The Alaska BAR RAG

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Inside:

- THE "CHINA SYNDROME" OF CHILD PROTECTION
- HATE SPAM? TIPS ON PREVENTION
- A ONE-STOP LOCATION FOR LEGAL SERVICES?
- COURT VIEW CASE SYSTEM LAUNCHED

A journey to the land of wind & ghosts[1]

BY BOB BURAKOFF, JON KATCHER, & JIM KENTCH

The reader especially blessed by Mnemosyne[2] will remember an article in this periodical some two years ago chronicling The First Jay Rabinowitz Memorial Ferry Trip. This is the story of the second such venture.

DRAMATIS PERSONAE

There were three of us this time: Bob Burakoff (aka "Ootek,)"Jon Katcher (aka "El Tigre"),[3] and Jim Kentch (aka "El hombre del fuego"). Bob is a cheechako from Boston who wanted to take a road trip to see glaciers, and we were happy to oblige. While a law student, Ootek once explained tort law by saying, "Torts are easy. It's just 'You break, you pay. Unless he had it coming'."

THE ROUTE

We drove to Portage, used the tunnel to cross the neck of the Kenai Peninsula to Whittier, took the M/V *E.L. Bartlett* to Cordova, and drove the 34 miles to the Million Dollar Bridge.[4] We then retraced our steps.

SPECIE[5]

We had 37 Susan B. Anthony dollar coins, of which even the most cursory examination would reveal them to be "specie." When we tried to use them to pay the $12 toll for the tunnel to Whittier, the following conversation happened:

Toll collector, apparently not recognizing that we had handed him 12 rather than 48 coins: "Are you going to pay in quarters?"

We: "No, those are dollar coins."

"Don't you have any cash?"

"Yes, I just gave you some."

"My boss gets real mad at me if I have a lot of coins, and I don't want her to get mad at me."

So we reluctantly paid in Federal Reserve Notes. Fortunately, throughout the trip we were able to spend all of our dollar specie. People in Glennallen, McCarthy, and even the Anchorage REI store (known for its snootiness) accepted specie with no problem. The only flack we got was from the State of Alaska employee at the Whittier Tunnel.[6]

THE TROTSKY TOWER[7]

This abandoned building in Whittier is redolent of failed socialist dreams. Upon entering we found ourselves in a post-apocalyptic world; from that point on, we realized, as far as tort law was concerned, "We had it coming." Gypsum stalactites, dripping water, graffiti[8], broken windows ("They should have fixed the first one," said

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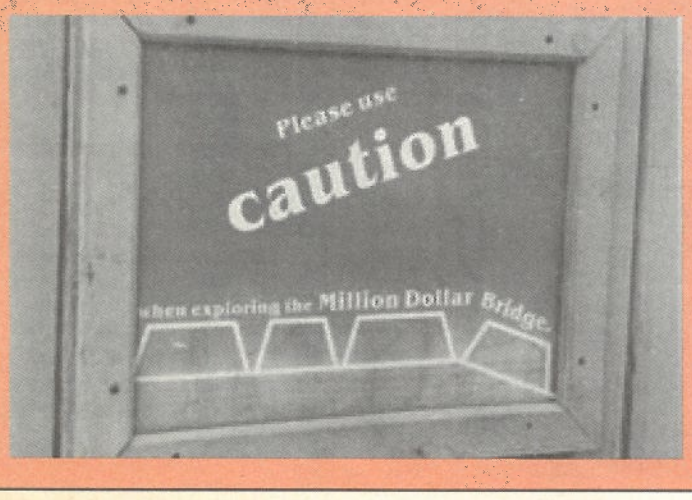

So you want a summer jury . . . — See page 20

First law education conference scheduled for March 2004

The new Alaska Teaching Justice Network will sponsor a statewide conference on Law-Related Education (LRE) on March 1, 2004, with speakers from national organizations joining Alaska presenters.

Teachers, judges, lawyers, juvenile justice officials, legislators, and community leaders who work with Alaska's youth will learn more about how to engage Alaska's students in learning about the law and the foundations of our democratic system of government. The one-day event will be held at the Alaska Court System's Anchorage court campus.

The Alaska Teaching Justice Network is a group of educators, judges, lawyers, Youth Court representatives, juvenile justice officials, school resource officers, and others concerned with advancing law-related education in Alaska. ATJN is sponsored by the Alaska Court System and chaired by Justice Dana Fabe. Funding for the statewide conference is provided in part by Youth for Justice, a program of the federal Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice.

For more information about the conference, see page 8.

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President's Column

The price of admission

☐ Lawrence Ostrovsky

The results from the July bar exam will be out at the end of October. Of course, most of you who are reading this article have long ago sublimated the memory of that traumatic event. Nonetheless, I think it's worthwhile to bring bar members up to date on the current state of the bar exam and admissions.

A lot of things haven't changed since I took the bar exam 20 years ago. It's still a two and a half day exam, consisting of nine essay questions, the Multistate exam and two longer, memo type, questions. People had philosophical issues about the exam then, and they still do. Among them are, since it's available only to graduates of accredited law schools and graduates of unaccredited schools who have practiced five years, is the exam even necessary, and, of course, does the exam really test professional competence. It seems to me that those are still valid questions. But, like Alaska, virtually all states still require attorneys to take a bar exam.

The recent pass rates in Alaska have varied from 51% to 76%. This is roughly in line with the national average, which, in 2002, had a pass rate of 57%. Both nationally and in Alaska, the pass rates tend to be slightly higher for first time exam takers. The number of applicants in Alaska has hovered in the fifties and sixties for a number of years, although 86 applicants took the most recent exam. The greater number of applicants is perhaps a function of slower economic growth down south, or word is getting out about our recent mild winters.

Much of the exam is written and graded by our colleagues who have volunteered for the law examiners committee. Both the writing and grading are rigorous processes that have built-in quality and calibration checks.

The exam questions go through peer review before they are selected for inclusion in the exam. On the grading side, a calibration team reads 10 actual exams and selects "benchmark" answers. During calibration, the graders come to agreement on what constitutes good answers, poor answers, and those in between.

Once the benchmarks have been established, two graders each take half of the essays for a particular question and, using a grader's guide and benchmarks, grade the essays. The graders then switch and grade the other half. If the two graders are more than one point apart on any exam, they meet and reconcile their scores. Usually about 6 – 8 exams per essay question must be reconciled. The essay scores are then combined with the Multistate exam scores. The examiners committee re-reads the essays of any applicants who come within one point of passing.

The good news is that, once lawyers have successfully run the exam gauntlet and practiced for a number of years, they are eligible for licensing reciprocity in 29 states. This includes, in recent years, Washington state. (The complete list is on the Bar's web page, at www.alaskabar.org.) Alaska, in turn, gets about 15 – 20 reciprocity applicants each year. As the country becomes a seamless web of communication and commerce, lawyers have raised the issue of national licensing, which would allow lawyers to practice freely in every state.

Recently the Bar allowed applicants to take the bar exam on their

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Editor's Column

The first commandment: You must obey . . . really

☐ Thomas Van Flein

Two events have occurred recently that, at first glance are amusing, but are rather pernicious upon closer examination. There seems to be a trend where those who ought to know better (one state supreme court judge, one state attorney general and some local police) are snubbing the rule of law. It is a trend that should end now.

I like the Ten Commandments (the book, not the movie). I can remember most of them, and I appreciate seeing them chiseled into granite to refresh my recollection. It is my opinion not enough things are carved in stone anymore. With delete keys, backspace keys and cut and paste options, nothing seems real permanent today. How often has some crafty lawyer said to a client, when asked if he or she can break a lease or some other contract, "Well, it's not carved in stone..."

Maybe it should be. That step alone would stop a few cases. Plus, the parties would be very selective in choosing exhibits for trial. Instead of saying "We plan on offering 64 exhibits, your honor" parties would say, "We have 72 pounds of exhibits. We can carry no more." Heck, a standard employment policy manual could weigh over 100 pounds. Choosing the most important exhibit would become a physical necessity.

I don't personally mind a 5,200-pound granite monument at any courthouse. It could have the Ten Commandments, or just a pithy comment from George Burns. Anything that reminds litigants that they will burn in hell for eternity has my vote. Alabama Supreme Court Justice Roy Moore seems to agree, in part (the Ten Commandments part). He personally oversaw the (apparently surreptitious) installation of such a monument in the Alabama courthouse in Montgomery.

ANYTHING THAT REMINDS LITIGANTS THAT THEY WILL BURN IN HELL FOR ETERNITY HAS MY VOTE.

There can be little doubt that the monument served a religious purpose. Judge Moore's own comments, and the comments of hundreds of worshipers who pledged to defend the monument when it was ordered removed, were based on clear expressions of religious devotion. If I were a judge reviewing this, I might conclude that the constitutional infringement was de minimus and, when combined with the secular adoption of some of the Old Testament laws (at least two Commandments), the monument may be acceptable in an historical context under our Constitution. Other judges, including a federal district court judge and an appeals panel, disagree. Maybe most judges disagree with me (and Judge Moore) on that.

But this is where Judge Moore and I part company. Rather than accept a valid court order to remove the monument, he chose to ignore it and defy it, citing a "higher law." When a judge ignores a lawful order from a higher court and asserts a nullification defense, that judge has admitted that he or she is no longer fit to serve as a judge. If any person should understand the rule of law, it should be a judge. Thus, while some of us may agree with his cause, and others strongly disagree (one of my partners explained at least six very good reasons why such a monument is inappropriate in a courthouse), it used to go without saying that the loser in any dispute will respect the outcome once a court has ruled. This principle alone has done much to advance our society, economy and culture. To me, Judge Moore's conduct in placing a religious monument in the courthouse was a minor constitutional concern. Defying a court order was a major constitutional concern and an irremediable lapse in judgment.

Sadly, it is not just one judge in Alabama who appears confused on the rule of law concept. In Alaska, the Court of Appeals recently applied the rule of law by following a higher court's holding. In *State v. Noy*, the court of appeals (not surprisingly) held that the Alaska Supreme Court's decision in *Ravin v. State* was good law and that it was bound to follow it. Standard legal thinking, really; nothing on the cutting edge. Under *Ravin*, the consensus seems

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The Alaska BAR RAG

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The price of admission

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laptop computers. Although only 17 people used their laptops in the July exam, this is a program that is expected to grow to the point where the vast majority, if not all, of the examinees will use their own computers. Although I'm nostalgic for pencils and the examiners' committee is undoubtedly nostalgic for bad handwriting, the electronic exam should make future bar exams more efficient to administer.

There are 3,582 members of the Alaska Bar, admitted as a result of passing the bar exam or through reciprocity. In a few weeks, that number will hopefully increase as we welcome the successful applicants from the July 2003 bar exam.

The First Commandment

Continued from page 2

to be that possession of up to four ounces of marijuana in one's home for personal use is protected under the Alaska Constitution. It is fair to debate whether that decision was correct when decided, or whether it should be reconsidered today. But it is the law and it is not appropriate to disregard it.

After the Court of Appeals ruling, which did not even change the law but merely applied the law, statements were made by some police representatives that the decision would be ignored and that "pot busts" would continue. Then, the state attorney general, to his credit, issued a memo to the State Troopers and state prosecutors, that state law enforcement should not arrest or issue citations to Alaskans who possess small amounts of marijuana for personal use at home. Not to his credit, however, Attorney General Renkes then directed the troopers and prosecutors to "investigate" these situations anyway and seize the marijuana as evidence to be turned over to the federal prosecutors.

It is obvious that the state disagrees with both the *Ravin* decision and the Court of Appeals decision following *Ravin*. It has said so. There are appellate avenues to be pursued and, quite frankly, legislative avenues in the form of a constitutional amendment, that can lawfully change the decision if that is what everybody wants. But instructing state prosecutors and state troopers to essentially violate state law is not consistent with upholding the spirit and letter of the state constitution. All of these government employees took an oath to uphold the law—all laws, not just the ones they like.

The instructions given by the Attorney General arguably intrude upon the rule of law and weaken respect and efficacy for the courts because it thwarts the spirit of the law as found by the Court of Appeals, and it ascribes a stringent interpretation to a constitutional provision that is typically broadly construed. Although the Attorney General stated that "[w]e have to respect the language of the appeals court decision" the actions demonstrate that the "language" is being minimized to fit within the state's goals. While this is not as blatant has Judge Moore's reliance on a "higher law" to disregard a court order, it is in the same category and poses a threat to the rule of law to some degree.

IN ALASKA, THE HIGH COURT HAS DECIDED ABOUT GETTING HIGH AND IT'S HIGH TIME PEOPLE CLEAR THE AIR AND RECOGNIZE THIS AND WEED OUT ANY MISUNDERSTANDINGS AND NIP THIS WHOLE THING IN THE BUD.

In Alaska, the high court has decided about getting high and it's high time people clear the air and recognize this and weed out any misunderstandings and nip this whole thing in the bud. (There are more where these came from, but I don't want this column to go to pot).

Like it or not, jurors have to follow the law in jury instructions. Parties have to follow the law established by the trial court. Trial courts have to follow the law established by appellate courts. And appellate courts have to follow the law established by the constitution and the legislature. The rule of law is not a Chinese menu. We cannot pick and choose what laws we like and what we don't like. You have to obey—or deal with the consequences. That is the First Commandment, and you can carve that in stone.

Preserving issues for appeal: Objections during trial

By Donald J. Martin

"This objection was waived, because it was not preserved at trial." These are the words you never want to see in an appellate opinion in place of a discussion of your arguments. In this issue, I will explain how to preserve trial issues for appeal. I will discuss objections to the jury charge and to the verdict in a separate article.

Pennsylvania Rule of Appellate Procedure 302(a) provides that issues not raised in the lower court are waived and cannot be raised for the first time on appeal. Rule of Criminal Procedure provides that a ruling on an objection "has the effect of a sealed exception." Pennsylvania Rule of Civil Procedure 227.1(b)(1) provides that post-trial relief man not be granted, unless the grounds were raised in pretrial proceedings, or by motion, objection, point for charge, offer of proof, or other appropriate method at trial. Pennsylvania Rule of Evidence 103 addresses the Court's rulings on evidence. Sub-section (a) provides that error may not be predicated on a ruling that omits or excludes evidence unless a timely objection, motion to strike, or motion in limine appears of record, stating the specific ground (if it is not apparent from the context[1]). If the ruling excludes evidence, then its substance must be made known to the Court by offer of proof or motion in limine, (or be apparent from the context[2]).

These rules are consistent with Pennsylvania case law. An appellate court will not rule on the exclusion of evidence, unless an offer of proof has been made.[3] The rule of waiver by failure to make a contemporaneous and specific objection is all but absolute.[4] The reason for the requirement of a contemporaneous and specific objection or offer of proof is that it gives the trial court the opportunity to rule.[5] However, once an objection has been made and ruled on, it need not be renewed to preserve the claim of error.[6]

All this, from a practical standpoint, means your objection to inadmissible testimony must be made as soon as a question is asked that would likely lead to inadmissible evidence. If inadmissible testimony is given in response to a proper question, a motion to strike must be made immediately after the answer is given. If an objection to your question is sustained, you must ask to make an offer of proof, outside the hearing of the jury. The risk of delay is a finding of waiver. Thinking about the problem, and raising it for the first time after a break or the following day, often results in a finding of waiver.[7]

While Pennsylvania Rule of Evidence 103 and the cases in Note 6 hold that once an objection has been made and ruled upon, it need not be repeated, it is still a good idea to seek a "continuing objection" from the Court. While not required by the Rule, it may help prevent an appellate court from deciding, on its own motion, that an issue was waived by failure to object when the evidence was offered thereafter. Note this in the Statement of the Place of Raising and Preservation of Issues in your brief.

Now, suppose you have objected and your objection was overruled. Can you cross-examine on the point, or offer evidence to the contrary? At least when the cross-examination is preceded by a statement to the trial judge that you intend to preserve your objection, cross-examination on the issue is not a waiver.[8] The offer of contrary evidence should also not be a waiver, but this is not clear in Pennsylvania.[9] Because of the uncertainty, you must weigh, quickly, the likelihood of the court's ruling being reversed on appeal against the harm that is done by leaving the evidence unrebutted. Then, if you decide that contrary evidence is required, make a statement on this record that you are preserving your prior objection, offer the evidence, and hope.

When is a motion for mistrial required? Pennsylvania Rule of Criminal Procedure 605(8) provides that when an event prejudicial to the defendant occurs during trial, the defendant must move for a mistrial at that time. The same principle prevails in civil cases. A motion for mistrial must be made whenever prejudicial and inadmissible evidence comes to the attention of the jury.[10] This can occur not just through testimony, but with a question which suggests an inadmissible answer.[11]

A motion for mistrial is not required if the trial judge overrules the objection. That is because this is a futile motion: having overruled the objection, the trial court would obviously not grant a mistrial.[12]

An objection to the trial court's bias, or a request for recusal, must be made at the earliest possible moment, and not delayed until post-trial motions.[13] There is a very limited exception to this rule stated in *Commonwealth v. Hammer*,[14] where the objection could have a deleterious effect on the jury or the judge. In *Harman v. Borah*,[15] the Supreme Court explained a contemporaneous objection is almost always required. The *Hammer* exception is construed narrowly. The party asserting it has the burden of demonstrating that making a timely objection would have been meaningless. "Meaningless" does not mean that the judge is likely to overrule the objection: more harm to the trial process is required. So, make the motion, then duck.[16]

In conclusion: object whenever inadmissible evidence that may hurt your case is offered; do so specifically; and give the right reason. If evidence you are offering has been excluded, make an offer of proof on the record. At least seek to do so, and, if refused, file a written offer right away. Preserve the issue by motion for post-trial relief in cases in which those motions are required.

