

The Alaska BAR RAG

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Dignitas, semper dignitas

SPECIAL FEATURE: Matthews leaves in style

Reflections on Matthews' Big-Bang Theory

By John Marks

The perfect job for me right after law school, about 20 years ago, was the one for which I had missed the application deadline. So my name was nowhere on the interview schedule when then Chief Justice Warren Matthews, while touring law schools in the Lower 48, visited my law school to interview applicants for judicial clerkships in Alaska.



Matthews

What can I say? I just wasn't very good at career planning back then. The thought of clerking at the highest court of our country's most exotic state had just never occurred to me—that is, until I heard that the guy who ran that court was on campus looking for clerks.

There I stood, outside a conference-room door, in my blue jeans and a sweat-shirt, trying to figure out how I was going to work my way into the pre-established schedule of interviews with the Chief Justice inside. On the door was a sign: "Alaska Clerkship Interviews." I looked at the sign and thought about how "totally awesome" (as we used to say back then) it would be to clerk for the highest-ranking judge in the most extreme state in the country—the most northerly, westerly and easterly of our states, where days can be longer, shorter, colder and . . . well . . . a lot colder than anywhere else. My plan was

simple: I'd just poke my head into the room between interviews; ask if the Chief Justice might be able to add me to the end of his already lengthy schedule; run home and change into a borrowed suit; and return with resume in hand for the interview.

I soon learned that Chief Justice Matthews was not a stickler for formalities. He simply waved me into the conference room when I made the request, and then he interviewed me on the spot during what was supposed to be his mid-morning break. That gesture alone practically blew me away.

During the interview he asked questions that tended to elicit long answers from me about, among other things, the reasons for my hasty decision to relocate 3,500 miles away from home for a clerkship in a place I obviously

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Carpeneti is new Chief



The justices of the Alaska Supreme Court on June 5 unanimously selected Justice Walter ("Bud") Carpeneti to serve as Chief Justice of the Alaska Supreme Court, effective July 1. Chief Justice Dana Fabe completes her three year term on June 30. Shown here at the Alaska Bar Association convention in May, Justice Carpeneti accepts a pin for his 30 years of service to the State of Alaska from Chief Justice Fabe.



Fodder for the water cooler

- Is the judicial selection process flawed?
- President says involve Bar in fed process.
- Even in France, selection is scrutinized.
- And, by the way, 25 candidates applied for selection to the Alaska Supreme Court
Below, pages 2-3, & 15

THE KING OF THE DUFFERS PAGE 24



Record number of applicants for the Supreme Court

A record 25 attorneys applied to the Alaska Judicial Council for a position on the Alaska Supreme Court. The seat on the highest court will become vacant Nov. 2, with the retirement of Justice Robert L. Eastaugh.

This is the highest number of applicants for a position on the supreme court in the 50-year history of the state, although one applicant, Susan M. Carney, has withdrawn her application.

Of the 25, four are in government or non-profit practice; 10 are in private practice; and 11 are members of the judiciary. Three of the 25 candidates are women.

Regionally, 14 candidates reside in Anchorage; 4 in Fairbanks; 2 in Palmer; and one each in Juneau, Ketchikan, Barrow, Nome, and Homer.

The applicants are:

Susan M. Carney: (withdrew) Ms. Carney is 47 years old, has been an Alaska resident for 21½ years and has practiced law for 20½ years. She graduated from Harvard Law School in 1987 and is currently an assistant public advocate in Fairbanks.

David S. Case: Mr. Case is 64 years old, has been an Alaska resident for 34½ years and has practiced law for 24½ years. He graduated from the University of Washington, School of Law in 1974 and is currently in private practice in Anchorage.

Kevin G. Clarkson: Mr. Clarkson is 50 years old, has been an Alaska resident for 23½ years and has practiced law for 23½ years. He graduated

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FEATURED IN THIS ISSUE



Justice Alito hits home run at the convention.
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Procrastination

By Sid Billingslea

Procrastinate: verb. defer action; delay, esp intentionally. Oxford Dictionary, American Ed. 1996

I prefer to think of procrastination as a way to maximize efficiency and lend zest to life. After all, how else could I justify writing my first president's column a day before it's due and on the eve of a jury trial? Desperation and adrenalin are my Muses, alas.

Which leads me to a different kind of musing, about the recent Bar Convention in Juneau, by all accounts a great success, attended by 397 attorneys. There was a wide variety of CLEs, from Evidence Cranium to trusts, ethics, and classic Appellate Updates by Professors Cherminsky

and Levinson. Justice Samuel A. Alito, Jr. participated in a bench/bar session and gave the keynote speech at the banquet. The bar staff worked tirelessly to ensure that the programs and materials were on time and the presenters showed up. They make it look easy, but it is not.

Equally important, and maybe the best thing about the convention was the opportunity to experience the collegiality of the Alaska bar, and to meet so many new people, as well as put faces to names I've known for years. Our bar is a diverse group indeed, yet we have much in common



"It is my honor and privilege to serve as your president this year."

that stood out during the social times of the week. Our bonding opportunity was in large part facilitated by the magnificent and generous hospitality of the Juneau Bar members. They made sure that we were welcome, and the hospitality suite most hospitable (crab! smoked salmon! hosted bar! games and prizes!) They organized field trips (whale watching, fun run, zip line), arranged for members to have a free visit to the museum to see a beautiful hand caligraphed sheepskin copy of the state constitution, and were generally on hand as unofficial tour guides. Thanks again to the bar

EDITOR'S COLUMN

The secret life of the Judicial Council

By Thomas Van Flein

It is time to bring the judicial selection process out of the shadows. Before explaining why, let me preface my comments with some observations. First, I believe we have a talented bench. I have tried cases in Fairbanks, Anchorage, Ketchikan, Juneau, Palmer, Wrangell, Dillingham (by way of Cold Bay), and even Glennallen. I have represented clients before our Supreme Court and down to District Court, though much of my time is spent before our Superior Court judges. I clerked on our Supreme Court. I have been impressed with our bench because collectively they work hard, and they care about doing the right thing the right way. I have no doubt my clients will get a fair chance at any level of our court system. And that really is the essence of justice. You may not, and indeed you cannot, win every issue and every case. But at the end of the day, if you leave the courthouse knowing the judge understood and considered your position, even if that position did not prevail, justice was achieved in large measure.

I can compare this to my time practicing law in California. The judges there, facing a docket that could choke a horse, often would issue one sentence rulings on complex motions of law, either "granted" or "denied." If time permitted, maybe "granted for the reasons set forth in the defendant's motion." Neither party was ever certain the judge really had time to digest the facts, much less consider nuanced legal argument. Contrast that to the practice here where even the District Court will issue detailed memorandum decisions of law. In short, it is a pleasure appearing before our judges who I find competent, fair and most of them are personable (not a requirement to be a good judge, but certainly not a detriment).

Now on to the selection process. There is an institutional flaw that is no fault of the Judicial Council. Namely, the founders of our Constitution determined that we should have a merit based selection process free from political maneuvering. It sounds

good. In fact, it sounds really good, and I have always thought it unseemly when visiting Outside to see billboards that say "Vote for Smith for Judge." So we don't elect judges, we select them. The Judicial Council does the selecting and it operates as a gate keeper, screening applicants based on a variety of factors and passing on to the Governor only the names of those it deems "most qualified."

The problem with this concept is that it ignores reality. Rather than have the general electorate weigh the intangibles of a particular candidate, we have a small group of people doing so. But every person on the Council has their own filters, biases, preferences and political inclinations. They are not robots. So in the end, we constitutionally took away the right of the people to weigh in on who will judge their disputes, and instead vested that right with a seven person committee. But we did not eliminate politics from the process. We simply drove it underground. I am not the first to see the problem. Mr. Tillman Finley wrote about his observations in "Judicial Selection in Alaska: Justifications and Proposed Courses of Reform" 20 Alaska L. Rev. 49 (2003). The council unconvincingly replied to Mr. Tillman by noting that his observations were either wrong or already in place. In other words, don't bother us.

How do we know the politicking is underground? We see the results. Despite the number of applicants, the Judicial Council often only sends a few names to the Governor. In some cases, the nominees were largely politically opposite of the selecting governor's position. This has the appearance of being a ploy aimed at coercing the Governor to select a candidate that has been essentially pre-ordained by the Council. If it is not such a ploy, then the Council has inadvertently created such an appearance—several times.

More troubling, the Judicial Council



"I suggest that the process be brought out of the shadows and that transparency be the order of the day. That would mean terminating the 'anonymous' bar poll."

has expanded its gate keeping function in recent years to such an extent that obviously well qualified candidates have not been forwarded to the Governor for consideration. Governor Murkowski confronted this problem in his administration. It appears that the practice of eliminating well qualified applicants and only forwarding a select few has political purposes since it appears that the more politically conservative applicants are often the ones not forwarded. The Council applies the standard of selecting the "most qualified" and relies heavily on its determination of who is the "most" qualified. Without ever publicly explaining why it selected someone as more qualified than another, the public is left to guess. We did away with pernicious discrimination in jury venires by mandating non-discriminatory explanations for peremptory challenges involving protected classes. If lawyers have to justify striking a juror when challenged, certainly the Council can provide an explanation when selecting a judge (and essentially striking others).

What should be done to address this? I am not advocating for a constitutional amendment that allows us to elect our judges. I do suggest that the process be brought out of the shadows and that transparency be the order of the day. That would mean terminating the "anonymous" bar poll. If you have something to say about a candidate, say it, and sign your name. As lawyers, we should have the integrity to stand by our word, and not cower behind a shield of anonymity. The Bar Poll comments sometimes read like a third rate blog with outlandish comments that do not befit a judicial selection process. (The same applies to the judicial retention survey. Anonymous comments simply have no place in this type of an endeavor). I am singularly unimpressed with the supposed rationale for anony-

and judges for a great week.

Which leads back to procrastination. As I head into trial on Monday it will be with the comfort and security of knowing that if I need advice or help I can pick up the phone and call one of you and you will be there, as a fellow professional, as a friend, as a mentor or as a cheerleader. All because you are another attorney and you know what it feels like to shoulder the responsibility to protect and defend another human being's legal rights in our justice system. It is my honor and privilege to serve as your president this year; I hope it will be rewarding for all of us.

Thanks to Mitch Seaver for his leadership last year.

The Alaska BAR RAG

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Process of selecting Alaska's judges is clearly flawed

By Bob Flint

Alaska courts have a long history of removing contentious social and cultural issues from the democratic process. Court rulings have forced private hospitals to perform abortions, ordered gay marriage and benefits, required taxpayer funded abortions and interfered with parents' rights to be involved in the abortion decisions of their minor child.

These court rulings involve the creation of new and novel legal doctrines untethered to our Constitutional history, intent, or even language. The decisions of the public and their elected representatives are ignored, not to mention the rights of individuals to parent their children or perform services or charity without being forced into immoral and abhorrent practices.

The Alaska courts have consistently struck at such basic moral rights as life, family, marriage and conscience, undermining in the process the essential pillars on which society is based.

Unlike other public officials, the judiciary operates largely outside the public scrutiny, including the judicial selection process. Policy makers who are elected officials are chosen in a public process and are subject to strict sunshine rules when policy is being made. Unelected policy makers — judges — are selected in secret and are subject to no effective public control or accountability. Therein lies the flaw in the selection process.

Our selection method consists of a nominating committee, called the Alaska Judicial Council, made up of the Chief Justice, three lawyers chosen by the bar association and three lay members appointed by the governor. Thus, the lawyers are in the majority. The Judicial Council nominates candidates for appointment by the governor who must select from these nominees.

In theory, though not in practice, the Judicial Council ignores political or ideological considerations when nominating, leaving those to the elected official, the governor. The

State Constitution's laudable goal was to eliminate the political influence of elections and the cronyism of direct appointment.

Regrettably, experience has shown that special interest influence cannot be held at bay, which now turns out to be the biggest legal special interest of all, the lawyers/members of the bar.

The Alaska Judicial Council deliberates and nominates in secrecy. It issues no reasons for its choices or rejections. Other than vague reference to "most qualified," (a term contained not in the Constitution but in the Judicial Council's own bylaws) or "best available timber," a wish by a delegate to the Constitutional Convention, no discernable standards for choosing nominees exist. Obviously qualified candidates are routinely not nominated. This year, one of only two nominees to the current Supreme Court vacancy was not nominated for the same position last year, thus appearing to have moved from unqualified to qualified in a very short

time without any observable change in his actual qualifications.

The judicial selection process is clearly flawed and in need of substantial reform. It was undoubtedly an error to entrust the choice of such important public offices to the lawyer community, alone.

If the legal profession and the judges who come from it would respect their role in the democratic system, the current system would work, but that has proved impossible. The temptation of power is simply too great.

Short of a Constitutional amendment, the public and the governor can demand transparency in the entire nominating process, the creation of standards by which nominations are made, the elimination of ideological considerations and the nomination of the maximum number of candidates, not the minimum.

The selection process and its results cannot be ignored. No progress can be made if time after time the unelected juristocracy intrudes on the workings of democracy with edicts shaping the world to their own ideological and moral vision.

The secret life of the Council

Continued from page 2

mous comments—fear of retaliation by judges or judges to be. Any judge who would "retaliate" against a lawyer for honest and factually accurate comments on a bar survey would fail the temperament test *ab initio*. If the comments are not honest or factually accurate, then don't make them.

Next, the deliberations of the Council should be public. All of it. I serve on a zoning commission. Cases are presented to us in public. Then, once the public comment is closed, we deliberate and state our reasons for or against on the record. We don't meet in secret. Right now the Judicial Council deliberates in private. No one knows what is really said or why a particular candidate got only two votes, etc. This is a public process and we should know the reasons the Council has determined that one candidate is qualified to be presented to the Governor and another is not.

If there are non-discriminatory politically neutral reasons to reject an applicant -- say so.

Finally, the Council's restrictive definition of "most qualified" needs to be reexamined. That term should not be used as a pretext, or as barrier in fact, to qualified candidates. If applicants have deficiencies in their records, education, or performance, then note it. But the Governor should not be deprived of a qualified judicial appointment because the Council finds another person slightly "more qualified." This is particularly true when the historical pattern suggests some of the more conservative applicants for the bench are being left off the list, though by all fair accounts, they are qualified for consideration.

I mentioned above that I find our bench competent and fair, and I do. But I did not say they are apolitical. They are not. No one is. While 70% (maybe more) of the court's daily work involves routine matters that have

no political tilt, it cannot be gainsaid that all court matters have no political impact. The political inclinations of a judge are frequently outcome-determinative on policy disputes. And in our society, policy disputes enter the legislature, exit as laws, and end up in the courts. Note the many 5-4 decisions at the U.S. Supreme Court level, often split along party lines. The Council is a gatekeeper, not a kingmaker. Give each governor, of whatever party, more choices. There is nothing in the State Constitution that requires the Council to do its work in secret. If the Council is to maintain its credibility, it needs to come out of the shadows and work in the light of day.

(Note: As with all columns, this is my opinion only and is not to be construed as representative for any other person or this publication.)

Let the Bar evaluate judges

By H. Thomas Wells, Jr.

The Obama Administration has requested that the American Bar Association Standing Committee on the Federal Judiciary resume its historical role in evaluating the professional qualifications of potential federal judicial nominees on a pre-nomination basis.

The ABA Standing Committee, which has been involved in the evaluation process for over 50 years, is pleased to continue to perform this important public service on a pre-nomination basis. Our goal is always to assist both the administration and the Senate Judiciary Committee as they deem appropriate in this process. As ABA president, I can assure you that our Standing Committee takes its role in the process very seriously.

The Standing Committee makes a unique contribution to the process by conducting an extensive peer review of each potential nominee's integrity, professional competence and judicial temperament. The Standing Committee does not consider a potential nominee's ideological or political philosophy. Its work is fully insulated from, and completely independent of, all other activities of the ABA, and is not influenced by ABA policies. The Standing Committee itself never proposes or endorses a particular candidate for the federal judiciary; its sole function is to assist the administration and the Senate in evaluating the professional qualifications of potential nominees for a life-time appointment to the federal bench.

The Standing Committee and the ABA look forward to working with the new administration.

Statement by the American Bar Association president,
March 17, 2009

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Avoiding the inadvertent common interest community

By Daniel B. Lord

(Part I)

The Uniform Common Interest Ownership Act (the "Act") is the law in a number of states, including Connecticut and Colorado. Alaska adopted its version of the Act, AS 34.08 *et seq.*, more than twenty years ago. But it is still possible to come across a set of Covenants, Conditions and Restrictions ("CC&Rs") or a declaration recorded recently in the state with hardly a mention of the Act.

According to AS 34.08.010, the Act applies to every common interest community created in Alaska after January 1, 1986. There are three primary exemptions. These are common interest communities, in which all units are restricted to nonresidential use, AS 34.08.070; *de minimis* planned communities, which are not subject to development rights and the annual expense liability of its residential units is equal or less than one hundred dollars, indexed to 1986, AS 34.08.030; and common interest communities which are created out of state. See AS 34.08.080.

Failing to mention the Act does not mean that a development project is exempt from the Act's provisions and requirements. For, it should be stressed, the Act casts a wide net that can catch an array of projects. See generally Richard J. Wirth, *The Uniform Common Interest Ownership Act Nonresidential Use Exemption: When an Out May Not Be an Out*, 26 Real Prop. Tr. & Prob. J. 885, 888-93 (1992). To avoid being ensnared in the Act, -- however inadvertently, -- requires careful consideration of the term "common interest community," what it means under the Act, *id.*, as well as how a common interest community is created.

So, what is a "common interest community"?

Under the Act, a "common interest community" means "real estate with respect to which a person, by virtue of ownership of a unit, is obligated to pay for real estate taxes, insurance premiums, maintenance, or improvement of other real estate described in a declaration." AS 34.08.990(5) (emphasis added). Use of the disjunctive is significant. As noted by one observer, this "characterizes any ownership arrangement as a common interest community if the development utilizes any of the above cost spreading bases, regarding of whether any other basis exists," in such a way that "ownership coupled with the mere obligation jointly to maintain another property" will render any development project a common interest community. Wirth, *op cit.*, at 888.

Important components in the definition of "common interest community" are the terms "real estate" and "ownership of a unit" or "unit." See Norman Geis, *Beyond the Condominium: The Uniform Common Interest Ownership Act*, 17 Real Prop. Prob. & Tr. J. 757, 759 (1982) (identifying "unit" and "other real estate," and payment obligation, as central to legal concept of a common interest community).

Under the Act, a "unit" is defined as a "physical portion of the common interest community designated for separate ownership or occupancy, the boundaries of which are described" in the declaration. See AS 34.08.990(32). "Ownership of a unit" is defined in the negative. That is, it "does not include a leasehold interest, including several options of less than 40 years in a unit." AS 34.08.990(22).

By "real estate" is meant, in part, "a leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests that by custom, usage, or law pass with conveyance of land though not described in the contract of sale or instrument of conveyance." AS 34.08.990(27)(A). The definition is the same as that provided under Section 1-103 of the Uniform Common Interest Ownership Act of 1994 (uniform act) in Uniform Laws Annotated. The official commentary to that section explains that the definition "is very broad" and is intended to accommodate real estate as a "three-dimensional concept." Unif. Common Interest Ownership Act §1-103, *cmt.* 8, 7 U.L.A. 213 (Sup. 1996).

Two noteworthy implications flow from the definition. One is that a "unit" in a common interest community may be composed entirely of airspace. See, e.g., *Alword Inv., LLC v. Zoning Bd. of Appeals of City of Stamford*, 920 A.2d 1000, 1009 (Conn. 2007). Cf. Gurdon H. Buck, *Drafting for Planned Unit Developments, Golf Course Communities, and Condominiums* 115, 117 (ALI-ABA 1997) (suggesting language in a declaration to create "unit sites" or air space units). Another implication is that if a declaration provides that virtually any portion of the development, no matter how small or insignificant, is vested in the owners of other portions or in a homeowners association acting on their behalf, that development may be a common interest community. See Gurdon H. Buck, *Beware the Inadvertent Condominium! The Commercial Common Interest Community* -- Choices Under the Uniform Condominium Act, 22 Real Prop. Prob. & Tr. J. 65, 76 (1987); see also *Pagosa Lakes Property Owners Ass'n, Inc. v. Caywood*, 973 P.2d 698, 702 (Colo. App. 1998) (concluding that subdivision constituted common interest community, because part of association dues went toward maintenance of common elements, though unspecified).

For example, suppose on the property of a development project there is anchored an attractive identifying sign, and according to the CC&Rs the unit owners are to pay an amount each month for the sign's upkeep. This could qualify the project as a common interest community, for the sign could be considered a "fixture," and, as such, real estate "with respect to which a person, by virtue of ownership in a unit, is obligated for . . . maintenance . . . of other real estate described in a declaration." AS 34.08.990(7). See also Geis, *op cit.*, at 761 (providing another "extreme example of 'two houses separated by a party wall which must be jointly maintained by the adjoining coowner'"). What may exempt such a development project from the Act is that it is a planned community type of common interest community, *de minimis*, and not subject to development rights. See AS 34.08.070; see also Geis, *op cit.*

It should be stressed that broad as the definition of "common interest community" is under the Act, it does not appear as encompassing as that found in the Restatement. A "common interest community" is defined in the Restatement as a real-estate development or neighborhood in which individually owned lots or units are burdened by a servitude that imposes an obligation that cannot be avoided by nonuse or withdrawal

(1) to pay for the use of, contribute to the main-

tenance of, property held or enjoyed in common by individual owners, or

(2) to pay dues or assessments to an association that provides services or facilities to the common property or to the individually owned property, or that enforces other servitudes burdening the property in the development or neighborhood.

Restatement (Third) of Property (Servitudes), § 1.8 (2001). Subsection (2) suggests that the simple payment of association dues may constitute a common interest community.

Clarification is provided by the following, Comment c to the Restatement:

Most common-interest communities have both commonly held property and mandatory-membership associations, but the existence of either is sufficient to constitute the property bound by the servitude requiring payment to a common-interest community. *The distinctive feature of a common-interest community is the obligation that binds the owners of individual lots or units to contribute to the support of an association*, whether or not the owners uses the common property or facilities, or agrees to join the association. . . .

