

The Alaska BAR RAG

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Dignitas, semper dignitas

Alaska mourns the loss of Judge Fitzgerald

By Gregory S. Fisher

Senior Judge James M. Fitzgerald passed away April 3, 2011 at his home in Santa Rosa, California surrounded by his family. A memorial was held in Anchorage on Sunday April 17, 2011. One of the Judge's sons, Kevin, presided. Featured speakers included Justice Fabe, Judge Holland, Leroy Barker, Lloyd Miller, and other leading members of the Bench and Bar. By rough count probably close to 250 people attended. The stories, photos, and memories painted a memorable picture. This all too brief tribute is drawn from that service and independent sources.

The Judge's biography is quickly stated. Judge Fitzgerald was born in 1920 in Portland, Oregon. He served in World War II with the United States Marine Corps in the South Pacific. He returned to Oregon after the war, and married his wife Karin in 1950. Judge Fitzgerald received his law degree from Willamette University in 1951. Shortly afterwards the Judge and his wife headed north to Alaska. The Judge served well and honorably in several state capacities before being appointed to the federal bench in 1974. He took senior status on January 1, 1989.

Those are the skeleton facts. It's what you don't know about Judge Fitzgerald that speaks to Alaska's loss. In December 1941 the Judge was in Honolulu with the Willamette University football team for a game with the University of Hawaii. His jersey number was 33. The team had gone to Hawaii on holiday. The trip was a reward for a bruising 8-1 campaign. Only Idaho had beaten the Bearcats.

The game was played on December 6, 1941. Hawaii prevailed 20-6. The Willamette boys had only arrived three days before and their legs were still unsteady from the ocean trip. The next morning team members were waiting to board a bus for a tour and picnic when they heard the penetrating roar of Commander Mitsuo Fuchida's squadron from the *Akagi* approaching Pearl Harbor. The Judge and his teammates grew up in a hurry. Head Coach Roy "Spec" Keene volunteered his team to serve auxiliary guard duty to assist the military. They were issued rifles, laid barbed wire, and guarded fuel and ammunition storage facilities. Days later, the Judge and his teammates embarked on the *SS President Coolidge*, helping take care of wounded servicemen on the return transport to the mainland.¹

Who can guess how the Judge and his teammates processed this sudden turn of events? One day they are college kids on holiday playing a game in paradise. The next they are at war and not even quite certain that they will see the States again. They slept on deck as the *Coolidge* neared San Francisco because there were rumors of enemy submarines in the vicinity. Once back home the Judge enlisted in the Marines. He served as a radio tail gunner in a torpedo squadron, earning a Distinguished Flying Cross among other awards, and rising to the rank of Staff Sergeant. In one engagement fully a third of the aircraft never returned. Imagine strapping yourself into a Grumman TBF Avenger and getting catapulted off a pitching deck in hostile waters pretty much knowing that your odds of making it back in one piece were maybe 60/40. We have



fewer and fewer veterans these days. Military service isn't convenient. The Judge lived in a day and age of shared risks. America today is so far removed from the Judge's generation that we can't begin to appreciate how the experience must have shaped his temperament.

What we do know is that the Judge survived. At war's end, he returned

to Portland and married his wife Karin in 1950. He worked as a fireman while attending night school. The Judge earned his law degree in 1951, and headed north to Alaska. That was a real trip in that era. According to reports, the Judge and his wife drove a Model A Ford part of

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Comments invited regarding proposed revisions to Alaska Bar Rules 65 and 66: Mandatory CLE

In 2008 Alaska joined the ranks of 43 other mandatory CLE jurisdictions when Bar Rules 65 and 66 went into effect. Rule 65 requires active Bar members to earn 3 ethics credits annually, recommends 9 additional credits, and requires annual reporting. Rule 66 sets out the consequences for non-compliance which include administrative suspension. In the commentary to Rule 65, the Supreme Court stated "At the end of three years, the Supreme Court will again assess the project's results, including recommendations and statistics provided by the Association, and will determine whether an expanded mandatory CLE program is necessary."

With 3 years of statistics in hand, a five member MCLE subcommittee and Bar staff conducted a review. An electronic MCLE survey was sent to Bar members which elicited over 900 responses. The overwhelming major-

ity (91%) were not in favor of increasing the number of mandatory credits. Reporting statistics for 2008, 2009, and 2010 indicated that an average of approximately 70% of Bar members earned at least 12 credits each year, 15% earned between 4 and 11 credits, and only 15% earned just 3 mandatory ethics credits. Suspensions for failure to comply numbered 4 for 2008, 5 in 2009, and 4 in 2010. Also reviewed were other states' requirements compared to Alaska's.

The subcommittee ultimately recommended leaving the basic requirements and consequences of Rules 65 and 66 the same, but revised the language and some procedures in both rules for clarity, conciseness, and efficiency of implementation. On May 2, 2011, the revised rules were presented to the Board of Governors, who voted to publish the rules for member comment in the Bar Rag.

The current versions of Rules 65 and 66 can be found on the homepage of the Bar website under CLE/MCLE or under Links & Resources or in the Alaska Rules of Court. Below are the proposed revised versions.

Proposed revised Rule 65. Continuing Legal Education and Mandatory Requirements.

It is the view of the Alaska Supreme Court and the Association that continuing legal education (CLE) promotes competence and professionalism in members of the Association. Therefore:

(a) The Association shall offer members a variety of CLE programs and activities that meet minimum standards for professional education. Minimum standards for CLE programs and activities are:

(1) 60 minutes of legal education

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We are a great bar

By Donald W. McClintock

Our Bar members are great volunteers. We, at just over 4,000 members, are one of the smallest mandatory unified bars in the country and your volunteer efforts strengthen us immeasurably. So one of my first public acts will be to recognize some of you for what you have done; a perilous mission, as by definition I will fail to note the deserving efforts of others. Let me excuse my oversight in advance by further explaining that part of my goal is to inform you of the many things your colleagues are engaged in for your betterment, and the advancement of our justice system.

First, those of you who attended the Fairbanks convention should recognize the tremendous effort Jeff Feldman made to serve as the moderator of the debate between Federal Public Defender Steven Wax and Professor John Woo. For an event that started in controversy, the result was thought provoking and stimulating. Second, those who attended the business meeting to debate the three torture resolutions also deserve recognition. Our membership provided a model for our political leaders by being able to debate a tremendously controversial issue that crossed all of the fault lines of morality, constitutional law, security, and humanism issues with a respectful debate that stayed to the issue and not the proponents. As someone who has sat through innumerable legislative and local level quasi-judicial proceedings,

it truly made me proud to be a lawyer and an Alaska lawyer at that.

A thank-you to all of you from around the state who rose to the occasion and volunteered to help Barbara Jones, Deb Periman and the Law Related Education Committee to draft topics for the online Youth and Law Guide. These efforts mirror the national level effort to improve civics awareness among our youth, as represented by the iCivics curriculum sponsored by Justice Sandra O'Connor and at the local level, the decision of our Supreme Court to hold oral arguments at various local high schools. As a profession, we share the responsibility to educate our youth (and perhaps some of the adults) about the history and values of our political system, the rule of law and the goal of justice that are necessary to nurture an informed electorate who will learn to appreciate and protect our freedoms and institutions.

This was the second year that Alaska's legal community celebrated MLK Day with free legal clinics in three communities: Anchorage, Fairbanks, and Juneau. As a public service project of the Alaska Bar Association, Alaska Court System, and Alaska Legal Services Corporation, the event has served 540 clients through the use of 110 volunteers in 2010 and 175 volunteers in 2011 who donated a collective 1,206 hours



"This year, in the tradition of Past President Wiener and his predecessors, I hope to meet many of you at your local bar meetings..."

of time equaling more than \$92,000 worth of services. Sincere thanks go to event organizers in all three communities: Justice Daniel Winfree, Russ Winner, Jonathon Katcher, Zach Manzella, Leslie Need, Stacey Marz, David Case, Lynne Lloyd, Hanna Sebold, Karen Godnick, Holly Handler, Amy Tallerico, Paul Eaglin, Mark Andrews, Nicole Schick, and Ed Husted. If you are interested in learning more, reading media coverage and/or hosting an MLK Day event in your community, you will find the information at www.alaskabar.org/mlk.

Finally, thank-you to those who serve on our fee arbitration panels, the area discipline boards, the Lawyers' Fund for Client Protection, the committees, our section leaders and all of you who have contributed over the last year. The quality of what is presented to the Board is uniformly of high quality and the work every one does is important to the proper functioning of our Bar and the public's perception of us.

All politics are ultimately local, so here is a short snapshot of what is happening around the state.

Anchorage—The Young Lawyers section of the Anchorage Bar Association staff a monthly volunteer day at Bean's Café and have created a new public service project called Wills for Seniors organized by Lizza Apostola.

They recently celebrated their 7th year of organizing Race Judicata, a 5k fundraiser for Anchorage Youth Court. Young lawyers Lars Johnson and Emily Whitney deserve credit for leading this effort. The Anchorage Young Lawyers continue to build on their past success, notably the national recognition they garnered for their Voices Against Violence Project.

Barrow—The attorneys in Barrow participated in a Borough wide Career Fair that included site visits to the courthouse and mock trials. Recently retired Magistrate Karen Hegyi organized the event with assistance from Judge Jeffery who also was the 2011 recipient of the Alaska Court System's Community Outreach award.

Fairbanks – Again, the Convention, where both younger and veteran practitioners in Fairbanks were

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The Alaska BAR RAG

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[Editor's Disclaimer: As with all Bar Rag articles, advertisements and letters, we do not vouch for, stand by, or support most of what we publish. Nor have we cleared any of this with either the FDA or the Department of Homeland Security (aka Interior Ministry). We sure as hell won't be responsible for your hurt feelings or misguided reliance on anything we publish].

EDITOR'S COLUMN

Gathering a team

By Gregory S. Fisher

Our June issue commemorates the late Judge James M. Fitzgerald who passed away in April. No tribute here would be adequate. However, we tried to collect together reports, memories, photos, and other recollections from Judge Hornaday, Kevin Fitzgerald, Lloyd Miller, Professor Mary Heen, Barbara Hood, Eric Croft, and other leading members of the Bench and Bar. Judge Fitzgerald will be missed.

The Bar Convention came and went, and in this issue we include photos and a report from Megan Lillick (Bar staff) capturing the week. Our March issue before the Bar Convention tracked the heated debate surrounding the keynote speaker's selection. For a period of time it looked as if we were headed clickety-clack off the cliff. We survived. No matter how one graded the Professor Yoo and Steve Wax debate, I think most would agree that Friday's session was an excellent presentation. Jeff Feldman did a fine job.

This has to be the best job ever. We are in the process of reaching towards two somewhat related goals: (1) recruiting more and different correspondents from across the State; and (2) trying to improve standards by moving us closer to our specified writer's guidelines (don't laugh, they actually exist), especially for length. The recruiting part could not be easier. Our Bar is talent rich. However, we have been demographically flat-lined for quite some time (most of our

writers being men over the age of 40 from Anchorage or Fairbanks). We are hoping to add some fresh voices and perspectives from a broader segment of the Bar.

Moving towards consistent standards has brought its comic moments. Your humble Editor could not escape the Wrath of Khan (aka Bill Satterberg) after it was suggested that we all shorten our submissions to share space with others. Not to let the facts get in the way of a good story, but the actual request that Bill skewers in his column was a somewhat tepid, "hat-in-hand" plea: "I would like to see if we could take a stab at adhering to the writer's guidelines (especially those addressing requested length) for our regular columnists. If we could do that it would free up space for more variety and different authors The five double-spaced page limit is not an absolute standard. If a submission is a little over we will work with it." I quickly learned that "sharing" is not a concept that resonates with Bill. But after all the sound and fury, Bill produced a piece that is both readable and enjoyable. The brevity is refreshing. Bill is an artist. Like many great artists Bill has a huge ego and fragile temperament. For my part, I'm pleased that I was able to bring out the best in Bill's writing (even at my own expense). He has stormed off stage, and "left the building." I'm hoping we can coax him back. We don't need Achilles sulking in his tent.