Donald J. Martin, is chair of the solo & small firm practice section for the Pennsylvania Bar. Reprinted from the PBA section news.

Endnotes:

[1]Don't rely on the exception. Always state the specific ground of your objection.

[2]See Note #1.

[3]E.G., Romeo v. Manuel, 703 A.2d 530, 533 (Pa. Super. 1997); Philadelphia Record Co. v. Sweet, 124 Pa.Super.414, 188 A. 631, 632-633 (1936).

[4]Commonwealth v. Corley, 432 Pa. Super. 371, 638 A.2d 985, 990, allocatur denied, 538 Pa. 641, 647 A.2d 896 (1994); Commonwealth v. Folino, 293 Pa. Super. 347, 439 A.2d 145, 147-148 (1981).

[5]Commonwealth v. Griffin, 271 Pa. Super.228, 412 A.2d 897, 901 (1979).

[6]Pa.R.Evid. 103(a); Matter of Silverberg, 459 Pa. 107, 327 A.2d 106, 108, n. 3 (1974); Drum v. Shaull Equipment and Supply Company, 787 A.2d 1050, 1055 (Pa. Super. 2001) allocatur denied, 569 Pa. 693, 803 A.2d 735 (2002).

[7]E.G., Harman v. Borah, 562 Pa. 455, 756 A.2d 1116 (2000).

[8]Dougherty V. Allegheny County, 370 Pa. 239, 88 A.2d 73 (1952).

[9]See discussion at Packel and Poulin, Pennsylvania Evidence, 2nd Ed. §126.

[10]While a trial judge is presumed capable of disregarding inadmissible evidence, e.g., Commonwealth v. Galindes, 786 A.2d 1004, 1014 (Pa. Super. 2001), it may help to move for a mistrial under the appropriate circumstances, if the case is tried before a judge alone. That

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ALSC President's Report

One-stop shopping?

☐ Greg Razo

The Alaska Legal Services Corporation (ALSC) is considering the idea of launching a capital campaign with the goal of eventually acquiring a building for its largest and oldest office, in Anchorage.

As part of this, ALSC is giving a lot of thought to the "one-stop shopping" concept that was one of the recommendations of the Alaska Supreme Court's Access to Civil Justice Task Force Report from May of 2000.

There are several other organizations with offices in Anchorage whose missions dovetail with the broad mission of ALSC (access to civil justice for Alaska's poor). They include:

• The Alaska Pro Bono Program, which was spun off of ALSC in 2000 to enable it to handle those types of cases prohibited to ALSC (representation of immigrants in general civil matters; representation of prisoners in any civil matter; class actions; and a few other areas.)

• The Disability Law Center, which focuses on the legal rights of Alaskans with disabilities;

• The Immigration and Refugee Services Project of Catholic Social Services, which focuses on advocating for the rights of Alaska's immigrant population with respect to the Bureau of Citizenship and Immigration Services (which is what the Immigration and Naturalization Service evolved into following September 11);

These agencies often make referrals of cases to each other, as they try to coordinate their work, avoid duplicative efforts, and improve access to justice in Alaska.

Although they cooperate with each other along a programmatic dimension, geographically, they are "all over the map."

ALSC is in the Legal Center at 1016 West Sixth; in fact, they are the only legal office currently in the Legal Center, as the rest of the building is rented by the State of Alaska Department of Vocational Rehabilitation and the Anchorage School District. (I don't think anyone has thought of it as the "Legal Center" for years. When I'd fly into Anchorage for a board meeting and tell the cab driver "the Legal Center," I'd get a blank look, my specification of "1016 West Sixth" would elicit an "OK, where is that?" and the only way to properly orient the cabbie would be to say "It's where the PFD office is" which got me an "oh, yeah, OK" and off we'd go. Nowadays I have to say "it's where the PFD office used to be before it moved" and that works.)

ALSC actually had to move its accounting office into separate quarters last year due to over crowding, and that department now works in some less expensive office space on Jewel Lake Road. The attorneys remaining in the Legal Center are still overcrowded, as our board members can tell when we convene there four times annually for our meetings.

APBP has a part-time staffer working in an office generously donated by Ashburn and Mason, and an executive director working in a garage generously donated by Bill Cotton (an appropriate arrangement, since Bill Cotton is that executive director).

The Disability Law Center is on Arctic Boulevard. (Back when APBP could afford office space, it sublet some space from the DLC there.)

The Immigration and Refugee Services Project is housed with the other Catholic Social Services programs on East 20th, where everyone is having to move over to make room for another incipient CSS program, and they are tightly squeezed for space.

Might it be possible at some point to co-locate all these organizations, so that an applicant who wants to consult with one or more of them would not have to travel all over town? And could these agencies reduce their overhead by jointly acquiring a building?

With substantial community support, it might be possible.

Handicapped accessibility is a must, for obvious reasons; it wouldn't do to have the Disability Law Center housed in anything that didn't meet ADA requirements, nor are the other organizations any more willing to compromise on that either.

Proximity to public transportation is also important, because so many of each agency's clientele depend on that.

The movements that are afoot to revitalize portions of the Fairview and Mountain View areas might hold some possibilities for this plan.

At this point, we don't know how viable this suggestion might be. All these agencies are so focused on their day-to-day service work that the long-range planning necessary to undertake a building acquisition plan is difficult for them to prioritize. That, and the fact that they are perennially operating under increasingly tight budgets, make this idea a challenge for them all.

This might be an opportunity for some pro bono work by Anchorage real estate or other specialists, who might cringe at getting a call from Erick Cordero about taking a divorce case, but would be willing to spend some time and effort to serve on a committee and lend their expertise to help all these organizations with this one-stop shopping idea.

Don't be afraid to give Erick a call at ALSC at 222-4521 if this is something you could help with. Tell him I told you to call him, and that he's not to give you a divorce.

But call him quickly, before ALSC has to move him into a broom closet!

Alaskans Against the Death Penalty

8th Annual "Fry Fish, Not People" Salmon Bake-Off

Anchorage attorney Carmen Clark won the Grand Prize in the AADP "Fry Fish, Not People" Salmon Bake-Off with a special cranberry glaze salmon.

Members of the Alaska legal community dominated the winner's circle at the AADP Salmon Bake-Off held August 8th in Anchorage. Winners and judges gathering after the awards presentation included, L-R: Paul Malin (chef), Berney Richert (judge), Judi Wehhe (visiting judge), Hugh Fleischer (chef), Rep. Ethan Berkowitz (judge), Carmen Clark (chef), Kevin McCoy (chef), Kathy Harris (chef), Jean Kollantai (chef), and Ruth Berkowitz (judge). Malin, Fleischer, Rep. Berkowitz, Clark and McCoy are all Anchorage attorneys.

ESTATE PLANNING CORNER

Quality over quantity

☐ Steven T. O'Hara

The most gratifying part of practicing law is doing quality work. The value of the client's appreciation cannot be quantified. Even if the client does not express appreciation, the attorney knows when quality work has been accomplished, and that knowledge provides confidence, which brings about more quality work, which brings about more satisfaction.

Money is not the most gratifying part of practicing law. Although money usually follows quality work, any gratification money provides is short-lived compared to the satisfaction received from a client's appreciation or the lawyer's knowledge of a job well done.

MONEY IS NOT THE MOST GRATIFYING PART OF PRACTICING LAW.

Years ago we prepared a trust for a client. At the trust signing, the client asked about our fee. I told the client the amount and said that the final bill was less than our usual fee for like work. The client responded that he was so appreciative of the work we had done that he wanted to pay our usual fee, even though it was substantially more than his bill. This additional compensation was great. We needed it to help operate our firm. But what is of more lasting value is the memory of the client's appreciation.

We had a client in the produce business who is now deceased. The client used to tell me that when he first got into the business in the 1950's, it was difficult for him to supply his customers with quality products. The quality of his produce always bothered him, although few customers complained.

The same ought to be true about our work. Clients may or may not realize when quality is lacking, but any absence of quality ought to bother us.

A SIMPLE STEP THAT DOES NOT GET EMPHASIZED ENOUGH IS FOR THE LAWYER TO LIVE WELL WITHIN MEANS.

While money is not the most gratifying part of practicing law, money can undermine the lawyer's ability to do quality work. Here it is not money itself that is the problem, but rather a preoccupation with money.

If the lawyer takes on large financial responsibilities, the lawyer may become vulnerable to the temptation to focus on quantity rather than quality.

In every field there is pressure to sacrifice quality for quantity. In the practice of law, quantity may mean accepting more work than the lawyer can handle or accepting work from persons with whom the lawyer would rather not be associated.

There are a number of steps the lawyer can take to help assure quality work. Many are common sense, such as reserving enough time for each project, exploring every issue, focusing on existing clients, as well as studying in order to stay current.

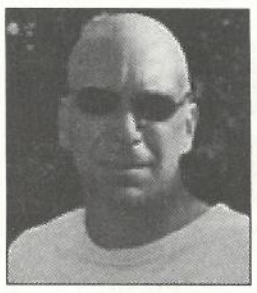
A simple step that does not get emphasized enough is for the lawyer to live well within means. The lawyer living beyond means is at risk of finding one day that the satisfaction of doing quality work had been exchanged for unsatisfying things that require an unreasonable workload or clients the lawyer would rather not have, or both.

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

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

In search of persons of substance

☐ Rick Friedman



"Part of the harm to the larger community here is the image that this does to the judicial system, when ***corporations, businesses, people of substance*** want to use the courts and they're deterred from doing it by the threat of runaway punitive damages, and that is not good for the legal system." Justice A. Kennedy, at oral argument in *State Farm v. Campbell*, 538 U.S. ----, 123 S.Ct. 1513, 155 L.Ed.2d 585 (2003).

I was not going to write any more columns about the Alaska Supreme Court. At least not for a while. The power of the press is intoxicating, but I felt I was in danger of becoming like Wild Bill, out in front of the courthouse with signs that keep getting bigger and more outrageous. Is he still around? Will the younger lawyers even know what I am talking about? Let's just say I did not want to become a crank.

But then there was a miscommunication with my editor. I wrote:

> We can only hope that these two Justices' comments about *Neakok* are a reflection of their struggle with admittedly difficult policy questions and not further documentation of ***their evolving disdain for the jury system.***
>
> He printed:
>
> We can only hope that these two Justices' comments about *Neakok* are a reflection of their struggle with admittedly difficult policy questions and not documentation of ***any disdain for the jury system.***

The Editor thought it advisable to "tone down" what I had written, and I didn't learn of this until the **Bar Rag** came out. (He had the best of intentions, and we worked out a plan to keep this from happening again.)

The Editor's perceived need to tone this sentence down made me think that I haven't been as clear as I would wish in my comments about the court. So I am going to give it one more try and then leave this subject alone for a good long time. Here is what I want to say about the Alaska Supreme Court.

AS AN INSTITUTION, IT DESERVES OUR RESPECT AND SUPPORT

In the '70s, our court had a national reputation for being innovative, scholarly, intellectually honest and creative. Many of us were drawn to Alaska, not by the opportunities to hunt and fish, but by the chance to work in a legal environment led by such a court.

THE INDIVIDUAL JUSTICES DESERVE OUR RESPECT, AND MAYBE AFFECTION

The people who have held positions on this court, including the sitting justices, have been extraordinarily bright. It is hard to tell from this vantage point, but they also seem to be very hard-working, kind and generous. Justices Fabe and Matthews were each kind and generous to me at different points in my career, and I have never forgotten--though they may have.

JUDGING IS AN EXTREMELY DIFFICULT JOB

The actual judging is hard enough. To make matters worse, no matter what decision you make, a large percentage of people are going to be unhappy with you. I think this causes some judges, in self-defense, to become more rigid, timid and myopic.

JUSTICES FABE AND MATTHEWS ARE PUSHING THE COURT TOWARDS IRRELEVANCE

Government and corporate institutions have always had strong economic incentives to take unfair advantage of the weaker members of society. An historic role of courts in our country has been to serve as a check on these interests. A court unwilling or unable to do this gives away its own power and becomes largely irrelevant in a society already dominated by powerful economic interests.

Justices Fabe and Matthews inherited a court that had a proud tradition of protecting individuals from governmental excess and corporate predators. They inherited a court that demonstrated strong respect for the jury system. They inherited a court that was not afraid to rein in the Legislature when that was needed to protect principles upon which our state was founded. They are selling their birthright, case by case, for a bowl of porridge. The "porridge," I suspect, is the belief (perhaps unconscious) that the court as an institution benefits from aligning itself with powerful economic interests.

The courtroom is the only place in this nation where an ordinary person has the ***chance*** of meeting institutions and "people of substance" on anything approaching equal terms. If going into a courtroom becomes no different than walking into an insurance claims office or a zoning board meeting, then the courts have lost their special purpose and their special power in our society. The courts, and all their nice statements about individual rights and justice, become "window dressing" for an economic reality that makes wealth and power, not respect for the individual, paramount.

As governmental and corporate power has grown over the last twenty years, our court has shrunk. A Supreme Court that views its role as acquiescing in all but the most outrageous exercises of governmental or corporate power is largely irrelevant in today's society.

IT IS NOT RESPECTFUL TO REMAIN SILENT

Maybe my editor thought he was doing the justices or me a favor by "toning down" my column. If so, this misperceives the legal world in which we live and work. Our world is one in which strong disagreements between good, reasonable people are inevitable and healthy. We deal with important, difficult issues in an adversarial system. Disagreement should never be viewed as a lack of respect.

Lack of respect is exhibited when we publicly laud people for their enlightened good judgment and intelligence, and then complain bitterly behind their backs that they have "sold out."

The little boy who cries out "the emperor has no clothes," is not showing a lack of respect. The emperor might even appreciate it from time to time.

SO I AM DONE. I PROMISE.

Let's move on. I am afraid I have been sounding much too self-righteous and sanctimonious lately. So let's move on to: ambulance-chasing by plaintiff lawyers.

Alaska Rule of Professional Conduct 7.3(a) prohibits in-person or telephone solicitation of prospective clients. We all know it is going on. Lawyers or their representatives are showing up at hospitals and accident scenes. They are calling tort victims at home. Here are my questions. Please give me your help on this by answering some questions:

1. Is it my imagination, or is the practice more prevalent than it was ten or twenty years ago?
2. Do you do it? If so, why? If not, why not? (You may respond anonymously.)
3. Do you think it is a good or bad practice? Why?
4. If you think it is a bad practice, what can be done to stop it?

If enough of you respond, (say, more than 3) I will write about this in the next issue. If not, I'll move on to something else.

Rick Friedman can be contacted at Allmytrails@hotmail.com

Amusing viruses, submitted by Jim Blair

- RONALD REAGAN VIRUS Saves your data, but forgets where it is stored.
- MIKE TYSON VIRUS Quits after two bytes.
- OPRAH WINFREY VIRUS Your 300 MB hard drive suddenly shrinks to 100 MB, then slowly expands to 200 MB.
- TITANIC VIRUS Your whole computer goes down
- DISNEY VIRUS Everything in your computer goes Goofy :).
- PROZAC VIRUS Screws up your RAM but your processor doesn't care.
- ARNOLD SCHWARZENEGGER VIRUS Terminates some files, leaves, but IT WILL BE BACK
- LORENA BOBBIT VIRUS Reformats your hard drive into a 3.5 inch floppy, then discards it through Windows

BAR TIDBIT

The number one reason people call to complain about their lawyer: "My attorney doesn't call me back." OR "Communication"

Like home in Dillingham

Dan Branch

The flight from Anchorage to Dillingham is short, taking less than an hour. You pass over a volcano still wrapped in winter white. After that, it's mostly low hills, lakes and tundra. Thanks to the oil boom of the late 70's, Dillingham's airport looks like the ones in every other Alaska hub community with a long runway and small sheet metal terminal.

It was late September so the birch trees fringing the airstrip have dry orange and yellow foliage. The sky is a cloudless blue. At home in Juneau the ash and cottonwood trees are just turning under rainy skies. Outside the terminal I enjoyed seeing the sun and birch trees and smelling high bush cranberries that have gone through their first frost.

The air terminal was crammed with unshaved white guys in camo clothes. They all had a going-back-to-civilization-look on their faces--like they are going to have to fight with each other for seats on the plane. It made me doubt whether they are bringing home any meat.

I thought this trip would be a homecoming for me--a return visit to the bush. I lived on the Kuskokwim River for over 12 years. Since they are both hub communities serving a Yupik population I expected Bethel and Dillingham to share many similarities. I found some. When inside the Dillingham AC store or the N & N Market, you'd think you are inside a Bethel store.

The N & N Market, like Swanson's Store in Bethel, is a mini-department store carrying an astonishing variety of goods. You can find oranges from Australia and bagels from Canada in one section, winter clothes, CDs and the latest DVDs in another. Folks collect in the N & N Market arctic entryway, visiting and watching the town population drift by the way people did in the entryways of Bethel stores when I lived in that river city.

There are many differences between Bethel and Dillingham. First, there are the trees and hills. Dillingham has them and for the most part, Bethel does not. Dillingham is much more spread out than Bethel. In Dillingham, good gravel roads snake away from town, giving access to other villages and housing lots.

Dillingham also has the boats. On the Kuskokwim most folks traveled by skiffs.

Even the Nunivak families used wooden skiffs to cross Etolin Strait and trade reindeer hides and meat with villagers on the mainland. In Dillingham there seemed to be a 30-foot salmon gillnet boat blocked for the winter in every yard.

In spite of a slump in the fishing industry, netting salmon must still bring a bunch of money into Dillingham. Judging by all the nice cars and trucks on their roads, people seem to have more spending cash.

