th
Barrow, 2/1/2002, 10:00 am, Law Library
Dillingham, 2/1/2002, 10:00 am, Jury Room
Fairbanks, 1/4/2002, 9:00 am, Cook Schuhmann et al.
Juneau, 1/4/2002, 9:00 am, Dillon & Findley
Kenai, 1/18/2002, 1:00 pm, Cowan, Gerry & Aaronson
Homer, 1/18/2002, 1:00 pm, Homer City Hall Conference Room
Ketchikan, 1/26/2002, 9:30 am, Borough Attorney's Conference Room
Kodiak, 1/26/2002, 10:00 am, Jamin, Ebell et al.
Nome, 1/11/2002, 9:00 am, Lewis & Thomas, P.C.
Sitka, 1/11/2002, 9:00 am, Pearson & Hanson

Using the Internet for Discovery
CLE #2001-026; CLE Credits TBA, Live – Anchorage, September 20th
Barrow, 11/30/2001, 10:00 am, Law Library
Dillingham, 11/30/2001, 10:00 am, Jury Room
Fairbanks, 10/26/2001, 9:00 am, Cook Schuhmann et al.
Juneau, 10/26/2001, 9:00 am, Dillon & Findley
Kenai, 11/2/2001, 1:00 pm, Cowan, Gerry & Aaronson
Homer, 11/2/2001, 1:00 pm, Homer City Hall Conference Room
Ketchikan, 11/10/2001, 9:30 am, Borough Attorney's Conference Room
Kodiak, 11/10/2001, 10:00 am, Jamin, Ebell et al.
Nome, 11/16/2001, 9:00 am, Lewis & Thomas, P.C.
Sitka, 11/16/2001, 9:00 am, Pearson & Hanson

Recent Developments in Intellectual Property & E-Commerce on the Internet
CLE #2001-007; 5.75 General CLE Credits, Live – Anchorage, October 11th
Barrow, 12/14/2001, 10:00 am, Law Library
Dillingham, 12/14/2001, 10:00 am, Jury Room
Fairbanks, 11/16/2001, 9:00 am, Cook Schuhmann et al.
Juneau, 11/16/2001, 9:00 am, Dillon & Findley
Kenai, 11/30/2001, 9:00 am, Cowan, Gerry & Aaronson (full day program)
Homer, 11/30/2001, 9:00 pm, Homer City Hall Conference Room (full day program)
Ketchikan, 12/8/2001, 9:30 am, Borough Attorney's Conference Room
Kodiak, 12/8/2001, 10:00 am, Jamin, Ebell et al.
Nome, 1/4/2002, 9:00 am, Lewis & Thomas, P.C.
Sitka, 1/4/2002, 9:00 am, Pearson & Hanson

Changes inPre-Trial Orders: Civil & Domestic Relations
CLE #2001-032; 3.0 CLE Credits, Live – Anchorage, October 17th
Barrow, 3/1/2002, 10:00 am, Law Library
Dillingham, 3/1/2002, 10:00 am, Jury Room
Fairbanks, 2/8/2002, 9:00 a.m., Cook Schuhmann et al.
Juneau, 2/8/2002, 9:00 a.m., Dillon & Findley
Kenai, 11/16/2001, 1:00 pm, Cowan, Gerry & Aaronson
Homer, 11/16/2001, 1:00 pm, Homer City Hall Conference Room
Ketchikan, 2/23/2002, 9:30 am, Borough Attorney's Conference Room
Kodiak, 2/23/2002, 10:00 am, Jamin, Ebell et al.
Nome, 2/1/2002, 9:00 am, Lewis & Thomas, P.C.
Sitka, 2/1/2002, 9:00 am, Pearson & Hanson