Restatement (Third) of Property (Servitudes) § 1.8 *cmt. c* (2000) (emphasis added). The commentary then goes on to state:

. . . Most common-interest communities are created by a declaration, which not only imposes the servitudes, but also provides automatic and mandatory membership in an association of unit owners. Such provision is not a prerequisite for inclusion in the definition of a common-interest community as used in the Restatement, however. If the property owners are obligated by virtue of a servitude to contribute to the maintenance of common property, to the provision of services or facilities, or to pay for enforcement of covenants, or other activity, whether or not they use the common property or facility, or receive any benefit from the enforcement effort or other activity, they are part of the common-interest community. Property subject to other obligations is part of a common-interest community even though no association has been created, or membership in the association is voluntary.

Id. (emphasis added).

Under the Restatement, then, the obligation to pay association dues for the use or maintenance of common property, or for association "services" or "facilities," qualifies a development project as a common interest community. In contract, common "real estate" remains the touchstone in Alaska. Cf. Wayne S. Hyatt and Susan F. French, *Community Association Law* 11, 22 (2d ed. 2008); Wyatt S. Hyatt, *Condominium and Homeowner Association Practice: Community Association Law* § 2.01, at 25 (2d ed. 1988). What the Restatement does instruct for common interest communities in Alaska is that the common expenses allocated to each unit need not be limited to the maintenance or upkeep of the common elements. See AS 34.08.990(6) (defining "common expense liability").

Returning to the breadth of the term "common interest community," this is hardly reduced by the delineation of its forms. Under the Act, there are three types of common interest community, the "condominium," see AS 34.08.990(8), the "cooperative," see AS 34.08.990(10), and the "planned community." See AS 34.08.990(24). The definitions for the three types are the same as that provided in Section 1-103 of the uniform act, and a comment to that section states, "Any ownership arrangement which is a common interest community but which does not meet the definition of either a condominium or cooperative, would be a planned community. Thus, there are but three forms of common interest community: (1) condominiums; (2) cooperatives; and (3) everything else." Unif. Common Interest Ownership Act §1-103, *cmt.* 8, 7 U.L.A. 213 (Sup. 1996).

In other words, "planned community" is a residual term, see Geis, *op cit.*, making all that is, or could otherwise be, a common interest community rolled into one or other form of common interest community.

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Please send your written comments to Nancy Meade at nmeade@courts.state.ak.us by June 30, 2009.

Supreme Court applicants

Continued from page 1

from Willamette University College of Law in 1985 and is currently in private practice in Anchorage.

Paul Eaglin: Mr. Eaglin is 60 years old, has been an Alaska resident for 16 years and has practiced law for 29 years. He graduated from Duke University School of Law in 1976 and is currently in private practice in Fairbanks.

Ben Esch: Judge Esch is 64 years old, has been an Alaska resident for 36½ years and has practiced law for 36 years. He graduated from Arizona State University School of Law in 1973 and is currently a superior court judge in Nome.

Richard H. Foley, Jr.: Mr. Foley is 55 years old, has been an Alaska resident for 35½ years and has practiced law for 27½ years. He graduated from Rutgers University School of Law in 1981 and is currently in private practice in Anchorage.

Andy Harrington: Mr. Harrington is 53 years old, has been an Alaska resident for 29 years and has practiced law for 28 years. He graduated from Harvard University Law School in 1980 and is currently the executive director of Alaska Legal Services.

Michael I. Jeffery: Judge Jeffery is 64 years old, has been an Alaska resident for 32½ years and has practiced law for 32½ years. He graduated from Yale Law School in 1969 and is currently a superior court judge in Barrow.

Michael Jungreis: Mr. Jungreis is 57 years old, has been an Alaska resident for 30 years and has practiced law for 29½ years. He graduated from the University of Miami School of Law in 1978 and is currently in private practice in Anchorage.

David A. Lawrence: Mr. Lawrence is 59 years old, has been an Alaska resident for 6½ years and has practiced law for 34½ years. He graduated from the University of Minnesota Law School in 1974 and is currently a chief administrative law judge in Anchorage.

Michael A. MacDonald: Judge MacDonald is 52 years old, has been an Alaska resident for 27½ years and has practiced law for 20½ years. He graduated from the University of New Mexico School of Law in 1988 and is currently a superior court judge in Fairbanks.

Michael P. McConahy: Mr. McConahy is 57 years old, has been an Alaska resident for 31 years and has practiced law for 30 years. He graduated from the University of Puget Sound Law School in 1978 and is currently in private practice in Fairbanks.

William F. Morse: Judge Morse is 55 years old, has been an Alaska resident for 28½ years and has practiced law for 28½ years. He graduated from Lewis and Clark School of Law in 1980 and is currently a superior court judge in Anchorage.

Frank A. Pfiffner: Mr. Pfiffner is 60 years old, has been an Alaska resident for 34½ years and has practiced law for 34 years. He graduated from the University of Iowa College of Law in 1974 and is currently in private practice in Anchorage.

Mark Rindner: Judge Rindner is 59 years old, has been an Alaska resident for 29½ years, and has practiced law for 30 years. He graduated from the University of California School of Law at Berkeley in 1978 and is currently a superior court judge in Anchorage.

Phyllis Shepherd: Ms. Shepherd is 60 years old, has been an Alaska resident for 27½ years and has practiced law for 25½ years. She graduated from Loyola University of Chicago School of Law in 1975 and is currently in private practice in Anchorage.

Eric Smith: Judge Smith is 56 years old, has been an Alaska resident for 27 years and has practiced law for 30 years. He graduated from Yale Law School in 1979, and is currently a superior court judge in Palmer.

Spencer C. Sneed: Mr. Sneed is 57 years old, has been an Alaska resident for 57 years and has practiced law for 30½ years. He graduated from Willamette University College of Law in 1978 and is currently in private practice in Anchorage.

Trevor N. Stephens: Judge Stephens is 49 years old, has been an Alaska resident for 49 years and has practiced law for 23½ years. He graduated from Willamette University College of Law in 1985 and is currently a superior court judge in Ketchikan.

Craig Stowers: Judge Stowers is 54 years old, has been an Alaska

resident for 31½ years and has practiced law for 23½ years. He graduated from the University of California Davis School of Law in 1985 and is currently a superior court judge in Anchorage.

John Suddock: Judge Suddock is 60 years old, has been an Alaska resident for 60 years and has practiced law for 33½ years. He graduated from Boalt Hall, University of California at Berkeley School of Law in 1975 and is currently a superior court judge in Anchorage.

Terry L. Thurbon: Ms. Thurbon is 51 years old, has been an Alaska resident for 18 years and has practiced law for 22 years. She graduated from the University of the Pacific, McGeorge School of Law in 1986 and is currently the Chief Administrative Law Judge for the state, located in Juneau.

Philip R. Volland: Judge Volland is 58 years old, has been an Alaska resident for 33 years and has practiced law for 32 years. He graduated from New York University School of Law in 1976 and is currently a superior court judge in Anchorage.

Daniel Westerborg: Mr. Westerborg is 55 years old, has been an Alaska resident for 30½ years and has practiced law for 30 years. He graduated from The Ohio State University College of Law in 1978 and is currently in private practice in Homer.

John W. Wolfe: Judge Wolfe is 51 years old, has been an Alaska resident for 11½ years and has practiced law for 25½ years. He graduated from the University of Oklahoma School of Law in 1983 and is currently a district court judge in Palmer.

The deadline for applications to the high court was May 28. Applicants for the judgeship will be evaluated by the council's seven members (the chief justice, three non-attorney and three attorney members). Comprehensive background investigations, a survey of Alaska Bar members, and personal interviews with the applicants are all part of the evaluations. Interviews with applicants and a public hearing will be held in Anchorage. The Council will select two or more nominees to send to the governor. The governor will have 45 days to make an appointment from the Council's list.



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Howling at the law

By Kenneth Kirk

I saw the best lights of generations turned
Rotten and flacid in the belly of the Law
Best young likelies to exceed becoming
Junior stars of liberal arts with yet
No prospects, not beyond the retail counter
Or the rack of the commissioned sale
Unable to afford or tolerate more years
To don the ivory tower's PhD, and so
With vague idea why, but past four years
They cannot face return to home less
Any pride nor future and
Those lawyers look real cool
On the TV.

And so these best and lightest turn
Toward the neon majesty of law
The bright chimera of justice with
Beating hearts for futures filled with
Dash and meaning and income
Lined up outside Potemkin towers
Of academia still but now smell of
Reality inside and power, intellect
Now with a purpose, direction and not
Mere chatter, but hands-on fulfillment
Of that which the college but dreamed
And set off from proud bawling mothers
To set the world right from oppression
Injustice and tyranny while affording
A nice car.

Now no longer coddled by kindly
Lapdog teachers of the bachelor years
They trembling quake in terror under
Rapid pinschers in elbow patched sweaters
Doling humiliation with unflinching lash
Like merciless drill sergeants in bow ties
Fingering out each day some pitiful pupil
To turn a blubbering mass before his peers
And like good Stockholm students in defense
They quickly learn that no fair argument
Is worthwhile, 'cept obediently to mirror
Their master's way of thinking, and become
A thinker like a lawyer, any other
Way one could think, way once they did
Beat bloody from their brains.

The stately graduation done, one test
Remains, rock harder than the past
Three months with nothing but to study
Each leading case as if t'were holy writ
Three grueling days of mental jactitation
Three cruel months spent waiting for the list
The day arrived, relief felt at esquirement
To make it feel as if a holy order
Had been bestowed upon
The lowly scribe. But that short competent sense
Soon dashed from out the young attorney's breast
They say that lawyers eat their young and now
They understand as thrown among the dogs
They quickly drop their bright-eyed innocence
So not to be eviscerated by the elder
Lions who take advantage of their youth
With unfettered treachery.

The experience now diverges
Some thrown before the wolves of court
To flail through some podunk client's case
In bench trial, where the master in black robe
Must be appeased, the manner of his mind
Now the holy manna of success
But well prepared, our family lawyer sits
For well her trinity of years have taught
To mold her mind to someone else's will
From the tweedy-sweatered lecturer in law
To the all-deciding judge upon the throne
Is small enough transition.

Some spend next years ensconced among the stacks
In multi-named prestige firms, gleaming for
The crumbs of well-healed clients, one of them
Perhaps enough to build a future on
The drudge-induced assignments
Dropped from on high by silken-tied elites
With names upon the masthead, while they wait
With hopes of similar glory, they must watch
Middle-age take credit for their toil
And wish some Learjet-riding client know
Their sadsack service, have some inkling of
Their devoted servitude.

Others to excitement and suspense
Venires of laymen, ripe for the persuasion
Of crafty strategists, but rather than
Expected bold truth-struggle
Find admissibility the key
And cases won on cynical attempts
To keep the stuff most damning to the case
Away from those who weigh the so-called truth
So much so that in just a little while
It seems to matter little who did what
But rather, what can clever counsel hide
And then pretend it never did exist
or matter.

Ah! The life of law, the learnt profession
In which we keen to think one certain way
Cock-sure it's but the only way to ponder
All other ways invalid. We begin
With skulls-full mealy mush to start the day
And end with heads filled with the self-same slop
But calcified to bone along the way.



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Alaska Bar Association Fall - Winter 2009 CLE Calendar

Date	Time	Title	Location
August 5	4:00 - 5:00 p.m. Reception: 5:00 - 6:00 p.m.	<u>14th Annual Informal Discussion with the U.S. Court of Appeals for the 9th Circuit</u> CLE Number 2009-022 1 general CLE Credits	Anchorage Downtown Marriott
August 26 FREE Live, Webcast & DVD	8:30 - 11:45 a.m.	<u>Ethics at the 11th Hour with Bar Counsel</u> CLE Number 2009-006 3 ethics CLE Credits	Anchorage Hotel Captain Cook
September 1	8:30 a.m. - 12:30 p.m.	<u>International Law</u> CLE Number 2009-025 CLE Credits: TBD	Anchorage Hotel Captain Cook
September 17 Live (NV)	8:00 a.m. - 5:00 p.m.	<u>Masters in Trial - American Board of Trial Advocates (ABOTA)</u> CLE Number 2009-010 TBA CLE Credits	Anchorage Downtown Marriott
October 16 Live & Webcast	8:30 a.m. - 12:30 p.m.	<u>AK Constitutional Law Update</u> CLE Number 2009-001 3.75 general CLE Credits	Anchorage Hotel Captain Cook
October 22 Audio Only	TBD	<u>Historian's Luncheon - History of the Bench & Bar: TBD</u> CLE Number 2009-023 CLE Credits TBD	Anchorage Hilton Hotel
October 30	8:30 - 12:30 p.m.	<u>15th Annual Workers' Comp Update</u> CLE Number 2009-004 TBA CLE credits	Anchorage Hotel Captain Cook
November 4	8:00 - 12:30 p.m.	<u>Federal Rules</u> CLE Number 2009-021 TBA CLE Credits	Anchorage Hotel Captain Cook
November 10	8:30 - 12:00 p.m.	<u>Family Law Ethics</u> CLE Number 2009-014	Anchorage Hotel Captain Cook
FALL 2009 Live & Webcast	8:30 - 10:30 a.m.	<u>Tort Law Update</u> CLE Number 2009-019 2 general CLE Credits	Anchorage Hotel Captain Cook

Go to www.alaskabar.org for more CLE info.

Lawyer groups receive grant

The New Lawyers Section of the Alaska Bar, in conjunction with the Young Lawyers Section of the Anchorage Bar, is pleased to announce that they have been awarded a subgrant from the American Bar Association's Young Lawyers Division for \$2000 to proceed with a project dealing with raising community awareness and educating lawyers about the issue of domestic violence in Alaska, specifically affecting teenagers.

The Section will host a screening of a DVD regarding this issue and issuing a call to action in October to celebrate domestic violence awareness month. The Section will also be creating resource kits which will contain items needed for individuals to hold their own screening and educational materials which will then provide at the October screening for dissemination throughout Anchorage, and subsequently through a mail-out campaign to reach other significant areas in Alaska.

The Section plans to reach 500 members of Alaska's legal community in this effort. We will need volunteers at a variety of stages along the way. If you are interested in helping with this project or would like more information, please email Lizza Apostola at eapostola@farleygraves.com or Krista Scully at scullyk@alaskabar.org.

Law Day celebrates Lincoln across the U.S.

The legal community celebrated Law Day this year by honoring the 50th anniversary of Alaska Statehood and the Bicentennial of Abraham Lincoln. Activities statewide included mock trials and tours of courthouses, commemorative displays, and other programs designed to foster public understanding of our justice system.

Dillingham court employees sponsored a car wash at the courthouse as a "thanks" for local residents who reported for jury service. In Anchorage, "Lincoln Karaoke" at Bartlett High School featured prominent members of the legal community and judiciary reenacting many of Lincoln's most famous speeches.

Law Day continues to offer an excellent opportunity for public outreach and education about our legal system. It's not too early to think about participating in 2010 events next May. Contact Krista Scully (scullyk@alaskabar.org) or Barbara Hood (bhood@appellate.courts.state.ak.us) for more information.



Dillingham court employees celebrated Law Day by offering free car washes for jurors. Here Judge Fred Torrisi (second from left) helps clean a local pick-up truck.



Jeanne Vincent, Sitka Civil Clerk, arranged the poster exhibit for The Alaska Court System: Celebrating 50 Years in the lobby of the Sitka Courthouse in honor of Law Day. The exhibit, which commemorates the 50th Anniversary of Alaska Statehood, will be on display at courthouses statewide throughout the year.



Tok celebrated Law Day early this year with a mock trial of *State v. Jack Robinson*, an adaptation of *Jack and the Beanstalk*, which was presented at the courthouse by Mrs. Canner's 5th grade class.



Wrangell Magistrate Chris Ellis poses with the quilt she created by hand to commemorate this year's Law Day theme, "A Legacy of Liberty: Celebrating LINCOLN'S Bicentennial." An avid quilter, Mag. Ellis selected a quilt style typical of the Civil War era, a 4' X 7' "soldier's cot quilt" that was designed to fit into a soldier's pack.



Sitka Criminal Clerk Ashley Purswell and In-Court Clerk Linda Williams developed a Law Day display for the Sitka Post Office that features highlights of the court system's first 50 years.

Celebrating Lincoln on Law Day: A great lawyer-president

By H. Thomas Wells Jr.

When he established Law Day on May 1, 1958 as "a day of national dedication to the principles of government under law," President Dwight Eisenhower sought to highlight for all Americans that our very freedom as a nation depends upon our continuing commitment to the rule of law. As he expressed it in the following year's official proclamation for Law Day, "Free people can assure the blessings of liberty for themselves only if they recognize the necessity that the rule of law shall be supreme and that all men shall be equal before the law."

Each year, when we observe Law Day, we celebrate this principle of the rule of law and recognize the contributions of the women and men who work on behalf of our system of law and justice.

This year, as Americans celebrate the bicentennial of Abraham Lincoln's birth, we honor him on Law Day with the theme "A Legacy of Liberty--Celebrating Lincoln's Bicentennial." Regarded by

many as our nation's greatest and most eloquent president, Lincoln devoted much of his adult life to the practice of law. He was our quintessential lawyer-president.

Lincoln's background in the law informed both his actions and his oratory. Reflecting 50 years ago on the sesquicentennial of the president's birth, cultural historian Jacques Barzun perceptively commented, "Something of Lincoln's tone obviously comes from the practice of legal thought. It would be surprising if the effort of mind that Lincoln put into his profession had not come out again in his prose." Grounded in his practical and principled understanding of American law and adhering to his own strong sense of moral clarity, we celebrate Lincoln today as a great leader who sought to preserve our national union and helped free millions from, in his own words, "the yoke of bondage."

President Obama frequently notes the impact that Lincoln has had on him personally and on our nation. He acknowledged this debt when he

announced his candidacy for the presidency--in Lincoln's home of Springfield, Illinois: "Through his will and his words, he moved a nation and helped free a people. It is because of the millions who rallied to his cause that we are no longer divided, North and South, slave and free. It is because men and women of every race, from every walk of life, continued to march for freedom long after Lincoln was laid to rest, that today we have the chance to face the challenges of this millennium together, as one people--as Americans."

This Law Day we encourage all Americans to renew their understanding of Abraham Lincoln. Celebrate in schools, courthouses, workplaces, and communities the impact he has had on our nation and on our democracy. By continuing the conversation on Lincoln and liberty, we can all ensure that the legacy of this great lawyer-president endures.

The author is president of the American Bar Association.

Reflections on the Big-Bang Theory

Continued from page 1

knew nothing about. He listened intently to my long, convoluted, and sometimes ill-conceived answers. Focused attention is something he would demonstrate every day when I later clerked for him. He frequently asked lawyers, clerks, and other judges thought-provoking questions; then he really listened to their answers; and then he'd make a decision.

A few hours after the interview, Chief Justice Matthews showed up in the hall outside one of my classes, with his decision. He directly asked, "Do you want the job?" It was clear that he wanted an answer—right then and there, on the spot. His expression was also clear—in his judgment, we were a good fit.

The Chief Justice's judgment was probably the attribute that I would come to admire most about him. Believe me, the man can read just the Statement of the Case from an appellate brief and tell you, with 99.9% accuracy, whether its Argument will have merit. That's not to say he won't continue reading the rest of the brief. It's just to say that he turns on an uncanny sense of judgment from the first moment you address him. To this day, I wish I had that kind of judgment.

I trusted his instinct, as I was at a loss for my own, when I answered "yes" to Chief Justice Matthew's clerkship offer. It was the most significant, most impromptu decision I have ever let another person make for me. It was also one of the best decisions of my life. I learned much more about being a good lawyer during a one-year clerkship with the Chief Justice than I had learned during three years of law school. In retrospect, I think I learned more during that year than I would in any of the next twenty years of law practice and teaching.

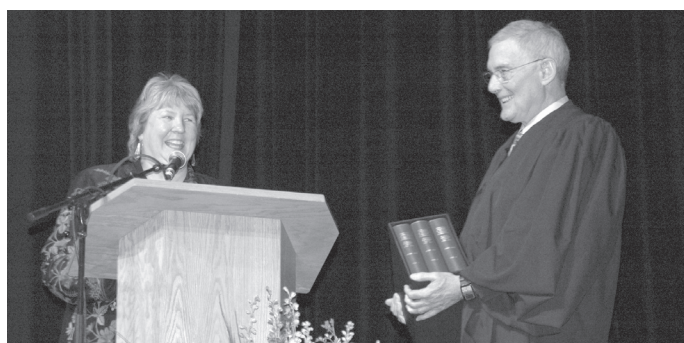
I will share with you just one lesson. Toward the end of my clerkship, I accepted a job offer from a large, prestigious law firm in Los Angeles. The decision caused me a lot of insecurity. I was going through the classic little-fish/big-pond syndrome, somehow convinced that I was going to shoot myself in the foot, or worse, while trying to do the whole "L.A. Law" thing. Even though I was very good at hiding this sort of insecurity, Chief Justice Matthews seemed to know it was going on (probably because of his uncanny sense of judgment).

On the very last day of my clerkship with him, the Chief Justice called me into his chambers and gave me a little pep talk, which really did make me feel better. Then, once he had my spirits up, he proceeded to give the best advice anyone ever gave me about taking on a challenging job in the "real" world. This, of course, is not an exact quotation of all that he said, but it's a close paraphrase:

There's something else I want to tell you. It's something that you might not want to hear, but I can see that you need to hear it. No matter how hard you try at this new job, I can assure you that, eventually, you will make a first mistake. We all make that first mistake on the first big job of our new career. When you make yours, you want people around you to see it as something unusual—the sort of thing you're definitely *not* known for. So, no matter how hard you've already planned on working when you arrive at this firm, I'm telling you to double or triple that effort for a while. First impressions really are everything. *Go in with a bang*, the way I know you can. And then, when you make that first mistake—and eventually you will—it won't be a big deal.

I think of Justice Matthews every time I pass that same advice along to those who I now mentor. "Go in with a bang," I say to the law students I now teach, as they leave my classroom and head into the "real" world. It truly is great advice once passed along to me from someone who makes a great, and lasting, impression. I wasn't there for Justice Matthews departure from the bench upon his recent retirement, but I have no doubt that he went out with as much bang as he went in with, and that he's going into retirement the same way.