The Dillingham small boat harbor is a bit of a wonder. Carved out at the mouth of Scandinavian Creek, the boat harbor has floats attached to long metal arms. The arms are attached to swivels on heavy vertical posts that let the posts rise and fall with the tide without danger of being blown away by high winds.

I don't recall ever seeing a bear in Bethel but there are some in Dillingham. Like Ketchikan and Juneau, Dillingham has a bear problem. The bears got used to eating at the dump. When the city fathers fenced it in, the bears started cruising town for a snack. I imagine more than a few are shot each year.

There weren't a lot of birds around Dillingham in September. I scared up a small raft of ducks once and crossed paths with a large raven. Until being taken to the airport I didn't see any eagles. The courtsey van driver pointed out one bald eagle in a white spruce lining the road to the terminal. You grow used to eagles in Juneau. They hunt loose cats on neighborhood streets and decorate every salmon stream. A place now seems empty without them.

Dillingham seemed a bit empty with the fishing over and many folks out hunting caribou. The airport terminal wasn't empty when I checked in for my return flight to home. Once again the place was packed with white guys in camo. Unlike the group crammed in the terminal when I arrived, these guys had smiles on their sun burned faces. Hunting must have good. I know the weather was fine.

Over in the corner some locals sat looking a little bewildered. One said he didn't recognize anyone in the place. His friend just smiled and said, "Don't worry, we'll have the place back in a couple of weeks."

On the flight to Anchorage a Yupik woman sitting in front of me offered every one in our row some dried moose meat. On the ground below a river wound through tundra in fall color. All the troubles of Anchorage were only 40 minutes away. The plane climbed into the first clouds I'd seem in days while I hoped that the lady in the next row would offer more moose meat. At that moment, it felt like home.

The C(h)INA syndrome: Child protection meltdown

By Kenneth Kirk

Brant McGee got out just in time.

Alright, Brant didn't really get to choose. He was given the heave-ho as the head of OPA (the Office of Public Advocacy) because the incoming Murkowski administration suspected his politics. He had run the agency since its inception way back in the 70s. But that's politics. And voluntary or not, Brant's timing couldn't be better. His agency is going down the toilet.

Let me back up. The real problem isn't OPA anyway, it's the Child in Need of Aid system (usually abbreviated CINA, and typically pronounced China), and OPA is a big part of that.So first, since most attorneys never deal with CINA cases, let's examine one weird legal subsystem.

CINA cases are multi-party litigation. Start with the State, in the person of the Office of Children's Services (they used to be DFYS, the Division of Family and Youth Services. In my cattier moments I like to accuse them of changing the name because they don't really care about families anyway. Maybe eventually it'll just be the Office of the Village). OCS is represented by a social worker, and by an assistant attorney general.

Then there's a GAL (guardian ad litem) who's sort of a social worker too, supposed to advocate for the child's best interests. Each of the parents gets an attorney, appointed if necessary. In theory the parents could share one attorney but there are almost always potential conflicts of interest between them; for instance if the father is accused of beating the kids, the mother could potentially get them back by separating from the father. If both parents are drunks, if one gets sober before the other he or she could get custody, but again only if the other parent isn't in the house.

So it's almost always two separate attorneys there, and on top of that there are not infrequently multiple fathers for the multiple children in one case (I remember one case with five kids by a drug addicted mother, and they had five different fathers)

On top of all that, it is not unusual for a grandparent, foster parent, or other interested individual to hire an attorney and ask to intervene. And finally, if the child is in the teens and there is a disagreement between child and GAL as to what is in the child's best interests, the judge may have to appoint an attorney to advocate for the child's desires.

Add all these attorneys up, and you have anywhere from four to eight people examining every witness. That makes for slow going, but worse, it makes for difficulties in scheduling. Attorneys who do this kind of work tend to be swamped, as there aren't enough of them. Depositions become impossible. Hearings must often be scheduled months down the road because everyone has schedule conflicts with anything sooner. Despite federal and state laws calling for CINA cases to reach certain points within certain deadlines, and despite the best efforts of the judges to meet those deadlines, scheduling realities mean that it isn't at all unusual for a case to take a year or more to finish adjudication (the equivalent of the guilt phase of a criminal case), or for a single contested hearing to take months.

And why are there so few private attorneys doing this? Because it's a lousy area to practice in. Clients regularly no-show for hearings or blow off urinalysis tests. Social workers, some of them at least, can be infuriating bureaucrats. Parents' attorneys rarely ever win, and constant losing can give you a complex. And while some cases are meritorious, the reality of the practice is that the fact situations in many cases will make you want to puke. And then there's the money.

Or lack of it. There are relatively few private CINA clients. The vast majority of the work is on referral from OPA, which has to hire private attorneys on a contract hourly rate because they can't handle CINA cases in house (the GAL's are OPA employees so they have to send all of these cases to conflict counsel). The rate varies from lawyer to lawyer, but it's usually less than half what the lawyer charges private clients. OPA is supposed to renegotiate contracts with their conflict counsel every two years, but they've been afraid to open it up because they can't afford to pay, so they've been rolling the same contracts over for years, in order to avoid the negotiation. So the lawyers either continue to try to pay their office expenses and make a living on, say, $65 or $70 per hour, or they move on into more lucrative areas of practice. With fewer and fewer new lawyers coming to Alaska each year, this results in a dwindling pool of lawyers available to take these cases. The worst job in the state must be that of the OPA employee responsible for finding conflict counsel to take new CINA cases.

Unless it's the job of public defender in the CINA section. These poor devils don't have the option of turning the cases down, so all they can do is work unpaid overtime trying to stay on top of it. The assistant attorneys general have quite a load too, but it seems to be worse at the Public Defender Agency where most of the resources go to criminal cases. So they scramble from hearing to hearing, barely able to stay on top of it and frequently late, and at 4:30 they head back to the office for a quick review of the files for tomorrow's hearings. Remarkably, the agency manages to hold on to some very good lawyers who've been there for many years, but even Johnny Cochran couldn't represent clients effectively with that caseload.

The agency which can't hold on to employees long-term, is DFYS (oops, OCS) where there are constant vacancies because no-one wants to stay there. They remind me of a dying shopping mall where about the time the management finds a new tenant, another one has moved out, and they can never seem to catch up. Every time one social worker quits, the others have to pick up her cases, which makes them more unhappy, so they start looking for work elsewhere. I became more sympathetic when I had a friend, a fellow soccer mom, who worked for the agency for a year. I remember her normally cheery face that year, dragging up to the sidelines somewhere in the second half, looking overloaded, bedraggled, spent. Not a fun situation, and she was delighted when she was finally able to move on to a different agency. The social workers are critical to CINA cases, because many of the statutes give discretion to the agency, and only the social workers can make those decisions. So, if the social workers don't have time to work the cases, the cases just sit there.

I recently had a case in which no social worker showed up for two hearings in a row. The master was more than mildly annoyed, and ordered OCS to get a social worker assigned to the case within seven days. Next hearing, no social worker. The master was unhappy, to use an understatement. The assistant AG explained, rather red-facedly, that the order had been followed: a social worker had been assigned. Unfortunately she was on vacation and no-one had been assigned to cover. But what could the master do? Dismiss the case in favor of an obviously unfit parent? That is the dilemma judges often face when the agency fails. There isn't a sanction available to them which would do much good, and they don't want to punish some poor overworked social worker or the rest of them will start quitting at an even faster rate.

Years ago, someone in the system came up with a clever idea to help keep cases on track. In a normal case, I can pick up the phone and call the other lawyer if I want to talk settlement, or sort out trial scheduling or related matters. You can't do that effectively in a CINA case because there are so many parties. So somebody invented the pre-hearing conference. They made it standard, in most CINA hearings, that the parties are all to be present half an hour before the hearing, and gave them conference rooms so they could talk settlement. Does that work today? Rarely. If you show up a half hour early, you'll probably be the only one there for the next 20 minutes. Everyone else shows up when their previous hearings end, and then any discussions run on into the hearing time, so that if the hearing does end up contested, it has to be rescheduled to another day.

Hearings drag on, parents don't get case plans, permanent placements get delayed for years while kids bounce from foster home to foster home, cases which should have been resolved in months instead take years to conclude, and judges throw up their hands in frustration and try desperately to find ways to make it work. And that's the current dysfunctional system. It will only get worse as we continue to swirl, inexorably, toward the drain.

The women posed on the stairway after the September luncheon in the Snowden Building: (l to r): Stephanie Cole, Cathy Walatka, Christine Johnson, Natalie Finn, Susanne DiPietro, Lisa Morales, Linda Shaw, Susan Miller, Kathy Carbaugh, Rhonda McLeod, Debbie Hulen, and Brenda Aiken.

The Alaska Court System accepts 2003 Run for Women challenge

Staff of the Alaska Court System organized two competing teams for the 2003 Run for Women, one of the premier runs in the U.S. in the fight against breast cancer.

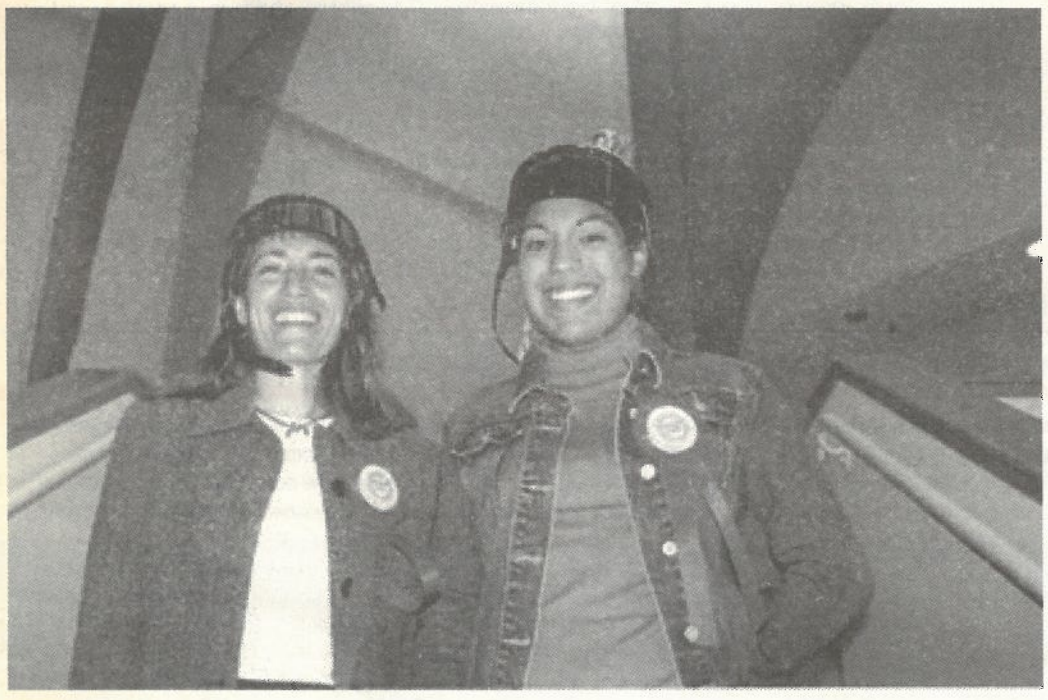
Held June 7 in Anchorage, the annual event draws thousands of women (and girls) of all ages and ability to the bike trail route that winds through the city. Among the nearly 5,000 women runners this year were some 70 from the court system, who entered designated teams in the run, itself, in addition to court system staff who competed individually in the event. The staff also competed in their own court system "race within the race."

The Anchorage Trial Court's team, "Just Us Feat," won the court system contest (based on rules that awarded points for participation, speed, slowness, artistry, and other factors). To celebrate the achievement of the court runners, the Administration and Appellate Court's team, "Runners for the Record," hosted a potluck luncheon for award- winners on Sept. 4 at the Snowden Building.

Presented by ***Stephanie Cole***, ACS administrative director, awards were conferred for a variety of remarkable achievements, including:

- Mercury Award for Fastest Time: ***Susanne DiPietro*** (Admin/Appellate team) and ***Lisa Morales*** (Trial Court team).
- Lead Weight Award: ***Cathy Walatka*** (1 of 6 presented for slowest in age group).
- Disorientation Award: ***Rhonda McLeod*** (for completing the 5-mile event while believing she was in the 1-mile event).
- Disorientation Support Award: ***Christine Johnson*** (for accompanying entrant in 1-mile event two miles into 5-mile event without telling her).
- Mercury Wanna-Be Award: ***Natalie Finn***, (for walking 4.9 miles before abandoning walking partner in a run to the finish line) and ***Kathy Carbaugh*** (for unsuccessfully attempting to outdistance her slowly walking friends).
- Anti-Cellulite Award: ***Linda Shaw*** (for co-organizing the event for ACS Administration & Appellate Courts) and ***Debbie Hulen*** (for co-organizing the event for Anchorage Trial Courts).
- Statistical Obsession Award: ***Susan Miller*** (for suggesting that Admin/Appellate take running times into account when hiring).

Brenda Aiken, ACS Resource Development Officer, served as emcee for the awards luncheon.



Susanne DiPietro of "Runners for the Record," (L) and Lisa Morales of "Just Us Feat," (R) wear their racing helmets after receiving "Mercury Awards" for the fastest times at the September 4 awards luncheon.

Pro Bono service committee recruits major law firms

By Christine McLeod Pate & Erick Cordero

The Pro Bono Service Committee held a breakfast in Anchorage on Sept. 10 for managing partners of large law firms regarding pro bono participation.

The breakfast was the result of concerns by committee members and pro bono service providers that more needed to be done to recruit pro bono attorneys at the larger firms.

"The need for pro bono attorneys in this state is tremendous," said Judge Mark Rindner, a committee member. "While each of the service providers does recruitment individually with attorneys, we felt, as a committee, that it was important to bring the managing partners at the major firms in and speak directly to them about the need." As John Treptow, counsel at Dorsey & Whitney put it, pro bono works at their firm "because there is a commitment to it by upper management."

The breakfast was sponsored and organized by Ashburn & Mason; Lane Powell Spears Lubersky; Landye Bennett Blumstein; and members of the Pro Bono Service Committee and moderated by Judge John Reese. By all accounts, the event was a great success. Over twenty-five firms were represented at the breakfast, which was held at the Captain Cooke. The breakfast provided a forum for both law firms and service providers to express their needs. Four service providers were represented at the event - Alaska Legal Services Volunteer Attorney Support, Immigration and Refugee Services Pro Bono Program, the Alaska Pro Bono Program, and the Alaska Network on Domestic Violence and Sexual Assault Pro Bono Program. Firms were given cards to fill out stating the types of pro bono work they could commit to taking and what types of resources would be helpful to them to expand pro bono among their employees.

THE PRESENTATION BEGAN WITH SOME INSPIRATIONAL WORDS FROM CHIEF JUSTICE ALEX BRYNER REGARDING THE NEED FOR INCREASED ATTORNEY VOLUNTEERISM . . .

The presentation began with some inspirational words from Chief Justice Alex Bryner regarding the need for increased attorney volunteerism and the Supreme Court's approval of the newly amended Alaska Rules of Professional Conduct 6.1, setting an aspirational goal of 50 hours of pro bono each year, for each attorney. Additionally, Sue Ellen Tatter, a pro bono attorney with the Immigration and Refugee Services Program, spoke about how gratifying it was for her to do asylum cases through IRSP. She praised Robin Bronen and the mentoring that she was able to receive and stated that this type of pro bono work was what she intended to devote herself to "in her retirement." One of her clients was there to speak about how meaningful Ms. Tatter's help to her and her family had been and how it had "changed their lives."

Representatives from the firms contributed valuable information about how service providers could improve attorney recruitment. Several firms expressed that the mentoring and training that is provided by some of the pro bono programs was very helpful.

Bill Saupe stated that his firm found it very useful to adopt one area of the law where there was great pro bono need and only do those kinds of cases. Other firms talked about the difficulty of dealing with clients who don't pay and therefore may unreasonably, at times, want to continue with needless litigation.

A suggestion was made to require clients to pay some minimum fee to prevent this situation. There was also the concern about screening policies. John Treptow suggested reinstating the "Attorney of the Day" program to help with screening. In addition, Judges Reese and Rindner both stated that if a client is being represented by a pro bono attorney and that the client's lack of financial incentive to settle was an important factor during a settlement conference, that the settlement judge should be made aware of that fact. Mark Kroloff, of CIRI, talked about the particularly hard job of getting in house counsel to volunteer and made several recommendations to help recruit this specialized group including appealing to their bar section and providing them with adequate resources such as malpractice insurance and administrative assistance. Some firms mentioned that additional recruitment with their employees was important and plans were made to invite service providers to firm-wide lunches to recruit.

The Pro Bono Service Committee hopes that this is just the beginning of a continued dialogue between services providers and large firms regarding pro bono work. Attorneys and firms wanting further information about the breakfast or pro bono work should contact any of the service providers: Mara Kimmel at Immigration and Refugee Services Program, mkimmel@css.ak.org, (907)276-5590, Erick Cordero at Alaska Legal Services Corporation, ecordero@alsc-law.org, (907)222-4521, William Cotton at the Alaska Pro Bono Program, wcotton@alaskaprobono.org, (907) 565-4311, or Christine McLeod Pate at the Alaska Network on Domestic Violence and Sexual Assault, christine.pate@worldnet.att.net, (907)747-2673.