"In this issue we welcome a few new correspondents."

In this issue we welcome a few new correspondents. Over the past five years Cliff Groh has been the most informed and reliable source of information concerning Alaska's political corruption prosecutions. His blog has been the only up-to-date and accurate source of news. Now that the entire cycle is winding down, Mr. Groh will be summarizing what was, and is, and may be yet to come. He will also place it into perspective for us.

Vivian Munson addresses unique challenges presented to those who serve disadvantaged clients in stressful circumstances. In future issues we are hoping that Ms. Munson will continue to share similar experiences.

Joining us as a regular columnist in September will be Kevin Clarkson. Mr. Clarkson is an attorney in private practice in Anchorage. He frequently contributes Compass pieces for the Anchorage Daily News. Mr. Clarkson's writing is muscular and to the point. You may or may not agree with his views, but you will enjoy their expression. He will challenge you.

After much begging, I was able to secure a commitment from Ben Seekins, the current Secretary for the Tanana Valley Bar Association, to start sending us some TVBA minutes. Ben is an Assistant District Attorney with the DAO in Fairbanks (my professional alma mater). Many of us

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Comments invited regarding proposed revisions

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instruction or activity is required for each CLE credit.

(2) The activity must contribute to professional knowledge, competence, or skills.

(3) Appropriate course materials shall be provided unless waived by the Association.

(4) Presenters shall have the requisite knowledge and skills to conduct the activity.

(b) Active Bar members are required to complete at least 3 credits in ethics CLE each year, are encouraged to complete an additional 9 credits of CLE each year, and are required to submit a Mandatory CLE Reporting Form to the Association each year. These requirements do not apply to new admittees during the first year of admission.

(1) Ethics topics

Ethics topics may include professional responsibility, workplace ethics, law office management, attention to cases and clients, time management, malpractice preventions, collegiality, general attorney wellness, and professionalism.

(2) Additional voluntary credits

Members are encouraged, but not required, to earn 9 credits in addition to the 3 mandatory ethics credits. The additional credits may be ethics or general CLE topics.

(3) Incentives for voluntary credits

Only members who complete at least 12 credits of CLE each year are

eligible to participate in the Lawyer Referral Service. Members who earn at least 12 credits of CLE each year will be named on a list available to the public and published on the Bar website each year. Completion of voluntary credits may be considered in disciplinary procedures and for judicial candidates. The Association may adopt additional incentives.

(4) Carry-over

Members may carry-over up to 12 unreported credits from the preceding calendar year.

(5) Records, documentation and audits

Members are required to keep track of and document their own CLE attendance, credit accumulation, and reporting for at least two years and are subject to audit by the Association upon request. The Association keeps records of member Mandatory CLE reports, but does not keep records of individual member CLE attendance.

(6) Mandatory Reporting

The reporting period is the calendar year; credits are required to be earned by December 31. Members must complete, certify and submit a Mandatory CLE Report on a form provided by the Association each year by February 1 for the preceding calendar year.

(7) Extensions

A member may file a written request for an extension of time which will be reviewed and determined by the Association.

(8) Consequences of non-compliance are set forth in Bar Rule 66.

(c) The Association shall review for accreditation CLE programs and activities that are produced in Alaska by providers other than the Association. CLE programs and activities produced by the Association are deemed accredited. Minimum standards set out in paragraph (a)

shall be met. Additional CLE activities deemed approved or eligible for approval are set forth in the regulations implementing this rule.

(1) Application for accreditation

An application for accreditation form shall be available on the Bar website and upon request. Any person or organization providing a CLE program or activity not otherwise accredited in Alaska must complete and submit an application to the Association. Programs and activities that are not accredited may not be used by members to satisfy mandatory requirements or voluntary CLE recommendations. Individual bar members may also use the same application to seek accreditation of CLE activities that they attended that were not otherwise accredited.

(2) Reciprocity

CLE programs and activities accredited by any other Mandatory CLE jurisdiction may be used by members to satisfy CLE requirements and recommendations without further accreditation procedures; unless the program is produced live in Alaska in which case the provider is required to obtain accreditation. CLE providers who produce programs in other jurisdictions are not required to seek accreditation from Alaska.

(3) Accreditation fees

An application fee in an amount to be established by the Association is required unless the provider is an Alaska non-profit organization, an Alaska government agency (municipal, borough, state, tribal or federal), the program is a no-fee in-house activity, or the applicant is an individual bar member.

(4) CLE provider duties

CLE providers who have been granted accreditation shall provide attendees with a certificate of attendance and notify the Association

of any substantial changes to their program.

(5) Accredited or pre-approved providers

Alaska does not recognize accredited or pre-approved provider status; CLE programs that are produced in Alaska are individually accredited.

(d) Regulations

The Board shall establish by regulation additional procedures, standards, or fees necessary to implement this Rule.

Proposed revised Rule 66. Non-compliance with Mandatory Continuing Legal Education; Suspension

(a) Notice of Noncompliance

Within 30 days after the deadline for filing the Mandatory CLE Report described in Rule 65 (b) (6), any member who has not complied shall be notified by certified mail that unless the member complies within 30 days from the date of the notice, the Executive Director shall, after 30 days from the date of the notice, petition the Supreme Court of Alaska for an order suspending the member for noncompliance.

(b) Suspension and Reinstatement

A member suspended under this subsection shall not be reinstated until the member has complied with the mandatory CLE credit and reporting requirements; paid a reinstatement fee in an amount set by the Board; paid any dues accruing during suspension; and the Executive Director has certified the member's compliance to the Alaska Supreme Court.

Please send comments to: Executive Director, Alaska Bar Association, PO Box 100279, Anchorage, AK 99510 or e-mail to info@alaskabar.org by August 30, 2011.

Gathering a team

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will remember Ken Covell's excellent TVBA minutes that used to be regularly published in the *Alaska Bar Rag*. Ken told me that Ben was a pretty good writer. With luck these will once again become a regular feature. I am still trying to tease out some submissions from other local or regional Bar Associations in Alaska.

We will also begin publishing submissions from the District of Alaska's lawyer representatives. The current lawyer representatives are Sara Gray, Kevin Clarkson, Brewster Jamieson, Erik LeRoy, and Heather Kendall-Miller. The lawyer representatives meet with the federal judges each quarter, and also attend the annual Ninth Circuit Judicial Conference. They are a valuable source of information regarding federal practice and procedure.

In the near future, hopefully by the September issue, we will also be adding Holly Wells, Joan Wilson, David Graham, Jeffrey Davis, and Jason Skala. We are particularly excited to welcome Ms. Wells and Ms. Wilson. With the new we retain our top talent, Steven O'Hara, Dan Branch, Peter Aschenbrenner, Ken Kirk, and Steve Pradell, all of whom need no introduction. These guys are the core of our team: talented, steady, reliable, unassuming, and always interesting.

I am still in the process of recruiting additional correspondents. That plus the chance to work with a real journalist, Sally Suddock (our Managing Editor), makes the ride worth the effort. Be patient with me when I call.

We are a great bar

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honored. Fairbanks Public Defender Michael Biderman received the Judge Nora Guinn award for his assistance to rural residents. Everyone was pleased with the opportunity to award the Professionalism Award to Charlie Cole and touched by the sincere appreciation shown by Judge Meg Greene as she received the well deserved 2011 Rabinowitz Award. Justice Rabinowitz would have approved.

Juneau—The Juneau Bar Association, in conjunction with the Glory Hole, the local homeless shelter, has started the Backpack Program. The JBA works with school teachers to identify those children who would benefit from this program. On Friday afternoon these children are given a backpack, gently used so it does not draw any attention, and full of food for the weekend. Currently the program is running at Yakoos Alternative High School; they are working on expanding the program to additional schools, as well as including books in the backpacks. This project was organized by President-Elect Hanna Sebold and Karen Godnick.

Kenai—Kenai attorneys Kristine Schmidt and fellow Board member Krista Stearns coached the local mock trial team that won the Alaska conference and headed to the national

competition in May.

Sitka—Juneau Judge Patricia Collins (retired) spearheaded the first ever Color of Justice program offered in Sitka in February 2011. The Color of Justice program brings diverse youth from across the state together for exciting workshops and activities designed to introduce them to the study of law and to encourage them to consider legal and judicial careers. Nearly all of Sitka's lawyers were involved in planning and workshop teaching.

As usual, the issues that face the Board of Governors this year run from the mundane to the sublime, with the bracing splash of fiscal reality. If you have not read Treasurer for Life Peter Maassen's explanation of the 2011 dues hike at https://www.alaskabar.org/servlet/content/treasurer_s_report_to_membership_on_2011_bar_dues.html, then you should. We will face the same issues this year. We will also need to decide over the next year to renew our contract with Casemaker, the free legal research service available without additional charge to all Bar members. We believe it is a valuable service, especially to those in smaller firms, but it has its cost. So if you consider it an important benefit of membership, then please let us know. We plan to bring the Casemaker team to Alaska this coming year to provide

more local support as well.

In terms of goals, we are actively looking for cross over CLE topics that will be of equal interest to private and public bar members. Our CLE Director Mary Patrick is happy for your input. This year we will also work with advancing a mentorship program to match new attorneys with experienced practitioners. The goal is to improve ethics training, practice skills and collegiality. Our model will be voluntary. There are resources we can adapt from other states for this program and one thought, if it is of interest to any of the local Bar Association leaders, is for the Alaska Bar to serve as an incubator for any local bar that want to start its own mentorship program. A local bar program has the salutary effect of allowing better matching of candidates and also serves to attract young lawyers to join a voluntary bar. It also avoids adding more staffing burdens at the statewide level with the accompanying impact on dues.

This year, in the tradition of Past President Wiener and his predecessors, I hope to meet many of you at your local bar meetings as Krista Scully and I travel around the state. I will be there to listen and Krista will be there to promote our pro bono mission. I look forward to the journey and to meeting you.

What does the federal probe into public corruption mean for Alaska?

By Cliff Groh

Born in the Territory of Alaska in 1954, I grew up in a skinny Anchorage media environment in which there was no live TV until the first moon walk occurred when I was 15.

Reading newspapers and magazines as a boy in the 1960s, I noticed occasional stories of public corruption—of police on the take, government officials who accepted bribes—in states like Massachusetts, New Jersey, and Illinois. I really didn't see that in Alaska, so I asked my father about it. He was a former President of the Alaska Bar Association who had served as both a prosecutor and criminal defense attorney; he had also been on the City Council, the Borough Assembly, and the School Board.

My father said "Well, son, there's not enough money to steal."

Back in the mid-1960s, Alaska was a young state with a thin economy. Although people on the Last Frontier felt poor, there was still some of that aura of idealism and optimism that remained from the excitement of achieving statehood in the late 1950s.

The announcement in 1968 of the discovery of a super-giant oil field at Prudhoe Bay on the North Slope brought billions and billions of dollars to Alaska, both to the private economy in paychecks and to the state government's coffers in taxes and royalties on oil development.

The long-running federal investigation into Alaska public corruption has underscored some of the changes seen in the 49th State, and that probe has also caused some. Most of the cases produced by the federal investigation involved alleged efforts to influence public officials regarding the state's taxes on oil development.

This probe electrified Alaskans. Think back to the wild days between the late summer of 2006 and the fall of 2008. In those 27 months, 11 people got charged with federal felonies. Those 11 included:

- legendary U.S. Senator Ted Stevens (R.-Alaska);
- five state legislators (some of whom had left office)—State Sen. John

Cowdery (R.-Anchorage) and State Reps. Tom Anderson (R.-Anchorage), Bruce Weyhrauch (R.-Juneau), Pete Kott (R.-Eagle River and a former Speaker of the Alaska House of Representatives), and Vic Kohring (R.-Wasilla);

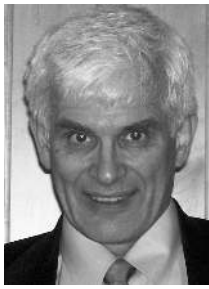
- Jim Clark, the chief of staff to former Alaska Governor Frank Murkowski;
- Bill Allen, a political kingmaker who was the long-time CEO of the multinational oil-services giant VECO, a billion-dollar company;
- Bill Weimar, the multi-millionaire former head of the private corrections corporation Allvest;
- Rick Smith, a VECO vice president who served as Allen's chief political lieutenant; and
- Bill Bobrick, a prominent lobbyist working on municipal issues in the Municipality of Anchorage.