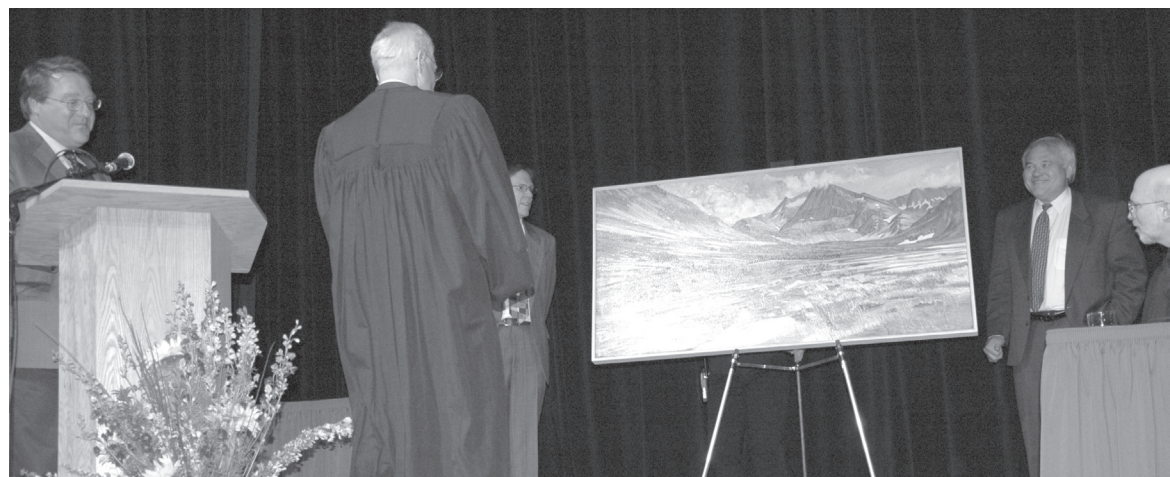
John Marks is currently a Professor of Law and clerked for Justice Matthews in 1989-1990.



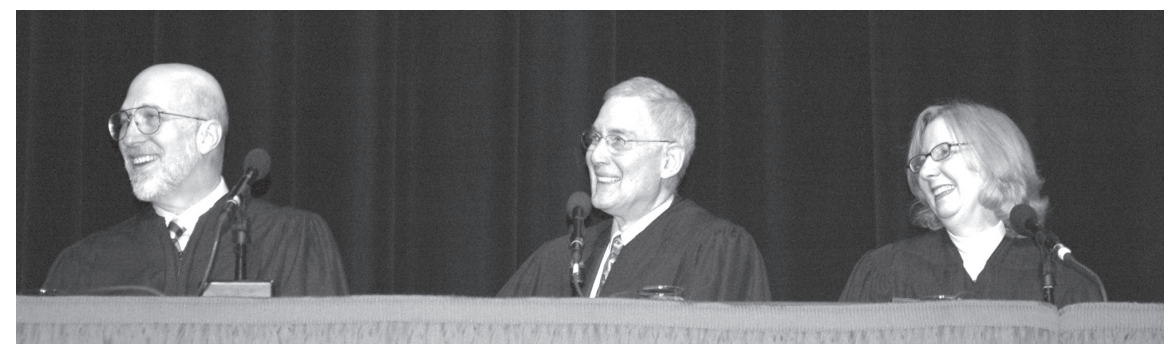
Justice Warren Matthews, C, with family, friends, colleagues and former law clerks who paid tribute to him during the April 1, 2009, ceremony honoring his retirement after 32 years on the Alaska Supreme Court. L-R: Bill Cotton; Marilyn May, Clerk of the Appellate Courts; Brewster Jamieson; Mera Matthews; Roger Holmes; Justice Matthews; Julian Mason; Rep. Lindsey Holmes; Justice Walter Carpenetti; Chief Justice Dana Fabe; Justice Robert Eastaugh; Justice Daniel Winfree; and Don McClintock.



Justice Matthews and his wife Donna, center, celebrate his retirement with his past and present law clerks and judicial assistants at a special dinner held April 2, 2009, at ORSO Restaurant in Anchorage. L-R (front row, seated): Sue Bailey Perry, judicial assistant; Donna Matthews; Justice Matthews; Marie Meeleis, former judicial assistant; L-R (standing middle row): Rebecca Blasco, Don McClintock, Marion Kelly, Richard Todd, Jeannie Weiersato, Marjorie Allard, Kimber Rodgers, K.D. Lowe, Tom Dosik, and Mike Mitchell; L-R (standing back row): Mike Arruda, Nelson Page, Jennifer Stuart, Sam Cohen, Sarah Marcus, John Fonstad, Chad Flanders, Andrew Hudson, Bill Cotton, Wesley Kellman, Bill Saupe, Brewster Jamieson, Brian Boyd; and (front row kneeling) Barbara Hood.



L-R, Brewster Jamieson, Bill Cotton, and Don McClintock present Justice Matthews with a painting of Williwaw Valley in Chugach State Park by Anchorage artist Steve Gordon as a gift from his past and present law clerks.



Justice Matthews enjoys his daughter Mera's remarks with his colleagues Justice Walter Carpenetti and Chief Justice Dana Fabe.

Photo left: Marilyn May, Clerk of the Appellate Courts, presents Justice Matthews with a set of bound leather volumes featuring a selection from the hundreds of decisions and dissents he wrote during his many years on the court.

Matthews: An inspiring jurist of talent & courage

Ed. Note: In January, 2005, when Warren Matthews applied for membership in the American Law Institute, Roger Holmes wrote to committee members urging approval of Matthews' application. The letter is reprinted here as a testament to the justice's service.

I write to you to second the nomination of Chief Justice Warren W. Matthews as a member of the Institute. He has been a close personal friend of mine since early 1970. His children and mine attended school together. For several years we owned a house together at a remote ocean location where our families spent the summers.

Warren is a person of many talents. He is an avid reader, tennis player, skier, and fly fisherman. Despite his many interests and obligations, he has always considered his family to be his first priority.

Warren was in his thirties when appointed to the Supreme Court. At the time, he was the youngest Supreme Court Justice in the country. Nevertheless, he was able to catalog enough legal accomplishments in that short time before assuming the bench to have more than filled a lifetime for most of us. He argued and won the case which established strict products liability in Alaska in 1969 at a time when that doctrine was in its infancy. *Clary vs. Fifth Avenue Chrysler Center, Inc.* 454 P.2d 244 (AK 1969). In 1980 he argued and won the first insurance bad faith case in Alaska, again at a time when that doctrine was only first emerging in its present form. *Continental vs. Bayless & Roberts, Inc.*, 608 P.2d 281 (AK 1980).¹

Even greater than Warren's impact on the emerging doctrines of law in Alaska was his legacy as a lawyer in the environmental area. He held up logging in Southeast Alaska long enough for the creation of the Tongass National Forest. He prevented oil drilling in Kachemak Bay thereby allowing the State to buy back the leases and provide the basis for one of the country's largest marine sanctuaries. He stopped development along the major stream drainage in Anchorage until pedestrian paths along the creek were established. He forestalled logging adjacent to Anchorage leading to the creation of the Chugach State Park, the largest state park in the country.²

In his twenty years on the Supreme Court bench, Warren has authored so many significant decisions that it would be impossible to adequately describe them all. One that he did not author stands out as an example he has set for jurists across this state. The Alaska Supreme Court justices are retained on what once was called the "modified Missouri plan." That is, the justice is appointed by the governor but has to stand for election against his or her record at the second state wide election after appointment and thereafter every ten years. Warren's first election was in 1982. In the late



Justice Matthews offers remarks during his retirement ceremony.

70s the State created a Permanent Fund to harbor its vast oil revenues. The plan called for distribution of the profits from this fund to the state residents at the rate of \$100 per resident times the number of years of residency. Thus, a relative newcomer to the state was to be paid very little. But old-timers would make enough for a decent grubstake. It was wildly popular despite the fact that its constitutional flaws were patently obvious.

The distribution scheme was challenged by two young lawyers who had recently moved to the state. They were publicly and privately vilified. The Alaska Supreme Court found the scheme constitutional. *Williams vs. Zobel*, 619 P.2d 448 (AK 1980). Although recognizing both the popularity of the plan and that he was about to stand for statewide election, Warren joined the dissent. The expected occurred. Ads were placed statewide prior to the next election identifying his dissent. The election result was extremely close. Warren did not know for over a week whether he had been reconfirmed or turned out of office. His final margin of victory was razor thin where all the other judges on the ballot at the same election won handily.³

The near loss associated with his *Zobel* dissent apparently made little impression on Warren. In 1989 the Court was faced with a constitutional challenge to a long standing statewide hunting and fishing regulation which granted a preference to rural Alaskan residents. Like the Permanent Fund, fishing and hunting are near and dear to the hearts of the majority of Alaskans. This time Warren commanded a majority and wrote the decision striking down this unconstitutional practice. *McDowell vs. State*, 785 P.2d 1 (AK 1989). While clearly the correct legal decision, it has plunged the State into a decade long battle involving numerous State and federal factions. While both the *Zobel* and *McDowell* decisions have legal significance, they have far more judicial significance. What they stand for is the courage to make the right vote whatever the consequences. Such public displays of judicial courage are infectious. They percolate throughout the judiciary, making us all the better for it.

I am very proud to have been asked to join the Institute. It is populated by truly remarkable people. Its long tradition of legal excellence would be enhanced by Warren's election to membership. I hope you will look favorably upon his application.

Footnotes

¹A Westlaw search turns up more than a dozen significant appeals he argued and won before being appointed to the bench.

²At the entrance to this park is a plaque recognizing the efforts of the small handful of people whose efforts made this remarkable park possible. Warren's name is on that plaque.

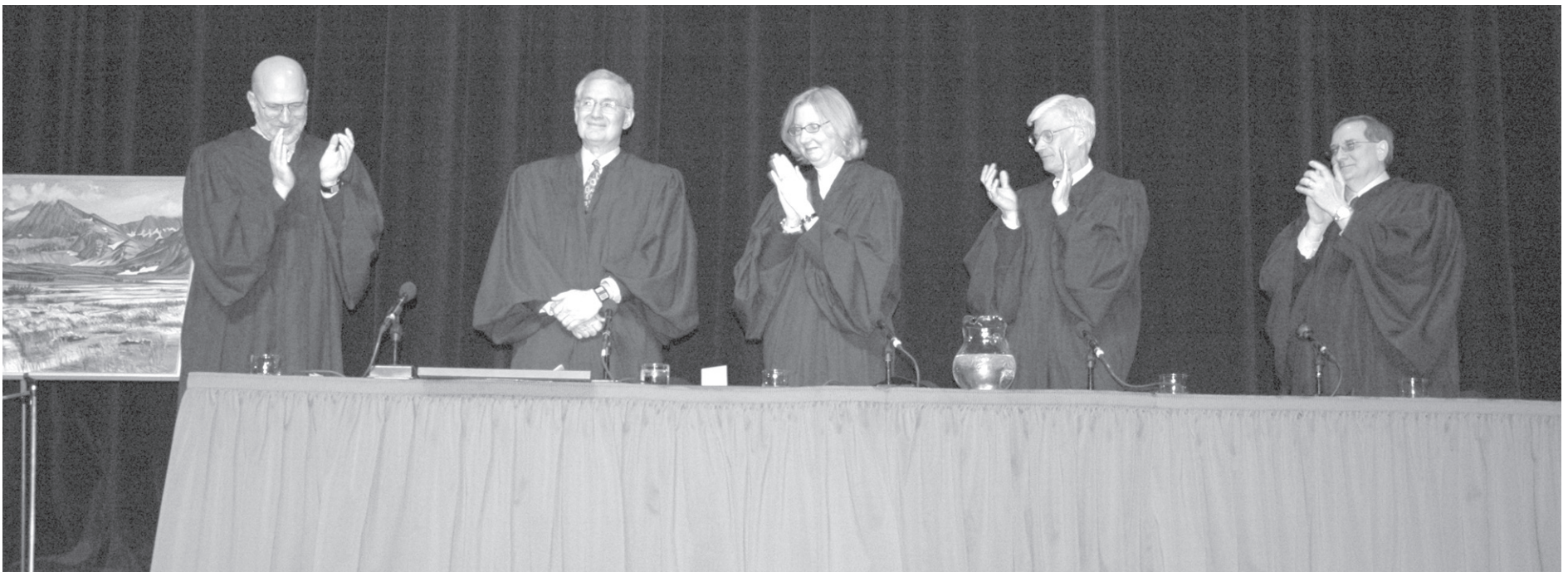
³The U.S. Supreme Court later reversed *Zobel* by a vote of nine to zero validating Warren's dissent.



Justice Matthews visits with Justice Morgan Christen, his successor at the Alaska Supreme Court, and her husband James Torgerson.

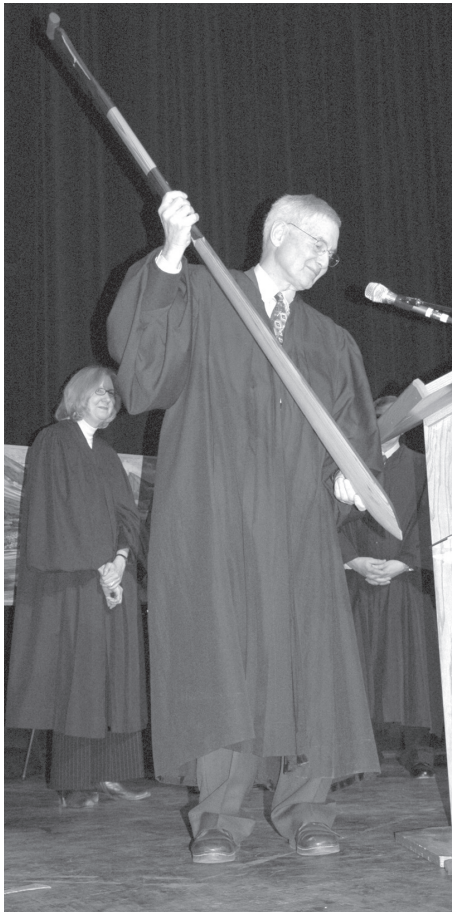


Rep. Lindsey Holmes of Anchorage presents Justice Matthews with a proclamation from the Alaska Legislature honoring his 32 years of service to the state. At left is Roger Holmes, Rep. Holmes's father and a long-time friend of Justice Matthews.



Justice Matthews is applauded by his colleagues on the Alaska Supreme Court near the close of his retirement ceremony.

**With all his talents,
the Justice
was also a poet**



Justice Matthews admires the carved cedar paddle he received as a gift from his colleagues on the Alaska Supreme Court and the court system's Administrative Director Stephanie Cole.

Barn Roof Sonnets

*The baron was four years consecutive
our country's highest paid executive.
And his wife for one year less
was America's richest executess.
He bought a Bitterroot ranch in '84
and liked it so well purchased twenty-two more.
And now comes a tale of wealth pride and reproof,
of hubris of kindness and of our barn roof*

The Upstream Place

Baron Leon Hirsch looked out
on his Sheep Creek homestead.
Groomed and green and planned no doubt,
By a modern Frederick Olmstead.
From the window of his manse
to our stile a full mile down the stream
(at the furthest reach of his expanse)
all was order, a handsome scene.
Fence rails were split, stained to match,
horses all greys, and cows, Charolais, each bore his mark,
Brown trout in the creek dimpled the hatch.
A perfect Montan' ranch theme park.
And a first class spread, throughout forty carat,
reflecting the owner, showing his merit.

A Wen in the Eye of the Baron

Then to this scene so justly earned
a flash, a glimmer, then a gleam
a beam of light, his mood it turned
transgressing from a place downstream.
His eyes grew moist and then they burned
his view, bought dear, had turned to tear
His amber waves of grain were blurred
His picture window now a smear.
"Whence the source of this cursed ray"
he asked his builder with reproof.
"The sun reflects this time of day
off your neighbors' tin barn roof."

And now a solution must be sought.
All questions have answers. All can be bought.
The Baron Pays a Visit
From a cloud of dust, from a gilded Suburban
strode the cowboy from Greenwich, the baron of beef.
The glint from our barn he found most disturbin.
He was goddam unhappy and he wanted relief.
Then he made us an offer, he called it win win
He'd pay from his coffer, the contract he'd make
to tear off our roof, of corduroy tin,
and replace it with one of split cedar shake.
We told him no thanks, we'd not take his charity.
We liked what we had and it fit the decor,
His new ranchette shakes would be a disparity
then we gave him a smile and showed him the door.
And we asked as he passed if he'd use this same etiquette
on the real estate of his friends in Connecticut.

Favors

Until the winter of our disarming
when the tenant ignored what he owed us
he'd had enough of hay farming
and he quit the place without notice.
Horses must eat every day
but the pasture was filled with ice nubble
the tenant had sold all our hay
and they could not get through to the stubble.
They might have starved without our knowing
but the baron's man showed kindly heed,
and every day rain, wind, or snowing
he trucked the road and pitched them feed.
So we dispensed with our sense of injured offence and our
attitude,
and we let Leon put a new roof on to show our gratitude.

*And so ends our story of wealth pride and reproof,
of hubris of kindness and of our barn roof.*

Preg Testuin'-----A Cowboy Poem

A ranch I bought
For I thought I ought
To own the fishing rights.
There's a meadow stream,
Whose waters teem with
With browns and cutts and whites.

And the evening rise
To the caddis flies
Is a sight to bring you peace:
Use elk hair hackle
And light light tackle,
And the rules are catch and release.

It's a working place
But no cattle grace
The meadows with my brand.
For to make cows grow
'S not a game I know
So I lease the rights to the land.

I was told why Dad
As a rebel lad
Left the old home place near Sant' Ann,
The hours are long
And the pay's a song,
And the grave is your pension plan.

But I thought I should
In that rural hood
Make friends with my rancher neighbors.
And so, said I,
I'd be glad to try
My hand at some cowboy labors.

And stockman Dean
Said he'd be keen
To 'low me to work the next day.
So I dusted my tack
And was up at the crack,
Ready to ride on my bay.

"Well you'll not need
That handsome steed,"
Said Dean pushing back his stained Stetson,
"For we'll not ride
The great divide,
Today we'll be doin' preg testin'."

Then we went in Dean's truck
Through the ruts and the muck,
To the place where the cattle were gathered:
Pens and some chutes
In the high Bitterroots,
And Dean had a glove which he lathered.

Then Dean told me
What my job'd' be:
Push the cows through the chute to the
holder.
Haze the steers through the gate
And on to their fate,
They would not be gettin' much older.

He'd test the females,
Enclamped in the rails,
Thus the long glove he was wearin';
For its quite a reach
Into the breach,
To see if they're fertile or barren.

I took a last gaze
At that landscape of sage,
And commenced to work with the
cattle.
I soon chased one
To the mouth of the run,
And that was the start of the battle.

She slid to a stop
So I gave her a pop,
With my hat on the top of her hips;
Then her tail she swished
And my face was enriched,
With a mixture of water and chips.

I reflected with rue,
As I wiped off the goo,
From my cheeks and my eyes and my
mouth,
Were I a romantic
This stuff aromatic
Would send my illusions due south.

But I continued to push
That cow on the tush,
In the shade of the Mountains Tendoy,
For I thought she was sayin',
Since your only here playin',
Here's welcome to the West, cowboy.

Well I worked all that day
Sending stock the right way,
How I wished that my contract was
over;
When my mentor fair howls
From his throat and his bowels
And swears like a chuck wagon drover.

And not long was the pause
Ere I learned of the cause:
In the dust, the confusion, the blear,
A mistake by the sender,
On a matter of gender,
And Dean had preg tested a steer.

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Amanda Van Flein busts through the finish line, while Dad Tom (rt.) urges her on!



The front runners race past Westchester Lagoon in Anchorage.



Clapp Peterson et al's impressive showing: over 50 entrants.

Race Judicata draws 200 runners

By Bill Pearson

A beautiful May morning graced the 200 participants of the 5th annual running of Race Judicata. An impressive field of runners and walkers enjoyed the morning on the coastal trail with Alex Schultz, law clerk to Superior Court Judge Carl Bauman, winning the coveted distinction as the fastest lawyer. Alex covered the five kilometer course in an impressive time of 19:08.

Clapp Peterson Van Flein Tiemessen & Thorsness, LLC once again won what is becoming their perennial dominance of the Law Firm Participation award with over 50 entrants.

Raising funds and awareness for Anchorage Youth Court, Race Judicata is an annual race hosted by the Young Lawyers Section of the Anchorage Bar Association. Race Judicata would not be possible without the support of the local law firms of Foley & Foley, P.C., The Law Offices of Davison & Davison, Inc., the Durrell Law Group, P.C., Pope & Katcher and the Anchorage Bar Association.

Bill was the 2009 race director.



Bill Pearson (rear) and his crew at the race finish.

The top 50 finishers (and times) were:

1- Matthew Klundt 16:35	18- Jeff Lentfer 20:50	35- Zach Manzella 24:07
2- Evan Hone 17:07	19- Timothy Hillyer 20:53	36- James Lieb 24:13
3- Levi Younger 17:26	20- Douglas Johnstone 20:54	37- Annie Luck 24:17
4- Luke Duffy 18:03	21- Galen Popisil 21:24	38- Matthew Smith 24:28
5- Edward Frank 18:13	22- Bruce Davison 21:33	39- Kathy Jin Kagen 24:35
6- Bob Davis 18:21	23- Victoria Clark 21:56	40- Marissa Amor-Hegna 24:42
7- Jonas Tetie 18:24	24- Scotty Borg 22:28	41- Aunnie Steward 24:43
8- Gordon Pospibil 18:26	25- Megan Merrihew 22:30	42- Don Cassel 24:59
9- Alex Schutz- 19:08	26- Alesia Thon 22:32	43- Claire Candler 25:14
10- Chris Clark 19:18	27- Stephanie Lentfer 23:07	44- Kayla Gaynes 25:33
11- Jeremy Wiseman 19:37	28- Bob Platte 23:18	45- Jodi McLaughlin 25:42
12- Thomas Buron 19:38	29- Melissa Gangle 23:24	46- Amanda Patterson 25:44
13- Eiden Pospisil 19:49	30- Eric Stratton 23:31	47- Colton Patterson 25:45
14- John Brewer 20:06	31- James Thomson 23:35	48- Heidi Hjelm 26:00
15- Nathaniel Peters 20:34	32- Jeff Jesse 23:39	49- Margaret Struble 26:04
16- Eric Skidmore 20:39	33- Brendan Babb 23:43	50- Amber Robbins 26:09
17- Mark Fineman 20:44	34- Judy Blake 23:43	



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Date and Time: Friday, June 19, 2009 4:30p.m.
to 7:45 p.m.

