

# VOIR DIRE

BY GAIL DIANE COX

## Your legal forecasts for the new year

AMONG THE PREDICTIONS for 2004, it's worth noting what Professor I. Michael Greenberger of the University of Maryland has to say.

The Supreme Court has accepted two civil liberties cases having to do with terrorism, one from the 4th U.S. Circuit Court of Appeals and one from the D.C. Circuit. Greenberger said both will be reversals. This means something because the professor has been right in the past and legal punditry could use some institutional memory.

But as we waited for CNN to start running batting averages below the talking heads, another New Year's came and went. And the compulsion to publish forecasts is more than we can resist:

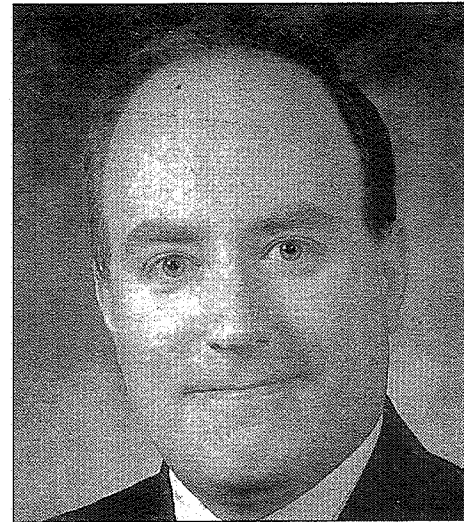
Commentator Alan Kellogg of the *Edmonton Journal* predicts that Michael

Jackson "will be found guilty of at least one molestation count, prompting other indictments. Neverland will be subdivided, as God intended."

It's a safe guess that the "tort reform" war will continue full tilt. On one side, plaintiffs' lawyer A. Barry Cappello, managing partner of Santa Barbara, Calif.'s Cappello & Noel, suggests that, given California's economic crisis, "all judicial officer functions will be outsourced to private contractors. The following will happily agree to provide judges: Alliance of Insurance Companies; the HMO Association; The Joint Venture of Asbestos, Chemical and Defense Contractors; The 200Banking and Securities Group, Inc." From the other side comes Lawrence E. Savell of New York's Chadbourne & Parke. (He's the source of such Christmas carols as "Santa and I are Going to Pull an All-Nighter," but that's a different holiday.)

If it were easy...to help disadvantaged minorities, we wouldn't have needed civil rights legislation.

Slate's *Dahlia Lithwick* on Supreme Court disability cases.



HOWARD BASHMAN: *The big blogger sees more protection for the Pledge.*

"Encouraged by much-publicized litigation regarding the revelation that hot coffee is hot," said Savell, "enterprising plaintiffs attorneys will pursue claims over discoveries that cold soda is cold, wet paint is wet, oil is oily, and fluffy donuts are fluffy."

Nicolas Gaffney, vice president of San Francisco's Magnet Communications, predicts that in criminal prosecutions, "Defense attorneys will continue to use the Internet to level the playing field" and "Web sites like [www.richardscrushy.com](http://www.richardscrushy.com), [www.mjnews.us](http://www.mjnews.us), and [www.marthatalks.com](http://www.marthatalks.com) will become the standard." As a result, "law schools and trial consultants will start teaching and consulting on how to use these techniques."

And speaking of the Internet, blogger extraordinaire Howard Bashman, an

appellate lawyer with Pittsburgh's Buchanan Ingersoll, fearlessly predicts that before the end of the year we'll see the Supreme Court approving the detention as an enemy combatant, in a cell containing a two-ton Ten Commandments monument, of anyone seeking to alter the text of the Pledge of Allegiance.

But back to batting averages ...

Last year saw a tsunami of predictions that justices William Rehnquist, Sandra Day O'Connor or John Paul Stevens would step down. That's where Greenberger earned his stripes by saying, "I would say that probably no one is going to retire." Joining him in clear crystal-ball gazing was House Committee on the Judiciary staffer Artemus Ward, the author of *Deciding to Leave: The Politics of Retirement From the U.S. Supreme Court*, who forecast, "It is very possible that they won't retire." NBC's Pete Williams qualified for the select group, saying, "My guess is nobody's going to retire this year," meaning 2003.

Many experts shared the Scrambled Tea Leaves Awards of 2003. A sampling: Ralph Neas, president of People for the American Way: "There will be some resignations" from the high court. *Chicago Sun-Times* editorialist William O'Rourke referred to the big affirmative action suits and said, "O'Connor will use the case as her swan song." University of Missouri Law Professor David N. Atkinson, author of *Leaving the Bench: Look for "at least one resignation."* And Cindy Adams, the *New York Post* columnist, on Rehnquist and O'Connor: "both resign next month."

So there, rune casters, someone is trying to keep track. **NLJ**