Environmental Law Issues
CLE #2001-016; CLE Credits TBA, Live – Anchorage, October 19th
Barrow, 1/4/2002, 10:00 am, Law Library
Dillingham, 1/4/2002, 10:00 am, Jury Room
Fairbanks, 12/7/2001, 9:00 am, Cook Schuhmann et al.
Juneau, 12/7/2001, 9:00 am, Dillon & Findley
Kenai, 12/14/2001, 1:00 pm, Cowan, Gerry & Aaronson
Homer, 12/14/2001, 1:00 pm, Homer City Hall Conference Room
Ketchikan, 1/12/2002, 9:30 am, Borough Attorney's Conference Room
Kodiak, 1/12/2002, 10:00 am, Jamin, Ebell et al.
Nome, 11/30/2001, 9:00 am, Lewis & Thomas, P.C.
Sitka, 11/30/2001, 9:00 am, Pearson & Hanson

14th Annual AK Native Law Conference – Self-Determination: Protecting Native Children, Tribal Courts and Village Economies
CLE #2001-006; 6.5 General CLE Credits, Live – Anchorage, October 24th
Barrow, 1/11/2002, 10:00 am, Law Library
Dillingham, 1/11/2002, 10:00 am, Jury Room
Fairbanks, 11/30/2001, 9:00 am, Cook Schuhmann et al.
Juneau, 11/30/2001, 9:00 am, Dillon & Findley
Kenai, 12/07/2001, 9:00 am, Cowan, Gerry & Aaronson (full day program)
Homer, 12/07/2001, 9:00 am, Homer City Hall Conference Room (full day program)
Ketchikan, 1/05/2002, 9:30 am, Borough Attorney's Conference Room
Kodiak, 1/05/2002, 10:00 am, Jamin, Ebell et al.
Nome, 12/14/2001, 9:00 am, Lewis & Thomas, P.C.
Sitka, 12/14/2001, 9:00 am, Pearson & Hanson

8th Annual Workers' Comp Update
CLE #2001-029; CLE Credits TBA, Live – Anchorage, November 2nd
Barrow, 1/18/2002, 10:00 am, Law Library
Dillingham, 1/18/2002, 10:00 am, Jury Room
Fairbanks, 1/11/2002, 9:00 am, Cook Schuhmann et al.
Juneau, 1/11/2002, 9:00 am, Dillon & Findley
Kenai, 1/4/2002, 1:00 pm, Cowan, Gerry & Aaronson
Homer, 1/4/2002, 1:00 pm, Homer City Hall Conference Room
Ketchikan, 12/15/2001, 9:30 am, Borough Attorney's Conference Room
Kodiak, 12/15/2001, 10:00 am, Jamin, Ebell et al.
Nome, 12/7/2001, 9:00 am, Lewis & Thomas, P.C.
Sitka, 12/7/2001, 9:00 am, Pearson & Hanson