Alaska Bar Foundation

IOLTA grants total $77,500 for 2004

☐ Kenneth P. Eggers

The Board of Trustees of the Alaska Bar Foundation held its annual meeting on June 3, 2003. Applications for grants from the IOLTA (Interest On Lawyers' Trust Accounts) funds for the fiscal year 2004 were considered. A grant totaling $77,500 was made to Alaska Legal Services Corporation, Alaska Pro Bono Program, Inc., and Catholic Social Services (Immigration and Refugee Services Program), pursuant to a joint grant proposal made by these organizations.

Unfortunately, due to a substantial reduction in the interest rates on trust accounts, the Board only had $77,500 available for grant purposes for fiscal year 2004. This compares to fiscal year 2003, when the Board was able to make grants totaling $121,000, and fiscal year 2002, when the Board was able to make grants totaling $344,000. This year the Board received grant proposals which totaled $241,641.85. Regrettably, the Board was not able to act favorably on a number of grant proposals. The Board hopes the financial situation will improve before they consider grants for next year. The Board thanks all lawyers and law firms for their participation in the IOLTA program.

Fairbanks Attorney Dan Winfree was appointed to serve a three-year term on the Board of Trustees. Winfree was also elected to serve as Secretary. Other Board members and officers for the upcoming year are Juneau CPA Karen L. Smith; Juneau attorney, William T. Council; Anchorage businessperson William A. Granger (who will serve as Treasurer); Anchorage attorney Dani Crosby (who will serve as Vice President); Anchorage attorney Mary K. Hughes; and Anchorage attorney Ken Eggers (who will serve as President).

Bar People

Rick Johannsen has finished his three-year assignment for the U.S. State Department in Ouagadougou, Burkina Faso (West Africa) and he is relocating to Washington D.C. in January for 12 months of training and a short-term assignment with the Department of State. He will then go to Copenhagen, Denmark for a three-year diplomatic assignment at the U.S. Embassy.....**Theresa Hillhouse**, after serving approximately seven years as an assistant municipal attorney for the Municipality of Anchorage, joined the law firm of Preston Gates & Ellis, LLP, as "of counsel" in October, 2002.

Pallenberg joins Faulkner Banfield

Faulkner Banfield, P.C., of Juneau, announces that Philip Pallenberg has joined the firm of counsel.

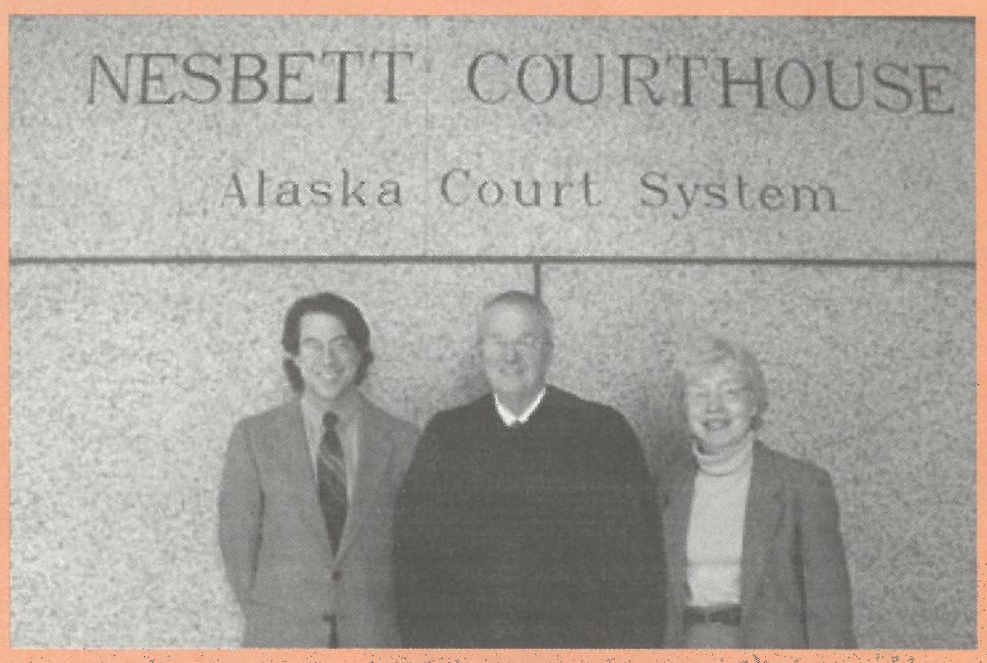
Mr. Pallenberg has practiced law in Alaska since 1984. His practice has involved civil and criminal litigation in the trial and appellate courts. Prior to joining Faulkner Banfield, he was in private practice in Juneau. He also served as an Assistant Public Defender, supervising that Agency's offices in both Juneau and Kodiak.

Mr. Pallenberg will continue to serve as a part-time United States Magistrate Judge in the United States District Court for the District of Alaska, a position he has held since 2000.

Mr. Pallenberg received a Bachelor of Science Degree in chemistry, cum laude, from the University of Washington in 1980. He earned his Juris Doctor from the University of Washington Law School in 1983. He was admitted to practice law in Washington in 1983 and in Alaska in 1984.

Faulkner Banfield serves businesses, governmental institutions and individuals in Juneau and throughout Alaska.

WELLNESS COURT



The Anchorage Wellness Court recently recognized its founders, L-R, Former Anchorage Municipal Prosecutor John Richard; District Court Judge James Wanamaker; and Janet McCabe, Partners for Progress, Inc.; during graduation ceremonies held September 5, 2003, at the Nesbett Courthouse in Anchorage. Chief Justice Alexander Bryner spoke at the ceremony. In Wellness Court, misdemeanor defendants agree to take naltrexone, a medicine that stops cravings for alcohol. They also agree to enter treatment, maintain sobriety, and seek education, employment or other defined objectives. The program's founders first introduced the use of naltrexone and Wellness Court concepts in a misdemeanor case in 1999, and the Anchorage Wellness Court was formally established on January 1, 2001. Since that time, 24 defendants have demonstrated 18 months of monitored sobriety in the therapeutic program and have been awarded certificates of graduation. The court continues to meet with success in addressing the underlying cause of alcohol-induced crimes, and participants have demonstrated significantly lower incidences of recidivism than their comparison group and national counterparts.

Judge James Wanamaker, Center Front, joins the current Anchorage Wellness Court team in the Nesbett courthouse lobby before the September 5th graduation ceremony. L-R: Back Row: Steve Christopher, Wellness Court Case Coordinator, Department of Law, Municipality of Anchorage; Conrad Brown, Probation Officer, House Arrest/ Electronic Monitoring, Department of Corrections, State of Alaska; Nancy Kneeland, Director of Program Development, Counselor, Alaska Human Services, Inc.; 2nd Row, Jim Babb, attorney and Partners For Progress, Inc. volunteer; John Richard, former Anchorage Municipal Prosecutor and Wellness Court Founder; Julie W. Linnell, Addiction Therapist, Alcohol and Drug Abuse Triage Team, Alaska Native Medical Center; Thea Whitehead, Community Liaison, Partners For Progress, Inc.; Mary Call, In-court, Alaska Court System; 3rd Row: Diana Fisher, volunteer, Partners For Progress, Inc.; Jill McLeod, Program Manager for the Center for Therapeutic Courts, Partners For Progress, Inc.; Robyn Johnson, Executive Director, Partners For Progress, Inc.; Gail Floyd, Probation Officer, Department of Health and Social Services, ASAP Misdemeanor Services, State of Alaska; Sharon Parker, Clinical Director, The Borealis Center, L.L.C.;4th Row: Michael Krukar, Founder and Facilitator of Nalgroup®; Judge Wanamaker; Janet McCabe, Wellness Court Founder, Chair, Partners For Progress, Inc.; Shelly Kissell, Executive Director, The Borealis Center, L.L.C.

NOTICE
Anchorage "Uniform Pretrial Order"

For more information contact:
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3rd Judicial District
907-264-0415

On February 28, 2003, 3rd Judicial District Presiding Judge Dan A. Hensley entered Administrative Order 3A0-03-04 (Amended), entitled "Uniform Pretrial Order," to govern civil pretrial practice in Anchorage. Several local form orders are incorporated in the Uniform Pretrail Order by reference, including an "Initial Pretrial Order," "Routine Pretrial Order," and "Order Scheduling Pretrial Conference for Non-Routine Case." All of the forms were developed with significant input from a committee made up of judicial officers and civil practitioners.

Because several provisions of the Uniform Pretrial Order are inconsistent with the Alaska Rules of Civil Procedure 16(a)-(e) and 26(f), the order was reviewed by the Alaska Supreme Court under Administrative Rule 46(e)(2). On May 15, 2003, the supreme court adopted Supreme Court Order (SCO) No. 1517, which approved the continued use of the Uniform Pretrial Order in Anchorage for a two-year period. The SCO directs the 3rd Judicial District to submit a report to the supreme court before May 15, 2005, that (1) describes the responses to the use of the Uniform Pretrial Order and accompanying local orders from both judges and litigants, (2) evaluates whether the pretrial procedures the new orders implement are an improvement over the pretrial procedures established under existing court rules, and (3) offers any specific recommendations for rule changes.

Both the Uniform Pretrial Order and SCO 1517 are available on the Alaska Court System's website as follows:

Uniform Pretrial Order, 3AO-03-04 (Amended)
www.state.ak.us/courts/ancpretrial.pdf
<http://www.state.ak.us/courts/ancpretrial.pdf>
Supreme Court Order No. 1517
(www.state.ak.us/courts/sco.htm
<http://www.state.ak.us/courts/sco.htm>

Alaska Court System inaugurates new case management system

The Alaska Court System will be installing a new trial court case management system at forty-seven court locations statewide over the next 20 months, reports Debbie Cook, Chief Information Officer for the Alaska Court System.

"Court staff from across the state have worked diligently to ensure an improved and efficient case management system that will greatly enhance the ability of judges, lawyers, litigants and members of the public to obtain ready access to case information," says Cook, who has coordinated the project since its inception in 2001.

The new system is CourtView, an automated court management program from the information technology vendor Maximus, Inc., which is headquartered in Reston, Virginia. The pilot installation of CourtView in Alaska was commenced in August 2002 at the Palmer courthouse and completed in March 2003. Beginning in October 2003, CourtView will be installed at the state's largest trial court in Anchorage. Subsequent installations in remaining court locations will occur over the following 18 months.

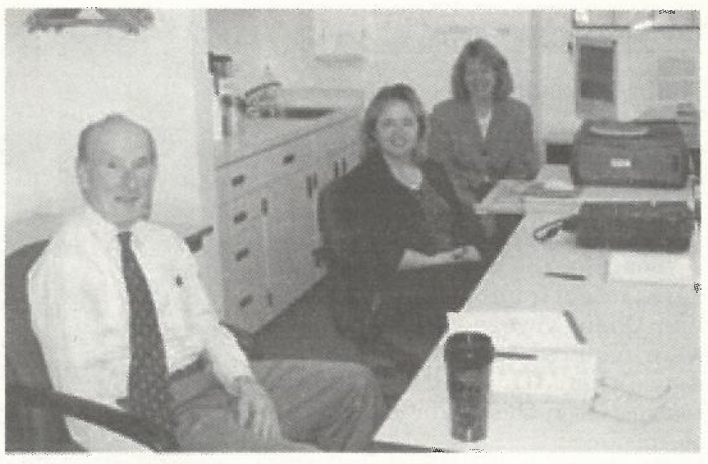
The CourtView system provides a wide range of services not previously available, such as electronic payments of fees and fines, web access to public information, and the potential for future e-filing of documents. The new system will also allow electronic data and document exchanges with agencies that regularly interact with the court. For example, efforts are underway to allow agencies such as the Public Defender to obtain immediate access to orders for court-appointments and other timely documents. Similarly, efforts are underway with the Attorney General's Office to facilitate electronic transfer of fines related to default judgments. Another new function will allow for tracking of post-judgment activities such as motions to modify custody and support in domestic relations cases.

Anchorage Clerk of Court Alyce Roberts and her staff have been helping prepare Anchorage court staff for the October 2003 installation of the CourtView system for many months. L-R: Susan Adams, Administrative Assistant; Roberts; and Brenda Axtell, Chief Deputy Clerk.

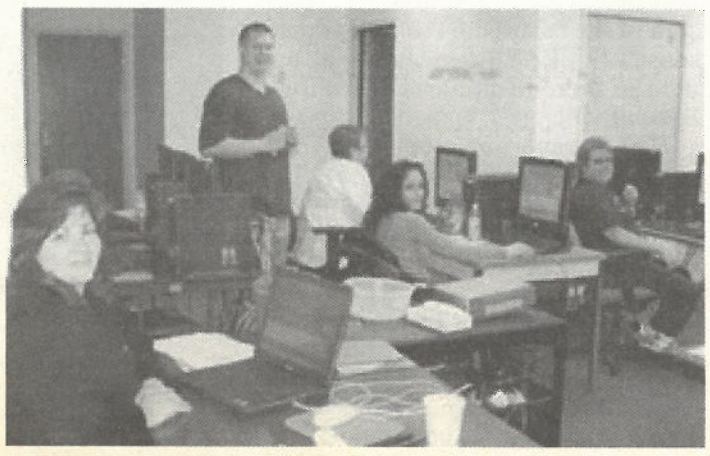
In addition to improving services to court-users, the new system will help the court system manage cases more efficiently and meet time-to-disposition standards more readily. Judicial officers and court staff will have immediate access to case histories and developments, calendaring information, indexes and other information critical to the prompt adjudication of cases. The CourtView system was selected in part because of its adaptability to Alaska's unique needs and the ease with which it can be modified to meet changing needs in the future.

"So far, the response to CourtView has been very positive," according to Cook, "The change has been a huge challenge for all of us at the court, but we're already seeing the benefits, and are very excited to see them expand across the state."

For further information about CourtView, contact Debbie Cook at 907-264-8227 or dcook@courts.state.ak.us.



Chief Justice Alexander Bryner, L, reviews the new CourtView case management system with Debbie Cook, Chief Information Officer; and Christine Johnson, Deputy Director of the Alaska Court System; during a recent meeting in Anchorage.



Chad Wilts, standing, Case Management Trainer for the court system, instructs Anchorage court staff about the new CourtView program during a recent training at the Nesbett Courthouse. L-R: Brenda Axtell, Anchorage Chief Deputy Clerk; Wilts; Jenny Wardle and Esther Cook, Domestic Violence Division staff; and Debbie Hulen, Customer Service/Domestic Violence Division supervisor.

A journey to the land of wind and ghosts

Continued from page 1

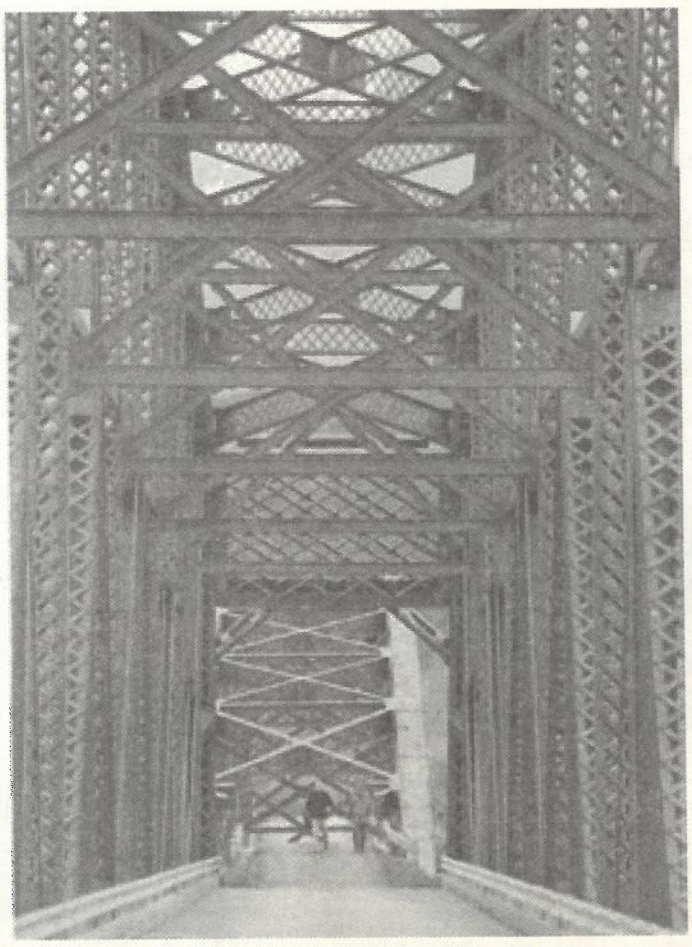
Mayor Guilliani), and rocks abounded. We played "Glass Skeet Shooting," a pastime made popular by the Mad Max genre.