Location: Anchorage Senior Center
1300 E 19th Ave

Cost: Free including a meal

Credit Information: 3 General Credits

Presenters: Jennifer Beardsley, Erik LeRoy,
Paul Paslay, Gary Spraker,
Amy McFarlane and David Bundy

Course Description:

Overview of Chapter 7 Bankruptcy

Pro Bono Aspects

Q&A with Panel of Experts

Probating Estates Informally CLE 3 General Hours

Date and Time: Friday, June 19, 2009 1:00p.m.
to 4:20 p.m.

Location: Anchorage Senior Center
1300 E 19th Ave

Cost: Either a \$300 donation to Alaska Legal Services Corporation per attendee or 3 hours of pro bono services provided through ALSC's Volunteer Attorney Support pro bono program.

Credit Information: Alaska Bar Association
Approved 3 Hours Total Participatory CLE
Credits

Presenter: Magistrate Alicemary Rasley

Course Description:

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Intestate

Informal Administration of Estates

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In Memoriam

Randy Clapp



Marcus Randolph "Randy" Clapp passed away on June 5, 2009 after a 20-year battle with Parkinson's disease. He is survived by his loving wife, Cathy, and his daughters, Kim Clapp and Kara Clapp.

Randy was raised in Phoenix Arizona. He attended Brophy College Preparatory and then Arizona State University on a Division I baseball scholarship. After a professional baseball scout told Randy that he did not have the arm to pitch in the big leagues, he shelved his baseball career and went to law school. That is probably the last time he took advice from anyone.

After graduating from the University of Arizona, College of Law, Randy and his then wife Judy headed north to Alaska in 1967. Randy was hired by John Hughes in Anchorage to work for Hughes & Thorsness, now Hughes Pffiffer Gorski Seedorf & Odsen. Randy headed north to Fairbanks to found the firm's new office in 1974, which quickly became very busy during the Pipeline years. He managed the Fairbanks office until his departure in 1994.

Randy then founded the Law Offices of Marcus R. Clapp. He subsequently joined with Craig Stowers and Matt Peterson a year later to become Clapp, Peterson and Stowers, now Clapp, Peterson, Van Flein, Tiemessen and Thorsness.

Randy was an accomplished trial lawyer, with close to a hundred civil jury trials in his career. Although known as a defense attorney, Randy considered himself to be simply a trial lawyer and successfully tried a number of plaintiff cases. He was always interested in the art of trial practice, taking time to mentor younger associates. Randy was a Fellow of the American College of Trial Lawyers.

Randy's interests over the years included his love and partner, Cathy, baseball, running, boxing, legal philosophy, UAF Nanooks hockey, food and wine, travel, and photography. He enjoyed dinner with friends and having the guys over for beer, cigars and boxing. After retiring from active practice in 2003, Randy and Cathy moved to Florida to be closer to family, including Randy's grandson, Aiden.

Randy once explained how he changed his name from Marcus to M. Randolph after reading "The Love Song of J. Alfred Prufrock" in high school and being impressed with the way "J. Alfred" sounded. The ending of the poem seems an appropriate dénouement on Randy's life.

grow old . . . I grow old . . .
I shall wear the bottoms of my trousers rolled.

Shall I part my hair behind? Do I dare to eat a peach?
I shall wear white flannel trousers, and walk upon the beach.
I have heard the mermaids singing, each to each.

I do not think they will sing to me.

I have seen them riding seaward on the waves
Combing the white hair of the waves blown back
When the wind blows the water white and black.

We have lingered in the chambers of the sea
By sea-girls wreathed with seaweed red and brown
Till human voices wake us, and we drown.

John Martin Conway



John Martin Conway, 72, a third-generation Alaskan, suffered a stroke while at his second home on Molokai, Hawaii. He died at Queen's Medical Center in Honolulu on March 31.

Conway was born Sept. 6, 1936, in Juneau. He grew up in Sitka, where his father, J.J. Conway, ran a commercial dock and other business enterprises. John attended Lakeside School in Seattle and graduated in 1954. He received an undergraduate degree from the University of Washington in 1958, followed by a

law degree from the same university in 1961.

During his time at UW, he was a member of the Phi Delta Theta fraternity and met his future wife, Sally Pebbles. John and Sally were married in August 1961 in Olympia, and the newlyweds moved to John's home state to start their life in the budding city of Anchorage. John chose Anchorage over his childhood home in Southeast Alaska because, during a summer visit there, he fell in love with the promise of the area, the natural beauty, and the access to hunting and fishing.

John began his law career in the office of John Hellenthal. In 1962, John joined with Jerry Wade to form the law firm of Wade & Conway, which became Atkinson, Wade & Conway in 1965. The firm prospered and grew and is now Atkinson, Conway & Gagnon Inc. John served as the firm's de facto managing partner from its beginning through the 1990s. John enjoyed a successful career, handling many large civil cases in Alaska.

He represented Providence Hospital for decades and served on its advisory board. He also managed many litigation matters for the National Bank of Alaska. He was a member of the Alaska and American Bar associations, The Maritime Law Association of the United States, and the American College of Trial Lawyers. John was selected for inclusion in "The Best Lawyers in America" and was a recipient of the Alaska Bar Association Award for Professionalism.

John was also an active Rotarian and past president of the Anchorage Rotary Club. John spent many of his weekends at his cabin in Girdwood, where the four Conway daughters grew up enjoying outdoor activities in all seasons. John also loved his cabin on Red Shirt Lake. He was the master of the campfire, took no prisoners in the horseshoe pit, and kept close to his Irish roots by maintaining a potato patch. John was preceded in death by his wife, Sally.

He is survived by his longtime companion, Ruthann Hansen; and his four daughters, three sons-in-law, and seven grandchildren: Shannon Conway and her children, Madeleine and Lily; Lael and Tim Duncan and their children, Ian and Michael; Maribeth Conway and Kevin Schnell and their son, Nicholas; and Molly and Paul Scofield and their children, Oliver and Sarai. He is also survived by his brother, Charles Conway, and his sister, Maribeth Steiner, and their families. A celebration of John's life was held May 28 in Anchorage at the Hotel Captain Cook. The family requests that any memorial donations be made in John's name to the Providence Alaska Foundation, Sally Conway Breast Cancer Education Memorial Fund, P.O. Box 196604, Anchorage, AK 99519-6604.

George Benesch



Anchorage resident and pioneer Alaskan George Lee Benesch, 84, died March 6 at home.

Benesch was an accomplished fly-fisherman, gardener, recreational gold miner and canoeist, and he loved spending time in the Alaska outdoors with his kids and grandkids.

He was born Jan. 11, 1925, in Pueblo, Colo., graduated from Pueblo High in 1943 and enlisted in the U.S. Army Air Corps in March of 1944. He trained as a tail gunner on B-29s and flew missions out of Guam and Okinawa toward the end of World War II. After he was honorably discharged in 1946, he returned to Colorado, attended college in Boulder and married his sweetheart, Peggy Higby, of Pueblo, Colo.

After receiving his bachelor of science degree in electrical engineering from the University of Colorado in 1950, he and Peggy drove the newly opened Alaska Highway to Haines. There, George worked as a truck driver during the construction of the Haines to Haines Junction road. He and Peggy started a dairy farm in Haines, which they operated until moving to Juneau in 1952.

George was hired as an electrical engineer for the U.S. Bureau of Reclamation and worked for them from 1952 to 1962. In addition, both he and his wife were actively involved in Alaska Statehood issues. The family temporarily moved to Eugene, Ore., in 1962 so he could attend law

school. He graduated with his law degree in 1965. They returned to Alaska and he was appointed an assistant attorney general.

In Juneau, he was heavily involved in his three sons' Boy Scout activities and was scoutmaster for Troop 12 for several years. During his tenure, Troop 12 went on numerous summer and winter camping trips, including a hike over the Chilkoot Trail and two 450-mile canoe trips down the Yukon River.

In January 1970, George was appointed a transportation commissioner for the State of Alaska Transportation Commission, and the family moved to Anchorage. He stepped down from the post of commissioner and went into private practice, specializing in transportation law, in 1972. He also served 10 years as chief hearings officer for the Alaska Transportation Commission. He retired from private practice in 1990 to spend more time with his children and grandchildren.

George was preceded in death by his beloved wife of 39 years, Peggy, in 1988.

He is survived by his three sons and their spouses, David Benesch of Anchorage; Dan and Leah Benesch of Thompson Falls, Mont.; and Dudley and Lisa Benesch of Anchorage; grandchildren, Deven, Michael, Eugene and Katherine; and his brothers and their wives, Walter and Renate Benesch of Fairbanks and Ralph and Eunok Benesch of Springfield, Va.

Joe Sonneman



Longtime Juneau political activist Dr. Joseph Sonneman died March 8 at Providence Regional Medical Center in Everett, Wash., after a three-year struggle with amyotrophic lateral sclerosis (ALS), also known as Lou Gehrig's disease. He was 64.

He was born in Chicago in 1944, and attended Chicago public schools. After serving in the U.S. Army from 1963 to 1966, including service as a radar repairman in Korea, he earned a bachelor of science in economics from the University of Chicago, and master's and doctorate degrees from Claremont graduate school. While in the master's program in government finance, he was an intern at the NASA Johnson Space Center in Houston. He first came to Juneau in 1971 to conduct research for his doctoral dissertation on the effect of oil income on Alaskan government financial decisions.

When he finished graduate school, he returned to Alaska where he worked as a photographer, budget analyst, taxi driver, heavy equipment oiler on the Alaska pipeline, postal worker, and university instructor. He became interested in the law and earned a J.D. degree from Georgetown School of Law in 1989. He was a member of the Alaska, Hawaii and Washington, D.C. Bar Associations and conducted a law and legal research practice in Juneau. Sonneman was active in politics all his life, and served on numerous local and state Democratic Party committees and as Alaska Democratic Party treasurer. He ran for Mayor of Juneau in 1973. He also ran in the primaries for the U.S. House in 1974, and for the U. S. Senate in 1978, 1992, 1996, and in 1998 succeeded in becoming the Democratic Party nominee for U.S. Senate but lost the election to Republican incumbent Frank Murkowski.

He was a member of Veterans of Foreign War Post 5559; Pioneers of Alaska Juneau Igloo Number 6; Juneau World Affairs Council; Juneau Chapter of AARP; and Paralyzed Veterans of America, and served on the Juneau Commission on the Aging.

As a photographer, he followed the example of Klondike Gold Rush photographer A. E. Hegg, and documented the construction of the Trans-Alaska Pipeline with an 8-by-10-inch view camera. Over his career, he had one-person shows at the San Jose Museum of Art, the University of Oklahoma Museum of Art, the Alaska State Museum, the Chicago Museum of Science and Industry and Harper Hall at Claremont Graduate University.

After his diagnosis of ALS, he moved to Washington to be closer to family members. He lived for two years at the Washington State Veterans Home near Seattle and was also an intermittent patient at the Veterans' Administration hospital

Continued on page 13

In Memoriam

Continued from page 12

in Seattle.

Survivors include his mother, Edith Sonneman of Chicago; and sisters Eve Sonneman of New York, Toby Sonneman of Bellingham, Wash., and Milly Sonneman of Sausalito, Calif.

Burial was to be at the Sitka National Cemetery with Jewish graveside services. Donations in Dr. Sonneman's memory may be made to the Joe Sonneman Prize in Photography Endowment c/o David Carpenter, Claremont Graduate University Advancement Office, 165 10th St., Claremont, CA 91711.

Bryan S. Merrell



Former Alaska attorney Bryan S. Merrell, 45, died of a sudden heart attack March 19, at the Bainbridge Island ferry terminal in Bainbridge, Wash.

Bryan was born Sept. 3, 1963, in Rolla, Mo. He graduated from Brush Prairie High School in 1981, Washington State University in 1985 and the University of Idaho law school in 1988.

For the last 15 years, Bryan was an attorney for First American Title, first as regional counsel and senior divisional underwriter in Seattle and as state counsel and title manager in Anchorage. Prior to that, he was an attorney with both Groh Eggers Price and Routh Crabtree in Anchorage.

Bryan moved to Anchorage in 1968 with his family, grew up and established his career here, and moved to Seattle in 1995. He adored his two dogs, Panda and Murphy and was a dedicated sports fan, holding season tickets for the Seattle Seahawks and a great attendance record at Mariners and WSU Cougars games. He enjoyed motoring in his convertible MINI, boating on Puget Sound, gardening and writing.

Bryan married Jeri Sisco Merrell on June 21, 1997, and was a devoted father to his stepsons, Benjamin and Zachary Moore, all of Poulsbo. In lieu of flowers, the family asks that donations be made in Bryan's name to the Humane Society for Seattle-King County, 13212 SE Eastgate Way, Bellevue, WA 98005 or your local animal rescue organization.

Eric Treisman

Attorney, adventurer and one-time U.S. Senate candidate Eric Treisman died April 3, five days after suffering a heart attack in Santa Fe, NM. He was 64.

Treisman was born in Yakima, Wash., grew up there and in Northern California, graduated from Dartmouth University in New Hampshire, and obtained his law degree from Stanford Law School in California.

He began his long-time advocacy career in New Mexico in 1968 to work for the Navajo legal-aid office, then went to Micronesia and Alaska to work for other Native legal-aid groups. After serving as in-house counsel for an Alaska Native corporation in Fairbanks, and living briefly in Seattle, he returned to Santa Fe to practice law in the 1980s.

In 1996, he ran for the Democratic primary for the U.S. Senate, losing to Bernalillo County Democratic Chairman Art Trujillo, a former Santa Fe mayor, who went on to lose to Republican incumbent Pete Domenici. Among other issues, he campaigned on making nuclear waste cleanup a bigger part of the mission of Los Alamos National Laboratory, installing a bullet train along the Rio Grande corridor, building a spaceport at White Sands, and returning to individual American Indians the \$5.1 billion held in their names by the Bureau of Indian Affairs.

In addition to his legal practice, Treisman was a mountain climber, adventurer and writer whose

articles have been published by Harper's, Rolling Stone and the Wall Street Journal.

"He was part of an expedition for the National Geographic, flying biplanes along the entire length of the northern coastline of Russia," said Mike Gross, who shared his office in Santa Fe. "He climbed the highest mountain in the Caucasus and wrote about it for the Wall Street Journal."

Treisman was an ardent supporter of Tibetan independence, helping hundreds of Tibetan refugees obtain visas for the United States and organizing a meeting between the Dalai Lama and then-President George H.W. Bush.

Rachel C. King

Rachel Carol King, 45, a lawyer for the U.S. House Judiciary Committee's subcommittee on crime and homeland security, died Aug. 25 (2008) of breast cancer at her summer home in Wayne, Maine.

During the 1990s, she worked as a public defender in Alaska and became the first executive director of Alaskans Against the Death Penalty. She was also executive director of the Alaska Civil Liberties Union and was active in the state's Green Party.

King moved to Washington in 1998 and was a legislative counsel and lobbyist for the American Civil Liberties Union, where she worked on limiting the scope of the USA Patriot Act. She joined the House subcommittee in 2007. A longtime activist against the death penalty, she was a founding member of Takoma Village Cohousing in Northwest Washington, where she lived.

She wrote "Don't Kill in Our Names: Families of Murder Victims Speak Out Against the Death Penalty" (2003) and "Capital Consequences: Families of the Condemned Tell Their Stories" (2005). She self-published a novel, "Tales of the District," in 2007.

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Justice Alito stands for a group photo with Bar members from Fairbanks.



Presiding Judge Patricia A. Collins, of Juneau, received the annual Community Outreach Award from the Alaska Court System at the convention.



Participants in the Annual Fun Run at the Convention in Juneau get ready to take off. (We can tell this is a pre-race photo because no one looks sweaty and/or exhausted.)



An exhibit commemorating Alaska's 50th year of Statehood was installed at Centennial Hall in Juneau during the convention. Kathryn Kolkhorst and Clark Gruening (son of one of Alaska's first senators at Statehood) were among convention-goers who paused to view the exhibit.



Justice Samuel A. Alito, U.S. Supreme Court (center), joins Justices of the Alaska Supreme Court: (l to r) Daniel Winfree, Dana Fabe, Walter Carpeneti, and Morgan Christen.



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A Juneau judge samples the law in Europe

By Larry Weeks

For 17 years I sat on the bench in Juneau and watched the tourist lawyers and judges from the cruise ships come into the back of the court and sit down to watch "how they do it here."

It would usually take about three minutes for the stress hormones to kick-in and you could see the thought going through their heads, "What am I doing here, I'm on vacation, this is what I was trying to get away from." They would sometimes come back to chambers and exchange business cards and invite us to visit them in Nebraska or some other place and we'd smile and agree - thankfully not under oath. (sorry, Niesje)

I admit I've done it myself. I visited Old Bailey in London and in Whitehorse would often go by the Justice Center. (They have a great bi-lingual courtroom in Whitehorse—and judges read sentencing decisions that are longer than Mannheim's dissents.)

I retired in July of 2007 and at the end of the year we came to Europe and have traveled and I've spent quite a bit of time in Paris. We eventually took a tour of the Palais of Justice and sat in the jury box of the courtroom where Petain was convicted of treason and saw the room where Marie Antionette had her "trial".

I then wandered into this 18th Century courtroom where the room was more interesting than the activity. It was district court arraignments in Juneau. One dude hadn't paid his drunk driving fine, there was a marijuana violation and another had relapsed on probation for pick-pocketing. No one went back to jail but there was much sturm and drang from the lawyers. The judge was a nice looking woman and I wondered if she was up there thinking what I used to think when I'd see those tourists lawyers from the cruise ships sitting in the back of the courtroom in Juneau.

Being in Europe during so much turmoil in the world has caused me to look a little at their system and compare it to our own. There are many more similarities than one might expect.

A comparison of the French and U.S. judicial systems usually starts with the Napoleonic Code versus Common Law and the differences in an adversarial and a magisterial system of justice. It is easy to ignore how practicality has caused both

systems to evolve similar methods of dealing with difficult disputes. There is a surprising similarity in U.S. and French administrative tribunals and agencies overseeing political campaigns, utilities, securities, aviation, insurance, environmental, telecommunications and other sophisticated areas. The salmon that spawned the alphabet agencies in the U.S. like ICC, FEC, SEC, APOC, IRS, EPA etc have made it to the rivers of France too and spawned as many of the same.

The way code countries, including France, have started to use the decisions of higher courts as authority is much like common-law countries. And there is virtually no common law country that has not gone to extensive code declaration of law. The European Union with its commissions and court has also created a situation not totally unlike the federalism that sometimes occurs in the U.S. . The French have been more successful in providing meaningful trials to terrorists than the U.S. but they've had more time to deal with those issues and that is another comparison for a more serious academic discussion

Sarkozy has made numerous changes to the French constitution and there is now a proposal to do away with the "Inquiry Judge" that is the hallmark of their magisterial criminal system. That "Inquiry Judge" now prosecutes only about 5% of their criminal cases (that 5% is mostly white-collar, political figures and mafia related offenses). All others are prosecuted by persons appointed by the Attorney General. Those AG appointees are called "Parquet Judges" but have to stand when the judge comes into courtroom and are the equivalent of what we call prosecutors.

One difference between the two systems is the selection of judges. The U.S. has an almost infinite variety of judge selection processes. But, like the other common law countries of England, Australia, Canada and New Zealand, the U.S. judges are selected from pools of experienced lawyers who have had more or less successful careers in the law before being considered for judgeships. The French often ask me about the judge selection process in the U.S. I try to tell them of the Alaska process and not about the



"Partially as a result of those controversies, judge selection has become important in the political process."

38 jurisdictions which elect judges. They are invariably polite about it, but it is clear they believe the election of judges to be bizarre.

France, and some other E. U. countries get their judges directly from very competitive schools. The judges are legally trained and then given additional schooling to become a judge. It is theoretically possible to become a judge after being an advocate but uncommon. The result of the French system can produce judges making important decisions who are intelligent, educated and trained, but inexperienced-in-

life. This can cause problems. There have also been concerns in France that the actual selection process is not very transparent. Some people have recently talked about the possibility that a large portion of their judicial officers may be "Free Masons" and how the secrecy of that fraternity may be affecting the appearance or actual fairness of judicial decisions .

Partially as a result of those controversies, judge selection has become important in the political process. The National Assembly in France began discussions for changing the French judge selection process in May of last year and made some changes. Other constitutional amendments are pending. The French reconstituted "The Conseil Superieur de la Magistrature" which selects most French judges. The French nomination and selection

procedures are largely obscure even to sophisticated French voters and there is virtually no public participation or oversight. The three main unions of judges have representatives on the Conseil and one participant said something to the effect, "No one talks about who a candidate is affiliated with but everyone knows." The idea of a closed fraternity making the decisions of who is to be a judge is not comforting. The Alaska Judicial Council with three criminal defense attorney members doesn't sound as different from that as I used to like to think.

French judges are appointed for life, which gives them the potential for great independence, but they are not subject to any meaningful review of their performance and removal is very rare. Often judges who are found to be wanting are simply transferred to a different town. One recent incident which caused great turmoil within the profession and aroused the public resulted in the offending judge being given a written reprimand. He was under 30 and had been a judge for only a few months and pulled a true bonehead mistake that in Alaska in would have resulted in a no-brainer "Not Retained" from the electorate - as it would have been in France if the public had voted on it.

All in all, there are many cultural and practical differences in the systems but there are a surprising number of similarities. If you don't believe it go to Paris and watch district court arraignments.

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No good deed goes unrewarded. Outgoing President Mitch Seaver received a gift of tripod equipment as thanks for his service, presented by incoming President Sid Billingslea.



Outgoing Board of Governors member Krista Stearns (L) receives recognition at the convention banquet.



Mitch Seaver (right) also bids farewell to John Tiemessen from the Board of Governors.



Incoming President Sidney K. Billingslea takes the gavel for 2009-2010.



Representatives of the judiciary discussed recent developments in the federal and state courts during the final CLE of the convention. From left are: Judge David Mannheimer, Justice Walter Carpeneti, Ninth Circuit Judge Milan Smith, Jr., U.S. Supreme Court Justice Samuel Alito and U.S. District Court Judge Ralph Beistline, who moderated the discussion.



Juneau attorney Gordon Evans (left) poses with board members Don McClintock and Peter Maassen.