At the end of 2008, 10 of those 11 people had pleaded guilty or heard

juries deliver guilty verdicts on all or almost all counts they faced. FBI surveillance tapes—many made at the VECO-rented Suite 604 in Juneau's Baranof Hotel—greatly aided the prosecutors in their cases at trial. Alaskans were mesmerized by iconic images of Allen telling Kott "I own your ass" and Allen handing cash to Kohring, and many citizens were stunned by how little it seemed to take to get some public officials to sell their offices.

Long accustomed to serving either as a sugar daddy or a political punching bag on the Last Frontier, between late 2006 and late 2008 the feds seemed to be on a roll straightening out a mess in Alaska.

Back in 2008, those 11 defendants seemed very likely to increase by a lot. Multiple sources told Alaska journalist Bill McAllister that 26 people would be indicted in the federal investigation into public corruption in the state. Speculation on potential additional defendants centered on U.S. Rep. Don Young (R.-Alaska) (identi-



"This is the first in a series of columns to examine the causes, effects, and significance of the federal investigation into Alaska public corruption."

fied in media reports as being under investigation for alleged campaign fundraising violations, among other things) and former State Senate President Ben Stevens (R.-Anchorage) (whom federal prosecutors got Bill Allen and Rick Smith to say that they had bribed).

Code-named "POLAR PEN" (apparently for its origins in an examination into corruption regarding private prisons), this federal investigation has had big effects, both for people and for policy.

Eight defendants ultimately went to prison, and one served a sentence of home confinement. The executions of the search warrants on the offices of six state legislators beginning in August of 2006 helped fuel the gubernatorial campaign of insurgent Republican candidate Sarah Palin, already running on a platform of "I'm not one of the good old boys." The oil tax legislation in 2006 that sent some lawmakers to prison was amended the next year to increase taxes substantially on the oil companies after the first indictments frightened some legislators into avoiding even the appearance of being in the pocket of the petroleum industry.

And after almost 40 years in the U.S. Senate, Ted Stevens got defeated for re-election in November of 2008 eight days after a jury returned guilty verdicts on seven felony counts of failing to disclose gifts on U.S. Senate forms. At the Senator's insistence, the trial started only 55 days after the indictment instead of eight months or so later as would normally have occurred in this kind of case. Given the small margin in the voting, it's clear that Stevens would have been re-elected if the trial had either not started or still been in progress on election day.

But now—about eight years after the investigation started—it's all different. The POLAR PEN probe has fizzled out in ways that are both surprising and disappointing.

The case against Ted Stevens collapsed in the wake of revelations of prosecutors' substantial failures to share evidence with the defense; the seven guilty verdicts got overturned, and Attorney General Eric Holder elected not to seek a retrial. The meltdown of the Ted Stevens case led to the federal government finding discovery failures in the cases against former Reps. Kott and Kohring, and the Ninth Circuit Court of Appeals has reversed their convictions. (Although as of this writing the federal government could retry Kott and Kohring, I predict that this will never happen. Note that this forecast comes from the same analyst who confidently predicted that Ted Stevens would never testify in his own defense.)

Following a U.S. Supreme Court decision that substantially narrowed the scope of the honest-services fraud statute—a law that provided

a favorite arrow in the quiver of federal prosecutors—the Department of Justice dismissed the federal felony charges against Weyhrauch and let him plead guilty to a unique state misdemeanor that resulted in no jail time. (Weyhrauch's lawyers have also gotten permission from the U.S. District Court to forward to the Alaska Bar Association evidence that they allege shows "serious misconduct by government prosecutors appearing before the grand jury," including the suborning of perjury.) Clark was also allowed to withdraw his guilty plea in the wake of that Supreme Court decision.

The prosecutors charged a 12th defendant in 2009—former State Rep. Beverly Masek (R.-Willow)—who pleaded guilty and served a prison sentence, but she is clearly the last defendant in the POLAR PEN probe.

It is the probers who are now on the griddle. The federal government is conducting two probes of the conduct of the prosecutors and investigators who worked on the federal government's investigation of Alaska public corruption. The Justice Department's internal watchdog unit—the Office of Professional Responsibility (OPR)—is holding one of the two satellite probes; the other investigation is a highly unusual criminal probe run by a special counsel selected by the trial judge in the Ted Stevens case. Fingerpointing among various prosecutors over the discovery and handling of allegations against Bill Allen involving sexual abuse of minors appears to have contributed to the delays in wrapping up the two probes, which have each gone on for more than two years.

A story that seemed to start out with white hats and black hats has picked up a lot of shades of gray. The arc of some Alaskans' feelings went from the bumper stickers of "We don't give a damn how they do it Outside" to "Thanks FBI for cleaning up Alaska"—now it's more like "How could the feds foul this up?"

This is the first in a series of columns to examine the causes, effects, and significance of the federal investigation into Alaska public corruption. It will rely on my extensive experience in Alaska, which brings both knowledge of how the state works and a number of other associations that might be seen as conflicts of interest when writing about this subject. (The full list of disclosures can be found at my blog at <http://alaskacorruption.blogspot.com/2011/05/even-more-updated-biography-with-still.html> on the Internet.) There are some lessons here and some elemental human stories, and this series of columns will have some of both.

Cliff Groh is a lifelong Alaskan who has worked as a prosecutor and represented some criminal defendants in his private practice. He maintains a blog on the federal investigation into Alaska public corruption at www.alaskacorruption.blogspot.com on the Internet. He is a lawyer and writer in Anchorage whose law practice focuses on the writing and revision of briefs and motions.

Most of the cases produced by the federal investigation involved alleged efforts to influence public officials regarding the state's taxes on oil development.

The arc of some Alaskans' feelings went from the bumper stickers of "We don't give a damn how they do it Outside" to "Thanks FBI for cleaning up Alaska"—now it's more like "How could the feds foul this up?"



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Race Judicata

The 7th Annual Race Judicata was a rousing success. Despite early clouds, the skies opened and the sun shone by the time runners took off from Westchester Lagoon at 10 a.m. on Sunday, May 1, 2011. The first runner, Bruce Dotterer, returned a mere 18 minutes, 34 seconds later, followed soon after by Bob Davis at 18:43 and Colin Strickland at 19:05. Colin, who won the award for the fastest attorney, just moved to Anchorage and is seemingly not worried that his newfound success will go to his head.

Jen Henderson led the charge for the women, winning fame and glory on behalf of Farley & Graves with a time of 20 minutes, 34 seconds. Laura Fox showing the efficiency of State government, following on Jen's heels a mere two seconds later at 20:36. Law clerk Rebecca Freeland rounded out the top three women with a time of 22:25.

Clapp, Peterson, Tiemessen, Thorsness, Johnson, LLC once again etched its name into history by winning the Law Firm Participation Award for a seventh straight year. They had better watch out next year though – Farley & Graves and Davison & Davison came close to upsetting the streak.

The organizers would like to thank all of the volunteers – members of Anchorage Youth Court, as well as folks from the Young Lawyers Section, and even some local Boy Scouts – who helped with the race.

A special thanks to our law firm sponsors, in particularly our new sponsors this year – Birch, Horton, Bittner & Cherot; Dorsey & Whitney; Jermain, Dunnagan & Owens, P.C.; Oles, Morrison, Rinker & Baker, LLP; Perkins Coie; Richmond & Quinn; and Stoel Rives, LLP. We had three levels of sponsorship: Flattop Sponsors (contributing up to \$299); Foraker Sponsors (contributing \$300-\$499); and Denali Sponsors (contributing \$500 and up).

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In total, Anchorage law firms donated over \$3000 for Anchorage Youth Court – a record amount!

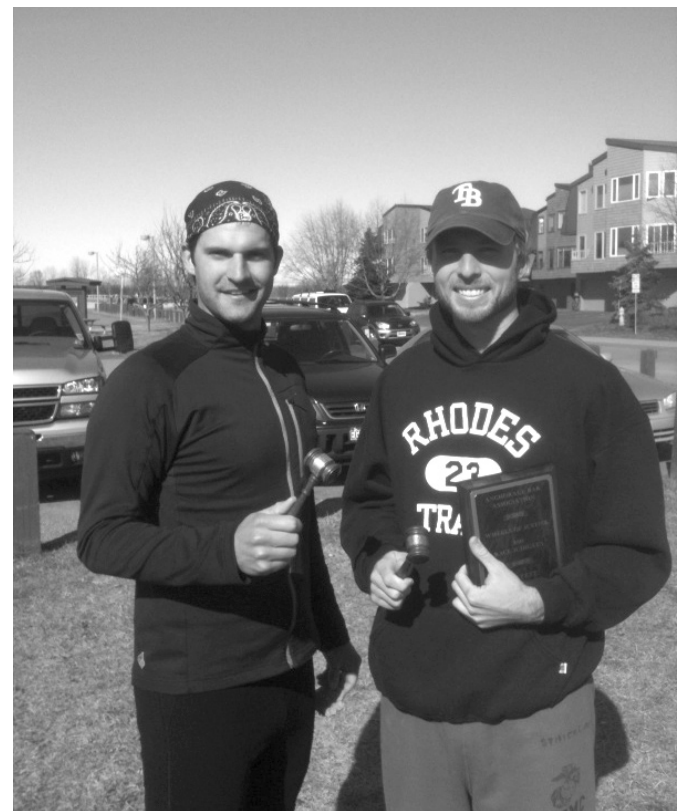
Great Harvest Bread Co. also donated 100 delicious cookies that barely survived the race.

Thanks to everyone who came out to run as well. We were able to raise over \$3500 for Anchorage Youth Court, and we could not have done it without the support of the local legal community. We listed our top 50 finishers in the ADN, but if anyone wants their particular results, they are welcome to e-mail AnchorageRaceJudicata@gmail.com.

See everyone again next year!
Emily Whitney & Lars Johnson



Oz boldly urges attorney Becky Windt along the Coastal Trail.



Non-attorney Bruce Dotterer (left) was the Race Judicata winner, but the fastest attorney was Colin Strickland (right), who won the Wheels of Justice award.

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James Fitzgerald: In Memoriam

Mourning the loss of Judge James Fitzgerald

Continued from page 1

the way into British Columbia, and then caught a ferry to Ketchikan. His first jobs were non-legal—he labored in the timber and fishing industries until a friend's urging he applied for a position as an Assistant United States Attorney in Ketchikan.

Those were the rough and ready Territorial Days, and by all accounts the Judge was every inch a Territorial Lawyer. He asked for and gave no quarter, but he fought fair and honorably. When no one else had the courage to do so, the Judge successfully prosecuted a corrupt (and popular) chief of police in Ketchikan who was taking bribes from local brothels. He forced the chief's resignation. Later transferred to Juneau, the Judge successfully prosecuted a corrupt (and popular) U.S. Marshall. According to one report, the Department of Justice then dispatched the Judge to Anchorage to "turn down the political heat" because locals were upset with this young crusader.

It's hard to wrap one's mind around those facts. Here's a guy who just arrived in the Territory with a new wife and only just removed from low-paying, precarious, day laborer jobs. He knew next to no one, and no one knew him. Seeing the corruption, he was willing to risk it all for prin-

ciple. How many of us would do the same? Probably few. Face it, probably none. In the context of recent events, the Judge's integrity and character challenge us. Alaska has always been particularly susceptible to corrupting influences. We are a big small state with huge egos, sharp elbows, and many insular cliques. If events of recent years are considered, we are simply not good at policing ourselves. That's an unpopular statement, but if we are going to be honest with ourselves it's an objectively verifiable fact. The truth of it all is that we do not have enough Judge Fitzgeralds to go around. We were allotted one, and only one.