THE WHALE ROAD[9]

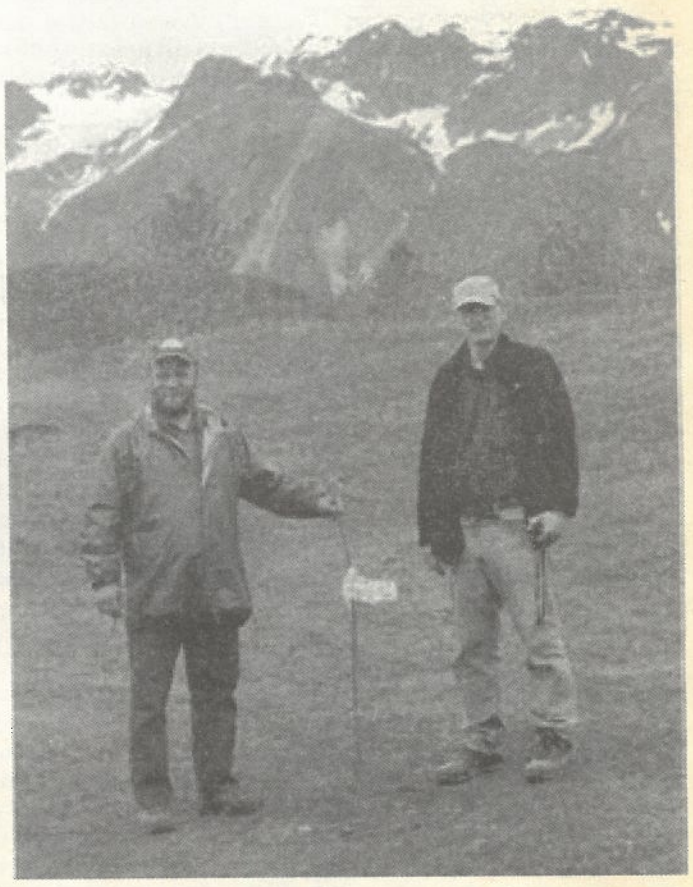
Boarding the ferry involved procedures absent from our July 2001 Aleutian Chain voyage. All passengers were required to show government issued photo ID. Homeland security reaches even the idyllic backwaters of Alaska.

We set our thrones on the solarium. Appropriate coronation music blared forth. The M/V Bartlett[10] was built in Indiana in 1969 for $3.35 million. At 193 feet in length she is the smallest of the Alaska State Ferries fleet. Her two engines, designed for WW II submarines, produce 3,468 horsepower. A sign in the bathroom read, "If you are seasick, PLEASE use the toilet and not the sink." (Emphasis in original). She ruled.[11]

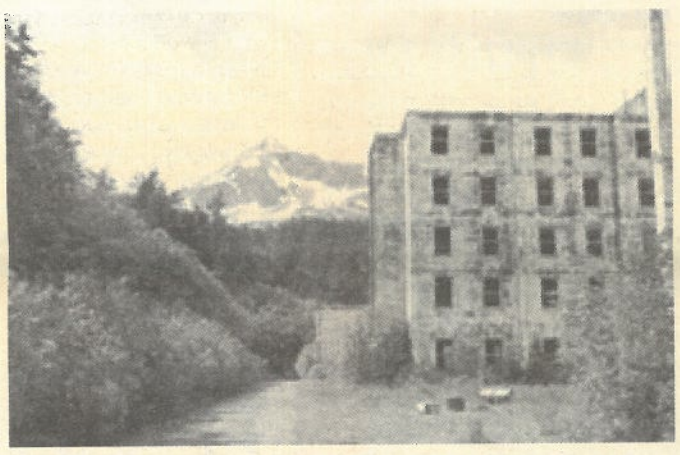
The voyage non-stop from Whittier to Cordova took 7 hours. And the weather cooperated magnificently. We had a great view of Mt. Marcus Baker, the highest peak in the Chugach at 13,176 feet.[12] Other spectacular views included College Fjord, numerous glaciers and mountains, and glimpses of the Gulf of Alaska off in the distance beyond the islands to the south. The sirens called but we resisted.[13]



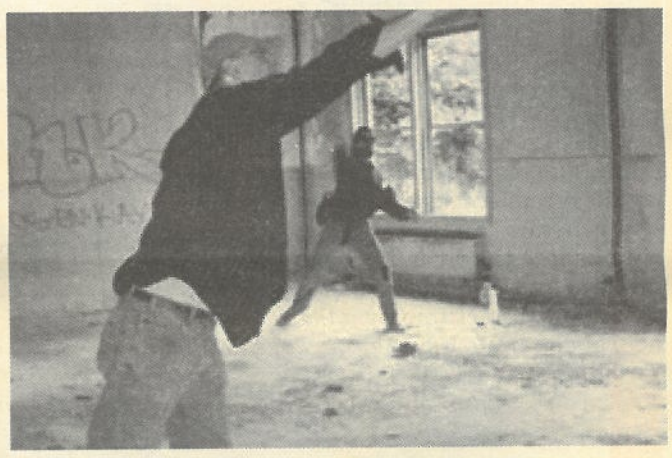
Ootek and El Tigre cross the Million Dollar Bridge.



Ootek and El Tigre on the 18th green at Augusta.



The Trotsky Tower, aka The Buckner Building, with the Chugach Mountains in the background.



Glass skeet shooting. (Editor's note: The Bar Rag's official policy is to respect private or governmental property . . . unless the building had it coming).

CORDOBA

HORSEMAN'S SONG[14]
Federico García Lorca[15]

Cordoba.
Alone, in the distance.

Black horse, Rising moon
and olives in my saddlebag.
Although I know the roads
I'll never get to Cordoba

Over the plains, through the wind,
black horse, red moon,
death is there watching me
from the towers of Cordoba.

O, what a long road!
O, my brave little horse!
O, that death waits for me
Before I get to Cordoba!
Cordoba.
Alone, in the distance.

DON LUIS DE CORDOVA Y CORDOVA

Salvador Fidalgo named Cordova on June 3, 1790, in honor of Don Luis de Cordova y Cordova, Captain General of his Catholic Majesty, Carlos IV of Spain. Don Luis was truly a dude! Born in 1706 (same year as Benjamin Franklin), he crossed the Atlantic nine times, twice by the age of 13. He captured 79 (!) British ships during the American Revolution, as Spain declared war on Britain in 1779.[16] As Captain General of the Spanish Navy, he commanded The Armada. The British were terrified of 1588 redux. [17] Don Luis died a nonagenarian, after 65 years of uninterrupted service in the Spanish Navy.

After chatting with Ricardo Montalban[18] and purchasing some rich Corinthian leather[19], we wasted no time in setting up camp, having martinis,[20] and preparing for the drive to the Million Dollar Bridge. And beyond.

ONE MORE RADAR-LOVER GONE

Near the campground we saw a wrecked airplane in the woods, close to the road, which the rainforest had not yet totally digested. We discovered and scavenged for El Tigre's office cradenza a part on which is engraved, "Do not fly airplane without this part properly installed." Res Ipse Loquitur.

EVEN THE NAME OF THE "MUDHOLE SMITH AIRPORT" FIT. MUDHOLE, WHO TAUGHT HIMSELF TO FLY AND ONCE HAD HIS OWN FLYING CIRCUS IN KANSAS...

THE ROAD TO NOWHERE

The 35 mile drive from Cordova to The Bridge equaled East Africa: Vast distance in all directions, the spectacular "Ragged Mountains" in the background, teeming wildlife, huge glaciers, the open ocean on the horizon, raw, savage nature, red in tooth and claw. The first vehicle we saw was an omen: a 1990 Ford Fairmont, whose owner informed us "It runs great!" Lacking a trunk lid, it reminded us of a do-it-yourself Ranchero.[21] Truly the Land of Wind and Ghosts.

And we had music to match the scenery. Jimi Hendrix, Cream, Golden Earring, "Blood on the Tracks," and Anton Bruckner's "Ninth Symphony in D Minor."[22]

Even the name of the "Mudhole Smith Airport" fit. Mudhole, who taught himself to fly and once had his own flying circus in Kansas, earned his sobriquet from an accident involving a great deal of mud, a putty knife, a rag and a screwdriver. His career spotting German submarines during WW II was probably not as exciting.

A hike along the Haystack Mountain Trail (where the trees come to die) revealed copious bear sign and a squadron of immature bald eagles performing maneuvers worthy of The Lafayette Escadrille[23] over cliffs covered with down they had shed in their ongoing transformation to adulthood.

STONEHENGE, OR, THE MONOLITH

We saw It as soon as we turned a corner. Frightful, sheer, no man fathomed: The Bridge. Huge, silent, brooding. Damaged by the 1964 earthquake

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A journey to the land of wind and ghosts

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but still passable in a Rube Goldberg kind of way. A relic of The Age of Great Mechanical Contraptions: the Panama Canal, the Eiffel Tower, the Suez Canal, the Titanic, the Statue of Liberty, the Brooklyn Bridge, and the Copper River and Northwestern Railroad, for which The Bridge was a critical link in the Herculean effort to reach the Kennecott Mine.[24] The railroad, The Bridge, the mine, the mill, and the town of McCarthy were all financed and owned by the Guggenheims and the Morgans through an enterprise known as "The Alaska Syndicate." Talk about vertically integrated capitalism. Michael J. Henry, aka "The Irish Prince," oversaw the construction of The Bridge and the railroad.[25] We drove across it, slowly, carefully. We were afraid.

A lodge across the river is under construction perilously close to Childs Glacier. The hubris displayed in The Age of Great Mechanical Contraptions continues.

THE CHILDS GLACIER

But the setting of The Bridge is even more impressive than The Bridge itself. Less than a mile down the Copper River from The Bridge, the Childs Glacier juts out into the channel. A very nice viewing area affords a prospect of power and terror: 1200 feet away a cliff of ice 300 feet tall (taller than the U.S. Capitol Dome) and several thousand feet wide creaks, groans, cracks, moans, shatters constantly as it calves huge ice chunks into the river. It was the best glacial sight/site we had ever seen. One couple from Illinois sat there five hours, watching. Excellently written and illustrated U.S. Forest Service interpretive signs enhance the glacier and Bridge viewing areas. In 1993 an ice chunk sent a wave 30 feet high into the glacier viewing area. One spectator broke her arm, and another broke her pelvis in two places. Fish, boulders, and icebergs joined the human flotsam/jetsam. Our vigilance was extreme. We saw a seal swimming upstream, miles from the ocean. We were very afraid.

Upstream from The Bridge we saw a cleared area reminiscent of the 18th green at Augusta. Closer examination revealed a crude golf green: half a Pepsi can for the hole, and a piece of trash fluttering from a stick poked in the ground. More ghosts. Grizzly tracks reinforced our prior decision not to wander off the Native corporations' 17(b) easements.

THE SILKIE

The silkie is a mythological creature of Northern Scotland who appears as a seal and as a man.[26] We saw a female employee of Fish and Game counting migrating salmon using two sonar devices.[27] This woman told us that seals swam upriver as far as Chitina. The fact that we never saw the seal AND this woman at the same time is profound: could she be a silkie, perhaps the first female silkie ever encountered?

THE RETURN

"Slow down, boys, your back door is open!" came the command from the rear seat as we left The Bridge for the campsite. Obviously the mischief of those pesky ghosts.

SOME ECONOMICS FROM YOUR TREASURER

Folks, the Copper River Delta is one of Alaska's best and most affordable road accessible wilderness experiences. If you don't want to pay homage to Justice Rabinowitz by spending time on the ferry you can fly from Anchorage to Cordova for about $260 round trip and then rent a car and head out to this spectacular area just a few miles from town. Amazing scenery. Mountains, glaciers, birds, fish, bears. Excellent hiking. Easy car camping. Very few people. You could even bring your mountain bike and ride the well maintained low traffic road to the Bridge. Do it!

CODA

We saw no seals in Chitina, but we did see some women's clothes on a gravel bar in McCarthy. We also saw a candidate for their silkie: a Park Ranger with whom we spoke French.[28] She also told us that Gifford Pinchot wore 44 caliber revolvers openly in D.C.[29] The tort theme continued in McCarthy as we played on a railroad turntable, the device at issue in the first attractive nuisance case.[30]

(Footnotes)

[1] A reference to the Simpsons episode in which the box of Japanese laundry detergent with Homer's picture on it is said to banish dirt to the land of wind and ghosts.

[2] Ancient Greek Goddess of memory, mother of the Muses.

[3] Bestowed by a former Spanish instructor.

[4] This bridge cost more than one million dollars.

[5] Black's Law Dictionary (4thed. 1968) defines "specie" as "Coin of the precious metals, of a certain weight and fineness, and bearing the stamp of the government, denoting its value as currency."

[6] The gender and federal supremacy issues are profound. Was the specie rejected because it has a woman on it? Are we going back to the days when it was hard to spend Maine Pine Tree shillings in Massachusetts? How can it be that we stopped the Taliban from oppressing the burkha-clad Afghani women and we can't spend female money here? Inquiries to the Comptroller of the Currency and Senator Ted Stevens' office are underway. It is obvious that we are facing a gender based assault on the full faith and credit of the United States.

[7] Also known as the Buckner Building, it was completed in 1953, with 1,000 apartments, a hospital, bowling alley, theater, gym and swimming pool.

[8] One particularly vulgar, scurrilous and imaginative graffito referred to a person with the same first name as a sitting Alaska Supreme Court Justice. Prudent restraint precludes further disclosure.

[9] See generally Beowulf.

[10] Contrary to popular belief, this ship was NOT named after the politician, but rather, in accordance with AS 19.65.020(b), was named after the glacier.

[11] Little did we know that this would be among the last voyages of the Bartlett upon the Alaska Marine Highway. Because she will soon be out of compliance with federal safety requirements the state has auctioned her off on eBay for $389,500.

[12] First climbed by Bradford Washburn in 1938, this peak was named after an early Alaskan explorer and geographer. Most importantly, Baker was a graduate of the University of Michigan, as are all three authors. Go Blue!

[13] "Tales of Brave Ulysses," Eric Clapton & Sharo, Cream, "Disraeli Gears."

[14] Translated by Ootek.

[15] This great poet and dramatist was born near Grenada, Spain in 1898 and was murdered during the Spanish Civil War by Fascist followers of Generalissimo Francisco Franco.

[16] Despite each having more than 20 years of schooling, which qualifies them for the day shift, the authors were not familiar with Spain's contribution to the Revolution. The authors object to the exclusion of this important information from the general American history curriculum.

[17] 1588 is when the Armada set forth on the godly sea to attack Britain.

[18] Only Montalban (in a 70's TV ad hawking the Chrysler Cordova, a car with mediocre styling and even worse performance), and the State of Alaska mispronounce "Cordova." The accent belongs on the first syllable, guys. Ootek heard Jorge Luis Borges speak in Kalamazoo (birthplace of Marcus Baker), so he knows. El Hombre del Fuego has also heard Cordova Street pronounced correctly in Santa Fe, New Mexico, so he knows, too.

[19] Pronounced "reech Coreenthian laythere."

[20] We broke three martini glasses on the trip, proving far beyond a reasonable doubt that life is tough on The Last Frontier.

[21] Multi-colored graffiti covered it: Million $ Car; Stop the Rust; Cordova to Tijuana; It's Not Something You Ate; Eyesore; M/V Bartlett; Cordova Rules; Salmon Car.

[22] As performed by the Berlin Philharmonic, conducted by Herbert von Karajan.

[23] The Lafayette Escadrille, a squadron of American pilots who volunteered to assist the French during World War I, was named after the Marquis de Lafayette, who served under General George Washington in the American Revolution.

[24] The Kennecott Mine, one of the richest copper mining operations in history, is named but incorrectly spelled after the nearby Kennicott Glacier, named for Robert Kennicott (1835-66). Stay tuned for an upcoming article regarding a cruise on the M/V Kennicott from Seward to Juneau.

[25] He once said, "Give me enough dynamite and snoose and I'll build a road to Hell." Whether he would pave it with good intentions is not in the historical record.

[26] See also, "The Secret of Roan Inish," John Sayles' movie based upon a similar Irish legend.

[27] One is vintage 1985, and displays only a spike on a graph for each fish that passes. The newer "Dodson 2002", run in conjunction with a laptop computer, shows the spectral images of salmon swimming. Even in the electronic world did we see ghosts. The inventor of the earlier device, Al Menin of Bendix Corporation, is reputed to have liked his cigars and martinis. There are dozens of fish counting stations operated by Fish and Game throughout the state. The stations range from towers where people peer into the river to the more electronic means found here. Whatever the means, a person must count the fish, record the data, and then pass it on for purposes of determining whether enough fish have escaped to allow fishing to commence. Johnson v. Alaska State Dept. of Fish and Game, 836 P.2d 896, 900-901 (Alaska 1991). Speaking of escapement, the Copper River was scene of one of the more notorious fish trap incidents. In the early 1900s a Seattle based cannery closed off the entire mouth of the river resulting in no escapement. To the upriver Ahtna people, such a thing had never been done.

[28] We asked her, "Ou sont les nieges d'antan?" to which she had no answer. Apparently Chief Justice Bryner has a degree in French Literature, so might he know? Can you help us, Mr. Chief Justice? Hint: the author Francois Villon.

[29] Gifford Pinchot (1865-1946) was a friend of the great conservationist John Muir. Pinchot was one of the first politicians to promote scientific management of the national forests. In 1898 President Roosevelt appointed Pinchot to be chief of the Division of Forestry, which became the U.S. Forest Service in 1905, and which he lead until 1910. He also served as governor of Pennsylvania from 1923-27 and 1931-35.

[30] Sioux City & Pacific Railroad Company v. Stout, 17 Wall., U.S., 657 (1873).

Fighting SPAM is a growing management task

BY ELLEN FREEDMAN

SPAM, sometimes known as UCE (Unsolicited Commercial Email) is any kind of unwanted email. Spam covers many subjects not exclusively commercial in nature - chain letters, pornography; scams, virus proliferations - and offers unscrupulous marketers an opportunity to perform mass marketing at little cost.

MOST SPAMMERS HAVE LITTLE IF ANY SCRUPLES. THEY RESELL YOUR INFORMATION WITHOUT YOUR PERMISSION, AND AGAINST YOUR WISHES. THEY IGNORE THE LAW.

Most Spammers have little if any scruples. They resell your information without your permission, and against your wishes. They ignore the law. They falsify their email addresses to hide their true identity; a practice known as "spoofing." They use and abuse computer systems of unknowing victims to perpetuate their acts. In short, they do whatever they can to try and separate you from your hard-earned dollars.