2009 BAR CONVENTION HIGHLIGHTS



Photos by Barbara Hood

Bar community gathers in Juneau

ATTORNEYS RECEIVE BAR AWARDS



Judge Philip "Zorro" Volland was among judicial panelists who "ruled" or "overruled" on contestants' answers during the Evidence Cranium event at the convention. See more of the Cranium on page 29.



Ever wonder about how the annual 25th-anniversary recognition works? Bill Estelle demonstrates the ritual of being pinned, Alaska Bar style by President-elect Sid Billingslea. See full pictorial roster of pin recipients on pages 30-32.



Leroy Barker, Historians Committee Chair, received the Distinguished Service Award. That was one surprise. The other was the arrival of his son Doug and daughter Pam, who flew in from Japan and British Columbia to join their dad for the event.

The **Distinguished Service Award** honors an attorney for outstanding service to the membership of the Alaska Bar Association.



Rob Meacham received the 2009 Professionalism Award, but could not attend the annual convention to accept it because he was attending his son's college graduation. Here, Judge Philip Pallenberg accepts it on Meacham's behalf.

The **Professionalism Award** recognizes an attorney who exemplifies the attributes of the true professional, whose conduct is always consistent with the highest standards of practice, and who displays appropriate courtesy and respect for clients and fellow attorneys.



Bob Bundy seemed humbled & surprised when his name was called at the convention to step up and receive the Robert Hickerson Service Award.

The **Robert K. Hickerson Public Service Award** recognizes lifetime achievement for outstanding dedication and service to the citizens of the State of Alaska in the provision of Pro Bono legal services.



Former Board of Governors Public member Bill Granger accepts the Layperson Service Award.

The **Layperson Service Award** honors a public committee or Board member for distinguished service to the membership of the Alaska Bar Association.



The annual Judge Nora Guinn Award went to Judge Richard Erlich of Kotzebue. Historians Committee Chair Leroy Barker (at left) presented the award.

The **Judge Nora Guinn Award** is presented to a person who has made an extraordinary or sustained effort to assist Alaska's Bush residents, especially its Native population, overcome language and cultural barriers to obtaining justice through the legal system.



Bar members who have practiced for 25 years join together for the annual group photo. (L-R): Kristine Schmidt, Margaret A. Moran, Marilyn May, Judge Philip Pallenberg, Eric Kueffner, Theresa Lauterbach, Lisa Fitzpatrick, Judge Sharon Gleason, Brian Doherty and David Carter.



Andy Harrington is surrounded by past and present ALSC colleagues upon his receipt of the 2009 Rabinowitz Public Service Award. Shown with Harrington (center, holding award) are: Back row: Chris Cooke, Russ LaVigne, Vance Sanders, Erick Cordero. Front row: Holly Handler, Andy Harrington, Christine Pae, and Judge Michael Jeffrey.

The **Alaska Bar Foundation Jay Rabinowitz Public Service Award** is given to an individual whose life work has demonstrated a commitment to public service to the State of Alaska.



It's a (baseball) guy thing... Upon learning of Justice Alito's dedication to the Phillies, Larry Cohn brought his alleged priceless and comprehensive baseball card collection to the convention, for the Justice to covet.

U.S. Supreme Court Justice Samuel Alito received a gift of a brand new Philadelphia Phillies baseball cap and a Native Alaskan handwoven basket at the annual banquet. At right, President Mitch Seaver & Larry Cohn, Judicial Council executive director, joined in honoring Justice Alito's favorite team.

Domestic violence implications in custody cases

By Steven Pradell

Family law lawyers often find themselves in cases that have domestic violence (DV) implications. How one proceeds in addressing these sensitive issues can have a significant impact on custody and divorce issues. Those unfamiliar with the process and impact of a DV case can find themselves unprepared for the proceedings and surprised by the ramifications involved. This article addresses some of these issues.

Often at an initial consultation with a potential divorce or a custody client, counsel will learn that there is tremendous conflict in the underlying relationship, an urgent need for an order which addresses such problems as which party should move out of a residence, with which parent or parents the children should reside, how visitation is to be arranged, communication and other issues. Along with these desires, there will often be a description of actions performed by one or the other spouse that could cause an attorney to consider whether a court would find that the behavior rises to the level of domestic violence. Consequently, the practitioner must determine whether to begin the proceedings in a Domestic Violence proceeding or by filing a Complaint for Divorce, or, for cases involving unmarried parents, a Complaint for Custody. The existence of an ongoing divorce complaint will normally cause the court to reschedule a long-term domestic violence hearing so that it

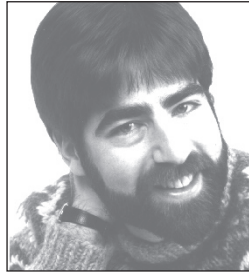
occurs before the same Superior Court judge who is handing that case, due to the nexus of the issues that the finder of fact may ultimately have to resolve.

In July of 2004, Alaska laws concerning custody changed considerably with regard to domestic violence issues. AS 25.24.150(c) was amended to read:

The court shall determine custody in accordance with the best interests of the child under AS 25.20.060 – 25.20.130. In determining the best interests of the child the court shall consider...

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

Moreover, AS 25.24.150 was



"Those unfamiliar with the process and impact of a DV case can find themselves unprepared for the proceedings and surprised by the ramifications involved."

amended by adding new subsections which included:

(g) There is a rebuttable presumption that a parent who has a history of perpetrating domestic violence against the other parent, a child, or a domestic living partner may not be awarded sole legal custody, sole physical custody, joint legal custody, or joint physical custody of a child.

(h) A parent has a history of perpetrating domestic violence under (g) of this section if the court finds that, during one incident

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

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

Previously, a judge considered many factors, including one, still in existence, which allows the court in a custody proceeding in making its finding to consider, "any evidence of domestic violence, child abuse, or child neglect in the proposed custodial household or a history of violence between the parents." Experienced judges who had previously considered domestic violence issues along with numerous other factors in fashioning appropriate custody and visitation

orders most likely were not pleased by the legislature's decision that court's finding of a "history of domestic violence" would trump all of the other factors and require the judge to impose the constraints contained in AS 25.24.250 (g) and (j).

With so much at stake due to these significant changes in the law, the expected reactions occurred in cases with custody issues; judges became reluctant to find that parents had a "history of domestic violence" and attorneys increasingly shifted their focus away from the other factors towards the domestic violence issues hoping to obtain favorable outcomes for their clients. A domestic violence restraining order is not in and of itself a requirement for showing that parent has a history of domestic violence. However, a finding of domestic violence in a domestic violence proceeding can be subsequently used as evidence in a custody proceeding. Attorneys have attempted to have the court set aside domestic violence findings or otherwise argue that they should not have an impact on a subsequent custody proceeding.

In order to obtain a domestic violence protective Order, AS 18.66.990 defines the following terms:

(3) "domestic violence" and "crime involving domestic violence" mean one or more of the following offenses or a law or ordinance of another jurisdiction have elements similar to these offenses, or an attempt to commit the offense, by a household member against another household member:

- (A) a crime against the person under AS 11.41;
- (B) burglary under AS 11.46.300 – 11.46.310;
- (C) criminal trespass under AS 11.46.320 – 11.46.330;
- (D) arson or criminally negligent burning under AS 11.46.400 – 11.46.430;
- (E) criminal mischief under AS 11.46.480 – 11.46.486;
- (F) terroristic threatening under AS 11.56.810;
- (G) violating a domestic violence order under AS 11.56.740 or
- (H) harassment under AS 11.61.120(a)(2) – (4);

When representing a client at a hearing seeking a DV protective Order, it may be wise to be prepared to point the court to the statute that you believe was violated by the respondent by a preponderance of the evidence so that a finding can be made by the court. In defending a client in a domestic violence proceeding, if there is enough time to do so, attempt to obtain the tape of the ex-parte hearing and compare it with the statements made in the petition. Because the outcome of an initial DV hearing at the start of a prolonged case involving custody issues can have a great impact on the ultimate issues, a careful practitioner should spend the necessary time to properly prepare.

©2009 by Steven Pradell. Steve's book, *The Alaska Family Law Handbook*, (1998) is available for attorneys to assist and educate their clients regarding Alaska Family Law matters.

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The estate planner's business plan

By Steven T. O'Hara

We lawyers might learn from our business friends that it is important to have a business plan. For the lawyer who works in the area of estate planning, a fundamental decision along these lines is whether to stay small or expand.

My father made his living selling fruits and vegetables. He would often say, "You can't get ten pounds into a five-pound bag." The question, therefore, is whether to stay within existing limits of time and space or go for a bigger bag.

There are four legs to estate planning. First, an estate planner must strive to have a good bedside manner. The second leg of estate planning is document preparation. The third leg is follow-up work, where requested, after the will or trust signing. The fourth leg is postmortem planning.

One of the hardest things we lawyers learn to do is to turn down requests by prospective clients to do their interesting work for which they are ready to pay us. In the estate planning area it may be tempting to think that all that is needed for an estate plan is a will. So knock out the will and move on to the next client.

The reality is that a will is often

no more an estate plan than a concrete-block foundation is a house. The will should be prepared first, since it is the foundation upon which to build the estate plan. But at best the will is the last instrument of transfer the client will use.

In many instances a will does not dispose of assets. For example, consider the client who prepares a will, intending all assets to go to X, but who fails to verify that her last beneficiary designation filed with her life insurance company is consistent with her. Suppose the client's last designation names Y as the beneficiary of the life insurance. Under such circumstances, upon the client's death the life insurance proceeds will go to Y and not to X, regardless of what the will says.

Thus we all advise clients to review all beneficiary designations, including under all insurance policies, pension and profit sharing plans, annuities, IRAs, Keoghs, pay-on-death accounts and the like. Review must be made of not only the primary beneficiary, but also of the person or persons who



"One of the most satisfying things about estate planning is that in the course of all the work you often become close, on a professional level, with many interesting people."

would take if the primary beneficiary dies before the client.

A will may also be ineffective because of how the client's assets are owned. Consider a married couple with assets in excess of \$3,500,000. They sign wills that use the so-called A/B plan, which under current law is intended to eliminate federal estate tax on aggregate assets of up to \$7,000,000. After signing the wills, the couple fails to separate their assets and continues to own them in a form of co-ownership with right of survivorship.

In general, upon the death of the first

spouse to die, the tax benefits of the A/B plan would be lost because no assets would be disposed of under the decedent's. Rather, the surviving spouse would now own all assets by right of survivorship, and his estate would face needless federal estate tax upon his death.

Thus we all advise clients to review their form of asset ownership and consider changing that form in light of the plan that has been adopted under their wills.

Often clients wish to avoid probate, especially probate of assets located in states like Hawaii or California. In this case, the client's primary document is typically a revocable living trust. A will would still need to be prepared in conjunction with the revocable living trust, but the will would merely pour over into the trust (AS 13.12.511). The client's beneficiary designations and form of asset ownership may also need to be changed in light of the client's revocable living trust.

Irrevocable living trusts may also be advisable, such as a trust that would own insurance on one or more lives or a trust that would pay income to the client for a term of years. With or without one or more irrevocable trusts, the client may also wish to undertake an annual gifting program,

with the goal of asset protection or minimizing taxes or both.

Of course, the client's will is ineffective during her lifetime. So besides living trusts, the client ought to consider a durable power of attorney (AS 13.26.332), which would be especially helpful in the event of the client's disability, and an Advance Health Care Directive (AS 13.52.010).

Also helpful is an inventory and location list. The inventory lists all the client's assets, along with approximate values, and the location list identifies the location of all important documents (including insurance policies) and contact persons.

Often clients will share their inventory and location list with the persons named in their wills or living trusts. In any event these persons

ought to be informed of where they may obtain a copy of the inventory and location list in the event of the client's death or disability.

I also recommend clients consider having an annual family meeting in a retreat-type setting. At the family

meeting, the client might provide full and fair disclosure of his wealth and intent. Each family meeting from now until the client's death is an opportunity to work on rooting out problems that may result in disharmony after the client's death.

Other estate planning work may include LLCs, LLPs, business succession planning, community property agreements or trusts, prenuptial agreements, postnuptial agreements, disclaimer planning, private or public foundations, annual gift tax returns, and annual trust accounting reports.

One of the most satisfying things about estate planning is that in the course of all the work you often become close, on a professional level, with many interesting people. This closeness re-enforces the rule to accept new clients only where additional time is available after performing the work requested by existing clients. This closeness is also a factor in the estate planner's decision of whether to stay small or expand.

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Lawyers can get assistance for coping with tough times

The American Bar Association's new Economic Recovery Resources Web Portal offers a assistance for coping with tough times including information on job searching, personal development and career transition, law practice management tips, handling stress, and more.

"The economic downturn is having its effect on the careers of lawyers just as it is on so many professions. The ABA is committed to assisting America's lawyers so that individuals, businesses and clients that depend on their help will not find themselves without benefit of counsel as they combat the woes of recession," said ABA President H. Thomas Wells Jr. "The Economic Recovery Resources Web Portal compiles the ABA's vast resources for professional and personal development in a single online site. I encourage lawyers to take advantage of the many tools available here."

The resources Web site at <http://new.abanet.org/economicrecovery> consists of six topic areas: job search and networking, career transition, practice management, professional development, stress management and savings. Each section offers an array of resources including:

- practical advice from ABA publications, such as ABA Journal articles on what to do if you've been laid off and how to make over your résumé if your years of experience make you appear old, on paper
- links to law practice tools, including 10 tips on building a better clientele, guidance on successful practice development, and the importance of effective client screening in a tough economy
- references to relevant books, CDs and continuing legal education programs, such as "50 Financial Tips to Help You and Your Firm Survive and Thrive in a Down Economy" and "How to Start and Build a Law Practice."

An evolving site, the easy-to-navigate Economic Recovery Resources Web Portal will expand as new resources are added regularly.

With more than 400,000 members, the American Bar Association is the largest voluntary professional membership organization in the world. As the national voice of the legal profession, the ABA works to improve the administration of justice, promotes programs that assist lawyers and judges in their work, accredits law schools, provides continuing legal education, and works to build public understanding around the world of the importance of the rule of law.

--American Bar Assn.

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Low-cost computer fixes for tough times

By Joe Kashi

Now that it's official that the US has been in a recession since December 2007 and North Slope crude is on that slippery slope, it's even more critical to get the most for your money when upgrading your computer. It's even better if you can boost your computing performance for free. Here are some suggestions.

Windows certainly has its foibles and it's a bit odd that the most effective fixes are typically inexpensive or free third party utilities available primarily as Internet purchases or as free downloads.

Here are some that I've found invaluable when a Windows installation has become unstable or slow but is not yet so flaky that a time-consuming re-installation becomes necessary. Think of these as minor maintenance.

Ace Utilities: Ace Utilities is a reliable compact program that's much less expensive than Norton, with lower system demands. Except for hard disk optimization, it performs basically the same diagnostics and Windows Registry clearing as Norton Utilities but only on demand rather than as a potentially intrusive background process that runs continuously. I'll typically run Ace Utilities as a first response whenever a computer system seems to be balky or slightly unstable. You can download a 30 day trial version at www.acelegix.com

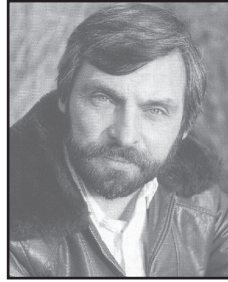
Free RAM Optimizer: Acelogix also provides, as a free download to its customers, a Windows memory optimizer. I've installed it on a home computer with 2GB RAM, a computer that's often used to edit photo files that may be several hundred megabytes each. This system often slowed nearly to a halt as a result of RAM overloads and resultant hard disk data swapping. Ace's RAM Optimizer seems to have somewhat reduced such performance bottlenecks to a tolerable level without any noticeable adverse effects. Programs like this will make a difference when available RAM is low as a result of many programs loaded simultaneously or when you are intensively processing very large files, such as running text recognition on a several hundred page Acrobat document or sharpening a massive photographic file. You can download this program from www.acelegix.com. However, you generally much better off adding more matched DRAM to your system, a very useful performance upgrade that's no longer expensive.

Diagnosing Performance Bottlenecks: Some useful programs for

detecting bottlenecks and tuning hard disk performance are HD Tune and Performance Test (www.passmark.com). You can download a free 30 day trial of the full Performance Test program and I recommend it as a means of finding performance bottlenecks in your existing system and checking whether any upgrades are worthwhile. Remember the common wisdom that you'll need at least a 50% overall system performance increase before an ordinary business user will perceive any useful improvement. Passmark also provides a 30 day free trial of their "burn-in" software that stress tests computer systems for potentially flaky components. You should definitely run burn-in software on any new system, particularly before any return period expires.

Belarc Advisor: Windows handles security and other issues by applying a series of "patches" to fix specific portions of the operating system code. Sometimes, though, patches are not properly applied and various portions of your operating system can become mismatched and thus potentially unstable. BelArc Advisor, a free download available from www.belarc.com, checks your operating system for vulnerabilities, installed software and its status, and Windows components. If one or more Windows components or patches are not as they should be, such items are flagged and you will be directed to the specific part of Microsoft's web site where a corrective download and/or more information are available. This program is invaluable when you need it. It certainly beats reinstalling Windows and all of your programs and data, not to mention relicensing hassles. Belarc Advisor also provides a lot of other useful information about your hardware and software, such as data on all installed programs.

Dial-a-Fix: The other free Windows repair utility that's occasionally worked wonders on an unstable system is "Dial-a-Fix", which I've found available from a number of sites on the Web. Dial-a-Fix has resurrected systems that otherwise seemed destined for a hard disk reformat and complete reinstallation of Windows. I have never experienced any damage a Windows installation from its use. In addition to trying the basic menu options, also try some of the various options in the Tools button but avoid any of the reinstallation options unless



"...it's more critical to get the most for your money when upgrading your computer. It's even better if you can boost your computing performance for free."

absolutely necessary.

Cost-Effective Hardware Upgrades:

Hard disk performance has a much greater impact upon a computer's performance than most non-technical users might realize. Speeding up hard disk performance can make as much improvement as upgrading to a new computer with a later generation processor. Luckily, increasing hard disk performance can be straightforward and don't require you to replace your entire computer system.

The newest locally available Western Digital and Hitachi hard disks, typically

holding 300 to 750 gigabytes or more and spinning at 7200 or 10,000 rpm, really pack data tightly. As result, not only do these hard disks have a very high storage capacity but they also move a great deal more data under the read-write heads every second, making them potentially much faster under the right conditions than older, lower capacity hard disks.

In some cases, just replacing the boot up hard disk and reinstalling Windows and your programs and data can greatly rejuvenate a computer that's a few years old and seemingly too slow. The local cost of a suitable new hard disk is well under \$150 locally, even for a very high capacity one, but replacing your primary hard disk and reinstalling Windows, programs and data is not a job for those who are technically faint of heart.

However, there are programs like Acronis Migrate Easy 7.0 that can simplify and ease the task by automating the entire hard disk upgrade and transfer process, particularly if you make the transfer using a USB portable hard disk enclosure to temporarily run your new hard disk during the transfer process. A free 15 day trial copy of Acronis Migrate Easy 7.0 is available from www.acronis.com

If the thought of opening your computer case causes trepidation, then include the cost of having this upgrade done by local professionals. If you have a professional open up your computer, then it may be worthwhile to upgrade the existing CPU processor if a significantly faster compatible CPU is still available and to upgrade the RAM memory, preferably at least doubling it by replacing all memory with matched pairs of the DDR memory that's speci-

fied for your computer.

If you plan to use Adobe's new Photoshop CS4 or Lightroom 2.x, then also consider replacing your existing video card with a fast new display card that has lots of memory onboard. The newest Photoshop CS4 uses the video processor on certain display cards to greatly increase Photoshop's performance.

Improving Existing Hard Disk Performance: The performance of all hard disks, whether old or new, gradually degrades as they are used and files are stored and moved around. This is an inherent problem with the Windows operating system, not the hardware. The Windows operating system has a tendency to scatter partial fragments of each computer file all of the hard disk. That makes the hard disk's read-write heads work much harder to load an application program or to read and write a data file, thus greatly slowing down a computer's overall operation, regardless of how fast its processor might be.

The best solution is to continuously defragment your hard disk. In an ideal world, Windows should defragment every drive automatically in the background in order to maintain optimal performance but Windows does not do so. Windows does include a disk defragmenting utility under the **Start, Programs, Accessories, System Tools, Defragment** menu item, but that Microsoft utility is mediocre. It has few options, must be run manually by the operation, slows a computer to a crawl while running for an hour or two or three, and does not really optimize disk performance. Still, it's better than nothing and it's provided free with the Windows operating system.

Several other system utility collections, such as Norton, include somewhat better hard disk optimization programs. However, in my experience, the clear choice for hard disk defragmentation and performance optimization is the Diskeeper family of products, available as downloads from www.diskeeper.com. Diskeeper allows you to download a free trial copy of the program that remains fully functional for 30 days, after which you must purchase a license and activate the product to continue using it. A free 30 day trial is useful as a one-time shot in the arm for a slowing computer and allows you to evaluate whether purchasing the product is worthwhile. Diskeeper's "Home" version sells for \$29.95, the "Professional" version for

Continued on page 21

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NOTICE TO THE PUBLIC

By order of the Alaska Supreme Court,
entered February 3, 2009

EUGENE B. CYRUS

Member No. 7410069
Chugiak, Alaska

is placed on
interim suspension from the practice of law
effective March 5, 2009 until further order of the Alaska
Supreme Court

Published by the Alaska Bar Association,
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Pursuant to the Alaska Bar Rules

Pro Bono awards go to firms and private practitioner

Outstanding Work of a Law Firm—Lane Powell

Do you know what the standing ethics rule on pro bono service encourages an attorney to give each year? 50 hours. This year's pro bono law firm recipient expects its attorneys to devote double that each year to pro bono activities. Thanks to Lane Powell's Anchorage office, 130 Alaskans have had the opportunity to meet with a lawyer through the popular 'Attorney For A Day' program with Alaska Legal Services Corporation or the very special non-contested adoption project that the firm adopted in 2007.

A law firm with a strong business law background is not where you would normally find volunteers seeking to move out of that zone; however, in 2007 all of that changed for Lane Powell. Since then the firm touts a 100% pro bono participation rate for their attorneys who have advised clients impacted by illegal evictions, victims of domestic violence, seniors risking loss of public benefits, and eager parents waiting to adopt a child. Even after brief client meetings through the 'Attorney For A Day', it was not unusual for firm members to follow-up with clients. Andrea Girolamo-Welp would routinely go out of her way to follow-up on consultations, Matt Claman would write follow-up letters, Peter Partnow would offer additional assistance, and Brewster Jamieson has become the firm's expert on adoptions.