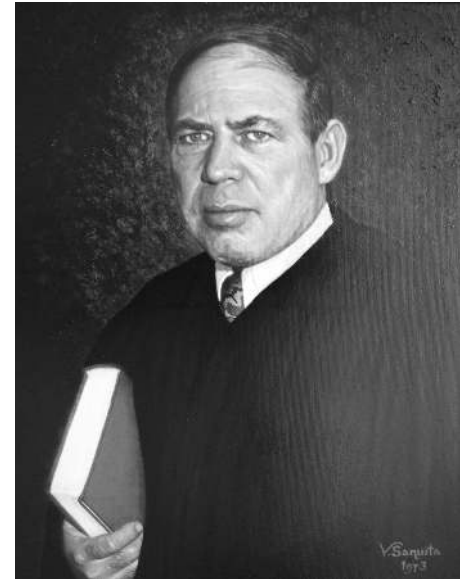
Posted to Anchorage, the Judge served as the city attorney for Anchorage and legal counsel to Alaska's first governor, William A. Egan. Judge Fitzgerald was Alaska's first Commissioner of Public Safety. The Judge organized the Alaska State Troopers. He was also one of the first judges appointed to the state Superior Court when Alaska was admitted to the Union in 1959. Judge Fitzgerald was elevated to the Alaska Supreme Court in 1972.

President Ford nominated Justice Fitzgerald as a United States District Court Judge in 1974, and he received his commission on December 20, 1974. Judge Fitzgerald assumed

duties as the Chief Judge of the District of Alaska in 1984, a position he occupied until December 31, 1988. I can't speak to the Judge as a Judge because his tenure was largely over by the time I was admitted to the Bar in 1991. Everything I've heard and read, however, is that the Judge was "fair, careful, and well-informed." His integrity was beyond question. That's a pretty good legacy for anyone. None of us will always agree with every decision that a Judge makes. It says a lot if people can look back and note that, win or lose, they got a fair shake.

The Judge took senior status effective January 1, 1989. Senior status for an Article III life tenured federal judge means nothing and everything. Some Judges reduce their workload to next to nothing, which is of course their right. By the time Judge Fitzgerald took senior status he had already served 30 years on the Bench in state and federal court. He had every right to step back and slow down. He didn't—not really at least. Instead, the Judge continued to preside over trials and settlement conferences, and accepted invitations to sit on Ninth Circuit panels.

Eventually time took its toll. The Judge moved to California in 2008 where he spent his remaining years. Judge Fitzgerald is survived by his



wife, Karin, four children, nine grandchildren, and a great-grandchild. The Judge will be greatly missed by the Bench and Bar. He will be more than missed—he was one of a kind. A true commemoration would preserve his memory by naming one of the federal courthouses in the State in his honor. The Judge is off the bench.

Footnote:

There is an ESPN video posted on Willamette University's website with comments from the Judge and his teammates. See http://www.willamette.edu/athletics/teams/football/pearl_harbor/index.php

A son's eulogy

Good afternoon — welcome all. My name is Kevin Fitzgerald. Of the four children I am the baby — a fact which some have said is self-evident. But enough about me — we're gathered here to celebrate the long, full, interesting, memorable, remarkable, incredible life of my father, James Martin Fitzgerald.

I would expect, given his considerable humility, that my father would be a bit chagrined by all this fuss. You can bet, though, that were he here with us now, physically, he would seize it as an opportunity to greet you all with his familiar and hearty: "How are you?" And when you responded in kind, he would give his stock refrain: "I'm tolerable."

Can't you just see it now? I can. He's here with us yet.

And then without so much as a pause, he would have likely launched into one of his many stories. My dad had lots of stories.

I loved my dad's stories — about people, places and events long ago — better than any fiction, more interesting than any history, though to be sure, many of his stories represented a rich oral history — including of this great State.

One of the most fascinating aspects of my father's stories was the vividness and depth of detail, the remarkable recall of dates, names and circumstances.

Close your eyes. Can't you just hear those stories now? I can. He's here with us yet.

But what I loved most about my dad's stories is not what they said about others, but what they said about him. My father's stories

revealed what by experience you all know to be true. That my father was interested in, and genuinely cared about people from all walks of life, no matter their station, color, or creed. Completely without pretense, my father cared. It is perhaps this singular trait which best defines who my father was, as a jurist, as a friend, as a father, and as a husband.

Can't you just feel it now? I can. He's here with us yet.

Now, the Irish are want to do things a bit differently — any excuse for a party. So it is here. Following the presentation the family hopes you will stay and share your experiences/stories about and with my father. You may have noticed that at a number of locations are boxes. We hope that if you have time you can jot you're your thoughts, memories, stories and leave them in the

boxes. Thanks to all who have done so already. And if you must leave and don't get a chance, it's not too late. Please send/e-mail your memory or story to one of the family members. Because more than anything it is these stories/experiences which not only honor my father, but through which he continues to live on in and with us, in our individual and collective memories.

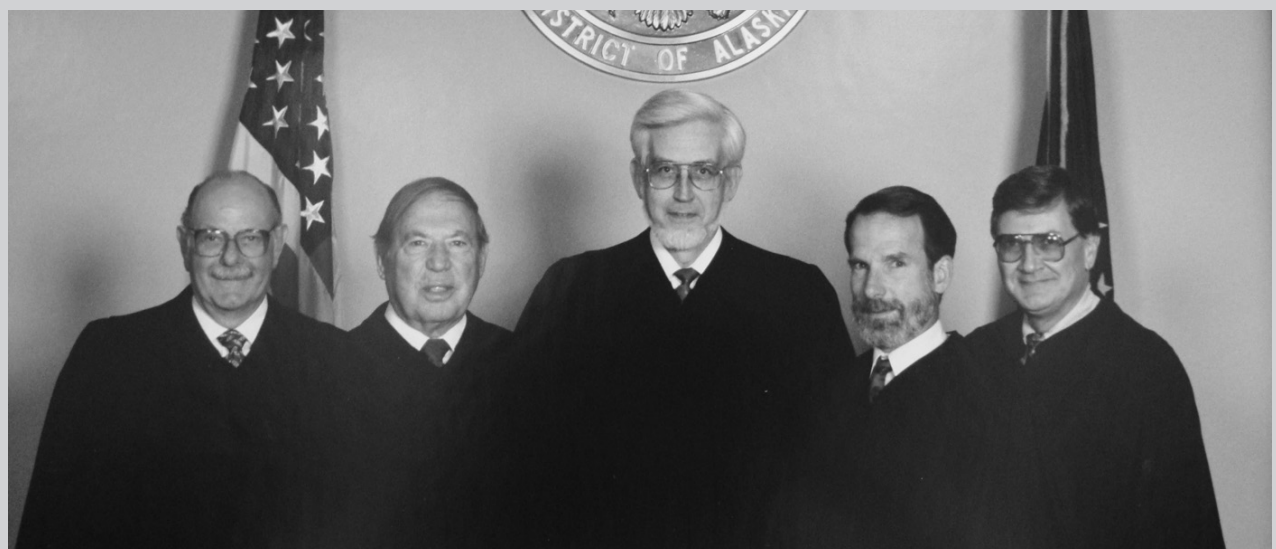
Can't you just feel it now? I can. He's here with us yet.

Finally, a word about my father's passing. After suffering what was believed to have been a stroke several weeks ago, and contracting pneumonia, my dad was hospitalized on Tuesday, March 29. The next day family managed to get him released back to the beautiful home my folks shared for the last two years in Santa Rosa. For the next four days my mom, the four children, some grand-

children and some in-laws staged a vigil around his bed, during which at least part of the time my father was responsive. We read stories, we recited poetry, and as awful as I'm sure it sounded, we sang songs. We laughed, we cried, we laughed some more. And yes, we told stories, stories of our experiences as a family and with dad.

Quite confident that the parental statute of limitations had run, we also told my parents the "rest of many stories." We told my father how proud we were, how much we loved him and how we were going to be okay! That his work on this earth was done. He heard it, he knew it, and when he took his last breaths the morning of April 3, he passed in peace.

I will leave you with this final question: Can you feel it now? I can. He's here with us yet.



Judge Fitz (and his federal court colleagues in the 1980s) L-R: James A. vonder Heydt, Judge Fitzgerald, H. Russel Holland, John W. Sedwick, and Judge James K. Singleton.

James Fitzgerald: In Memoriam

Remembering Fitz, from clerks he has known

Introduction

The idea was simple: Get a list of Judge Fitzgerald's law clerks and get their memories of the Judge. Glad to do it, no problem.

The first problem was that he was on the bench for almost 45 years and nobody has the complete clerk's list with updated contact information. So the first job was to find them, which actually was a joy because I got to call around the country talking to people who loved and respected Fitz as much as I did and hear their stories. Stories plural.

That led to the real problem. There are too many stories. So over the next couple of issues of the world-famous Alaska Bar Rag, we plan to publish stories about Judge Fitzgerald, from former law clerks and from anyone else who wants to contribute. Any law clerks I have not tracked down yet or anyone with a Fitzgerald tale to tell, please send me your stories, non-fiction preferred, at ericcroft2@gmail.com.

A note about the stories the Judge himself told. Anyone who knew him knew, and most everybody else has heard, that he liked to tell stories, sometimes long ones. He was famous for it. It had not occurred to me until I talked about it with other clerks, how few of the stories were about the Judge himself. He was in them, as a narrator or as a participant, but the stories were about the history or the important issue decided, about the nobility or the treachery of the main actors, about a ridiculous situation or a brave sacrifice. I have never met a person who loved to tell stories more but I have never met anyone whose stories were less about themselves.

Brian Heady, who has some stories in this initial installment and was Judge Fitzgerald's longest serving clerk, tells a story of an ESPN television crew coming to Anchorage and interviewing the Judge about his Willamette Football team playing a game in Hawaii just before Pearl Harbor and getting commissioned on the spot to stand guard after the attack. (A great story that we may get to in a later installment.) The interviewer kept asking about what Fitz did, there and later serving in the Marines in the war, but the Judge kept answering about what others did, including the men he knew that fought and died. At a break, Brian took the Judge aside to try to tell him what the crew wanted. "I know what they want, but that is not what they are going to get," said Judge Fitzgerald.

Well Judge, it is our turn now and these stories are going to be about you and the Alaska Court system you helped to create. Whether you like it or not.

--Eric Croft, Fitzgerald Clerk 1993-94, Clerk Wrangler, part-time Comp Attorney, and aspiring Bow Hunter.

#1: Preparation

While I clerked for him, Judge Fitzgerald took three multi-district litigation (MDL) cases, each of which was an enormous amount of work. The most complex of those three was a product liability-antitrust action filed against the commercial airliners in the US. Separate actions had been filed in 18 or 20 US District Courts around the country. Litigation counsel were from large firms in New York, Philadelphia, Chicago, Houston, Los Angeles, San Francisco and elsewhere.

When the MDL panel in Washington, D.C. makes a decision for litigation to "go MDL," all of the US District Clerks in each of the jurisdictions would send the original court file to the "transferee Judge," who was supposed to review all the actions, meet with litigation counsel and take over the overall case. These Transferee Judge Initial Meetings are very important because counsel are jockeying for position and quite prepared to test the transferee.

Judge Fitzgerald set the initial meeting in Seattle and we went through all of the files, making particular note of what motions had been ruled on, which are pending, and the law firms and partners that were involved. I made up what would now be called a spreadsheet, which was a graph covered with very small handwriting.

Prior to the meeting that day, Fitz had the clerk in Seattle get the business cards of the 45 or 50 senior partners who had flown in. We incorporated those names into the graph. He had the meeting held in a large conference room rather than in court.

He and I came in once counsel were seated. He announced in that low, gravelly voice, his usual introduction, "My name's Fitzgerald." We then placed the cheat sheet before us and he asked counsel to stand and identify themselves by name and law firm.

As each lawyer identified himself (and they were all men then), he would say something to the effect of, "You represent the Plaintiff in the action in Houston. I understand that the Motion to Dismiss was denied and you have two pending Motions; is that correct?" Almost all of the lawyers were expecting a "soft" how-do-you-do session, not an immediate getting down to business and certainly not a Judge who was quite familiar with all of the individual cases.