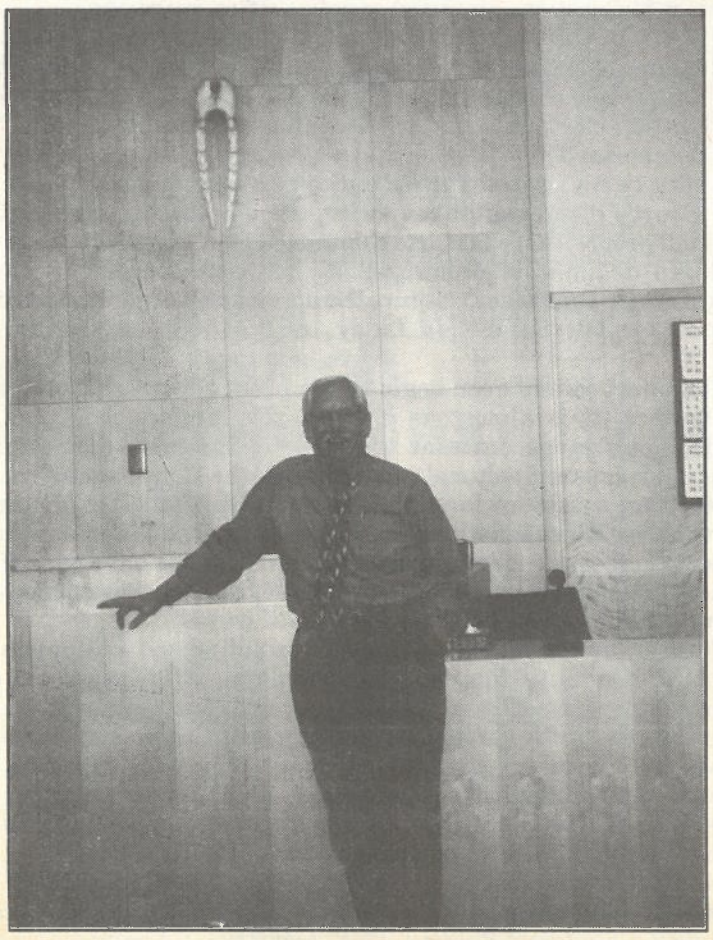
Consumer Law & Your Practice
CLE #2001-029; CLE Credits TBA, Live – Anchorage, November 2nd
Barrow, 12/7/2001, 10:00 am, Law Library
Dillingham, 12/7/2001, 10:00 am, Jury Room
Fairbanks, 12/14/2001, 9:00 am, Cook Schuhmann et al.
Juneau, 12/14/2001, 9:00 am, Dillon & Findley
Kenai, 1/11/2002, 1:00 pm, Cowan, Gerry & Aaronson
Homer, 1/11/2002, 1:00 pm, Homer City Hall Conference Room
Ketchikan, 1/19/2002, 9:30 am, Borough Attorney's Conference Room
Kodiak, 1/19/2002, 10:00 am, Jamin, Ebell et al.
Nome, 1/25/2002, 9:00 am, Lewis & Thomas, P.C.
Sitka, 1/25/2002, 9:00 am, Pearson & Hanson

New Federal Discovery Rules
CLE #2001-020; CLE Credits TBA, Live – Anchorage, November 30th
Barrow, 2/15/2002, 10:00 am, Law Library
Dillingham, 2/15/2002, 10:00 am, Jury Room
Fairbanks, 1/18/2002, 9:00 am, Cook Schuhmann et al.
Juneau, 1/18/2002, 9:00 am, Dillon & Findley
Kenai, 1/25/2002, 1:00 pm, Cowan, Gerry & Aaronson
Homer, 1/25/2002, 1:00 pm, Homer City Hall Conference Room
Ketchikan, 2/2/2002, 9:30 am, Borough Attorney's Conference Room
Kodiak, 2/2/2002, 10:00 am, Jamin, Ebell et al.
Nome, 2/8/2002, 9:00 am, Lewis & Thomas, P.C.
Sitka, 2/8/2002, 9:00 am, Pearson & Hanson

Ethics at the 11th Hour
CLE #2001-024; CLE Credits TBA, Live – Anchorage, December 4th
TENTATIVE: General Replay for all locations (unedited) on Wednesday, December 12th.
Barrow, 2/22/2002, 10:00 am, Law Library
Dillingham, 2/22/2002, 10:00 am, Jury Room
Fairbanks, 1/25/2002, 9:00 am, Cook Schuhmann et al.
Juneau, 1/25/2002, 9:00 am, Dillon & Findley
Kenai, 2/1/2002, 1:00 pm, Cowan, Gerry & Aaronson
Homer, 2/1/2002, 1:00 pm, Homer City Hall Conference Room
Ketchikan, 2/9/2002, 9:30 am, Borough Attorney's Conference Room
Kodiak, 2/9/2002, 10:00 am, Jamin, Ebell et al.
Nome, 1/18/2002, 9:00 am, Lewis & Thomas, P.C.
Sitka, 1/18/2002, 9:00 am, Pearson & Hanson