Brewster H. Jamieson, attorney with Lane-Powell's Anchorage office, accepts the Pro Bono Award for Outstanding Work of a Law Firm at the Bar Convention banquet.

Outstanding Work of Private Practitioner—Retired Judge Thomas Schulz

What do you say about a man who's been called the "Jimmy Carter of judges" and devoted his life to service? 100 thank yous would never be enough. After 18 years on the bench and a few in California while working on graduate work in religious studies, Thomas and Mary Schulz returned to Ketchikan to do what they've always done: spend time with family, fish as often as possible, and be deeply involved in their community. It was at a famed daily Ketchikan Bar Association coffee meeting that Tom mentioned he'd be willing to do pro bono during their summers in Alaska. Word travels fast. He got a call from the Alaska Bar Association's Pro Bono Director Krista Scully the very same day.

Described as the 'Jimmy Carter of judges' by a fellow legal community colleague because "He is just what was needed in this community—someone with the time and energy and outstanding ability to speak for those who most need it. I don't know that he would necessarily like being compared to Jimmy Carter but he is something of the Jimmy Carter of retired judges. Instead of pursuing a generous income as a mediator or being of counsel to a prestigious firm, he has dedicated his retirement years to helping others for little, if any, compensation, and I suspect, often without due thanks. We are blessed to have him."

We feel blessed to have Thomas Schulz working with us too. His pro bono work for the Alaska Network on Domestic Violence and Sexual Assault has kept people safe, start over, and/or move on with dignity. In fact, the bulk of his work both in Alaska and California has been devoted to helping battered women. Since 1996 Tom has basically volunteered full-time with the Good Shepherd Shelter in California. When contacted by the Alaska Bar Association for information, Sister Ann of the shelter said, "You couldn't have picked a more deserving recipient for your award." In addition, he's done work for the Alaska Pro Bono Program in helping review potential prisoner claims.

Note: Retired Judge Schulz was unable to accept his award in person; he was busy in trial on a pro bono case.

Letter of thanks

Colleagues 'humbled' by award

Ladies and Gentlemen:

The staff and lawyers of Lane Powell are humbled and delighted to have been the recipient of the Alaska Bar Association's Pro Bono Law Firm Award for 2009. We are humbled, because we know that this is a very generous recognition of the modest services we provide in the pursuit of universal access to our courts, and that there are many firms and individual lawyers whose contributions to pro bono service exceed ours. We are delighted, because this recognition provides us encouragement to continue and expand our participation in pro bono programs designed to assist our fellow Alaskans.

Access to justice is critical to the integrity of our State and the United States. There are few things more important to citizens than the ability to access a fair justice system to decide their disputes. Increased complexity of the process combines with skyrocketing legal expense to render access to our courts almost impossible for an increasing number of Alaskans. The resulting erosion of access in turn erodes and undermines faith, confidence and legitimacy of our justice system. All lawyers have an abiding responsibility to restore faith in our system, one client at a time. Taking on the cases of those who lack resources to do so themselves sends the powerful message that all are equal before the law.

We believe that this award serves as a validation of the ingenuity and dedication of the lawyers and staff at the Alaska Legal Services Corporation (particularly Erick Cordero), who have developed many alternative ways for private firms like ours to assist their important mission. We also are grateful for the direction and encouragement supplied by our judiciary, in particular our former partner Judge Mark Rindner, who was instrumental in prodding our participation in the Attorney for the Day project. And we thank Chief Justice Dana Fabe for her very kind words when she presented this award.

We at Lane Powell do not do enough; yet the little we do is of vital importance to those we help. We thank the many lawyers and legal professionals throughout Alaska who provide pro bono services, and are inspired by their example. We accept this award not as an end, but as the beginning of doing more and doing it better.

Very truly yours,
LANE POWELL LLC
Brewster H. Jamieson

HI-TECH IN THE LAW OFFICE

Low-cost computer fixes

Continued from page 20

\$59.95, and the "Pro Premier" version for \$99.95. I suggest that the "Professional" version makes the most sense economically. It continuously optimizes and defragments your hard disk in the background without imposing a serious drain upon computing resources. There is no reason to buy the optional "Hyperfast" add-on module unless you have one of the new, cutting-edge solid state hard drives, and I don't know a single person who does.

Even if you should replace your old hard disk with a new, faster drive, you'll still notice a substantial performance improvement with continuous defragmentation.

Removing junk and temporary files from your hard disk and compressing the data can also improve system performance under some circumstances and, in any event, maximize your available storage. To access Microsoft's hard disk cleanup tools, click on **My Computer**, then right click to select the hard disk to be cleaned and compressed, then click on the **Properties** menu item. A graphic display shows how much of the

total hard disk space is in use. In the graphic display for that hard disk, first click on the **Disk Cleanup** radio button. This will scan the selected hard disk for unused old files, temporary Internet content files, and other files that can be safely deleted. Delete them. Then, left click on the **Compress drive** and the **Allow Indexing Service** check boxes, and start these operations by left clicking on the **Apply** button. Then, sit back, make some coffee, and find a good book. You'll not be using your computer for some time. After you've completed these tasks, and they must be performed separately for each hard disk, click on the **tools** menu item at the top of the disk's graphic display. You'll see several options including **Error-Checking** a hard disk and **Defragmentation**. Run Error Checking prior to defragmenting the drive. Otherwise, any disk errors may spread during the defragmentation process. If you have purchased Diskkeeper, then that optional program will start when you press the Defragmentation program. Otherwise, Microsoft's defragmentation accessory will run.

Hard disk failures: I have found a lot of useful hard disk resurrection

and repair information at <http://www.cgsecurity.org/wiki/TestDisk> This site links to some potentially useful open-source programs but I have not personally tested them.

At the end of this rather tedious process, your computers should be in pretty decent shape and running noticeably faster.



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Ethics Opinions adopted on fees, advertising

ALASKA BAR ASSOCIATION ETHICS OPINION 2009-1

Misleading to Characterize a Fee or Retainer as “Nonrefundable.” (Modification of Ethics Opinion 87-1)

Question Presented

Do the Alaska Rules of Professional Conduct preclude a lawyer from characterizing a fee or retainer as “nonrefundable”?

Conclusion

Every fee must be reasonable and is subject to the standards of Rule 1.5 of the Alaska Rules of Professional Conduct as well as to review by fee arbitration. For that reason, it is misleading to describe a fee or retainer in any way as “non-refundable.”

Discussion

The issue of “nonrefundable fee deposit or retainer agreements” was previously addressed in Ethics Opinion 87-1 which cautioned lawyers against using such agreements due to the potential for misleading clients and the possibility of excessive fees. Despite the adoption of 87-1, the use of “non-refundable retainers” and advance payment of “minimum fees” continue to be reported in disciplinary and fee arbitration matters. Because Alaska has also adopted the Rules of Professional Conduct which have recently been revised pursuant to Supreme Court Order 1680, the Ethics Committee has been asked to revisit the issue.

Ethics Opinion 87-1 addressed the issue, stating in part:

Historically, retainers were taken by attorneys as an engagement fee, separately from the fee for actual services rendered. The purpose for this engagement fee was to pay the attorney to take the case and make him or herself available to the client, thereby causing the attorney to refuse other employment and to be precluded from representing the opposing side.

....

In current practice, non-refundable retainers are generally deposits against which a certain number of hours are charged. Hours in excess of the stated amount are generally charged against the client at a stated rate. Occasionally, non-refundable retainers are flat fees which are kept whether or not the matter is taken to completion by the attorney.

....

This Committee finds that a non-refundable retainer may be charged to a client if the nature of the retainer as non-refundable is fully and clearly explained to the client, orally and in the written fee agreement, and if the fee is not excessive, considering the factors of DR 2-106.

....

The attorney must refund the non-earned portion of a non-refundable retainer if the attorney withdraws from representation of the client. The attorney must also refund a portion of the non-refundable retainer if, at the cessation of representation, the retainer would be

excessive under the circumstances of the particular matter.

Since the adoption of 87-1, numerous opinions have been published in other jurisdictions illustrating the potential for abuse resulting from fees characterized as “nonrefundable retainers” or “advance payment of minimum fees.” Examples include a contingency fee lawyer requiring a flat fee for purposes of “investigation”, *In the Matter of Stephens*, 851 N.E. 2d 1256 (Ind. 2006)(public reprimand); a criminal lawyer taking a flat fee and performing no work, *In re Disciplinary Proceeding Against DeRuiz*, 99 P.3d 881 (Wa. 2004)(6 month suspension); a civil lawyer immediately spending a \$20,000 nonrefundable retainer/minimum fee and then being unable to perform the contracted legal services, *In the Matter of Sather*, 3 P. 3d 403 (Colo. 2000); a lawyer’s continuing practice of requiring a \$15,000 “minimum fee” even if his work product was limited to the entry of a written court appearance, *In the Matter of Cooperman*, 591 N.Y.S. 2d 855 (A. D. 1993)(2 year suspension); and, lawyers collecting flat fees and failing to administer such payments through a trust account, *In the Matter of Kendall*, 804 N.E. 2d 1152 (Ind. 2004)(public reprimand). Because of these abuses, the Washington Supreme Court has amended its Rules of Professional Conduct 1.5(f) and 1.15A to address the issue.

Rule 1.5(a) of the Alaska Rules of Professional Conduct requires that fees be reasonable according to the following factors:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

Regardless of how a fee is characterized, e.g., “a nonrefundable retainer,” “a fee earned upon receipt,” a “flat fee,” a “minimum fee,” etc., these factors continue to apply to the lawyer’s fee. If unreasonable, the fee is improper. It is for that reason that a lawyer’s characterization of amounts paid to the lawyer as being “nonrefundable” is fundamentally misleading.

Upon termination of representation, Rule 1.16(d) requires “refunding any advance payment of fee that has not been earned.” Again, regardless of how a fee is characterized, this requirement applies to the lawyer’s fee. Even if characterized as non-refundable, an unearned fee must be refunded. Because characterizing the fee as nonrefundable incorrectly suggests that a client has no recourse against the lawyer, this practice is

fundamentally misleading.

Approved by the Alaska Bar Association Ethics Committee on April 2, 2009.

Adopted by the Board of Governors on May 5, 2009.

ALASKA BAR ASSOCIATION ETHICS OPINION 2009-2

Use of Membership in Lawyer Ranking System In Lawyer/Law Firm Advertising

Question

Is it permissible to reference ranking by a commercial rating system in a lawyer’s or law firm’s advertising materials?

Lawyers and law firms increasingly are listing a ranking in commercial publications such as SUPER LAWYERS, BEST LAWYERS IN AMERICA, and other similar rankings in their advertising materials. This opinion establishes guidelines for including such rankings in advertisements to avoid a violation of Alaska Rules of Professional Conduct 7.1 and 7.2.

Conclusion

Lawyers and law firms may refer to a listing in SUPER LAWYERS, BEST LAWYERS, or another commercial professional ranking so long as the reference includes the publication name, date, and the practice area, if one was specified, in which the lawyer was ranked or selected. By issuance of this ethics opinion, the Alaska Bar Association is not endorsing any of the commercial ranking systems referenced herein.

Specifically, a lawyer shall utilize essentially the following format when including a lawyer’s professional ranking in advertising materials:

Attorney’s Name was selected for inclusion in PUBLICATION Date.

Thus, for example, a lawyer may state:

Jane Doe was selected for inclusion in ALASKA SUPER LAWYERS 2008.

If the ranking was limited to a specific area of practice, such information shall be included as follows:

Attorney’s name was selected for inclusion in PUBLICATION Date in the area of field of practice.

Again, for example, the lawyer could state:

John Doe was selected for inclusion in BEST LAWYERS IN AMERICA 2008 in the area of family law.

Discussion

Alaska Professional Conduct Rule 7.1 prohibits a lawyer from making a false or misleading communication about the lawyer, the lawyer’s services, or a prospective client’s need for services. Communications are defined to be false or misleading if they contain a material misrepresentation of fact or law; if they are likely to create an unjustified expectation of results; or if they compare the lawyer’s services with other lawyers’ services, unless the comparison can be factually substantiated.

The Commentary to Rule 7.1 explains that all statements about a

lawyer’s services must be truthful. It explains further that even truthful statements are prohibited if they may mislead a layperson.

Comment [3] to the Model Rules of Professional Conduct elaborates that an advertisement that truthfully reports a lawyer’s achievements may be misleading if presented in a way that would lead a reasonable person to form an expectation that the same results could be obtained for other clients, since each case has unique factual circumstances. Thus, advertisements that contain information about results obtained on behalf of a client, the lawyer’s record in obtaining favorable verdicts, or client endorsements are ordinarily precluded by Rule 7.1(b).

A comparison of one lawyer’s services to another lawyer’s services can also be misleading if the information would lead a reasonable person to believe the comparison could be substantiated, when in fact it cannot. The Annotation to Model Rule 7.1 explains that the key to avoiding a misleading comparison is the ability to verify the comparison. The Annotation concludes that, if a rating system is utilized in the comparison, the comparison may be verified, so it is not misleading even if the rating system is generally unknown by the public.

Companies focused on rating lawyers are not a new phenomenon. The first and arguably most well known is MARTINDALE-HUBBELL’s rating system, which began in the late 1880s. Other companies prevalent in the United States include THE BEST LAWYERS IN AMERICA, CHAMBERS USA, LAWDRAGON, and SUPER LAWYERS.

The use of lawyer rankings in advertising and promotional press releases has become controversial. SUPER LAWYERS has received the most attention in recent ethics opinions.

A minority of jurisdictions has determined that references to rankings in a publication such as SUPER LAWYERS are unethical. For example, the New Jersey Supreme Court’s Committee on Attorney Advertising ruled that advertising an attorney’s inclusion in SUPER LAWYERS is a violation of Rule 7.1 because it is likely to create unjustifiable expectations and compares the “Super Lawyers” to non-“Super Lawyers.”¹ This New Jersey Opinion has been stayed pending a challenge in the New Jersey Supreme Court.² The New York Appellate Division proposed an amendment to their disciplinary rules that prohibited “any nickname, moniker, motto, or trade name that implies an ability to obtain results.”³ On July 20, 2007, the United States District Court found the amendment to be an unconstitutional limit on free speech.⁴

The majority view regards advertising that mentions a rating received from a commercial publication to be ethically permissible. The State of Connecticut Statewide Grievance Committee offered a particularly thoughtful analysis. The Connecticut Committee determined that an unexplained reference to an attorney as a “Super Lawyer” in an adver-

Tales of Thailand's legal processes

By Mark Andrews

(Part II)

The last issue of the Bar Rag had a few of my stories about legal life in Thailand. The stories continue:

The preservation of the record story

At hearings the testimony of the witness is preserved, but not verbatim. There is no tape recording and no court stenographer. Instead, the judge speaks into a recording device and summarizes the testimony as the witness is testifying. The attorneys, who ask their questions while standing next to the witness podium, pause every so often to allow the judge to catch up with the summary.

Every few minutes the judge hands a tape to the in-court clerk. The clerk sits at a computer and prepares a written summary of the testimony during the hearing. At the close of the hearing, the two sides are asked to approve the document as an accurate summary.

The courtroom decorum story

Courtroom visitors are not allowed to fold their arms or cross their legs. Or take notes, either. I had to finish my notes outside the courtroom.

The VIP in the courtroom story

As in the US, the day's calendar is posted outside the courtroom. In the Thai courthouse a wooden frame holds the calendar, and it has a photograph. The photo does not show the judge. The photo shows the clerk.

The haircut story

This one is personal. Getting a haircut required some preparation. One of BABSEA's volunteer coordinators wrote instructions to the barber in



The Thai Courts post a daily calendar, but interestingly it is the clerk's photo, not the judge's.

Thai. I also had a picture of myself that was taken just after a haircut. I took these with me to the barbershop.

The barber, a young woman, spoke no English and I spoke no Thai that would be helpful. So I handed her the instructions and the picture. I wish someone had been filming the event. The barber kept reading the instructions, then looking at me, then reading the instructions, then looking at me.

She motioned to a chair, a regular barber's chair, and I sat down. She unbuttoned the top button of my shirt, placed a towel around my neck and then a white smock over that. The chair did not raise and lower, so I had to slide forward in the chair so she could reach.

The main event was the shave. She removed the white smock that I wore while she cut my hair then replaced the smock with another one.

For the shave she lowered the back of the chair

so that I laid flat. The shave was a model of precision. The barber went over the same areas several times, to get every small hair that should be gone and to trim each one that should be shorter.

She put shaving cream on my neck and cheeks. She used a small straight razor. I think that it was 35 years since I last had a barber who used a straight razor.

The barber finished with my neck and cheeks. She dusted my face with powder and shaved my forehead, temples, and the bridge of my nose. She shaved my earlobes and the edges of the ears. She used small scissors to shave my mustache precisely. She cut my nose hairs.

To finally clean all the little cut hairs off my face, she placed a warm wet washcloth on my face and lifted it off. Then she raised the chair again.

The haircut finished with a massage. She massaged my back below my neck, my shoulders, and upper arms. Then she placed her hands together and pounded across my upper back.

The haircut took about 45 minutes. The total cost was about US\$3.75.

Haircuts like this are something I will miss about Thailand.

The tuk-tuk story

Tuk-tuk are small three-wheeled vehicles, about the size of a golf cart, that shuttle people around Chiang Mai. I used my Thai as often as I could, and the tuk-tuks were another chance to do so. On November 21, I wrote home to my family: "This afternoon I took a red truck to Central market, which is the local mall, and took a tuk-tuk all the way back to the house, giving instructions only in Thai. Life's victories!"

Want to tell your own stories? Again, here is the URL for the International Senior Lawyers Project: www.islp.org

NEWS FROM THE BAR

Ethics Opinions adopted on fees, advertising

Continued from page 22

tisement is "potentially misleading and confusing to consumers." The Connecticut Committee recognized that the SUPER LAWYER selection process is "subjective and arbitrary," but decided that a truthful reference to a ranking by SUPER LAWYERS is not unethical if sufficient information is provided to put the reference in context.⁵ To alleviate potential confusion, the Connecticut Committee requires that the reference to "Super Lawyer" must be explained. As an example, the Connecticut Committee indicated that announcing that a lawyer has been designated a Connecticut Super Lawyer in CONNECTICUT SUPER LAWYERS 2007 magazine is allowed, but stating simply that a lawyer is a Super Lawyer is not allowed.

This Committee agrees with and adopts the approach of the Connecticut Statewide Grievance Committee. A lawyer does not act unethically in advertising his or her selection or ranking in a commercial publication, including SUPER LAWYERS and BEST LAWYERS OF AMERICA, so long as the complete context is provided -- meaning that the lawyer's advertising must state accurately the publication by which he or she was ranked, the year of the ranking, and the field of the ranking, if one was specified. Sample acceptable statements are set forth above.

Any advertising must also comply

with Alaska Professional Conduct Rule 7.2. Under Rule 7.2, a lawyer may not provide compensation to a person for recommending the lawyer's services, though a lawyer may pay the reasonable cost of advertising. The Comment to Rule 7.2 explains that a lawyer may not pay another person to channel work to him or her. But the rules do not prohibit third persons from promoting or recommending a particular lawyer's services.

A lawyer's mentioning his or her ranking or selection by a professional publication does not violate Rule 7.2, so long as the lawyer did not pay to be selected. SUPER LAWYERS, BEST LAWYERS IN AMERICA, CHAMBERS, and MARTINDALE-HUBBELL do not charge a lawyer to be ranked. They may charge a lawyer to be listed or to advertise in the publication, and paying for such a listing or advertisement is not prohibited.

Finally, any advertising must comply with Rule 7.4, which, with narrow exceptions, prohibits a lawyer from stating or implying that the lawyer is a "specialist" or "certified." Including a professional ranking, such as described above, in a lawyer's advertising materials is not in itself a violation of Rule 7.4.

Approved by the Alaska Bar Association Ethics Committee on April 2, 2009.

Adopted by the Board of Governors on May 5, 2009.

Footnotes

¹N.J. Ethics Op. 39. *Advertisements Touting Designation as "Super Lawyer" or "Best Lawyers in America."* July 24, 2006.

²*In re Opinion 39 of the Committee on Attorney Advertising*, 197 N.J. 66, 961 A.2d 722 (2008).

³N.Y. Comp. Codes & Regs. Tit. 22 Sec. 1200.6.

⁴*Alexander v. Cahill*, 2007 WL 2120024 (N.D.N.Y. July 20, 2007).

⁵C.T. Advisory Opinion #07-00188-A. *Print Media Advertising Super Lawyers*. October 4, 2007.

Proposed Bylaws revision: Deleting board action without assembling

The Board of Governors invites member comments concerning the following proposed amendment to the Alaska Bar Association Bylaws. Additions have underscores while deletions have strikethroughs.

Article IV, Section 10

Article IV, Section 10 permits the president, or the secretary at the direction of the president, to submit any matter to the Board for "action, decision, approval, or authorization, either by mail, telegraph, or simultaneous communication by telephone." However, this provision conflicts with the requirement in AS 44.62.310(a) that all meetings of a governmental body of a public entity are open to the public with specified exceptions and that the vote on matters shall be conducted in a manner in which the public may know the vote of the persons voting unless a voice vote is authorized. This bylaw also conflicts with the state policy regarding meet-

ings in AS 44.62.312. Since the Board is subject to both provisions under AS 08.08.075, the Board proposes to delete this provision.

ARTICLE IV. BOARD OF GOVERNORS

Section 10. Action of Board Without Assembling

~~The President, or Secretary by direction of the President, may submit any matter to the Board for action, decision, approval, or authorization, either by mail, telegraph, or simultaneous communication by telephone. The vote on any propositions so submitted may be either by mail, telegraph, or telephone, and the results shall be filed with the minutes of the Board meetings. Any proposition receiving a majority of affirmative votes in such matters shall be considered adopted by the Board the same as if the action were taken at a meeting of the Board.~~

Different strokes for different folks

By William Satterberg

When I was young, golf was a game for grumpy old men in plaid pants. Traditionally, such duffers would walk around on lawns, sporting funny hats with cotton tufts, and wearing effeminate, tasseled saddle shoes. Dad never said much about golf. Dad was a contractor. A man's man. Golf was reserved for bankers, like my uncle, and my wife's father. For Dad, real men were supposed to sit on the couch on Sunday afternoons, drinking beer and watching football while the "wimmen" fixed dinner and did the dishes. Golf was a game for sissies. I agreed. Dad's approach to life was much more fun, even if it did land us both in the family doghouse regularly without dinner.