Once the lawyer representing one side of the dispute had stuttered a response, then Fitz would ask for opposing counsel in that particular case to stand and review the pending matters, politely suggesting that counsel in each case consult there in Seattle and see if they could simplify their case in preparation for the MDL case, and to promptly notify his Law Clerk. There started to be a high-pitched hum in the room as each litigator began to very quickly go through the file they had brought – but probably did not expect to look at.

Even before Fitz finished going through all the counsel, it was evident that the lawyers there knew that they were dealing with a Judge that was already in command of the multiple cases, that he respected them enough to work from the beginning to understand their positions and they were caught up in the spirit of cooperation that his competence, strength, respect and straightforward nature so often engendered.

--Murphy Archibald, is now an attorney in Charlotte, North Carolina. He clerked from 1977 to 1980.

#2: Semper Fi

I recall one afternoon in Tucson, Arizona, where Judge Fitzgerald was sitting as a visiting Judge. We had just finished lunch and were walking back to the courthouse. Judge Fitzgerald had half a sandwich in a to-go box. We walked by a homeless man reclining in the shade. Judge

Fitzgerald stopped, turned around and handed him his sandwich. He said to him, "I know what it's like to be down and out. Why don't you take this sandwich?" The man took the sandwich. The Judge said, "Here's a couple of bucks," and handed the money to the man.

We walked away. The judge said to me, "I felt bad for that old-timer. I believe Judge Fitzgerald was 84 at the time."

I recall on September 11, 2001, the US Marshal's evacuated and closed the courthouse. We cleared out and eventually everyone went home; except for Judge Fitzgerald. The Judge slipped back into the courthouse and went to work. Just like the young man who stood on the beach at Oahu through the night on December 7, 1941, armed with a carbine and awaiting a Japanese invasion, Judge Fitzgerald, a good Marine and a solid American to the end, manned his post on 9/11/01. Semper Fi.

--Brian Heady is an attorney in Anchorage. He is the longest serving Fitzgerald clerk, working "on loan" from Judge Fitzgerald to Judge Holland on the Exxon litigation from 1993 to 1996 and then directly from 1996 to 2006.

#3: Everybody Knows Your Name

On the civil side, the most significant case that Fitz heard while I was his clerk was *United States v. Atlantic Richfield, et al.*, the "North Slope Trespass" case in which the Justice Department sued the oil companies and the State of Alaska on behalf of Alaska Natives for damages stemming from pre-1971 trespass (mainly oil exploration activity) on aboriginal title lands on the North Slope. The threshold legal issue was whether ANCSA had retroactively extinguished trespass claims based on aboriginal title. Judge Fitzgerald was truly impressive on that case because of his extensive knowledge of the history and background of the dispute, his firm control of the many high profile lawyers, and his sense of how to write a persuasive opinion that would stand up on appeal when the legislative history was less than crystal clear.

Something that happened on the day before oral argument on the cross motions for summary judgment illustrates what a great Judge and boss Fitz was. In 1975-77 the court was in the old Federal building on 4th Avenue and there was little security. There were a few marshalls that patrolled the halls but anyone, drunks included, could and did walk into the building and into the judge's chambers without any security check. Fitz's long time Secretary, Sydney Dodge, had a desk just outside the Judge's chamber door and served as Fitz's gatekeeper.

Sydney had a medical appointment the day before the hearing in the Trespass case and she asked me to sit at her desk while she was gone. About noon several men dressed like lawyers came into the office, said they had just come in from out of town and would like to say hi to the Judge. I knew that Fitz was in his chamber reading the newspaper while waiting for a colleague to join him for lunch. Fitz had many, many friends, lawyers and non-lawyers, who stopped by chambers to visit or greeted him on the street whenever I was with him, so this was nothing

unusual. One of the men mumbled a name but I didn't quite catch it and waved them in to see Fitz.

As soon as they entered the chambers I heard Fitz explode: "Jesus Christ, Charlie, you shouldn't be in here!" Fitz then marched out of the office with the visitors in tow and didn't return for another hour or so, leaving me to worry that I might have let a known convict or other security threat in to see the Judge.

I knew that I had screwed up and expected Fitz to chew me out. He didn't. When he returned from lunch I offered my apologies for failing as Receptionist and he said not to worry, wasn't my fault. I asked him who those guys were. Well, Fitz said, one of them was Charlie Edwardsen, Jr., the leading trespass claimant, who wasn't a lawyer but should have known better than to visit the Judge on the day before the hearing. Several weeks later Fitz granted summary judgment to the defendants, concluding that ANCSA had extinguished all claims based on aboriginal title, including any pre-existing trespass claims. The decision was affirmed on appeal.

--Shelley Higgins is a private attorney in Chugiak. She clerked from 1975-77.

#4: Creating the Kenai Court

The passing of Judge Fitzgerald marked the final passing of the four Superior Court judges I clerked for in 1965, following Joe Brewer as Law Clerk. (Judges Moody, Davis, Gilbert, and Fitzgerald).

My office was next to Judge Fitzgerald's and Sydney, his secretary. Both were very good to a young lawyer just out of law school. Clerk of Court Anna Mae Vocacek was also very helpful. I believe I was the only Republican in the Anchorage Courthouse at the time, which made the experience even more interesting.

Judge Fitzgerald was a true scholar of the law and kept a notebook on all of the Alaska cases. Often, when my briefs and explanations ran too long, Judge Fitz would suggest that I shorten and summarize. He also admonished me, "Jim, just don't get me reversed."

As my former law partner, Jim Fisher, the founder of the Kenai Peninsula Bar Association observes, Judge Fitzgerald was crucial in establishing local judicial services on the Kenai Peninsula as during his service as Presiding Judge, he sent all of the cases involving the Kenai Peninsula to Kenai, which gave us the necessary evidence that we needed a resident Superior Court Judge, the first being Judge James Hanson.

Tom Wardell was the first Kenai DA and Bob Coats was the first Kenai Public Defender. Judge Fitzgerald was a lion of the Alaska Judiciary, having served on the Superior and Supreme State Courts and then on the Federal Bench. As a Democrat, his appointment to the Federal District Court by President Ford, a Republican, after being recommended by Senator Ted Stevens, is further evidence of Judge Fitzgerald's widely recognized judicial abilities. He was totally devoted to his wife and children and to Alaska. Judge Fitzgerald will be sorely missed.

--Jim Hornaday is a private attorney in Homer. He clerked for the pool of Alaska Superior Court Judges in 1965-66.

James Fitzgerald: In Memoriam

I'd like to read a letter . . .

Dear Fitz,

It was a grey November day when I first walked into your chambers for my interview in the old courthouse on Fourth Avenue.

I wasn't quite sure what to expect. I'd never before met a federal judge. And though you were the same age then that I am now, at the time one's late 50s seemed pretty old. So I imagined you looking like Chief Justice Berger, with chiseled features, a great shock of white hair, and an imperious demeanor.

What I found was a warm bear of a man with a fighter's mug who was uninterested in any of the trappings of the bench, and who was instead defined by his humanity, his profound sense of justice, and his deep sensitivity for the human condition.

Getting to know you over that first year together cemented in me a belief that the courts could actually be a place of refuge to secure justice, to have one's day in court, and to truly be heard. Your belief in the rule of law has inspired all that I have done since.

Sure you could be tough, and at times you had to be, but you also treated everybody with respect, and humility, and kindness, and with a genuine interest in all that they were about.

You were a Federal Judge – you didn't have to do that – but you did; that's just who you were.

With a firm hand, but also often a twinkle in your eye, you could tame even the most ornery of those who came before you. I remember the ubiquitous tax protester Joe Vogler once entering your courtroom, ready for bear and packing heat—as he always did—in his shoulder holster. Marshals were all over the place.

Vogler fiercely hated the Government, and he fiercely hated your institution and all that you stood for. But you showed him the same respect you showed everyone, you flashed a smile or two, and Joe left court that day without quite the grand battle royal he'd planned on when he came in.

My co-clerk Mary Heen and I loved watching you in trials, especially when a major case brought lawyers into town from the great cities Outside.

You'd lean back behind the bench as the testimony began, and eventually your eyes would close as the witnesses and the lawyers ran on. The lawyers were sure you'd fallen asleep. At first, we were too. But when the testimony ended you'd slowly lean forward, declare that the proof was closed, and then proceed with eloquence and absolute mastery to announce your detailed findings of fact encompassing the entire scope of the proceedings.

We never got over your ability to do that, nor at the astonishment of the Outside lawyers when you did.

I knew you'd been a Marine in World War II, and the time came one day when I asked you about that, too. I'd grown up on post World War II heroic movies about the Marines, and I think part of me wanted to hear about your heroic exploits.

But instead you talked with me about the butchery and depravity and ugliness of war, and in a way, and with a tone, I will never forget.

You were a hero and you took enormous risk in the face of horrific odds, but you'd have none of that. Like so much about your stories, it was never 'about you.'

One thing I never learned from

you was your mastery of storytelling. As everyone who knew you knows, you could spin a story for hours – and did.

You'd tell us about a notable case you'd tried, or your early adventures in the Territory, or about hearing Billie Holiday, or about playing baseball with Satchell Page.

Sometimes we'd find ourselves wrapped in awe for hours in your chambers neglecting our work, or walking home with you on a winter's night. We'd be standing on a street corner where our paths would diverge, yet your story went on, snow gathering high on your hat.

But that was you: total absorption in your stories, like your total absorption in your trials, and that is what made you such a great story teller and a great trial judge.

The last story you told me about was the time you got home-towned arguing a motion before Justice Brennan in the infamous Kake fish-trap case. You were Governor Egan's head of Public Safety but also a special assistant AG, and you'd been victorious in the Territorial Court in upholding Alaska's new anti-fish trap law.

But the fish companies were undeterred and within 10 days you had to fly to D.C. to fight against a single Justice stay of your victory. You walked in to appear before Justice Brennan, only to find that the fish companies had hired Abe Fortas. I think you told me Justice Brennan ate your lunch that day, or words to that effect, and he went on to rule for the companies.

But a few years later you'd end up being vindicated by a unanimous Supreme Court and the fish traps became history. Of course, by then



The judge in a moment of U.S. district court levity.

you were already 3 years on the bench. It was a great story, Fitz, full of high drama and, as always, you (unlike me today) did it justice—over a three hour lunch.

With your bare hands you could crack the claws on the largest 15 pound lobsters one could find on Nantucket, a feat even hammers could not match. Yet with all that power and brute strength, you were a man of unlimited compassion, a deep and abiding sense of justice, and a bottomless wellspring of love for your family and all of us fortunate enough to be your friends.

The Roman Emperor and philosopher Marcus Aurelius said in his Meditations:

"When you arise in the morning think of what a privilege it is to be alive: to breathe. to think. to enjoy. to love."

What a privilege, too, it has been to know you Fitz.

—Lloyd B. Miller

Memorialized in the Congressional Record

My home State of Alaska is a young State. Barely over 50 years old. I often marvel at the fact that so many of those who led Alaska during territorial days and were instrumental in the statehood movement also played important roles in post-statehood modern Alaska. Very few of our 50 states can boast that its founders are still around to guide the current generation of leaders. Alaska has been deeply fortunate in this respect. And we've never taken the wisdom of these individuals for granted.

I speak today to honor the life of one of these individuals who passed away last week—Senior U.S. District Judge James Martin Fitzgerald, a member of Alaska's Territorial Bar, one of the first eight individuals selected to serve on the Alaska Superior Court, an associate justice of the Alaska Supreme Court and a Federal judge since 1974.

Judge Fitzgerald was born in Portland, OR, in 1920. He enrolled in the University of Oregon and played football for the Ducks. But shortly thereafter he left college, when he was called to active duty in the National Guard. Following discharge from the National Guard he resumed undergraduate study at Willamette University, once again playing on the football team.

But World War II interceded. On

December 6, 1941, the Willamette team played an away game at the University of Hawaii. The next morning, the team was waiting outside the Moana Loa Hotel for a bus to take them on a sightseeing tour as bombs fell on Pearl Harbor.