CINA Update
CLE #2002-004; CLE Credits TBA, Live – Anchorage, January 15th
Barrow, 3/15/2002, 10:00 am, Law Library
Dillingham, 3/15/2002, 10:00 am, Jury Room
Fairbanks, 3/1/2002, 9:00 am, Cook Schuhmann et al.
Juneau, 3/1/2002, 9:00 am, Dillon & Findley
Kenai, 3/8/2002, 1:00 pm, Cowan, Gerry & Aaronson
Homer, 3/8/2002, 1:00 pm, Homer City Hall Conference Room
Ketchikan, 2/16/2002, 9:30 am, Borough Attorney's Conference Room
Kodiak, 2/16/2002, 10:00 am, Jamin, Ebell et al.
Nome, 2/22/2002, 9:00 am, Lewis & Thomas, P.C.
Sitka, 2/22/2002, 9:00 am, Pearson & Hanson

Spotlight On Nome



Photos by Barbara Armstrong

Nome Video Replay Site:
Law Firm of Lewis & Thomas

Pictured above are the lawyers and staff of Lewis & Thomas in Nome: l to r Conner Thomas, partner; Bob Lewis, partner; Greg Parvin, associate, and Agnes Miller, secretary. Nestled in front is a stuffed trumpeter swan, sort of the office mascot, which was part of a disputed estate. Now it welcomes clients in the reception area.

At left, Judge Ben Esch in his courtroom in Nome. Actually, it is a federal courtroom that is leased by the state and shared with the U.S. District Court as needed – a great arrangement for both courts.

The walrus artifact was an exhibit in a theft case. The skull and carved tusks were stolen from the courtroom during a recess, but shortly discovered in a pawnshop. Now the piece graces the wall behind the bench.

Voluntary Continuing Legal Education (VCLE) Rule Pilot Project First Reporting Period 9/2/1999-12/31/2000

CORRECTED LISTINGS

Following are corrections to the list of active Alaska Bar members who voluntarily complied with the Alaska Supreme Court recommended guidelines of 12 hours (including 1 of ethics) of continuing legal education per year. The original list was published in The Bar Rag July-August , 2001 issue. **The individuals below should have been included in the original list, but were omitted due to clerical error.**

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

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

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

Brad J. Brinkman
Janet L. Crepps
Maryann E. Foley
Les Gara
Karen R. Hegyi
Mary R. Knack
Kirk R. McKenzie
Claire Steffens

Alaska Bar Association Fall 2001 CLE Calendar

Date	Time	Title	Location
September 19	8:30 – 11:45 a.m.	Using the Internet for Discovery CLE #2001-026 3.0 General CLE Credits	Juneau Centennial Hall
September 20	9:00 a.m. – 12:15 p.m.	Using the Internet for Discovery CLE #2001-026 3.0 General CLE Credits	Anchorage Downtown Marriott
October 11	8:30 a.m. – 4:30 p.m.	Recent Developments in Intellectual Property & E-Commerce on the Internet CLE #2001-007 5.75 CLE Credits	Anchorage Hotel Captain Cook
October 17	8:00 – 11:30 a.m.	Pre-Trial Orders: Civil & Domestic Relations CLE #2001-032 3.25 General CLE Credits	Anchorage Hotel Captain Cook
October 19	8:30 a.m. – 1:00 p.m.	Environmental Law Issues CLE #2001-016 4.0 General CLE Credits	Anchorage Hotel Captain Cook
October 24	8:30 a.m. – 5:15 p.m.	14th Annual Alaska Native Law Conference CLE #2001-006 6.5 General CLE Credits	Anchorage Hilton Hotel
October 24 (tentative) (NV)	9:00 a.m. – 12:00 noon	Therapeutic Courts CLE #2001-028 2.75 General CLE Credits	TBA
November 2	8:30 a.m. – 12:30 p.m.	8th Annual Workers' Comp Update CLE #2001-029 3.75 CLE Credits	Anchorage Hotel Captain Cook
November 7	Morning	Consumer Law & Your Practice CLE #2001-009 CLE Credits TBA	Anchorage Hotel Captain Cook
November 8	5:00 – 7:00 p.m.	Off the Record – First Judicial District CLE #2001-033 2.0 General CLE Credits	Juneau Centennial Hall
November 30	Morning	Federal Court Rules Update CLE #2001-020 CLE Credits TBA	Anchorage Hotel Captain Cook
December 4	8:30 -- 10:00 a.m.	Ethics at the 11th Hour CLE #2001-024 1.5 Ethics CLE Credits	Anchorage Downtown Marriott