I eschewed golf for several years. When I first met my wife, Brenda, as a right of passage, my future father-in-law, Ed, invited me to play golf with him. Maybe it was the way I shook his hand. I resolved myself to use a tighter grip in the future. Still, not wanting to disappoint Ed, I mustered up my deepest volume and squeaked my consent to a game while massaging my aching fingers. For a sissy, Brenda's old man still had quite a

handshake.

Our first and only game was a disaster. By the second hole, it was clear that Brenda's father was seriously considering recommending to Brenda that she quickly find somebody else. I was miserable at hitting the ball. So bad, in fact, that we eventually had to return to the country club to buy more balls just to complete the nine-hole course. My constant whining and temper tantrums probably didn't do much to impress Brenda's father, either, although he did concede that I could throw a club farther than most beginners.

Years later, another, younger friend asked me to play golf. Given this challenge from someone who I might be able to beat, I began to evaluate the game more seriously. I found that golf gave me an excuse to escape from work. Local Fairbanks attorneys such as Bob Noreen, Terry Hall, Al Vacura, Jason Gazewood and even the voluptuous



"The siren of golf began to beckon to me. Not only was hitting the balls fun, but I received a great degree of pleasure out of driving the little go-carts around the imaginary Nascar track, spinning out on the greens and sliding across wet grass."

Valerie Therrien had fully succumbed to the addiction. Terry Hall even had a miniature golf course built in his back yard.

The siren of golf began to beckon to me. Not only was hitting the balls fun, but I received a great degree of pleasure out of driving the little go-carts around the imaginary Nascar track, spinning out on the greens and sliding across wet grass. Although my play was abysmal, the collateral benefits were a blast. I especially liked the bit about the beer cart that would regularly circle around, and which made losing much less embarrassing or even memorable at times. It was not

until I moved to Saipan, however, that I began to take up the game in earnest.

In Saipan, I learned many things about golf. The first thing is that one should always keep their head down. This is not in order to be able to better strike the ball. Rather, ducking

one's head helps to hide one's identity. When the player's head is down, many people are unable to make eye contact and therefore cannot make a positive identification as to whom smacked them in the head with the unannounced projectile. In fact, this was the first lesson that my father-in-law attempted to teach me when he initially regained consciousness. It took me a long time to appreciate that most basic lesson, having never played Little League.

I began studying videos about the game. Three particularly educational movies turned out to be the two *Caddyshack* series with its lessons by Chevy Chase in Zen, and *Happy Gilmore*, which had some very instructional fight scenes with Adam Sandler which I would later try to use without success.

Like most golfers, I had a profound desire to want to look like Arnold Palmer or Tiger Woods. The silly clothes helped, but were not enough. I also needed to do "the walk" as well. How one looked after "the swing" was crucial. At first, I would swing the club wildly at the ball, immediately raising my head, to see where the ball went, just like the pros. Unable to see the ball arching to its distant target in flight, I eventually would look down to discover it lying uninjured at my feet. The way I saw it, there was no credible explanation for such a result. After all, I had swung with all of my might. Simple high school physics dictated that the ball would not have moved if I had not hit it. A frustrated scientist at heart, I soon concluded that a sinister celestial boomerang effect was at work. Once I began to concentrate on the ball, however, my long drives quickly improved. Soon, they were regularly over six feet. My distance shots under control, I next learned about certain other rules, like having to hit the ball "beyond the women's tee". The consequences for failing to do so could be embarrassing.

I learned that it is not wise to gamble while playing golf. Gambling is an expensive venture, especially given my abilities. I also learned that laughing at the other person's game was definitely a challenge to fight. Fortunately, the *Happy Gilmore* instructional film had prepared me for that eventuality. Later, I was taught that talking while the opponent was trying to putt is also rude. As a lawyer, I accepted that extemporaneous talking was going to take a lot longer to control, but I vowed to give it a try. It was a toss up. In the end, I decided not to change all of my allegedly bad habits at once, but to concentrate on the really bad ones first. That list was long enough. Still, I was beginning to learn some rudimentary etiquette.

It was also in Saipan that I eventually hooked up with what was to be my regular golfing buddy, Dick Cody. Dick and I were evenly matched. Simply stated, Dick, like myself, was terrible. Typical males, both of us worried about our image. Fortunately, the nice thing about Saipan is that there are several golf courses located on the island. As such, we were usually able to play other courses while tempers cooled down, memories faded and grass regenerated.

Golf is fun, but golf is expensive. Unlike bowling, a favorite sport for people who live in North Pole,

Continued on page 25

THANKS!

From Alaska Legal Services Corporation, Alaska Pro Bono Program, Alaska Network on Domestic Violence and Sexual Assault, Alaska Immigration Justice Project, Family Law Self-Help Center, and The Disability Law Center to our 2008 pro bono volunteers.

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Since 1896

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Different strokes

Continued from page 24

Alaska, golf is reserved usually for the rich, which is why it took me so long to become attracted to the same. In Saipan, green fees for foreigners substantially exceed \$300.00 in many cases. "Locals," like myself, on the other hand, enjoy green fees in the range of \$30.00 and sometimes even less, if one can sneak onto the course without being seen. Saipan green fees ordinarily include the rental of a sometimes supercharged golf cart, the use of loaner golf clubs, and the ability to be able to avoid tipping the caddies. This is because, when locals play, tipping is not expected. Caddies realize locals do not have money, with such funds only being reserved for the rich Orientals. Then again, caddies are not that helpful to the locals, either.

The first time that Dick and I played a full game of golf without quitting midway was when two longtime Alaskan friends, Bob and Elaine Nisson, visited Saipan. As soon as they arrived, Elaine challenged the men to a "friendly" game of golf. From the beginning, I suspected a trap.

As a top sales associate for Northern Air Cargo, Elaine was an avid and accomplished golfer. After all, for a salesperson, work is optional. Golf, on the other hand, is mandatory. Conversely, Bob, like Dick and myself, was abysmal. Still, I had a desire to be a good host. Wanting to impress Bob and Elaine with the quality of the tropical golf courses, I took the friends to a well-known country club known as Lau Lau. Lau Lau boasts two eighteen hole golf courses. The ocean course threads its way precariously through the hills and along the rugged cliffs of the Pacific Ocean. The other, inland course is less threatening, but is still formidable by Alaskan standards.

Indomitable Alaskans, with an image to protect, we chose the ocean course. Besides, having a woman playing along with three men, we all understandably wanted to show off for Elaine. It was time to teach her to leave the guy's games to the guys. If Elaine wanted to do Alaskan women things, I figured she could always run the Iditarod. Elaine, in retrospect, probably viewed it more as a fair fight, based upon the final tally.

It would be an understatement to say that the game was interesting. Despite the adjacent jungle and the endless Pacific Ocean water trap, we had only lost a combined total of thirty-five balls. I learned, however, that there was an additional factor to playing near the jungle. The jungle was dense and forbidding. Rather than risking the undergrowth, many experienced players abandoned far more balls to the vegetation than ourselves. For us, this was a benefit. By the game's end, we were actually able to cut our net losses to only ten balls. This was because we collectively recovered twenty other balls along the course. The tangible rewards of golf balls gained at least lessened the massive blow to our collective male egos when we matched up our three scorecards against Elaine's.

Shortly thereafter, Dick and I decided that the gauge of a successful golf game would not be who had the lowest, or highest score. That stuff was for women. Instead, the criteria would be who garnered the most lost

golf balls. We entered into a solemn pact. Thenceforth, we would not keep traditional score. Rather, we would search for lost golf balls whenever we were not being pushed along by other golfers. A successful day would be measured by the size of our ball bags.

The first time that I went on a dedicated golf ball hunt was when I realized just how treacherous golfing could be. As usual, my drive from the sixth tee sailed into the jungle as if drawn by a magnet. Forgetting the game, I ventured into the foliage in search of my one ball. Finding other's balls was one thing. Losing your own balls was far worse. After crawling through several feet of thick brush and debris, I located not only my own ball, but over ten others. They were neatly gathered in a large circle. In fact, I was amazed at just how neatly the balls were arranged. I figured that it must have had something to do with continental drift or an island religious rite. Probably the latter.

As I started picking up the little lost orbs, I heard a loud, menacing hiss. A large reptile, known locally as a monitor lizard, was all buffed up, perched on a rise approximately fifteen feet away from me. The bristling creature was obviously quite angry. I was apparently invading its nest. I realized quickly that trying to reason with the animal was futile. My attorney skills were being wasted. Quick, courageous, action was called for. I bravely did what came naturally, without a second thought. Protecting my own precious balls, I ran full speed out of the jungle, chased by an anti-social, irate lizard who made it quite clear that my entry into its domain was never to be repeated. At the time, I did not realize that this lizard had probably gone beyond its egg bearing years, and had adopted logo'd golf balls as its surrogate young. What I did realize, however, was that I was never ever going to venture off of the sixth hole at Lau Lau again. Or any other Lau Lau hole, for that matter. That was to be the Year of the Lizard. In the end, the lizard was able to keep its horde of synthetic eggs that day. Try as I could to coax Dick into retrieving the balls, he would have nothing of it — Sissy.

The next year found Dick and myself playing golf at a much more intimidating course known as Kingfisher. Kingfisher is on the windward side of Saipan. Contrary to Lau Lau, which was in a gentle cove surrounded by picturesque palm trees, Kingfisher overlooked the ever present whitecaps of the Pacific Ocean. On a windy day, Kingfisher was a course where one could hit a ball into the wind, only to find it sailing backwards to land well behind the player. Because of such obstacles, Dick and I knew that very few local people ever wanted to play Kingfisher. As such, our reputations were more secure. By island rumor, Kingfisher was the most challenging course. To attest to its difficulty, it boasted both expert men's and women's tees, as well as tees for ordinary players, even if our usual novice tees were noticeably absent. Still, Kingfisher beckoned.

One particular attribute of Kingfisher was that the golf carts were no joking matter. The carts boasted considerably stronger horsepower than those on competing courses, and could even do burnouts on occasion.

Moreover, the Kingfisher track was far more formidable, with several "S" turns and chicanes interspersed with high-speed straightaways which would make the design engineers of the Monaco Grand Prix jealous. We quickly agreed that Kingfisher would become our regular venue, even though we had yet to play the course.

During our first round at Kingfisher, two things happened. The first was on the fourteenth hole. Not that we had already played the other thirteen holes. Rather, the protective course marshal had made us start our game that morning on the tenth hole, hoping we would finish by nightfall, in order to avoid mobilizing a search party.

As I was driving our cart down a steep hill with Dick complacently riding shotgun, I became enthralled by a breathtaking view of the Pacific, just like Dick, who was obviously holding his breath for some reason. Distracted, I allegedly missed the large warning sign that said the cart's path was slippery when wet. Besides, we had only had a sprinkling of rain that day. In Saipan, "wet" means "monsoon". In my mind, there was little to worry about. Yet, for some reason, the cart did not agree. In seconds, we were spinning tight circles down the increasingly steeper cart path. Personally, I thought it was fun. Perhaps because of his advanced age, Dick viewed life differently. Throwing bravado to the wind, Dick began looking frantically for a place to leap from the cart. In retrospect, I suspect that my maniacal laughter

did not help, either. I yelled to Dick, between my whoops of glee that leaping from the cart would be suicidal. With any luck, he would land in the Pacific Ocean and spoil the game. Fortunately, Dick reconsidered, and we both rode the cart to a stop. Over my objections, the sissy, Dick, insisted that he would drive for the rest of the day. Gasping for air as I pried Dick's sixty-nine year old meaty fingers from my throat, I told him that I would not do it again. The event reminded me of the fight scene between Adam Sandler and Bob Barker in *Happy Gilmore*. The results were similar. Despite my repeated promises, Dick would have nothing of it. In the end, valuing my life, I graciously conceded the issue. Dick could try to kill us next time. The game continued.

The second event was more personally distressing. Three holes later, Dick found an attractive logo golf ball. It had the unique name of "Saipan" emblazoned brightly upon it. Saddened by my earlier loss of driving privileges, I immediately took a liking to this ball. Dick gave it to me and, as expected, it worked to stop my crying. The ball had a captivating design. It immediately became my course security blanket. Because Dick had given the ball to me, I played the ball for a couple of other holes to show my respect for him. Eventually, the ball landed in a shallow pond. Tearstruck again by the loss of what had become my most recent favorite ball, I swore to recover it from its watery grave. The pain

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Lawyer's Assistance Committee offers free Substance Abuse Help

We will

- Provide advice and support;
- Discuss treatment options, if appropriate; and
- Protect the confidentiality of your communications.

In fact, you need not even identify yourself when you call. Contact any member of the Lawyer's Assistance Committee for confidential, one-on-one help with any substance use or abuse problem. We will not identify the caller, or the person about whom the caller has concerns, to the Bar Association, or anyone else.

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Different strokes

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was just too great. Moreover, outside temptation existed. I could easily see the ball approximately six feet from the edge of the water. Several others were also nestled nearby in the silt. Given the gentle slope of the bed of the pond, I figured that it would be easy for me to stretch out and shag the ball with my short putter. Thus began my quest.

As I extended farther and farther into the pond, I noted that Dick was not providing any assistance. In fact, Dick was trying to entice me out of my efforts, claiming that I was going to slip into the stagnant swamp. Clearly, Dick was just jealous that I would soon have a bigger ball bag than himself. As I began to respond in kind to Dick's distracting catcalls, the cleats on my shoes suddenly lost traction and shot out across the porcelain tile bottom of the pond. There was no time to react. Before I could yell for help, I was immersed in the green, slimy water. When I surfaced, Dick was in hysterics. As suspected, Dick provided little in the way of assistance, although he later did offer me a dirty golf towel as a token modesty blanket.

The damage was done. Rather than waste the opportunity, I waded around the entire pond and gathered all the balls that I could find. I collected in excess of twenty. In trade, I was thoroughly soaked and dripping of pondscum. Fortunately, there were only a few golfers playing that day. That was good, since I had to doff all of my clothing, with the exception of my shorts. I next arranged my waterlogged attire on top of the golf cart to dry in the tropical sun. For the remainder of the day, I played the course in such an unclothed state. Eventually, by the time that we returned to the clubhouse, I was once again able to be dressed. Still it was obvious to all caddies that I had taken a dip in the local water trap. To add insult to injury, the caddies' direct joking comments to me were less than gentle. Later, however, it was rumored around the island that the "Gringo from Alaska" was actually a rather good swimmer, despite being a terrible golfer. The way I saw it, no tips today! Then, again, the caddies already knew that from our past island reputation, which maybe explained their obvious lack of respect. The historic bamboo telegraph was alive and well on Saipan.

During my Saipan vacation the following year, Dick and I were more careful. At first, we played gentler courses and stayed out of the jungle at Lau Lau. Kingfisher could wait. In addition, to aid in ball recovery that year, Brenda had wisely given me a toy that Christmas designed to retrieve sunken golf balls. The device was a pole with a basket on the end that extended my reach to eighteen feet in length. Besides cutting my laundry bills, the investment had substantially increased our growing collection of golf balls. In fact, Dick and I were averaging well over thirty balls per game. We were justifiably proud of ourselves. The caddies, to the contrary, were becoming increasingly upset. We were now cutting into their side earnings from used golf ball sales to the Oriental tourists.

I was wiser, as well. Experience is a great teacher. No more lizards. No more ponds. I vowed to play it safe.

And, so began my first game of the new season at Kingfisher.

Once again, as Dick and I entered the back nine of the now infamous course at Kingfisher, I was saddened to see one of my balls go over a small bluff. Not wanting to lose this ball, and recognizing, furthermore, that other players had probably also lost their own balls in the same fashion, I approached where I had last seen my ball dribble over the edge. As expected, I was rewarded for my efforts. At the bottom of a rock wall, I saw over thirty balls. Contrary to my experiences at Lau Lau, the balls were not neatly arranged. This was a plus, signifying that angry, man-eating lizards were not a factor. The ground also was dry. This was also a plus. I had no near-drowning incidents to fear. From all appearances, I was soon to be the lost ball king that day. So much for Dick's arrogance in previous years when he regularly refused to save me. Although I had my ball retrieving tool, necessity and greed prevailed. Because we had a squad of tourist golfers closing in on us, it would take too much time to gather all of the balls on a one by one basis. Logically, the better approach was simply to climb down the small rock wall and scoop up the balls quickly by hand. After all, it was only six to seven feet down the wall. It looked like an easy climb back up, even for a chubby Alaskan Gringo guy in shorts.

Admittedly, I briefly wondered why so many balls had come to rest unclaimed in that location. But, then again, the rich Oriental golfers were always known to be far too proud to wander off the course in search of lost balls, so I chalked it up to that explanation. Little did I know that there was another reason for the inviting cache.

I first climbed down the wall approximately three feet, picking my footholds carefully. I then dropped the remainder of the distance to the ground. What was good was that my landing was soft. What was bad was that it was directly into a large, hidden wasp's nest. I quickly learned that Saipan wasps have a reputation for being far less hospitable than their American counterparts. Once again, logic and seeking the hand of friendship would not work. Dick kept his distance. I was on my own. Left to my own devices, I amazed both Dick myself with my ability to scamper up the imposing rock wall. I did so in milliseconds, if not faster. Then again, I had several thousand willing incentives to assist me in my panic-driven escape up the impassible wall. The first thing I saw when I cleared the ledge was Dick standing several yards away, laughing uncontrollably. The sissy! But, I was not unscathed. My back looked like a bad case of acne when I showed it to Brenda later that evening, adorned with over twenty-five strikes.

Not wanting to be defeated by the wasps, despite the fact that Dick was claiming to be concerned that I might be risking anaphylactic shock, once the swarm disbursed, I seized my ball grabber, and grabbed, and grabbed again. The way I saw it, Dick's concern had nothing to do with shock. Instead, he wanted to get his hands on my balls. In the end, I recovered gobs of lost balls, which made the personal sacrifice worthwhile.

When we entered the clubhouse later that afternoon, I told the cad-

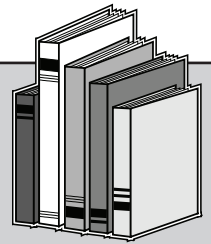
dies that I had found one location where there were lots of balls over the edge of a small cliff. I suggested they might want to fetch some balls in their spare time to augment their diminishing sales. Secretly, I figured I would retaliate for their unfeeling sarcasm the previous year over my unscheduled swim. Additionally, it would help to control the indigent, antisocial wasp population. There were no takers. Instead, the caddies laughed openly at me from their shaded hammocks. One said, "Hey, man, you're crazy! Nobody goes down there because of the wasps!" In a moment of weakness, I confessed that I had found the wasps in an up close and personal way. Rather than sympathizing, one callous caddy coldly commented that, when he thought back about it, I looked very much like the "fat American dude" who had fallen up to his neck into the slime-covered pond the previous year trying to save a cheap golf ball. The way I saw things, no tips that day, either!

I have now been golfing on Saipan for four years. During that time, I have yet to keep game scores. First, it still would be too embarrassing. Secondly,

it would detract from the intellectual quality of the game. Instead, I plan to stick to the ball counting method for the foreseeable future. Despite criticisms from purists, I am having a ball keeping score just the way that I do. After all, golf is a personal game and I intend to keep it that way. In addition, to date, both Dick and I have added well over one hundred balls to our arsenal. Even though we first tend to lose much of our stash as we blast countless volleys into the ocean on the seaward holes of the Saipan golf courses, we usually more than make up for our initial losses by game's end.

Finally, the scorekeeping strategy is far more profitable, the way I see things. In fact, if I ever become proficient again at scuba diving, I expect to make a quick fortune collecting submerged balls off of the Saipan reefs and ocean floor, as long as some barren, territorial sea turtle does not decide to compete for them. But, if such an attack ever occurs, at least I have a good local recipe for turtle soup. Monitor lizard is a bit too chewy for me, even if it does taste like chicken.

From the Library



Library Tip:

Need help with a tricky research program? Looking for a secret weapon? Ask a librarian!

Sometimes people ask us about our jobs – What exactly does a librarian do? Did you take classes in the Dewey Decimal System? What does it mean to be a librarian?

Well, some of us did learn about the dewey decimal system in library school, but we learned a great deal more than that. Librarians have master's degrees in library and information science, and many of us have additional degrees in other areas. Two of us at the Alaska State Court Law Library have a J.D. as well as a M.L.I.S.

Librarians are highly skilled researchers, and we're here to help you find the resources you need. Sometimes we can even help you find material you didn't know you needed in the first place. We perform legislative history and devise sophisticated search queries everyday, and you can benefit from our daily practice.

Librarians are also natural teachers. We like to explain what we're doing, and why. We're happy to offer impromptu tutorials on print or electronic resources, and we love showing people how legal materials work. So if you've been dabbling in the digests, or drowning in the Senate Journal, and would like more guidance on how to get the most out of your research, come in and ask us! We will gladly explain the ins and outs of legal research and the resources available here in the law library.

Law Library News:

- The new Palmer Law Library is open and ready for business! Check out the library's new location in the recently opened addition to the Palmer Courthouse. The library has Alaska primary law, the USCA, some Restatement volumes, and a variety of treatises. The public access computer offers access to Westlaw as well as court system web pages.

- The Kenai public access computer has moved! Thanks go to the Kenai Public Library for housing our computer during court house construction. Now the computer is back in the Kenai courthouse, in the soon-to-be new Kenai Law Library. Ask at the clerk's office for directions and a key. The Kenai computer includes Westlaw and HeinOnline.



(Right) The Law Library was at the Bar Convention. Marinke Van Gelder had a great time meeting bar members in Juneau. Thank you to everyone who stopped by our table!

ECLECTICBLUES

Parenting across Europe is no teetotaling matter

By Dan Branch

She delivered it as a simple declaratory statement: "I am going to drink wine and beer while we are in Europe." After living with her for over 19 years I knew what would follow if I said no. My daughter had marshaled her arguments to defend this line drawn in the sand. Even if I tried to hold tough the best I could hope for is stipulation that she pay for her own drinks.

She has just returned from Los Angeles after completing her sophomore year at college. In a day we would fly to Venice for a family vacation. While others see my daughter as the young adult she is, I still see the three year old who loved to dance with an umbrella in the Ketchikan rain. I had to challenge her.