The entire Willamette football team was conscripted to help defend the Island of Oahu. After brief training they were armed with World War I era rifles and put on guard duty at a Honolulu High School. The team went on sentry rotations to keep watch over nearby water towers and storage tanks that were potential Japanese targets. They strung barbed wire along the Waikiki beach.

The football team remained in Honolulu for several weeks until their coach convinced the captain of the SS President Coolidge to take the team home in exchange for aiding the hundreds of critically wounded servicemen that were on board.

On Christmas Day 1941, the team arrived in San Francisco. Judge Fitzgerald promptly enlisted in the U.S. Marine Corps. He spent 5 years fighting for our country as a radio gunner for a torpedo squadron in the South Pacific.

Honorably discharged once again in 1946, Fitzgerald returned to Portland. He married his wife Karin in 1950. Fitzgerald worked as a firefighter and reenrolled at Willamette

where he completed work toward his B.A. and subsequently earned a law degree in 1951. The newly married couple spent their first summer in Ketchikan, Alaska where he worked in a lumber mill and a salmon cannery.

Upon graduation from law school, Judge Fitzgerald returned to Ketchikan. He served as an assistant U.S. attorney in Ketchikan for 4 years then relocated to Anchorage where he served as the city attorney.

Judge Fitzgerald was subsequently named counsel to Alaska's first Governor, William Egan, and was appointed the first commissioner of the Alaska Department of Public Safety.

In November 1959, Judge Fitzgerald was selected to be one of the first eight judges of the newly created Alaska Superior Court, which is our trial court. Prior to Alaska's admission to the statehood, the Federal Government maintained the judicial system for the territory. A new court system for our new State had to be created from scratch. The eight new judges were promptly dispatched to New Jersey to learn how a State trial court operates. Among his colleagues on that trip was Judge James von der Heydt, who like Fitzgerald, would also one day serve on the U.S. District Court.

Judge Fitzgerald was elevated to the Alaska Supreme Court in 1972 and served there until 1974 when he was confirmed to serve on the federal bench. Judge Fitzgerald was sworn in as a U.S. district judge on December 20, 1974. He served as chief judge of the District of Alaska from 1984 until 1989 and became a senior district judge in 1989.

Judge James Fitzgerald passed away surrounded by his family on April 3, 2011. He is survived by his wife Karin Fitzgerald and their four children. On behalf of my Senate colleagues, I extend condolences to Karin, Judge Fitzgerald's family and his many friends in the Alaska Bar and the community as a whole.

James Fitzgerald's life was one of sacrifice and public service. He set aside his college education and an opportunity to play varsity football in order to serve his country in time of war. He was a dedicated attorney and jurist who brought peace to the territory of Alaska and then went on to help create Alaska's highly respected State court system before joining the Federal bench. He served my beloved State of Alaska for well over 50 years; and it is my hope that his life will continue to serve as an inspiration to us all.

—Sen. Lisa Murkowski

James Fitzgerald: In Memoriam

James Fitzgerald: Another clerk remembers Fitz

(Ed. Note: The following is a tribute to Judge Fitzgerald upon his retirement 5 years ago, but is a fitting memoriam, as well.)

June 29, 2006

Dear Judge Fitzgerald:

Although I can't be there for the tribute on July 6th, I want to add my voice to those congratulating you on this day of celebration. In addition to all of the accolades you will receive from others about your important contributions to the administration of justice in Alaska, in the Ninth Circuit, as well as your distinguished service on the multi-district litigation panel and other national judicial service, I'd like to add a comment about your influence on those who worked with you.

Your clerks had the extraordinary good fortune to learn about law and the constitutional role of the judiciary from a master trial judge. Through your example, we absorbed the careful craft of lawyering and judging. During early morning or late evening plane trips to court sessions outside of Anchorage, we would see you reading and annotating a sheaf of slip opinions and advance sheets; later, you'd "remind" us of the most recent rulings when related issues arose in new or pending cases. On the bench, you would preside over hearings with long complicated testimony and stacks of documentary evidence; when the final witness had been examined and last document submitted, you'd lean forward, and with an awe-inspiring photographic memory, make thorough and elegantly-articulated oral factual findings from the bench.

We also were lucky to clerk for a great teacher, whose stories, peopled with memorably colorful characters, recounted both high and low moments in establishing the rule of law in Alaska. We watched you apply that gift of understanding people, combined with great dignity, to your interaction with juries. All in all, you brought an inspiring combination of courage, realism, integrity and humanity as well as keen intellect, insight and wisdom to the cases before

you. It was a great honor and privilege to serve as your law clerk; we wanted to do our best for you.

Although unyielding regarding important principles and standards, you were always warm-hearted and exuberant in your dealings with us. We, along with our spouses and significant others, enjoyed some spectacular feasts and ski weekends at Alyeska with you and Karen and your big-hearted, spirited family. Both on and off the slopes, we admired the Fitzgerald family physical courage, strength, and energy.

The strength part was impressed on Ole and me a few years later during a visit you made to the cottage we were building on Nantucket. You came to the rescue of hungry dinner guests at one of our early less successful culinary efforts. Our neighbors, two professors from Sweden, still remark about the wonderful judge who could crack the half-inch thick claws of a giant-sized 15 lb. lobster open with his bare hands. We had been attempting unsuccessfully to smash them open with a hammer. You also helped us solve a difficult engineering problem by lifting an immovably heavy chimney owl up on one shoulder and simply carrying it more than 20 feet up ladders and then up a precarious scaffolding to place it miraculously on top of the chimney. Twenty-five years later, it's still standing there; I can see it now from where I'm now writing. As for the exuberant part, we remember your shouting over wind and waves that we needed to test the limits of our creaky wooden sailboat by sailing it more aggressively—even if we all ended up being "dumped" in the sea. In the last few years, that same boat dumped our teenage son on a regular basis when he learned to sail; I'm convinced that having heard us tell the story helped make him better sailor!

We celebrate both your work and your joy in the day-to-day life shared by the extraordinary group of family and friends that have gathered around you today.

With warm best wishes,
—Mary Heen

Changing lives

It was always clear to me what a terrific husband, father, grandfather, and family man the Judge was. I found it remarkable how well he balanced his high-powered and significant work as a judge and his tremendous work ethic with his great focus on his family and his commitment to all of you.

I am also struck by what a remarkable life the Judge led — from his youth, to his college football career, to his time in Hawaii at the beginning of World War II, to his military service, to his time in Alaska before statehood, to his time as a state trial and appellate judge and federal judge. He was such a wonderful story-teller, and was so enjoyable to listen to as he brought his experiences to life. It is hard to think of anyone who came so far, who had a more interesting career, or who contributed more to Alaska and this country. The Judge was a true giant of Alaska history and Alaska law. He really made a difference with his career and his decisions. Yet no one was more down to earth and less impressed with himself.

For me, the two years I worked with the Judge were two of the most important years of my life. I soon learned that the Judge didn't regard having a law clerk as a one- or two-year commitment. Just as he had life tenure as a federal judge, he had life tenure with all of us who worked with him. He wanted to teach us as much as he could — about law, about being a lawyer, about the court system, and about life. He wanted to make us the strongest and best lawyers and people he could and to prepare us for our lives and careers after our clerkships.

His interest didn't end when we stopped working for him. He wanted to help us select the right careers and attain the right positions. He wanted to help us find a place in law where we could enjoy legal practice and our careers as much as he did. And he never lost touch. Even when I left Alaska and moved thousands of miles away, he would always call to check up on me, and try to get together.

The Judge made his clerks members of his extended family. I still remember arriving at the District Court in Anchorage over 25 years ago as a very green and inexperienced law school graduate (I wasn't a lawyer). But the Judge didn't focus on the gaps in my knowledge and experience. He saw the glass as having a little water in it, rather than being almost empty. (I think he was that way with everyone.) Every afternoon he would sit with us in his chambers and talk about the cases that were before him. He would explain the issues, facts, and legal questions he considered significant and would direct us to research particular questions and to draft orders for him. He would tell us what lawyers had done well and what they could have done better in the hearings and trials before him, and he would tell us about similar cases he had handled as a lawyer. He had already been a judge for 25 years, but he still brought to every case an excitement and enthusiasm, a genuine interest, and a desire to find the correct and just legal answer.

I was transformed. The Judge taught me how to go beyond the classroom and book learning I had received in law school and how to become a real lawyer. He taught me how to analyze cases, how to argue legal positions, how to write briefs, how to examine witnesses, and how to approach trials. No one had ever taught me those basics before, and although I have been fortunate to work with some excellent lawyers since, I had never learned as much about the fundamentals of being a lawyer as I did during my clerkship.

The Judge changed my life. There isn't a day that goes by — even now, 25 years later — when I don't think about him and draw upon what he taught me.

I'm sure the same is true for dozens of other lawyers. The Judge gave us a great gift and had a remarkable legacy. For all of us, he is, and will always be, a continuing part of our lives.

—Rich de Bodo

A great gift to Aaska

When James and Karin Fitzgerald drove up the Alaska Highway in Little Nell, their Model A, Alaska was nearly a decade away from Statehood. Today—60 years later—the 50th Anniversary of Statehood has come and gone. And we can celebrate, with tremendous gratitude, the remarkable role James Fitzgerald played in shaping our state.

To me, the classic image of Alaska Statehood isn't President Eisenhower signing the Statehood bill, or the group of ecstatic political leaders holding the famous "WE'RE IN" headline. To me, the iconic image of Statehood will always be the one of Alaska's first eight superior court judges, newly appointed by Governor William Egan, standing on the steps of an airplane on their way to judge's school in New Jersey, with Judge James Fitzgerald beaming from the front row. The territorial justice system these judges

would soon replace had been a slow and cumbersome disappointment, and was a major factor in the drive for Statehood. So Judge Fitzgerald must have felt the burden of a new and momentous responsibility. But what you see in the image instead is a sense of pride, shared purpose, hope, and unbridled delight. The Judge was setting out on a mission. And as we now know, it was a mission he accomplished magnificently. That he was able to perform it so long and so well has been a great gift to the people of Alaska.

When I was thinking about what to say, the word "trailbreaker" kept coming to mind. Trailbreakers are definitely heroes in Alaska because they make life easier and better for the rest of us. But the word seemed so inadequate. Judge Fitzgerald not only broke the trail for our judiciary—he practically made the trail, and he

helped maintain it for 47 years.

Then earlier this week, as we were working on photos for today's celebration, Karin Fitzgerald showed us her favorite photo of her husband. He is standing next to a snowy spruce tree in Girdwood, on a pair of old WOODEN cross-country skis, with a wool cap on his head and a smile from ear to ear. "Fitz never liked the groomed trails," Karin said. "He liked to head off into the woods. We would climb over logs, twist through brush, dive under the branches of trees and come up with twigs in our hair. And he would turn to me and say, 'isn't this just GREAT?!'"

This helped explain some things. The transition from the territorial justice system to the new state justice system wasn't easy to navigate. I can imagine Judge Fitzgerald as a new judge, sitting in borrowed chambers in the old federal build-

ing, next to a borrowed courtroom, with no Alaska Rules Of Court or Alaska case law. And I can envision him sitting amid piles of neglected territorial case files, carefully paging through them with chaos all around, suddenly seized by the marvel of it all and beaming up from his desk, "isn't this just GREAT?!" It makes me wonder whether the Alaska Court System would have come into its own as quickly and as well as it did if our founders had demanded set track.

Judge Fitzgerald would serve for 13 years as a superior court judge in Anchorage. Then in 1972, he received another appointment from Governor Egan—this time to the Alaska Supreme Court. He would serve on our state's highest court until 1975, when President Gerald Ford appointed him to the U.S. District Court for the Dis-

Continued on page 10

James Fitzgerald: In Memoriam

A great gift to Aaska

Continued from page 9

trict of Alaska. At the time he left to join the federal court, Judge Fitzgerald held the distinction of being the longest-serving jurist in the Alaska Court System—the last member of our original bench. Already, he had served a stellar judicial career distinguished by both skill and longevity. Yet he continued to serve the people of Alaska for another 31 YEARS.