Texas judge visits 'Alice in Wonderland'

(Editor's Note: We are reprinting this federal court opinion with mixed emotions. On the one hand, the opinion is more interesting than most, and it is reaching for humor. We question, however, whether the court itself crossed acceptable lines of decorum by engaging in a personal attack on the quality of counsel. Thus, we share this with you and request your opinions. Send comments to: info@Alaskabar.org).

US District Court
for the Southern District of Texas, Galveston Division

June 28, 2001, Decided June 27, 2001, Entered

John W. Bradshaw, Plaintiff, v. **Unity Marine Corporation, Inc.;** ***CORONADO***, in rem; and ***Phillips Petroleum Company,*** Defendants.

CIVIL ACTION NO. G-00-558

Plaintiff brings this action for personal injuries sustained while working aboard the *MV CORONADO*. Now before the Court is Defendant Phillips Petroleum Company's ("Phillips") Motion for Summary Judgment. For the reasons set forth below, Defendant's Motion is GRANTED.

I. DISCUSSION

Plaintiff John W. Bradshaw claims that he was working as a Jones Act seaman aboard the *MV CORONADO* on January 4, 1999. The *CORONADO* was not at sea on January 4,1999, but instead sat docked at a Phillips' facility in Freeport, Texas. Plaintiff alleges that he "sustained injuries to his body in the course and scope of his employment." The injuries are said to have "occurred as a proximate result of the unsafe and unseaworthy condition of the tugboat *CORONADO* and its appurtenances while docked at the Phillips/ Freeport Dock."

Plaintiff's First Amended Complaint, which added Phillips as a Defendant, provides no further information about the manner in which he suffered injury. However, by way of his Response to Defendant's Motion for Summary Judgment, Plaintiff now avers that "he was forced to climb on a piling or dolphin to leave the vessel at the time he was injured." This, in combination with Plaintiff's Complaint, represents the totality of the information available to the Court respecting the potential liability of Defendant Phillips.

BEFORE PROCEEDING FURTHER, THE COURT NOTES THAT THIS CASE INVOLVES TWO EXTREMELY LIKABLE LAWYERS, WHO HAVE TOGETHER DELIVERED SOME OF THE MOST AMATEURISH PLEADINGS EVER TO CROSS THE HALLOWED CAUSEWAY INTO GALVESTON, AN EFFORT WHICH LEADS THE COURT TO SURMISE BUT ONE PLAUSIBLE EXPLANATION....

Six days after filing his one-page Response, Plaintiff filed a Supplemental Opposition to Phillips Petroleum Company's Motion for Summary Judgment. Although considerably lengthier, the Supplement provides no further illumination of the factual basis for Plaintiff's claims versus Phillips. Defendant now contends, in its Motion for Summary Judgment, that the Texas two-year statute of limitations for personal injury claims bars this action.

Plaintiff suffered injury on January 4,1999 and flied suit in this Court on September 15, 2000. However, Plaintiff did not amend his Complaint to add Defendant Phillips until March 28, 2001, indisputably more than two-years after the date of his alleged injury. Plaintiff now responds that he timely sued Phillips, contending that the three-year federal statute for maritime personal injuries applies to his action.