Just how big the problem has become is subject to lots of guesstimates. In an article written August 30, 2002 for ZDNet, Robert Lemos predicted that spam "could make up the majority of message traffic on the Internet by the end of 2002, according to data from three email service providers." Clearly, it hasn't gotten quite that bad. But the problem is growing exponentially. Joyce Graff, a VP at the Gartner Group, reported that the volume of spam was 10 times greater in 2002 than in 2001, and 16 times greater than in 2000.

In a June 11, 2003, statement by Commissioner Orson Swindle before a Federal Trade Commission Subcommittee, he stated "Current estimates indicate [spam] constitutes at least 40% of all email. In addition, recent Commission studies indicate that spam has become the weapon of choice for those engaged in fraud and deception. Nearly 66% of the spam messages that Commission staff examined appeared to contain obvious indicia of falsity. . ."

In a May 21, 2003 news release by the Federal Trade Commission which summarizes its Prepared Statement of the Federal Trade Commission on "Unsolicited Commercial Email", (www.ftc.gov/opa/2003/05/spamtestimony.htm), the commission reported its findings on its study of the various aspects of spam. It noted that "the volume of spam is increasing sharply and the rate of increase is accelerating."

How does one get onto the spammer's lists? Or more importantly; how do you avoid getting on the spammer's lists? Here are the activities at the top of the list for creating the flow of spam. Avoid them as much as possible.

1. Participation in chat rooms, newsgroup discussion groups and other similar on-line locations where your email address can be "harvested" by spam mail list providers. According to the FTC news release referenced above, ". . .one hundred percent of the email posted in chat rooms received spam; one received spam only eight minutes after the address was posted. . . . Eighty-six percent of the email addresses posted at newsgroups and Web pages received spam, as did 50 percent of addresses at free personal Web page services, 27 percent from message board postings, and 9 percent of email service directories."

2. Selection of a previously owned email address that has been a spam target in the past. This can be particularly troublesome if you're using a free email provider like Yahoo, for example.

3. Choosing a common email address, like "bob@" will make you a ripe target for spam. Spam engines routinely send out emails to thousands of common names at various internet domains. Remember, unlike regular mail, there is no cost to them for incorrectly addressed and / or returned emails.

4. Signing up for a free service on a web site in exchange for your email address. Just because the web site looks good, doesn't mean it doesn't belong to a spammer trying to harvest addresses. And sometimes even "legitimate" businesses will secretly sell their email lists to spam mail list providers for the easy revenue. I have tested this myself. You'd be amazed at how many "1egitimate" businesses engage in this practice. To give them the benefit of the doubt, maybe they don't know and unscrupulous employees engage in the practice for additional "under the table" earnings. No matter, you become the spam victim either way.

5. Virus infestation creates spam, too. Klez, for example, is fairly well known as a recent epidemic which stole subject lines and contents from files on the victim's computer, and sent the information out to addresses in the victim's Outlook address book. Can you say "loss of client confidentiality?"

How do you fight back? Well, let's start with the easiest solution. Use of a good virus scanner puts virii like the Klez out of commission. But it is estimated that as many as 10,000 new viruses are released into the "wild" each week. So you must also regularly update the virus definitions by going online and downloading a new file. If you use Norton or Inoculate it will do this automatically for you. I use Inoculate, and it automatically updates the virus definitions every hour, in the background, as I work. McAfee works at the touch of a button. If you're an Outlook user, installation of the Microsoft free software patch to plug the address book vulnerability in Outlook is a must.

The most powerful prevention tool is your DELETE key, or the "X" on the tool bar in your email program. If you suspect a message is junk mail, treat it as such by deleting it without even opening it. Look at the subject heading and sender for clues. I automatically delete anything with an attachment from an unknown source, without opening it. Remember that just opening an email can sometimes activate a virus within. So can using autopreview. Instead, I use an inbox "view" which displays just the first couple lines of text, which is usually enough to let me know if the email is legitimate.

If you do receive spam, do not reply. A reply can perpetuate what you're trying to stop, as it verifies to spammers that they've reached a valid email address. This just ensures you'll wind up on more spam mailing lists in the future. In the previously referenced FTC release, it was noted that their test as to whether spammers were honoring "remove me" or "unsubscribe" options found that ". . . 63 percent of the removal links did not function," I'll take it a step further and tell you that they function to the opposite of your desires by validating your address.

As an alternative, if you are an Outlook user you can automatically block additional email from a source by right clicking on the email, and selecting Junk Mail/Add to Junk Email Sender List. You will never receive email from this source again. It will not help for the fraudulent spoofed addresses, as those spammers change the "from" address regularly. But for "legitimate" junk email (how's that for an oxymoron?) it will stop further receipt without the associated risk of validating your address for additional spammers.

Use of email filters is another method to deal with the influx of spam. Filters examine email headers and message bodies for signs that they're

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Alaska Bar Association 2003 CLE Calendar

Date	Time	Title	Location
September 25	All Day	Masters in Trial (NV) Presented in cooperation with ABOTA CLE #2003-016 6.5 General CLE Credits/.5 Ethics Credits = 7.0 Total CLE Credits	Anchorage Hotel Captain Cook
September 30	8:30 a.m. – 12:00 noon	Discover the Internet: Super Search Strategies and Investigative Research for Discovery with Carole Levitt CLE #2003-018 3.25 General CLE Credits	Anchorage Hotel Captain Cook
October 2	9:00 a.m. – 12:15 p.m.	Business Research and Due Diligence on the Internet with Carole Levitt CLE #2003-025 3.0 General CLE Credits	Fairbanks Chena River Convention Center
October 3	8:30 a.m. – 5:15 p.m.	5th Biennial Nonprofits Program – Nonprofits in 2003: What's New and What's Important CLE #2003-011 7.0 General CLE Credits	Anchorage Hotel Captain Cook
October 10	8:30 a.m. – 4:30 p.m.	Working with Immigrant Victims of Crime CLE #2003-019 5.75 General CLE Credits	Anchorage Downtown Marriott Hotel
October 22	8:30 a.m. – 5:15 p.m.	16th Annual AK Native Law Conference – Health Solutions and Tools for the Native Community: Programs, Tribes, and Courts CLE #2003-004 6.5 General CLE Credits	Anchorage Hilton Hotel
October 31	8:30 a.m. – 12:30 p.m.	Copying Intellectual Property in the 21st Century: The Do's and Don'ts CLE #2003-015 3.75 CLE Credits	Anchorage Hotel Captain Cook
Fall 2003 Date TBA		Family Law Off the Record CLE #2003-023 CLE Credits TBA	Anchorage Location TBA
November 7	8:30 a.m. –	10th Annual Workers' Comp	Anchorage

Anti-SPAM techniques & tools lessen risk

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spam or worse, such as prohibited email of a sexual or illegal nature. The problem with filtering methods is that they are somewhat indiscriminate in what they block. A filter can exclude legitimate business emails because they discuss blacklisted words. These are called false positives, and can cause important messages to get delayed or lost. One editorial I read somewhere likened false positives to the dolphins that get tangled up in the tuna nets. Very apropos, as I discovered firsthand at a law firm I managed which did employment law. The words and phrases which would be automatic triggers forfiltering would have stemmed the flow of legitimate emails.

For reviews and links to popular filtering software programs, which range in price from free to $60, go to www.pcworld.com/reviews. The most highly rated filtering software for Outlook is iHateSpam™ which sells for $19.95, and works with Outlook 2000/2002 and Outlook Express v.5 or higher, and runs on all Windows operating systems except Win95.

THERE IS NO DOUBT THAT SPAM IS UNDERMINING CONSUMER CONFIDENCE IN THE INTERNET AS A RELIABLE MEANS OF COMMUNICATION AND COMMERCE.

Blacklists are another method of blocking the flow of spam. Blacklists are literally lists of domains which are known spam sources. A network manager can either create a blacklist based on spam which reaches the firm's mail server, or can subscribe to services which provide such lists. However, as you can imagine, incorrectly listed domains can block legitimate emails from reaching their destinations. This problem is greatly exacerbated by spoofing techniques, as well as the ability of spammers to use legitimate web mail servers, without knowledge and consent of the owners, as a base from which to send spam.

There are also application service providers (ASPs) which provide email content or blacklist filtering, and even high-grade virus scanning, before the email even reaches your mail server or workstation. Network Alternatives of Langhorne, PA is one such reliable ASP, offering a service called Message Patrol™, which is very affordable. You can reach them at (215) 702-3800 or at www.network-alternatives.com. (Tell them Ellen sent you.)

Along with blacklisting of domain names is the practice of setting up decoy email accounts, which uses a dummy account to attract and capture spam for analysis. Once a system administrator determines that the email is spam, the domain name can be added to the blacklist.

If you believe you are the victim of spoofing look for these tell-tale signs:

1. You receive delivery rejection notices for messages you haven't sent. These messages would be returned to you because the recipient's email address is invalid. They come back to you because your address was put into the "from" line.

2. You receive complaints from people who believe you are the sender of an email. Check your sent items folder if you cannot remember, but it should be very easy to determine whether or not you actually sent the email. If you did not, you have been spoofed.

3. The traffic on your computer system's email server is disproportionate to the volume of email you receive and send. This could be a sign that your system is being secretly used by a spammer as a base of operation. It's a more common practice than you think. In fact, some EUL (end user license) agreements contain language carefully buried which grants legal rights to the software provider to use part of your system for outbound traffic. Always read the EUL before clicking "I Agree." I found this by accident once when attempting to download some free software utility which was highly touted on a reliable and respectable web site. Needless to say, I did not agree to the EUL and passed up the opportunity for the "free" software.

If you have been spoofed you need to take action. First, you should respond to those who send email complaints. Use a form email which lets them know you did not send the email, and that the sender address was forged. Encourage them to trace the email and report it to the appropriate ISP. You may even want to provide educational information which assists them in tracing the real route of the email. Sites like Spam Abuse (http://spam.abuse.net/userhelp/) and Death to Spam (www.mindworkshop.com/alchemy/nospamlhtml) can be very helpful. You may even want to join, or recommend someone else join the Mail Abuse Prevention System (www.mailabuse.org).

Second, if it gets too bad, you should consider abandoning your email address by shutting it down, and selecting another. And then be more cautious about where it gets posted.

I would be remiss if I did not mention legislative solutions before ending this article. There has been little of substance accomplished on the legislative front, aside from a number of weak state laws. Federal legislation may be the only effective means to fight an epidemic that has infested a global medium.

There is no doubt that spam is undermining consumer confidence in the internet as a reliable means of communication and commerce. There is also no doubt that it is costing business enormously in actual revenues and in lost time; some estimates are that management level employees spend as much as ten minutes out of each hour dealing with UCE.

There must be an economic cost for the delivery of unsolicited email, and only strong federal legislation which bans bulk, unsolicited commercial advertisements will accomplish that. At the least, creation of a national do-not-spam registry would be helpful. It has certainly helped with unwanted telephone and fax solicitations. In Japan, where there is tough legislation requiring all spam to have the label "unsolicited advertising" in the subject line, DoCoMo, the country's dominant mobile phone carrier, was awarded 6.57 million yen ($54,420 US) for the cost of delivering unsolicited email. DoCoMo estimates that more than 80 percent of the 950 million daily messages that are sent to its mobile service each day is unsolicited.

If you'd like to know what legislation has been passed, and what is pending with respect to spam, both federally and at the state level visit www.spamlaws.com. Meanwhile, stay out of those chat rooms!

Ellen Freedman is the Law Practice Management Coordinator for the Pennsylvania Bar Association (PBA). Reprinted from the PBA, Summer 2003.

Preserving issues for appeal

Continued from page 3

evidence would have to be highly prejudicial.

[11]McMillen v. 84 Lumber, Inc., 538 Pa. 567, 649 A.2d 932 (1994); Coffey v. Minwax Company, Inc., 764 A.2d 616 (Pa. Super. 2000); Allied Electrical Supply Co. v. Roberts, 797 A.2d 362 (Pa. Super.) allocatur denied, 570 Pa. 680, 808 A.2d 568 (2002).

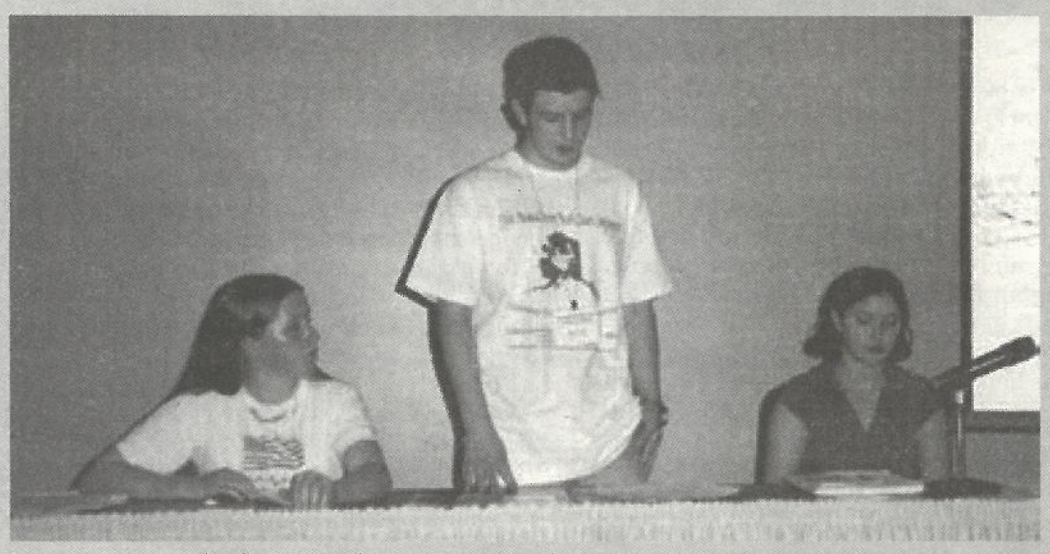
[12]Factor v. Bicycle Technology, Inc., 550 Pa. 50, 707 A.2d 504 (1998).

[13]Harman v. Borah, 562 Pa. 455, 756 A.2d 1116 (2000); Crawford v. Crawford, 429 Pa. Super. 155, 633 A.2d 155, 159-160 (1993).

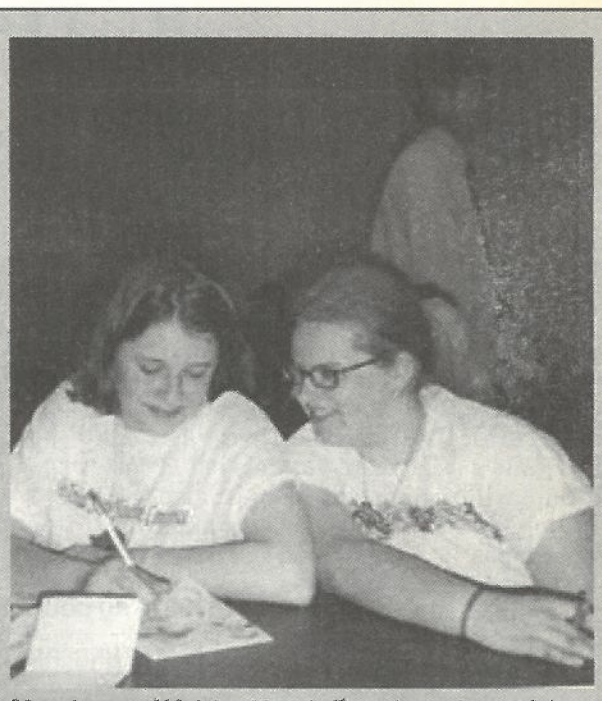
[14]508 Pa. 88, 494 A.2d 1054 (1985), overruled on other grounds, Commonwealth v. Grant, Pa. 813 A.2d 726 (2002).

[15]562 Pa. 455, 756 A.2d 1116 (2000)
16756 A.2d at 1126.

Youths learn court operations



Members of the Mat-Su Youth Court lead a panel at recent statewide conference.



Members of Valdez Youth Court worked with Judge Joel Bolger at recent statewide conference.

Youth courts to 'convene' in November

By Peter Bradley

On November 6th, 7th, and 8th, the Seventh Annual State Youth Court Conference will be taking place in Anchorage. Co-planned and hosted by the Anchorage Youth Court and United Youth Courts of Alaska (the statewide, non-profit organization serving 14 youth courts in Alaska), the event is anticipated to gather over 200 youth court volunteers, program directors, justice professionals and community leaders. Using rooms at the University of Alaska, Anchorage (UAA), youth, ranging in ages between 13 and 18, will come together to share ideas on how to better run Youth Courts, what does and does not work in court, and figure out how to advance their organizations while learning from each other. Other educational activities include tours of the FBI headquarters, McLaughlin Youth Detention Center, Cook Inlet Pre-trial facility, Alaska Court System, Alaska Crime Lab, Anchorage Police Department, UAA Campus and a full day spent in Open Space where participants will shape their own meeting agenda based on what's most important to them regarding youth courts and community engagement. Youth volunteers will also have the unique experience of participating in an evaluative research project conducted by senior research students from UAA. The State Youth Court conference gives Youth Court Bar members a chance to meet and make friends with people of similar interests from around the state, an activity that no teenager would ever say no to.

Youth Courts are an alternative referral option given to minors who commit small crimes. The Youth Court lawyers and Judges are all teenagers and the bulk of the organizations are run by youths. The Anchorage Youth Court was one of three volunteer organizations that were submitted by Anchorage to win the All-American City award in 2001. Alaska boasts over 950 volunteer Youths currently participating in the 14 Youth Courts around the state.