I didn't know Judge Fitzgerald through most of his judicial career, and I never worked with him or appeared in front of him. But as someone who works for our state court system and loves history, I've learned a bit about his judicial reputation. I think it could be accurately characterized by words like "talent," "integrity," "dignity," and "fairness." Yet I think the greatest tribute to his qualities as a jurist came just two days ago at a legal education program on diversifying the judiciary, held here in Anchorage. As many of you know, Kevin Fitzgerald is an attorney member of the Alaska Judicial Council, which is tasked by Alaska's Constitution with evaluating candidates for judgeships. Kevin

served on the program's panel, and was asked what qualities he looks for in a judge. "Humility," he said without pause, "it's terribly important to be humbled by the seriousness of the job." And then he added: "compassionate," "caring," "honest." And as I sat there in the crowded room, I had to believe that those Irish eyes were smiling somewhere. Because of course the qualities Kevin chose were the qualities of his father—the qualities for which Judge Fitzgerald was so widely respected and admired. And it was obvious at that moment that while the Judge is no longer with us, his spirit, and the values he embodied, are still very much alive.

I came to know Judge Fitzgerald in the later years of his career, through my friendship with his daughter Debra and my membership in the Bar Historians Committee. I will always remember with fondness listening

at Bar Historian's meetings as the Judge and his colleague Judge James von der Heydt swapped stories. The Judge was a great storyteller, but his stories themselves were not what impressed me most. What impressed me was that, despite his amazing life, his stories never faced the mirror to

I was struggling for a word to describe Judge Fitzgerald's contributions in these later years of his life, when his humble presence inspired so many of us of the next generations. And the word that kept coming to me was "touchstone."

himself to reflect on his own achievements, but instead faced the mirror outward to reflect others in the best light.

I will always remember with gratitude all the times the Judge and Karin walked arm-in-arm into annual Bar Historian's luncheons, or Territorial Lawyer's dinners, or Bar banquets, spreading their greetings with hugs and smiles all around. I always felt lifted up by the warmth of their glow, and I know I wasn't the only one.

And finally, I will always be moved by the incredible love and devotion that Debra and the entire Fitzgerald

clan bestowed upon their patriarch. He was a much-adored husband, father, grandfather, and great-grandfather, and the affection directed his way was beautiful to see.

I was struggling for a word to describe Judge Fitzgerald's contributions in these later years of his life, when his humble presence inspired so many of us of the next generations. And the word that kept coming to me was "touchstone." To me, a touchstone is someone whose inspires you to live your values, and whose example helps you stay on track even when you fear you might falter. By my definition, this fit Judge Fitzgerald perfectly. But I thought I'd better check the dictionary. The dictionary says a touchstone is "a black stone related to flint and formerly used to test the purity of gold and silver by the streak left on the stone when rubbed by the metal." So in essence, "touchstone" means something like "gold standard." And this definition works even better.

—Barbara Hood
April 17, 2011, Anchorage,
Alaska

Keith Sanders: In Memoriam

Keith Allen Sanders, 49, died unexpectedly at his Eagle River home on March 7.

Keith was born Nov. 13, 1961, in San Pablo, Calif., to James and Helen Sanders. He graduated from the University of California at Berkeley in 1984, and married his high school sweetheart, Rhonda Speck. He received his law degree from S.F. Hastings College of Law in 1987, and the couple moved to Anchorage. There, Keith began his distinguished legal career beginning with a clerkship for Alaska Supreme Court Justice Edmond Burke and continuing with positions at Bogle and Gates, the Alaska Bar Association, BP Exploration Alaska, 13 years at Cook Inlet Region Inc., and three years at Dorsey and Whitney.

Keith was a family man through and through. He never missed an essential moment in any of his kids' lives, attending everything from diving meets to theater productions to basketball games. The family loved



to camp, fish, enjoy the Alaska wilderness, and above all, spend time together. He was a member of the board of directors of the Eagle River Nature Center.

Keith was in a perennial good mood, with a smile and teasing comment always ready. He was smart and thoughtful yet understated, charitable and humble. He leaves many colleagues and friends who loved his entertaining stories of growing up, dealing with an awkward encounter, or handling a strange but interesting situation.

Keith's wife and children wrote: "He was a person loved by all who met him, generous with his time and spirit, truly the light of our lives. He was devoted to providing for and spending time with his family - holding togetherness and love above all other things. Although he cannot be here, he will always be with us; although we cannot see him, we will always feel his love."

He is survived by his beloved wife

of 28 years, Rhonda Sanders; and his children, Katie, 20, John, 18 and Mark, 16. He is also survived by his mother, Helen Sanders-Tunnell and in-laws Bob and Joy Speck of El Sobrante, Calif.; siblings, Steve (Lyndie) Sanders, Jim (Betty) Sanders, Lynette (Kevin) Rivard, Domenic Sanders, and David (Nancy) Sanders, all residing in California, and also Brian (Barbara) Sanders of New Jersey; brother-in-law, Bob Speck (Sloan MacDonald), brother-in-law Ed (Carol) Speck; and sister-in-law, Brenda (Ron) Barfield; and many nieces and nephews.

Donations in Mr. Sanders' name may be made to the Eagle River Nature Center.

Arrangements were made with Legacy Funeral Home's Bragaw Chapel. A service was held at Eagle River Community Covenant Church on March 12.

"I worked with Keith at CIRI for several years and was always impressed by Keith. Whether you were a janitor or the President & CEO, he treated you with the same level of respect and friendship. I always enjoyed his candor and charisma."

—Ethan Tyler, Girdwood,
Alaska

"I worked with Keith back in the early 90s. He was a great guy, and I loved working for him. He always took time for people, even though he was so busy. He truly made a difference in the lives of those he touched."

—Deb Jones, Anchorage,
Alaska

"The Alaska legal community has regrettably lost one of the good ones."

—Jill Farrell, Anchorage,
Alaska

It's difficult for me to express in words how my heart sank upon hearing that my dearest childhood friend has passed away. Keith and I shared a cradle together, countless backyard adventures, and even several homes over our early adult years.

There are many endearing moments I've shared with Keith, but a couple I immediately reflected upon was how he remarked in his early 20's that it was like he "was laying the foundation for a building," but was worried he "had no idea of what it would look like when he finished." Yet another insight he shared with me one late night, after walking several miles and seeing homeless persons along the way. He said, "you know what makes the difference between a person in such hardship and us is really just one thing, it's the family and friends that sets us apart."

It comes as no surprise that Keith successfully pursued the greatest adventure of all, by traveling to Alaska with the love of his life Rhonda and together raising a beautiful family. I know he would be proud of the "building" he finally constructed, for Keith, his family was everything. Well done my friend!

—Charles, and Jeannette,
Johnny, and Lea Fromm, Pleasant
Hill, California

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Marvin Hamilton: In Memoriam

MEMORIAL SERVICE FOR JUDGE MARVIN HAMILTON April 15, 2011, Bethel, Alaska

Remarks by Chief Justice Walter L. Carpeneti

It is a privilege for me to be here today to represent my colleagues on the supreme court, and all of the employees of the Alaska Court System, in honoring Judge Marvin Hamilton and the wonderful life that he led. I am just so sad that it is the occasion of his death that brings us together. For while we join in this celebration of his life to pay him tribute, we also come together to support each other in the face of a tremendous loss, and to help each other through a deep common grief. Marvin Hamilton was a well-loved man. And it is hard to say goodbye.

When I first heard the tragic news last weekend, my reaction was one of shock and sadness. I just couldn't believe it, and my heart went out to his family, to his colleagues at the Bethel court, and to the Bethel community. But it didn't take long to realize that the tragedy would be felt far beyond the boundaries of Bethel. The Alaska Court System has lost a tremendously talented, hard-working and dedicated judge, and all the people of Alaska share in this loss.

Judge Hamilton brought to the bench a lifetime of experience and achievement that was truly extraordinary. His resume reads like a global adventure list, with rich and varied endeavors, but there is a common theme that shines through: he was a man who had great compassion and concern for his fellow human beings, and an abiding commitment to social justice—for everyone, everywhere.

After growing up in California and receiving degrees in philosophy and theology with honors from San Diego State University, Judge Hamilton spent two years with the Peace Corps in Kenya, directing rural water projects. Returning to the U.S., he entered law school at Notre Dame, where he graduated cum laude and received awards for both academic excellence and public interest service.

It was during his last year at Notre Dame that he noticed a tiny announcement on the wall about law clerk opportunities in Alaska. He convinced two friends to interview with him, and it was not long before all three arrived in Anchorage to clerk for the Alaska Court System. He would spend a year as a clerk for Judge Robert Coats of the Court of Appeals, then embark on a career as a public defender that would last for nearly two decades.

Judge Hamilton's years as a criminal defense lawyer took him around the State of Alaska—from Barrow, to Ketchikan, to Bethel. And they also took him around the world—to Micronesia and Palau. But it was Bethel that he ultimately called home. When he applied for the judgeship to which he was ultimately appointed, he put it this way:

"My family and I lived in Bethel for five years. I ran the Public Defender Office, my wife worked for the airlines, our Yapese niece attended the local college, our daughter went to Yupik Immersion School (and danced in Camai twice) and our son played with our dog on the tundra. We miss it."

I can attest personally to the pride Judge Hamilton had in this community and the life he and his family enjoyed here. I came out to Bethel

in 2004 for a full-day program on children in the courts. When I found myself with an hour to spare before my flight home, he took it upon himself to give me a tour. While we visited his family's home and drove the streets to see local landmarks, his enthusiasm about living here, doing the work he was doing, was palpable. I didn't know Judge Hamilton well then, but I've since learned that "enthusiasm" could have been his middle name. Everything was exciting to him, and it showed.

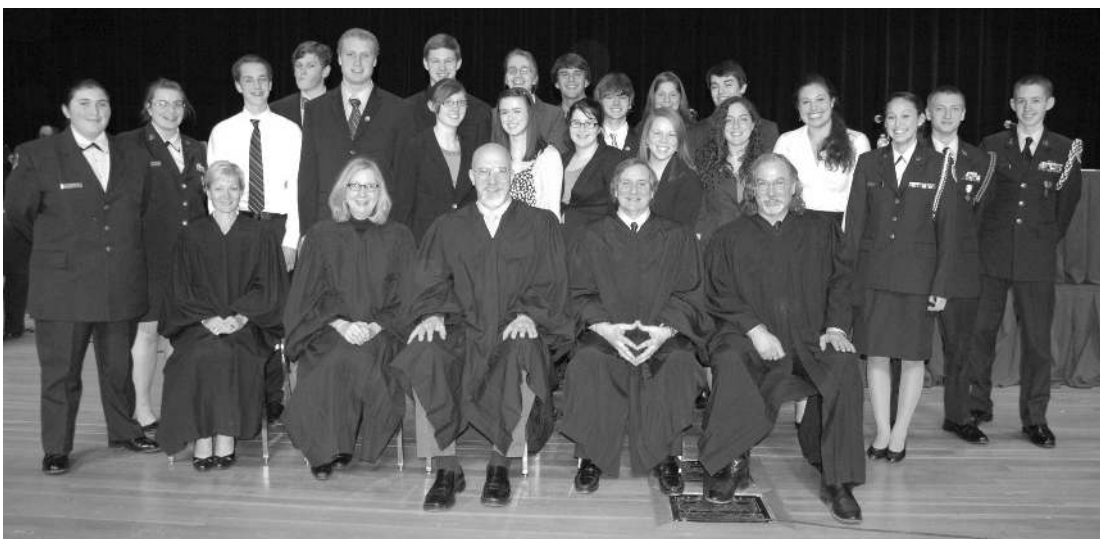
There is a passage in his judicial application that helps explain the values that shaped his character. He explained that "after 50 years trodding this planet" he felt he had learned valuable lessons that might be of some value to the Alaska judiciary and the people of the Y-K Delta. And what were the lessons he learned, in his words? "Open-heartedness from my mother, hard work from my father, family devotion from my wife, innocent joy from my children, quiet pride from a Navajo Codetalker, good humor from a Kenyan farmer, far-sightedness from a Micronesian navigator, personal integrity from an Inupiat magistrate, and cultural inclusiveness from a Yupik kindergarten teacher."