Before proceeding further, the Court notes that this case involves two extremely likable lawyers, who have together delivered some of the most amateurish pleadings ever to cross the hallowed causeway into Galveston, an effort which leads the Court to surmise but one plausible explanation. Both attorneys have obviously entered into a secret pact—complete with hats, handshakes and cryptic words—to draft their pleadings entirely in crayon on the back sides of gravy-stained paper place mats, in the hope that the Court would be so charmed by their child-like efforts that their utter dearth of legal authorities in their briefing would go unnoticed. Whatever actually occurred, the Court is now faced with the daunting task of deciphering their submissions.

With Big Chief tablet readied, thick black pencil in hand, and a devil-may-care laugh in the face of death, life on the razor's edge sense of exhilaration, the Court begins.

Summary judgment is appropriate if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. When a motion for summary judgment is made, the nonmoving party must set forth specific facts showing that there is a genuine issue for trial. Therefore, when a defendant moves for summary judgment based upon an affirmative defense to the plaintiff's claim, the plaintiff must bear the burden of producing some evidence to create a fact issue for some element of defendant's asserted affirmative defense.

Defendant begins the descent into Alice's Wonderland by submitting a Motion that relies upon only one legal authority. The Motion cites a Fifth Circuit case which stands for the whopping proposition that a federal court sitting in Texas applies the Texas statutes of limitations to certain state and federal law claims. That is all well and good—the Court is quite fond of the Erie doctrine; indeed there is talk of little else around both the Canal and this Court's water cooler. Defendant, however, does not even cite to Erie, but to a mere successor case, and further fails to even begin to analyze why the Court should approach the shores of Erie.

Finally, Defendant does not even provide a cite to its desired Texas limitation statute. A more bumbling approach is difficult to conceive—but wait folks. There's More!

Defendant submitted a Reply brief, on June 11, 2001, after the Court had already drafted, but not finalized, this Order. In a regretful effort to be thorough, the Court reviewed this submission. It too fails to cite to either the Texas statute of limitations or any Fifth Circuit cases discussing maritime law liability for Plaintiff's claims versus Phillips.

Plaintiff responds to this deft, yet minimalist analytical wizardry with an equally gossamer wisp of an argument, although Plaintiff does at least cite the federal limitations provision applicable to maritime tort claims. Naturally, Plaintiff also neglects to provide any analysis whatsoever of why his claim versus Defendant Phillips is a maritime action. Instead, Plaintiff "cites" to a single case from the Fourth Circuit.

Plaintiff's citation, however, points to a nonexistent Volume "1886" of the Federal Reporter Third Edition and neglects to provide a pinpoint citation for what, after being located, turned out to be a forty-page decision. Ultimately, to the Court's dismay after reviewing the opinion, it stands simply for the bombshell proposition that torts committed on navigable waters (in this case an alleged defamation committed by the controversial G. Gordon Liddy aboard a cruise ship at sea) require the application of general maritime rather than state tort law. *See* Wells v. Liddy, 186 F 3d 506, 524 (4th Cir. 1999) (What the....)?!

The Court cannot even begin to comprehend why this case was selected for reference. It is almost as if Plaintiff's counsel chose the opinion by throwing long range darts at the Federal Reporter (remarkably enough hitting a nonexistent volume!). And though the Court often gives great heed to dicta from courts as far flung as those of Manitoba, it finds this case unpersuasive. There is nothing in Plaintiff's cited ease about ingress or egress between a vessel and a dock, although counsel must have been thinking that Mr. Liddy must have had both ingress and egress from the cruise ship at some docking facility, before uttering his fateful words.

Further, as noted above, Plaintiff has submitted a Supplemental Opposition to Defendant's Motion. This Supplement is longer than Plaintiff's purported Response, cites more cases, several constituting binding authority from either the Fifth Circuit or the Supreme Court, and actually includes attachments which purport to be evidence. However, this is all that can be said positively for Plaintiff's Supplement, which does nothing to explain why, on the facts of this case, Plaintiff has an admiralty claim against Phillips (which probably makes some sense because Plaintiff doesn't).