Executing this event relies on the generosity of donors statewide. Donations are used to provide food, travel stipends, event space, local transportation and general event support. Donations of any size are noted in event literature, website (both AYC & UYCA) and the statewide newsletter. If you or your organization is interested in donating to this year's conference, please contact, Krista Scully, Executive Director of United Youth Courts of Alaska at 278-1165 or toll free in Alaska 877-278-1165.

The author is a senior at Chugiak High School, attorney with Anchorage Youth Court and is on the Defender newsletter published by Anchorage Youth Court.

Alaska Law Library: Resources on the web and in the libraries

On the Web

The Alaska State Court Law Library is pleased to announce that its statewide catalog is now available on the web. Search the catalog by keyword, title, author or subject to find out if a book is available in any of our 17 locations. If your local branch doesn't have a copy, contact the Anchorage Law Library at 907-264-0585 to ask about getting the information you need.

You'll find the law library catalog on the library's new web page. Follow the link to the law library from the court system website: **www.state.ak.us/courts**. The law library's new web page also provides information about library services for bar members, electronic resources, library staff contact information and links to legal research resources.

In the libraries

In many law library branches print subscriptions to reporters, digests and Shepard's citators have been replaced with electronic subscriptions. Library computers with the *Alaska Bar Association Research Program* are in all law library locations. This program allows Alaska Bar members to retrieve electronic versions of case law, digests, citators, statutes and many other resources from Westlaw at no charge. Resources available from this program include:

- state and federal case law: the entire National Reporter System (retrieve by citation)
- state and federal statutes, rules and regulations (retrieve by citation)
- West's Digest – search by keyword and by West topic and key number
- law reviews, restatements, ALR and AmJur (retrieve by citation)
- KeyCite – a citator service more powerful than the traditional Shepard's Citations

A program tutorial is available on the Alaska Bar Association website - **www.alaskabar.org** - under **Links and Resources**. You are welcome to contact State Law Librarian Cynthia Fellows, cfellows@courts.state.ak.us or 907-264-0583 for more information.

Treatises are not generally available electronically so the law library will continue to maintain print treatise collections to support the needs of attorneys statewide. The law library welcomes suggestions for specific titles or subject areas of interest to bar members.

Contact the law library at library@courts.state.ak.us or State Law Librarian Cynthia Fellows, Cfellows@courts.state.ak.us, to comment on library resources and services.

Alaska Law Library Resources on the Web
www.state.ak.us/courts/library.htm

The statewide law library catalog is now online! Go to **www.state.ak.us/courts** and follow the law library link. You can search the library catalog by keyword, title, author or subject to find out what's available in 17 law library locations.

The law library's web page also provides:

- information about library services for bar members
- electronic resources
- links to legal research resources
- library staff contact information

Westlaw resources are available in all court libraries to Alaska Bar members at no charge

Use the library computer to access:

- state and federal case law: the entire National Reporter System (retrieve by citation)
- state and federal statutes, rules and regulations (retrieve by citation)
- West's Digest – search by keyword and by West topic and key number
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Learn how to use this program by going to the tutorial at **www.alaskabar.org** – click **Links and Resources**. or contact State Law Librarian Cynthia Fellows at cfellows@courts.state.ak.us or 907-264-0583.

Mediating cases involving domestic violence

☐ Drew Peterson

A number of years ago, I saw a couple for an initial divorce mediation session where the couple presented with clear signs of active domestic abuse. The woman was afraid of the man, deferring to him through her body language, as well as in the actual proposals he was making in the short session. At the time, I had just read an article in one of the mediation publications about the dangers of such cases to the abused spouse, as well as to the mediator, and the "correct" way to terminate such a session. I followed the directions exactly, asking to caucus with the parties, and meeting first with the wife. I told her of my diagnosis, and advised her that I would give her at least a ten minute head start to get to a safe place away from her abuser. I then met with the abuser, and told him as well that I was terminating the mediation process.

I felt pretty proud of myself, for following the correct protocol, dealing with an area in which mediation has been controversial, recognizing the problem, and getting the victim of the abuse to safety. Upon subsequently speaking with my receptionist, however, I discovered that the wife whom I thought I was "protecting", had gone to the local bar next door, where she and her husband had continued the negotiations without me. I have always wondered whether I did that abused woman more harm than good, and have felt in my heart that although my motives were pure, that I actually may have placed her into a more dangerous position than she was in already.

Having been criticized in the last issue of the Bar Rag for allegedly advocating the use of mediation in serious domestic violence cases, which I did not, I thought I would see what further controversy I could stir up by actually setting forth my thoughts on the subject.

Domestic violence, and how to, or whether to ever deal with it in mediation is a topic that will not and should not go away. However, as a feminist friend put it to me recently, the bus has already left the station: mediation is being used more and more in family law cases, the majority of which cases do involve domestic violence to one extent or another.

There are two important admonitions which seem particularly pertinent to the subject, and which frame my own consideration of the issues involved. The first is a reminder to all of the helping professions to "First, do no harm!" The second admonition is more particular to mediation and the collaborative negotiation process, and asks us to always remind ourselves to consider just "What are the alternatives?"

FIRST, DO NO HARM

This simple admonition, while easy to understand and agree with, is much harder to apply in daily practice. The reason I feel so uncomfortable with the memory of the mediation I terminated, as set forth above, is that I feel that I may well have placed the abused spouse into an even more dangerous situation than she was already in by terminating the mediation process. I have discussed this scenario with domestic violence counselors I have met who have counseled against any use of mediation in domestic violence cases, and their answer is that I did the right thing, and that it is not my responsibility for what happens after I have terminated the mediation process in the appropriate way. I do not agree. Once inviting that women into my office to attempt to help her with her conflict, I think I had more duty to her than to simply set her out on the street when I discovered that she did not meet someone's criteria for an appropriate case. For all I know, my recognition of the abusive nature of the relationship may have increased the danger level at what the experts agree is the most dangerous time in any violent relationship: the time of physical separation.

PART OF THE PROBLEM WITH FIRST DOING NO HARM, OF COURSE, IS THAT IT IS SO HARD TO TELL.

Part of the problem with first doing no harm, of course, is that it is so hard to tell. Some of the absolute worst domestic violence cases are the ones that are the least expected, involving apparently sophisticated and worldly clients who are well educated and often wealthy. The more total the control of the abuser, the better the secret is kept hidden, often with the complete and utter cooperation of the victim. The most sophisticated of evaluation tools will often not catch such cases. This is admitted and even described and emphasized by the domestic violence counselors who deal with such cases on a daily basis.

That is why I believe that proper training of the mediator in the dynamics of domestic violence is the essential first part of the solution to the problem. I agree that there is a huge potential for harm to individuals involved in mediation in domestic violence cases where the mediator is not trained in recognizing the signs. Indeed, I believe that the genesis of the controversy surrounding mediation and domestic violence came from some of the early mediation programs, especially in California, where parties were mandated to participate in mediation with no domestic violence screening and in front of mediators with no training in domestic violence.

Once domestic violence issues have been recognized, however, the question then becomes how proceed with the case, if at all. As family mediation practice has become more widespread and established, over the past thirty years or so, a number of different protocols have been established. Many of them have been established in cooperative efforts between mediation and domestic violence agencies and organizations. The first and essential premise of such protocols is that violence itself is never a negotiable issue. Violence is a crime and needs to be recognized and treated as such. But domestic violence mediation protocols further recognize that parties to abusive relationships often have legitimate issues to negotiate about. The protocols are all about allowing them to do so in a safe environment. In extreme cases, that may mean a form of shuttle negotiation where the parties never see each other, or perhaps are never even in the same location at the same time.

SECONDLY, WHAT IS THE ALTERNATIVE?

The second troublesome admonition for mediators considering domestic violence cases is to consider the alternatives for the parties, especially for the abused party. To some extent it would be easy, if simplistic, to simply refuse to handle any cases involving domestic violence issues, at least if they are serious and recent issues. Indeed, that is what many critics of mediation advocate. But is that really helping the victims, or placing them in an even more vulnerable position?

In Alaska, the primary alternative to mediation is for the parties to prepare their own dissolution papers without the benefit of a third party. In such cases the gun may literally be at the kitchen table while the "agreements" are being reached. Are we really doing victims of domestic violence a favor by refusing to handle their cases, even when the violence issues are recognized and addressed? I personally do not think so.

Studies done by some domestic violence programs have demonstrated that domestic violence victims receive the best outcomes when they are represented by aggressive attorneys. I can understand why that would be true, and even believe it to be very appropriate in some cases, when possible. But how many victims of domestic violence can afford aggressive attorneys? Part of the dynamics of domestic violence is that the abusers often control all aspects of their victims' lives, including finances. Even after beginning to break the cycles of violence, many victims find themselves very hard pressed financially. That is one of the very reasons for the shelter system. Other studies have demonstrated the average cost of aggressive attorneys in divorce cases to exceed $15,000 per case. Perhaps as a result, many of the so-called aggressive attorneys are now referring their clients to family mediation.

The other alternative to mediation to consider, of course, is the court system itself. At the risk of offending some, I would assert that the average family mediator is better trained in the dynamics of domestic violence than is the average judge. Certainly the court systems of this country have not done a stellar job over the years in resolving the problems associated with domestic violence.

But really, that is an unfair comparison for the court system. The big difference is the difference in the role of a judge as opposed to the role of a mediator. What really bugs me about some of the mediation critics in the domestic violence arena and their preference for the court system for resolving such issues is that it is inconsistent with the message they are preaching to the domestic violence victims. Domestic violence advocacy is all about self determination, and about helping victims of domestic abuse to retake responsibility for their own lives. To help them break the cycles of dependency and violence which link them to their abusers. But rather than having such victims empower themselves by taking responsibility for resolving their own legal disputes, which is what mediation is all about, these mediation critics encourage them instead to have such disputes resolved by strangers: by judges in a traditionally very patriarchal system.

I understand that such victims have been downtrodden and controlled for years, and that they may not yet be able to negotiate fully and fairly. In some cases negotiation may not be safely possible, and the court system is the only alternative remaining. But I am offended when I hear it said that such victims should not even be given the option, and that mediation is inherently biased against them. That has not been my experience with mediation. My experience with mediation is that it can be successful in many such cases, as long as the domestic violence aspects of the case are acknowledged and recognized as such, and protocols utilized to protect the integrity of the process and the safety of the participants.

A FINAL DIRTY LITTLE SECRET ABOUT DOMESTIC VIOLENCE

One little secret about domestic violence remains to be revealed, which in my experience has been glossed over or ignored by almost everyone in the debate on domestic violence and mediation. Domestic violence is defined by the experts as virtually any serious assertion of power by one family member against another along any of three continuums of abuse: sexual abuse, physical abuse, or psychological abuse. As such, domestic violence exists in almost every family law case. Actually the studies show the statistics to be about 95% of such cases as involving domestic violence. Thus to say that mediation should never occur in domestic cases is to say that family mediation should never occur at all. I am sure that some mediation critics would agree.

Most people would not agree, however, including many in the domestic violence advocacy community who have discovered that mediation works well in many of their cases. This is why I talk about the inappropriate use of mediation in some of the most serious domestic violence cases rather than in all domestic violence cases, as some do. There is obviously a huge difference between case where the parties shoved each other once, a few years ago, and a case where someone has held a loaded gun to the other's forehead, or worse. To treat all such cases in the same manner would be absurd, in my opinion, although that is advocated by some.

The bottom line is that it is critical that family mediators be very well trained in all aspects of domestic violence and the cycles of abuse, in order for them to recognize the dynamics of such cases, even where very carefully hidden. Once such issues are recognized, the mediators and the parties together, if safely possible, should craft a process that allows them to continue a collaborative negotiation in an atmosphere of safety and mutual respect. If not possible, or ambiguous, the mediator should terminate the process, or proceed using special safety protocols, keeping always in mind the two admonitions to: 1) first do no harm, and 2) consider the alternative to the parties, especially the victim of abuse.

TALES FROM THE INTERIOR

Bush jury

☐ William Satterberg

It was a hot summer day in June. The type of day when mangy sled dogs just roll over, shed tufts of hair, and look at you out of their one blue eye. The type of day where salty sweat rolls off your brow, trickling off the end of your nose and soaking any paperwork in sight. The type of day where everyone prays that the courthouse air conditioning works and that the toilets don't stop up again.

I was in Nenana, Alaska, commencing jury selection in a hotly contested trial. I would have given my eyeteeth for a cool stare from just anyone. Months earlier, the Alaska Supreme Court had decided *John v. State*, establishing that a defendant had a right to have their felony jury trial in the Superior Court venue allegedly closest to the alleged scene of the alleged crime.

Although Galena probably had better facilities, overall, the court system had not yet done its duty to designate Galena as a trial site. The excuse was due to an alleged lack of bureaucratic funding. Nenana, on the other hand, was alive and well. Nenana boasted a courtroom that could seat 30 spectators, and 13 jurors, on folding metal chairs - all quite less than comfortably. The biggest problem would be finding an adequate jury panel during the active summer months. The general opinion among the court administration was that the time would be wasted trying to select a Nenana jury and that the case would eventually end up back in Fairbanks due to a lack of qualified jurors.

In anticipation of exhausting the ordinarily limited Nenana jury pool, over 100 potential jurors had been summoned for the selection process. Involving several serious, unclassified felonies, the case was to be the biggest trial in Nenana of the new century - in fact, of the new millenium. Judge Pengilly, obviously eager to ride his new Harley Sportster, volunteered to preside. Most everyone involved--judge, court clerk, attorneys, guard, and prisoner--would daily commute the 50-mile treacherous drive to Nenana.

To deal with the space limitations, four separate panels were established. The panels were then summoned at different times to the courthouse. By agreement, an initial period was allocated for each panel performing the obligatory "cuts." Jurors who legitimately had other things to do or who simply just did not want to be at trial, and had even a somewhat legitimate excuse, would be the first to be rejected. Following various cause examinations by the court, the attorneys would then have a go with anyone who was foolish enough to still want to be a juror.

The first panel was summoned for 9:00 a.m. Approximately one-half of the panel actually arrived on time. Despite the clerk's pleasure at such a strong turnout, I was already growing concerned. It looked to be a long, repetitious day.

Because Nenana is a bush community, many jurors had an immediate excuse. The summer was their only working season, taking advantage of the tourist industry as patriotic Alaskans. The court conveniently recognized this requirement, and furthermore acknowledged that one full week or more out of a Nenana juror's summer earnings could be substantial, costing jurors possibly even their jobs, and exceeding their yearly PFD stipend. As such, any juror claiming a seasonal job was automatically released. Predictably, excuses abounded.

Most excuses quickly established that tourism was "King." Fishing took a close second, although one person's request to be excused for sport fishing went unheeded.

One inventive juror stood up and announced that he was an "EFF," or emergency firefighter. Most likely recalling the bravery of such firefighters, the court inquired whether he was fighting fires at the time. The man answered, "No, but I *could* be." The court then asked if he knew of any existing fires to which he likely would be dispatched. He looked at the ceiling and thought for a minute. He then responded that, "No, but there *could* be." From my perspective, the man simply was trying to come up with an inventive excuse. Whether that was the case, or whether he truly was an EFF who just happened to be left behind like the little crippled boy in the Pied Piper fable, remained to be seen. Either way, I suspect that everyone figured that, if this man did not want to be on the jury, any good attempt at an excuse should also work.

One juror from the first selection group announced that he was the sole parent for a young boy of six years. He had to take care of the child and could not be available for court because of that duty. He was told to inquire with respect to whether or not there were any childcare arrangements that could be made.

Two selection panels later, a woman came in accompanied by a young boy. She announced that she was a daycare provider. She was taking care of a young boy for a person who had to serve on jury duty. She declared that she could not serve on jury duty if she had to take care of the young boy. Faced with such a Hobson's choice, the litigants made the decision that a father's time with his son was more important than the babysitter's time with the boy. The father was excused, allowing the childcare provider the privilege to report again the following day. She was later preempted.

Another juror vaguely announced that she needed to be at a wedding. She was obviously timid and apologetic in making her request. Upon further inquiry, it was determined that the wedding she was talking about was actually her own. It was scheduled for two days later. Her excuse made sense. How many of her guests ultimately ended up as jurors in the case was never known.

Following the excusals for inability to attend due to the scheduling requirements, Judge Pengilly then read a very serious multi-count indictment to the jury. Because the case involved several alleged unclassified sex offenses, the general feeling among counsel and the court was that the prospective jurors should hear the charges up front to make a determination of whether or not they could sit on such a case. There was no sense in sugar-coating the issues. The reactions were varied. Some were immediate.

When the panel members were asked whether they had any opinions, one juror quickly raised his hand high into the air. The court asked for his opinion. Without any hesitation, he announced, "Cut it off." The court then asked what he meant. He said, "You *know* what I mean! Cut **IT** off!" I cringed. The tone of his response left little to the imagination. It was a true "kneejerk" reaction, if there ever was one. The concept of a trial only delayed the inevitable formation of the fledgling Nenana Boys Choir.

This was not the first time that I had experienced outspoken bush jurors. I thought back to a recent trial in Delta before Judge Beistline on similar issues where one juror had become so visibly agitated with my questions that the district attorney requested that the juror be excused before things got too wild. Violence in the courtroom was a distinct possibility. As for myself, I figured that a brawl with a Delta juror was classic *Bar Rag* material. Almost as good as a defense counsel being arrested.

To many of the jurors' credit, they were quite candid with respect to issues involving their past contacts with the law and, for that matter, their attitudes with respect to the crime. All too often, in larger cities, jurors tend not to be as open with respect to their position. After all, it is not politically correct to say what you feel, is it?