Out came her opening argument. "The drinking age is 18 in Europe and I am 19."

I planned to counter by pointing out that the wise legislators in Alaska and California had determined that only those who had reached the age of 21 were mature enough to safely

consume alcohol. Maybe kids in Europe mature quicker--- some form of the EU magic that allows them to drink safely and speak more than one language. Before I could speak she set out a stronger argument.

"Dad, wouldn't you rather have me drink responsibly in your presence than get drunk at a party?" At first I couldn't see the connection. Why couldn't she do both? Then I saw the issue was trust -- something I have been struggling with since she aged out of curfew restrictions.

During weekend evenings in her senior year of high school she would skip out the door of our house on Chicken Ridge after announcing vague plans to hang out at a friend's house in the Valley or down Thane Road, leaving me with a simple commitment that she would make good choices. I had to trust that she would and trust that the friends she selected would slow down when the



"The complexity of parental challenges seems to have grown with age."

roads were icy and offer my daughter soft drinks rather than liquor.

Anna and her Juneau friends didn't abuse my trust, which made it easier for my wife and I to say good-bye to her at her LA dorm room just before she started her first year of college. Still, I did not want to be seen as condoning her drinking by buying her wine at every Italian sidewalk cafe we stopped at to feed.

Coming from an Irish tradition where guilt is seen as a useful tool for child control, I harbored the fantasy that the image of my frowning contenance would appear to my daughter each time she was offered a beer. During our discussion about drinking in Europe I reminded myself that my daughter had not been schooled by nuns who would tell her to think of the pain she caused her parents every time she sinned. The frowning contenance bit wouldn't work on her. After that I was left to negotiate over

the quantity and type of alcohol she could consume on the trip.

My daughter's efforts first bore fruit on the Campo San Barnaba in Venice. On that canal-side square where ancient Venetian street gangs once battled, she ordered a small glass of Italian beer. It was hot that day and the sun warmed the face of the Chiesa di Barnaba. I ordered a beer as well and we talked like adults about the strengths and weaknesses of the brew. The food came and the world continued on.

The scene was repeated throughout the rest of our trip. Anna had her wine or beer every night. I began to look forward to each chance she took to swirl a glass of wine or take the first sip of a beer.

My Aunt Anna, my daughter's namesake, once told me that parents never stop worrying about their kids, even when they have children of their own. The complexity of parental challenges seems to have grown with age. My toughest challenges may be yet to come as I learn to parent an adult child.

Anchorage Children's Court Master receives Judge of the Year award

The National Association of Court-Appointed Special Advocates for Children [CASA] has honored Anchorage Children's Court Master William Hitchcock with its 2009 Judge of the Year Award. The award recognizes excellence in judicial service in cases involving abused and neglected children. Master Hitchcock has been a judicial officer with the Alaska Court System for over thirty years, and has presided over Anchorage children's court since 1985. In 1987, he was instrumental in founding Alaska's first CASA program, which provides trained volunteer advocates to work with abused and neglected children during court cases affecting their welfare. He has fostered expansion of the CASA program statewide and is active in a variety of other children's justice and juvenile justice initiatives. Master Hitchcock has received many awards over the years for his dedication to the administration of justice in children's cases, including the 2005 Commissioner's Award for Alaska from the federal Administration on Children, Youth and Families, and the 2002 Community Outreach Award from the Alaska Supreme Court. Master Hitchcock is the first Alaskan to receive the National CASA Judge of the Year award, which was presented on April 25, 2009, during the 28th Annual National CASA Conference in Denver. In recognition of the award, the Anchorage CASA program paid special tribute to Master Hitchcock during its volunteer reunion April 22 at the BP Energy Center.



Court Master William Hitchcock receives the 2009 National CASA Judge of the Year Award during the national convention April 26 in Denver. With him is National CASA CEO Michael Piraino. Photo by Michael Schwieter



John Tiemessen, President-Elect of the Western States Bar Conference with President Dan O'Brien and President-Elect Eduardo Rodriguez, on North Shore of Hawaii in March.

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274-2023

Liars and Lawyers -- Part One

By Peter Aschenbrenner

Lights, camera, cue action.
I enjoy a view of the Pacific Ocean.

The judge has ordered a recess in the proceedings. The Posse is on trial. They lie, cheat and steal.

The 'victims' of their peculating and purloining are hedge fund managers and other Ponzi schemers.

Surely you've heard of the female vigilantes whose patron deity is Posse Galore?

My seatmate pulls a volume from the rack that dispenses reading matter.

There are no pictures or conversations.

I like dialogue in my books. "Children know how to play the game," he remarks.

There's no one else around. I suppose he's addressing me.

"Still, that well-known 'Liar's Paradox' baffles me."

"This sentence is blue," I mind his cue. "One example."

"This sentence is silly," he offers another. "This statement is a lie," he continues. "Can a sentence be true and false at the same time?" he asks.

This fellow is dressed a bit on the weird side of southern California.

Now that's bizarre.

To stay awake, I pull a volume of caselaw – or was it codelaw? – from the rack.

'And just what is the use of a book,' I think to myself, 'without pictures or conversations?'

The hot day made me feel very sleepy and stupid, and I wondered whether the pleasure of making a daisy-chain would be worth the trouble of getting up and picking the daisies, when suddenly –

I found myself at lunch.

'This can't be a dream,' I said to myself. 'How often do you get lunch in a dream?'

We enjoy the best seats in the place, on the terrace of Santa Barbara's most famous seaside restaurant

"Paul, if I may," my companion offers his hand. "I suppose I could have introduced myself," he waves, "back in the basilica of justice we left behind us."

"You're alive," I greet him. "It surprises me too," he gestures at the seascape. "But it's been worth it, so far."

"The voyager's reward," I suggest, "is the most beautiful weather in the world. And it is," I add, "the same latitude as the island of Crete."

"I invited someone to join us," Paul says. "If that's okay."

"I'll pick up the check," I laugh, "if it's Augustine."

"It's Titus," he replies. "As in 'the Epistle to?'" I ask. "I am impressed."

"I owe him one," Paul concedes.

"But before we consider," I signal our waiter, "the merits of the Epistle – featuring the World's Most Embarrassing Logical Blunder in scripture – let's get something to drink."

We order up and sip our iced teas.

"Alcohol at lunch," I 'ching ching' my tablemates, "and long preambles make me sleepy."

"I'll drink to that," Paul winks at me.

"There seems to be," Titus takes the conversational lead, "something about talking about talking."

"This statement is a lie," I give a 'for instance,' "is a sentence that seems to be talking about itself."

"Is this about lawyers?" Paul asks. "Lawyers are always talking about talking."

"It's in their nature," I mumble.

"Liars can't tell the truth," Titus joins in. "They have to lie."

"It's in their nature," Paul winks at me.

Titus and Paul wave Augustine into the nearest seat.

"Augustine," I offer my hand. "The author of *The Confessions*. Are there others here?" I ask.

"Everybody's who's anybody."

Augustine takes his ice tea from the waiter.

"I live down by the beach. It's a gated community."

"The City of God?" Titus laughs at his own joke.

"It sure beats whatever else I might be doing," Augustine shrugs. "So what's up?"

"Against the Academicians," I signal my interest in the topic.

"Augustine's maiden essay," Titus points out. "He called Paul's gaffe a 'flimsy trick.'"

"Et tu, Augustine?" Paul recoils in mock dismay.

"I have entertained," Paul studies his nails, "hopes of bringing Augustine over to my side."

"You had it right all along?" Titus guffaws. "Lotsa luck with that one, partner."

"And with him, perhaps I could bring the Academy along," Paul adds.

"A tall order," I turn to Augustine. "They've pretty much made a meal of Paul for two thousand years."

"Buy us all lunch," Augustine suggests, waving at an ancient figure and her companion, who now enter our ristorante, "and the rest is history."

"A long time ago," Paul begins, "the Mediterranean was the world's ocean. And there was Crete. Shimmering beaches. Knossos's red and blue columns."

"The grave of Nikos Kazantzakis," Augustine adds. "Author of *Zorba The Greek*."

"I knew that," I pull a face. "I wanted you to know that I knew it," Augustine sniffs.

"People who lived there were reputed to have problems telling the truth," Paul goes on. "They were, in fact, reputed to be liars."

"Steady on, lad," Augustine counsels.

"For this cause left I thee in Crete," Paul quotes himself writing Titus, and turns Titus-ward to make this more clear – "that thou shouldst set in order the things that are wanting, and ordain elders in every city, as I had appointed thee."

"So far so good," I compliment Paul, "but the King James is a bit frumpy, don't you think?"

"Continue," Augustine signals our narrator of the Epistle to Titus.

"For a bishop must be blameless," Paul continues, "as the steward of God; not self-willed, not soon angry, not given to wine, no striker, not given to filthy lucre; But a lover of hospitality, a lover of good men, sober, just, holy, temperate; Holding fast the faithful word as he hath been taught, that he may be able by sound doctrine both to exhort and to convince the gainsayers."

"Chapter one," Augustine supplies the citation. "Verses five through nine."

"It was a bit of a muddle," Titus adds. "It certainly confused me. 'Tips on how to be a better bishop?' Or were you telling me what qualities to look for when I named bishops? *Episkopos* and *presbyteros* doing more or less the same jobs in the first century."

"I was training you," Paul throws up his hands. "Think of the epistle as a how-to. Training believers to talk to unbelievers."

"That clears everything up nicely," Titus laughs.

"They'll stop first at the bar," Augustine stays my gesture.

I have recognized Xantippe and Socrates.

"For a snort," Paul adds. "At eleven in the morning?" I ask.

"Tough crowd," Titus explains. "If you go to trial," Augustine reflects, and more to Paul than to me, "you should consider hiring Socrates as your expert witness. On dialectics."

"Paul's going to be on trial?" I ask.

"Let's say he's earned a retrial," Augustine explains.

"We can start at verse 10," Titus suggests.

"I admit it," Paul responds. "I was not obliged to discuss 'bad men' in general. I was speaking," he waves his hand, "in generalities. How would I rate a bishop's performance of his duties?"

"Ah blunder," Titus sighs. "Thy name is digression. Verse 10, I hasten to add."

"For there are many unruly and vain talkers and deceivers ... Whose mouths must be stopped, who subvert whole houses, teaching things which they ought not, for filthy lucre's sake."

"Verses 10-12," our maitre d' adds, and acknowledges my nod. "Antoninus Pius, servirla."

He clicks his heels.

"One of them" – Titus speaks up. "May I?" he asks Paul.

Paul has no choice but to chant the lines along with him.

"Even a prophet of their own, said, 'The Cretans are always liars, evil beasts, slow bellies.' This witness is true."

"Quoting a guy reputed to be a liar –"

But this interruption is itself interrupted.

"I'm Charlemagne," the recognizable hulk of a man offers his hand, "and here is the The Venerable –"

"Bede," his 'body man' explains. "It's my job to hold the mirror while he combs his magnificent and Frankish beard."

Before I can respond, Charlemagne is back 'on message.'

"Liars make," Charlemagne declares, "poor witnesses. In my humble opinion. And I'm a Holy Roman Emperor."

"Why would this help Titus, Paul?" The Venerable asks Paul. "Why would 'this witness is true' or more precisely 'all Cretans are liars,' overwhelm your prospective persuadee?"

"Verses 10-12," a new voice provides the citation. "A browbeater's delight!"

"Cyprian!" our crowd waves him over.

"That's my job," he explains. "I do citations."

Augustine pumps Cyprian's hand and insists 'next to me.'

"The Professor's buying lunch," Augustine explains, expanding my generosity.

"There's no law school in Alaska," I point out.

"I'll bet there's a story there," Cyprian prompts me.

"Chief Justice Rehnquist –" I launch into my favorite honorific.

"There you go again!" Titus slaps me on the shoulder.

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Evidence Cranium



Cranium Wizards (aka Judge Michael Thompson, Justice Dana Fabe, and Judge (Ret.) Larry Zervos) pose with the winning team of their session.



First District Presiding Judge Patricia Collins (left) tackled the hard work of planning chair and chief arbiter for the Evidence Cranium competition. Chief Justice Dana Fabe also waved the magic wand of approbation for the event. Teams of lawyers were challenged to ponder the Alaska Rules of Evidence and rule on hypothetical evidence scenarios. The manic event was organized by the Alaska Court System.



Funny hats and costumes are not required...but highly recommended if you aspire to be gold mesalists.



Retired Justice Alex Bryner gets into the Evidence Cranium spirit.



Gloating is allowed when your team wins.



Another winning Evidence Cranium team enjoys its medallions.



A dedicated Cranium team shows off their blue ribbon. Awards were given for team spirit, support for the team captain, and most innovative wrong answer.



25 years of Bar Membership



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James Babb



Christian Bataille



Jeri Bidinger



Shelley Biegel



F. Christopher Bockmon



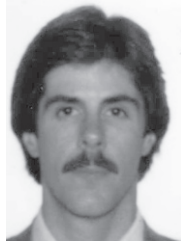
Julia Bockmon



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Cory Borgeson



Joseph Bottini



Debra Braga



Peter Brautigam



Robin Brenna



Carol Brenckle



Glenn Brown



William Budigan



Melissa Burke-Cain



James Burling



Wallace Burnett



Kevin Callahan



Steven Carney



David Carter



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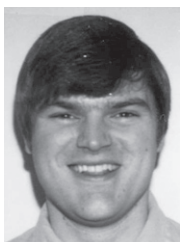
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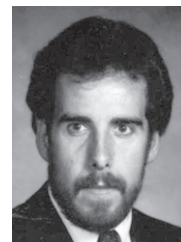
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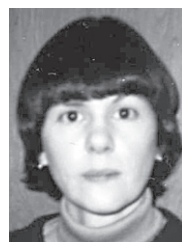
Eric A. Kueffner



Suzanne La Pierre



Timothy Lamb



Theresa Lauterbach



Cameron Leonard



Constance Livsey



George Lyle



Traeger Machtetanz

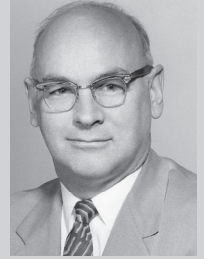
50-60 years of Bar Membership



Barry Jackson

Not pictured

George Hayes
Peter Walton
Jack Asher
Jane Asher
Richard Gantz
Douglas Gregg (see page 32)



Daniel H. Cuddy



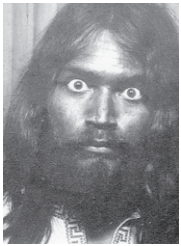
25 years of Bar Membership



Susan Mack



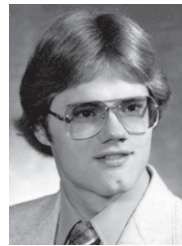
William Maer



Paul Malin



Glen Mark



Marshall Martin



Marilyn May



Maurice McClure



Bennet McConaughy



Dennis McKelvie



Jill Mickelsen



Douglas Miller



Bernard Minarik



Margaret A. Moran



Margaret E. Moran



Mary O'Brien



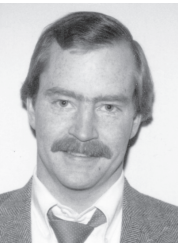
Jeffrey O'Bryant



Camille Oechsli Taylor



Steven O'Hara



Robert Owens



Philip Pallenberg



J. Gardiner Pieper



Christine Pomeroy



J. Frank Prewitt



Charles Ray



Gregory Razo



Susan Reeves



Mark Regan



Jerald Reichlin



Margaret Restucher



Constance Cates Ringstad



Stuart Ross



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Brigitte Siff



Mark Snyder



Amy Spare



Charlane Stead



Michael Stepovich



Clark Stirling



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Anthony Strong



Karla Taylor-Welch



John Tomlinson



Sharon Turley



Calvin Vance



James Wagner



David Weber



Jess Webster



Mary Whitmore



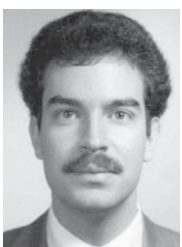
Marc Wilhelm



James Wilkens



Glen Woodworth



A. Michael Zahare



Moshe Zorea

Not pictured

Mason Damrau
David R. Dierdorff
Deborah Ivey
Amrit Kaur Khalsa

Historical Bar

It's a golden anniversary for Doug Gregg

Douglas Gregg has seen a lot of history—and history-makers—since he was sworn into the Bar 50 years ago.

Back on Jan. 28, 1959, the Daily Alaska Empire (the forerunner of today's Juneau Empire), reported Gregg's admission to the bar with this headline: "Doug Gregg Admitted to Alaska Bar; Probably Last of 'Mohicans'". Indeed. The new lawyer was the first sworn after Statehood, and the last who achieved Bar status without having gone to law school. In the tradition of Abe Lincoln, Gregg had "read" for the law, taken correspondence lessons from LaSalle Extension University, and passed the bar exam on his first try.

Gregg arrived in Alaska in 1939 with his parents, graduated from Juneau High School, and worked for a time for Pan American World Airways. His interest in the law began in 1955, when he was accepted for a clerkship with Howard D. and Gladys Stabler, and later with Attorney General J. Gerald Williams.

The young law clerk Gregg, as it turned out, became the first to get the news that the Territory of Alaska had officially been granted Statehood. As President Dwight D. Eisenhower was prepared to sign the Statehood Proclamation, an open line was established between the Oval Office and capitol in Juneau to administer the oath of office to the new Gov. Bill Egan. But no one answered the phone at the capitol building switchboard. So an enterprising assistant to Alaska Delegate Bob Bartlett attempted a telephone call to the Juneau courthouse/office building across the street from the capitol building. Law clerk Gregg was working that Saturday morning, answered the phone, and carried the message across the street.

Gregg was standing by for another Statehood event, as well. It was he who hand-carried the first ballots for the State of Alaska's first primary election, to post officers and election commissioners in outlying regions in the Northwest.



Juneau Attorney Doug Gregg receives a 50-year pin from President Mitch Seaver at the May convention.

During his long career in the law, Gregg served as an assistant attorney general (with a young Jay Rabinowitz) under John L. Rader and Ralph E. Moody from 1958-60, when he joined the firm of Robertson Monagle Eastaugh and Annis. In 1961 he purchased the law office of Thomas B. Stewart and practiced solo until 1963, when he formed a partnership for a time with Shirley Meuwissen and Gladys Stabler, and subsequently formed and joined the partnership Gregg, Fraties, Peterson, Paige, and Baxter in Southeast. At the time he retired, Gregg was back in solo practice.

Joining him at the Alaska Bar Association convention in May were his daughter Jan Levy and son-in-law Keith Levy—both lawyers following in the footsteps of an Alaska law pioneer.



Doug Gregg with his son Walt on his shoulders at a parade in downtown Juneau. Circa 1959.



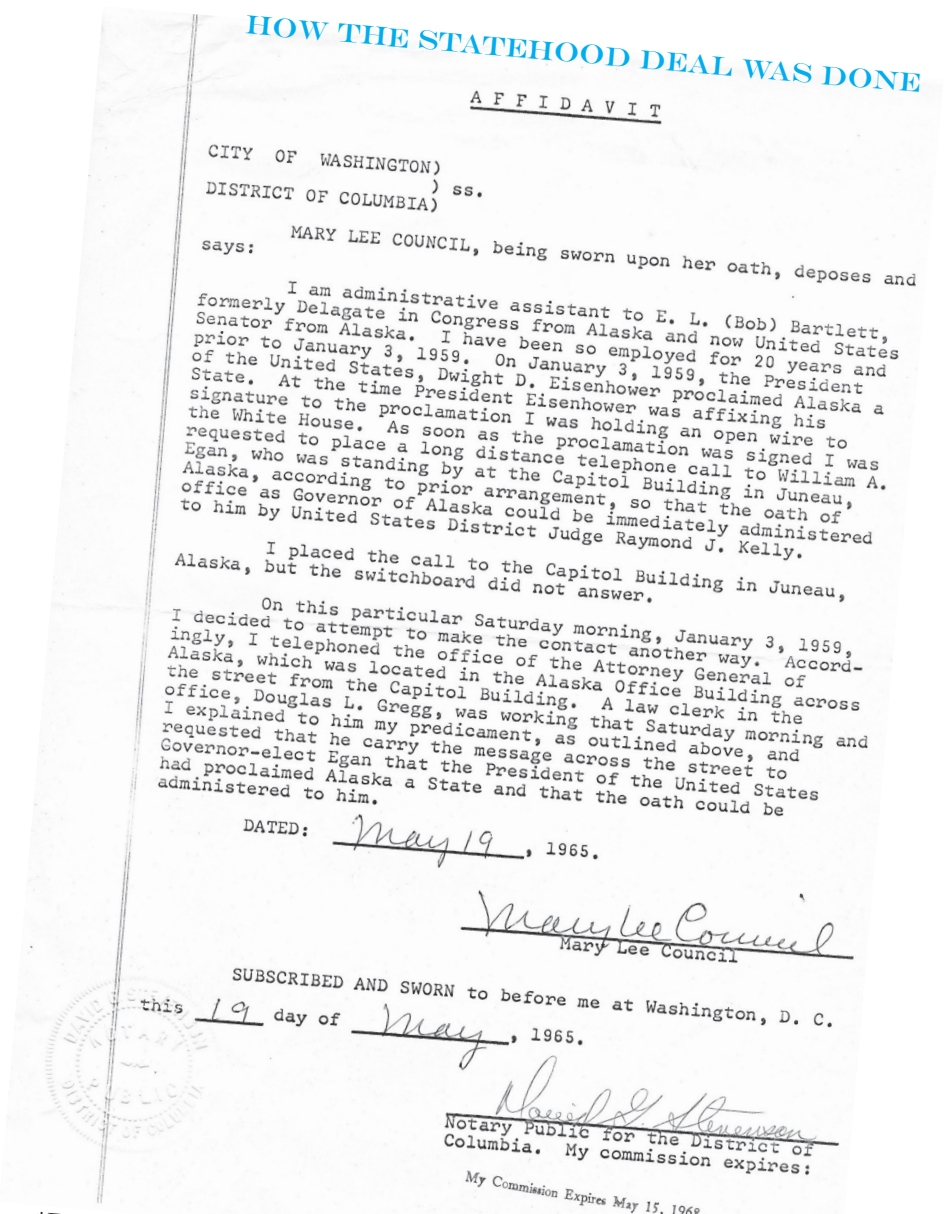
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*From the Gregg family archives