Plaintiff seems to rely on the fact that he has pled Rule 9(h) and stated an admiralty claim versus the vessel and his employer to demonstrate, that maritime law applies to Phillips. This bootstrapping argument does not work; Plaintiff must properly invoke admiralty law versus each Defendant discretely. Despite the continued shortcomings of Plaintiff's supplemental submission, the Court commends Plaintiff for his vastly improved choice of crayon—Brick Red is much easier on the eyes than Goldenrod, and stands out much better amidst the mustard splotched about Plaintiff's briefing. But at the end of the day, even if you put a calico dress on it and call it Florence, a pig is still a pig.

Now, alas, the Court must return to grownup land. As vaguely alluded to by the parties, the issue in this case turns upon which law—state or maritime—applies to each of Plaintiff's potential claims versus Defendant Phillips. And despite Plaintiff's and Defendant's joint, heroic efforts to obscure it, the answer to this question is readily ascertained.

The Fifth Circuit has held that "absent a maritime status between the parties, a dock owner's duty to crew members of a vessel using the dock is defined by the application of state law, not maritime law. Specifically, maritime law does not impose a duty on the dock owner to provide a means of safe ingress or egress. Therefore, because maritime law does not create a duty on the part of Defendant Phillips vis-a-vis Plaintiff, any claim Plaintiff does have versus Phillips must necessarily arise under state law. Take heed and be suitably awed, oh boys and girls—the Court was able to state the issue and its resolution in one paragraph...despite dozens of pages of gibberish from the parties to the contrary!

DESPITE THE WASTE OF PERFECTLY GOOD CRAYON SEEN IN BOTH PARTIES' BRIEFINGS (AND THE INEXPLICABLE ODOR OF WET DOG EMANATING FROM SUCH) THE COURT BELIEVES IT HAS SATISFACTORILY RESOLVED THIS MATTER.

The Court, therefore, applies the Texas statute of limitations. Texas has adopted a two-year statute of limitations for personal injury cases. Plaintiff failed to file his action versus Defendant Phillips within that two-year time frame. Plaintiff has offered no justification, such as the discovery rule or other similar tolling doctrines, for this failure. Accordingly, Plaintiff's claims versus Defendant Phillips were not timely filed and are barred. Defendant Phillips' Motion for Summary Judgment is GRANTED and Plaintiff's state law claims against Defendant Phillips are hereby DISMISSED WITH PREJUDICE.

A Final Judgment reflecting such will be entered in due course.

II. CONCLUSION

After this remarkably long walk on a short legal pier, having received no useful guidance whatever from either party, the Court has endeavored, primarily based upon its affection for both counsel, but also out of its own sense of morbid curiosity, to resolve what it perceived to be the legal issue presented. Despite the waste of perfectly good crayon seen in both parties' briefing (and the inexplicable odor of wet dog emanating from such) the Court believes it has satisfactorily resolved this matter. Defendant's Motion for Summary Judgment Is GRANTED.

At this juncture, Plaintiff retains, albeit seemingly to his befuddlement and/or consternation, a maritime law cause of action versus his alleged Jones Act employer, Defendant Unity Marine Corporation, Inc. However, It r~ well known around these parts that Unity Marine's lawyer is equally likable and has been writing crisply in ink since the second grade. Some old-timers even spin yarns of an ability to type. The Court cannot speak to the veracity of such loose talk, but out of caution, the Court suggests that Plaintiff's lovable counsel had best upgrade to a nice shiny No. 2 pencil or at least sharpen what's left of the stubs of his crayons for what remains of this heart-stopping, spine-tingling action.

In either case, the Court cautions Plaintiff's counsel not to run with a sharpened writing utensil in hand—he could put his eye out.

IT IS SO ORDERED.