For example, when asked about contacts with the law, one juror proudly proclaimed, "I like to drive fast." He was almost applauded. Numerous other jurors confessed that they, too, had various legal encounters, although they could not always be certain with respect to specifically when or even why they were busted.

Attitudes and opinions abounded. Much like the ebb and flow of the tide, I found that there was no way of necessarily predicting a juror's opinion. Sometimes, the opinions would change in midstream. The best method was simply to assume that the juror's opinion was contrary to the previously expressed opinion.

During one episode, a juror emphatically told the district attorney her attitude with respect to accused sex offenders. The district attorney likely was delighted with such a hanging juror. A true Dwayne Bobick fan. As for me, I was scurrying for cover. Just when I was going to totally give up on the juror and execute a preemptive challenge before we even got to that phase of the case, she had a radical mood swing. Maybe it was some sort of medication or the local water. Maybe we were getting a bargain with two diametrically opposed jurors in one body. In any event, she next asked the district attorney, "Now, why don't *you* ask me about all of those rotten little kids who just like to make things up just to get people in trouble?" I felt inadequate. Such questions were my job, not the district attorney's. Ultimately, given time, the juror succeeded in disqualifying both of herselfs for cause without any real help. She did so by finally disclosing that she likely did have a bias that was in favor of the State and which would not survive the case, announcing that she felt that she should be removed from the panel.

Next to swatting at mosquitoes, the duties of the court during jury selection became rather unusual. At one point, a juror asked Judge Pengilly whether he had a calendar available. Following some frantic searching, a calendar finally was located. Surprisingly, it even had the current year. The court was then asked by the juror to perform some mathematical computations with respect to the length of time remaining in the summer and a library reading program that needed to be fulfilled. Ultimately, based upon the computations, the juror announced that she would be unable to serve at the trial because she had other obligations. Mathematics was obviously not her area of teaching.

Of particular interest was the willingness of the jury to provide friendly legal advice to one another when times became slow. At one point, a juror announced that he did not know whether he was or was not an Alaska resident, because his Permanent Fund check had just been withheld for a claimed lack of residency. After a few minutes of open debate among the jurors panel, the collective lay opinion was that he no longer qualified as an Alaska resident until his PFD appeal was resolved. Although Judge Pengilly was inclined to agree with the other jurors, as was the state in order to avoid any appellate issues, the issue did not stop there. Many of the jurors were quick to provide further impromptu, yet well intentioned legal opinions, openly advising the disenfranchised individual of the various local tricks which might be successfully employed to reinstate the most-coveted PFD check. Although I had some vague misgivings about the panel practicing law without a license, I decided not to call this to the attention of the well-intentioned prospects. No sense tipping over the apple cart. Besides, they had some pretty good ideas that I could charge for later.

On balance, the jurors were a friendly lot. When issues involving small town politics came up, they were quick to chime in that they were fully aware of the small town nature of Nenana, rumor spreading, and often-unfounded opinions.

Although most jurors were obviously reluctant to serve, one juror actually appeared to be quite willing to be on the panel, which caused me to go on mental alert. In the past, I have found that some jurors will appear to campaign to be selected for service. This juror looked to belong to such a category. During the break, he was quite friendly with virtually everyone in the courtroom. At one point during the selection process, furthermore, he had his arms comfortably wrapped around the juror on either side of him as if they were his best friends. That he was enjoying his retirement years would have been an understatement. However, he became openly upset with me at one point when he defiantly announced that he had hearing problems and could not hear things happening in court when "that defense attorney keeps rustling his papers." It was then that I realized that the combination of circumstances probably indicated that this person would not be a good

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Bush jury

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defense juror. Besides, he had been the City's former Chief of Police. Fortunately, I never had to execute a peremptory challenge, since he was ultimately one of the "extras."

Medical issues were also unique. Maybe it actually was the water in Nenana, or the flouride treatments. When asked about physical limitations, one lady nicely volunteered that she was blind in one eye. She explained that she could only see "half of everything." Judge Pengilly, curious about this unique physical condition, asked her how much of him did she see. She responded, "I can only see half of you, Your Honor." Testing the hypothesis, Judge Pengilly then physically shifted his chair behind the bench approximately three feet to the side and asked her what she now saw. She innocently responded, "The other half, Your Honor." This was the first time that I had ever heard of a diagnosis of blindness in one eye resulting in only seeing half of the world. The question that I naturally had was whether her world was still three dimensional, despite only being observed in halfway format. The lady was preempted, which might have been shortsighted of me.

Another individual, who actually made the jury, announced that he had a history of seizures. These seizures, he claimed, would occur approximately three times a year. They usually were unexpected. He was not an epileptic and could not explain much about his seizures. He told us not to worry, but, as a precaution, he did warn us that, if a seizure happened, he would simply, "Fall down on the floor and thrash around a bit." He explained that he would be able to return to his jury seat once it was over and that, "As long as it doesn't bother you, it doesn't bother me." Judge Pengilly thanked the man for the advance notification. As an afterthought, the juror reassured all present that the seizures were primarily brought on only by things like too much coffee and stress. I thought about asking the clerk to put milk in the jury room, having already sampled the coffee during a break. I did not figure that a ten-day sexual abuse trial in Nenana would be particularly stressful, and did not challenge the juror.

The court building in Nenana is multi-functional - a tribute to the capitalistic philosophy of its owner. A hairdresser's salon and a washateria occupy half of the small building. Another portion is being remodeled. The rest is reserved for a small courthouse. As such, the utilities are taxed. The first day of jury selection was an extremely hot day. Fortunately, the second day was cooler, but quite humid due to regular passage of thunderstorms. At some earlier date, the building landlord, the locally well-known former Lieutenant Governor Jack Coghill, had apparently been advised that the building needed to have air conditioning. Clearly, air conditioning was of a greater priority than the shattered window or the need for extra lavatories.

To say the air conditioning was efficient would be an understatement. The air conditioning, when it chose to fire off, resulted in a windstorm that rivaled a blizzard. The desired cooling effect was substantial, since only one large unit was dedicated to deal with the entire room. Unfortunately, my table sat directly beneath the air conditioning outlet. As a result, each time the system rumbled into operation, my papers would literally hover in midair and start to float off of the desk. I regularly felt like I was trying to chase a stack of napkins that had blown away at a church social. To add additional perspective to the amount of cold air being rapidly exchanged, it is of note that my client, who was Native, complained that he personally found the climate extremely uncomfortable. Based upon his Native heritage, I remarked that he should be the one in the courtroom to handle it best. His curt reply was, "No way."

The Nenana jury chairs, although uniform in their brown color, were considerably less than comfortable, if one excludes the non-reclining chairs that are installed at counsel tables in the new Fairbanks courthouse from comparison. (The chairs in the Fairbanks courthouse are a good reason why one should not always select the lowest bidder.) The chairs in the Nenana courthouse did not have the ability to swivel or rock, being folding metal in nature. Because a jury of thirteen individuals was selected, furthermore, something had to go. That, "something" was elbowroom.

The other issue that suffered was the close proximity of the jurors to the defense attorney. Although the district attorney had the luxury of being squeezed against the far wall, where she may have wanted to be in order to have eye contact with her witnesses, I had the unfortunate location of having my files placed within ready eyesight of many of the jurors, prompting me to make my already illegible writing even more illegible for security reasons.

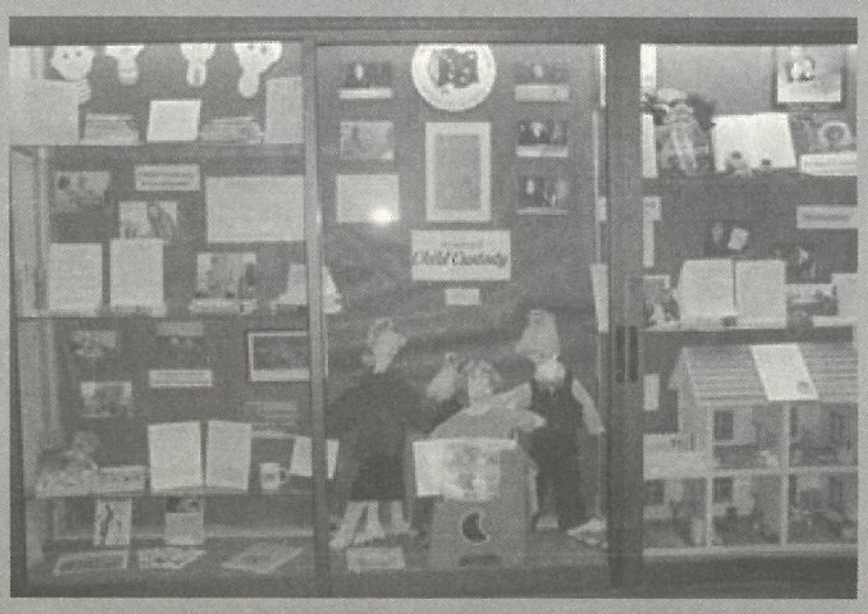
Desk placement quickly became an issue. Due to the lack of space, the defense table and the district attorney's table necessarily had to be butted together. To promote better relations, I had my client sit between the dedicated district attorney and myself. I figured that it was the least I could do to foster better relations. To the district attorney's credit, she did not voice any objections.

Courtroom security was also affected. The Judicial Services Officer had to sit in the witness box during the selection process. The witness box was actually a good location, being strategically placed above most of the rest of the occupants of the gallery, much like a prison guard tower. She actually had a good field of fire. Unfortunately, when the trial began, she had to leave her perch. The good news was that there were no metal detectors. Nobody had to worry about sleazy defense lawyers smuggling metal knuckles or deadly key chains in and out of the courtroom.

In the end, the jury selection process went remarkably well - a tribute to the efficiency of the court staff. Contrary to initial expectations, the parties were able to select a panel of thirteen jurors after only going through a list of close to one hundred people, many of whom never did even make the roll call. Surprisingly, only one person did not return for the final selection process the next day, having survived the previous day's for-cause disqualifications. Although both the state and the defense utilized all of their peremptory challenges, there were still two surplus jurors, neither of whom I particularly wanted on the panel, regardless. Finally, despite the court's initial expressed concern, a panel was selected, even if it did exhaust the entire reserve of Nenana names for the summer, not to mention two hard working court clerks, who engaged in a modified version of "the draft," with many late night calls and alleged door knockings.

The outcome? Let's just say that I highly recommend bush trials to all defense counsel. Not only is the selection process almost always a most memorable experience, but Alaska's individualism and sense of justice is still quite alive and well.

Court display focuses on Child Custody



Presiding Judge Niesje Steinkruger of the Fourth Judicial District in Fairbanks recently initiated a unique effort to educate the public about the legal system's role in child custody cases -- a full display case devoted to the topic in the Fairbanks Noel Wien Library.

Entitled "The Challenge of Child Custody," the display includes panels dedicated to (1) the factors courts consider in child custody decisions; (2) the role of the Child Custody Investigator; (3) an overview of Child in Need of Aid proceedings; (4) the role of tribal courts in cases involving tribal children; (5) mediation and parenting agreements, including information about the court's new "Two Homes" video on these subjects; and (6) the court's statewide Family Law Self-Help Center.

In addition to these informative panels, the display features a dinosaur family reading the book, "Dinosaurs Divorce;" a doll house with quotes about the stress of changing families, and a Berenstain Bear injured by child abuse.

Many books on the subject of family breakup are also featured. According to Judge Steinkruger, the outreach effort was designed to help demystify a court process that affects many people but is not well understood.

Responses to the display have been very positive, she reports. "People appreciate the information, and want to know more," Steinkruger says, "The legal and judicial communities can play a huge role in helping people understand what happens in these difficult cases."

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

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- Ideal manuscript length: No more than 3 single-spaced or 5 double-spaced pages, non-justified.
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- Photos: B&W and color photos encouraged. Faxed photos are unacceptable. If on disk, save photo in .tif format.
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No strings attached

Cutting the cord with a wireless practice

BY ROSS L. KODNER

Those frustrating cables. Intertwining and connecting seemingly plug-incompatible gadgets in our laptop cases; tangling purses and briefcases in a snakelike mass of plastic-encased cords; connecting Palms to PCs; going from headsets to cell phones; "conveniently" linking us to printers (when sometimes the cables weigh more than the laptop); stretching to scanners; retracting (or not) from telephones; coiling like a garden hose around the legs of our chairs while connecting us to a network.

It's time to banish the cable headache once and for all. Wireless technology is the answer. It's hard not to hear about wireless today. From network connections for our laptops and Palms to wireless earphones for our cell phones, wireless e-mail, wireless Internet "hot spots," the practice of "warchalking" sidewalks to note wireless Internet access points in metro areas -- we're walking in a wireless wonderland.

What kinds of wireless devices make sense for lawyers? Several key wireless technologies recently have gone past being de rigueur and have morphed into "must haves." Different methods for wireless connections, including WiFi (otherwise known as "Wireless Ethernet") and its short-range cohort, Bluetooth technology has appealing features.

WIRELESS NETWORKING

Most law firms with more than one PC have them networked together to share data, programs, and peripherals such as printers and backup systems. Traditionally, this network has involved some kind of interconnecting device (typically referred to as a "hub" or a "switch") and cables to actually connect the device to the PCs. Firms that planned ahead and installed network cable outlets in many places throughout their offices have had the luxury of being able to sit and work, connected to their networks (and via them to the Internet) at any of these "cable points."

But what happens when one of the lawyers wants to sit in the library with laptop in hand and get work done, surf the Net, and so forth? How about the office's kitchen area? What if there aren't any cable points there? The localized nature of cable points has meant there has been no practical way to access from all points in an office the network documents, calendars, the Internet, or even e-mail. And that, today, just isn't acceptable.

In more and more families, all members have their own PCs. Add a speedy new cable modem to access the Internet and you end up with a chaotic logjam -- everyone wants to access the Net at the same time. Spending hundreds, if not thousands, to run network cabling in an existing home is not an appealing option..

WiFi wireless network technology), currently available in several numerical flavors, is the most popular wireless networking technology. A cableless derivative of tried-and-true Ethernet network, it is now standard equipment in many laptops, some printers, some Palm-sized devices, and even some LCD projectors. The technology is successful because, well, it actually works.

The most common form is called 802.11b. This system sends and receives information via a device called a wireless access point at 11 Mbps (megabits per second: remember to divide by 8 to get "megabytes per second"), with some systems capable of "turbo" mode at double that speed. If you purchased a laptop in the last 18 months, it likely uses the 802.11b transmission standard. Operating ranges extend to about 1,000 feet, but more like 200 feet inside a building.

ACCESS & CARDS

A wireless access point is a small box that connects to your existing network. It adds the whole network to communicate wirelessly with the wireless-equipped devices on your network. Some wireless access points incorporate a router to allow shared access to a cable modem or DSL Internet connection and often standard network hub capabilities to interconnect cabled network components. They sometimes include Internet firewall capabilities as well: consider them the multifunction devices of the networking world. Popular makers include Linksys, D-Link, U.S. Robotics, Netgear, Orinoco (Lucent Technologies), Cisco, 3COM,

The next piece of the puzzle is the wireless "card" -- the component either built into a PC or printer, or added to one that communicates with the wireless access point. More and more laptops, and even several higher-end Palm-sized devices, have wireless capability (generally following the 802.11b standard) built-in. If not, a wireless PC card can be added to a laptop for between $50 and $150. For desktop PCs, the options are internal PCI cards or external USB wireless adapters, which cost between $50 and $125. It is also possible to connect devices such as printers and some scanners with a device called a "wireless bridge." offered for about $100 by companies such as Linksys (http://www.linksys.com).

Security is always an issue with a network, so it is even more so when all those bits and bytes float through the air. The 802.11b standard uses a security system called WEP (wired equivalent privacy). Unfortunately, this method hasn't lived up to its acronym and has been proven to be penetrable. Also, every wireless network has a special identifier called an SSID. This is essentially an identifying code that is exchanged between the wireless access point and PCs trying to connect with it. It is critical to reset the SSID on a new wireless access point (and on the PCs connecting to it) to something other than the default setting. The newer 802.11g systems employ far more sophisticated security capabilities: WEP on steroids.

WIFI'S FUTURE

The future of WiFi? More and more companies are embedding WiFi capability into an ever-widening array of devices. Wireless access points in public locations are multiplying rapidly. Hotels are exploiting 802.11b technology to create wireless zones in their properties, which is much less costly than offering high-speed Internet cabling to every room. Many Starbucks locations around the country are offering T-Mobile's version of 802.11b access. Services like Boingo (http://www.boingo.com/) offer a flavor of 802.11b at hundreds of access locations nationwide. Expect more.

A standard called Bluetooth also is now coming to fruition for interconnecting personal devices into a PAN (personal area network). Blurtooth examples include cordless communication between an earphone/headset and a cell phone, or PDA-to-PDA. Bluetooth devices have an effective transmission range of about 30 feet. Another short-range wireless connection approach is infrared (IR) technology. Let's take wireless a step further into the realm of portable Internet Web and e-mail access. We are just now seeing fast enough speeds to make the effort worthwhile. Using the platform of 2.5G and 3G cell transmission systems, companies like Verizon are offering wireless Internet in a growing number of metro areas around the country. Another is Blackberry text messaging.

Whether by WiFi, Bluetooth, or Infrared, or Wireless Net or the Blackberry e-pager approach, the future of wireless technology is growing explosively. The lure of a cordless world is one that few can resist.

Attorney Ross Kodner founded MicroLaw, Inc., a legal techn consultancy (http://www.microlaw.com.) He is a member of the ABA GP/Solo Technology & Practice Guide Editorial Board, and received the 1999 TechnoLawyer Legal Technology Consultant of the Year Award. Article provided by the Technolawyer Syndication Network.