Judge Hamilton brought all of these valuable lessons to his work on the bench, and they no doubt helped him become a good judge. But what he didn't include on this list, of course, are the lessons we learned from him. Judge Hamilton carved his own path in life with a vision, integrity, and sense of purpose that was uniquely his own. In his inimitable way, he showed us how to live a generous and principled life. He taught us the im-



portance of a full heart and a keen eye for justice. He inspired us by spending his life as he wanted to spend it, serving the public good. And he did it all with a big smile and a twinkle in his eye, in a manner that an old friend and colleague described simply as "Marvinesque." She needed to coin a new word for him, because no other word would do: he was one of a kind. The ancient Greek Euripides taught that "the wisest men follow their own direction." By Euripides' measure, and any other, Marvin Hamilton was among the wisest of men.

To Judge Hamilton's wife Mili, his children Whitney and McKinley, and other members of his family, I am so sorry for your loss. And to his court family here in Bethel and the Bethel community, I extend my sincerest sympathy. I know the days ahead will be difficult, and you will be in our thoughts and prayers.



The justices of the Alaska Supreme Court meet on stage with members of the West High School ROTC program, who served as ushers during the event. Members of the court, seated L-R, are: Justice Morgan Christen, Justice Dana Fabe, Chief Justice Walter Carpeneti, Justice Daniel Winfree, and Justice Craig Stowers.



Volunteer attorneys visited classrooms in teams to present the two cases that would be argued during the Supreme Court LIVE program. L-R: Volunteer attorney Moira Smith, Dimond High teacher Lem Wheelers, and volunteer attorney Jeff Feldman.

700 attend Supreme Court LIVE

Over 700 high school and middle school students attended the third Supreme Court LIVE program held Feb. 24 at West High School in Anchorage. The Alaska Supreme Court heard oral arguments in two cases, one involving PFD eligibility for a member of the military, and one involving the dismissal on summary judgment of a personal injury case.

Teams of volunteer attorneys visited 35 participating classes at high schools across Anchorage in the weeks preceding the program to help students prepare for the arguments, describing both the court process generally and the specific issues raised by the cases. The next Supreme Court LIVE program is tentatively slated for Fairbanks during the fall of 2011. For more information, visit: <http://www.courts.alaska.gov/outreach#scl> or contact coordinator Barbara Hood at 264-0879; bhood@appellate.courts.state.ak.us.

Thank you!

To the following attorneys who generously volunteered their time to visit classrooms in advance of the Supreme Court LIVE event:

Jeff Feldman
Laura Fox
Robert C. Erwin
Leslie Hiebert
Marc June
Jonathon A. Katcher
Kathy Keck
Doug Kossler
Allison Mendel
Susan Orlansky
Rachel Plumlee
Mark Regan
Sara Rishko
Moira K. Smith
Kelly Taylor



Volunteer attorney Allison Mendel, L, West High teacher Brandon Barter, and volunteer attorney Laura Fox.

Should we shoot the messenger?

By Sara Trent Gray

Many would agree that a blanket prohibition on use of cameras in the courtroom is too high of a price to pay for the antics exemplified by those in the O.J. Simpson courtroom. The discussion of and argument for and against whether cameras should be allowed in the courtroom began long before O.J., but it was emphasized and highlighted by the O.J. trial. Do cameras threaten the impartiality of a court proceeding or do they provide the level of public access necessary for a transparent public justice system?

As a member of the Ninth Circuit Lawyer Representative panel for the District of Alaska, I had the opportunity of attending the Ninth Circuit Conference of Chief District Judges and Lawyer Representatives Coordinating Committee in January.

The program "Cameras in the Courtroom: The Next Chapter" generated a heated panel discussion, and it was the impetus for many after-program conversations. The program panel was well-balanced, representing judicial, media, and both for- and against-camera perspectives; the panel included The Honorable Marilyn L. Huff, District Judge for the Southern District of California; Greg Dawson, Vice President of NBC News San Diego; Patricia Glaser, Glaser Weil Fink Jacobs Howard & Shaprio, LLP; Kelli L. Sager, Davis Wright & Termaine; and Chief Judge Robert S. Lasnick, who moderated the program.

Ms. Glaser is, among other things, an entertainment lawyer who represented Conan O'Brien in his recent breach of contract lawsuit against NBC. Kelly Sager is known as a national expert in the area of entertainment law and free speech rights for the media and regularly represents media outlets requesting access to proceedings in high-profile trials, including the trial of O.J. Simpson.

The program's presence on the

conference agenda was likely a result of the Federal Judiciary's recent approval of a pilot project for cameras in the District Courts. The pilot project, approved in September 2010, will last up to three years.

Media coverage had been expressly prohibited in criminal proceedings under Federal Rule of Criminal Procedure 53 since the rules were adopted in 1946 and by the Judicial Conference since 1972 when it adopted a policy banning cameras in civil trials. In 1996, however, the prohibition was rescinded for courts of appeals allowing appellate courts discretion in permitting electronic media coverage of its proceedings. Only the Second and Ninth Circuits allow such coverage. The Supreme Court has never allowed live electronic media coverage of its proceedings. However, its opinions and the transcripts of the oral arguments are posted on its website and audiotapes of the arguments can be accessed by the public from the National Archives and Records Administration.

While cameras in the courtroom may be fairly new to federal district courts, they are not new to Alaska state proceedings. Administrative Rule 50 permits media coverage anywhere in the state court facility. Consent of the presiding judge must be applied for and requests must be made at least 24 hours prior to the proceeding. Applications that are timely filed are deemed to have been approved unless otherwise ordered by the court. All parties to a divorce, dissolution of marriage, domestic violence, child custody and visitation, paternity or other family proceedings must consent to coverage. There are some coverage restrictions with respect to jurors and victims of sexual offenses, and the court may impose reasonable restrictions with respect to time, place, and manner of coverage.

While the panel at the Ninth Circuit Conference did not necessarily bring forth any new arguments and

the discussion centered on the standard points of view, the conversation was no less interesting.

Arguments *against* having cameras in the courtroom included: witnesses, judges, and attorneys play to the cameras or the cameras have an intimidating effect on litigants, witnesses, and jurors; sequestered witnesses may see the prior day's testimony; cameras may lead to lack of courtroom control (i.e. the media circus); publicity may compromise the security of participants in the judicial process; and excessive publicity may give rise to due process problems.

Arguments *for* having cameras in the courtroom included: the public's need for transparency; the presence of cameras may encourage otherwise disengaged judges to give greater attention to arguments; watching the proceedings will provide the public the opportunity to learn important civic lessons by providing insight into how federal courts work; and knowing that cameras will be present may persuade lawyers to prepare more.

It is impossible not to recognize validity in both positions. However, does allowing cameras in the courtroom fit within the courts' constitutional responsibility to guarantee a fair and impartial trial? In a 2005 Senate hearing, Alabama Sen. Jeff Sessions expressed the need for caution with respect to allowing media in the courtroom and stated that the Supreme Court preferred that the public focus on the law and not the evaluation of it. The Supreme Court's preference, however, begs the question: How does focusing on the law differ from evaluating it?

Chief Judge Alex Kozinski for the U.S. Court of Appeals for the Ninth Circuit, an advocate of cameras in the courtroom, and Robert Johnson, his law clerk, in their Law Journal article entitled, *Of Cameras and Courtrooms*¹ opine that cameras should be brought into the courtroom not only because the public has a right to know what its judiciary is

doing, but also to deflect the public's reliance on pseudo-journalists such as bloggers for legal news. In today's world of Twitter, YouTube, Facebook, and blogging, the Nina Totenbergs at the Supreme Court level and similarly respected beat reporters at the trial court level are being replaced by those who can blog the loudest. What tools does the public have to evaluate these opinions? As Chief Judge Kozinski stated, "the camera doesn't lie, editors sometimes do."²

Cameras can be and are being operated by the courts. Therefore, the concern regarding sensationalized proceedings by zooming in and out on participants or selective editing can be eliminated. Similarly, footage of an entire trial can be posted online. Trials recorded or not will always be supplemented by tweets and opinion pieces, but allowing court-operated cameras in the courtroom will at least provide the public with the entire picture instead of a bite size media clip. Armed with a true to life proceeding, the public can then decide for itself whom to believe. While a trusted beat reporter may be a better option than a court-operated camera, I agree with Chief Judge Kozinski that when the decision is between a court-operated camera and Twitter, the camera wins hands down.

Sara Trent Gray is Chair of the Ninth Circuit Lawyer Representative panel for the District of Alaska and is joined by representatives Kevin Clarkson, Eric Leroy, Brewster Jamison, and Heather Kendall-Miller (appellate representative). Please contact any of the members with your concerns regarding the federal practice of law.

https://www.alaskabar.org/servlet/content/9th_circuit_judicial_conference.html

Sara.t.gray@usace.army.mil; kclarkson@brenalaw.com; Leroy@alaska.com; jamiesonb@lanepowell.com; Kendall@narf.org

Footnotes

¹20 Fordham Intell. Prop. Media & Ent. L.J. 1107

² *Id.*

Law Library News

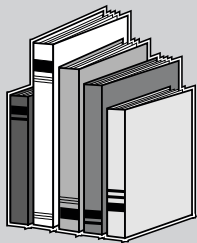
Alaska State Court Law Library in depository spotlight

Each month, the Government Printing Office highlights one of the nation's 1,250 Federal Depository Libraries that does a particularly good job in providing access to federal government information. For May, the Alaska State Court Law Library (ASCLL) was featured in the "Depository Library Spotlight" at <http://www.fdlp.gov/outreach/spotlight/933-akstatecrlawlibrary>. The article concludes with this well deserved praise:

"By deciding to reach out to all Alaskans to the greatest extent possible and considering the geographic area, it is clear that the ASCLL has gone to great lengths to provide access to legal information and Federal Government Publications. For these efforts, the Government Printing Office would like to say thank-you to the ASCLL for their continued participation in the Federal Depository Library Program."

Besides the ASCLL there are six other Federal Depository Libraries in Alaska: Alaska State Library (Juneau), ARLIS (Anchorage), Elmer E. Rasmuson Library UAF (Fairbanks), UAS Ketchikan Campus Library, Consortium Library (UAA) and the UAS William A Egan Library (Juneau).

The depository library program was established by Congress to ensure that the public has access to government information. Libraries in the program collect, organize, maintain, and preserve government information. They also assist users in locating Government information. The information is provided to the libraries at no cost. The libraries provide local, no-fee



access to Government information.

GPO has also been working with the Administrative Office of the U.S. Courts to provide PACER access and training in depository libraries. Stay tuned for further developments.

Depository libraries can select from the many titles published by GPO. The Alaska State Court Law Library receives approximately 4% of the available titles. (In contrast, UAF's Rasmuson library receives about one-third of the titles available for selection). Included in the titles received by the Law Library are the Code of Federal Regulations, U.S. Reports, Federal Register, IRS material, Census information, the budget, and more. The Law Library retains old publications of the Department of the Interior, Civil Aeronautics Board, Interstate Commerce Commission, and more.

Of course, more Government information is becoming easily accessible online. The GPO's primary site is FDsys, www.gpo.gov/fdsys. FDsys contains congressional and executive branch information. FDsys is searchable. One important feature of the information on FDsys is that the PDF documents are authenticated and certified by the Superintendent of Documents. The documents have a watermark with a digital signature.

The accessibility of Government information to the public is fundamental to democracy. This information was created at taxpayer expense and should be available to the public. Visit any depository library for assistance with Government information research.

Getting in my two-tenths worth

By Kenneth Kirk

I was working late, but was almost finished. I had to get through these monthly billings so my staff could get them in the mail the next day. I scanned through the last one. No errors, everything was accurate, these could all go out in the morning. And then I stood up from my desk, stretched, and turned around to look out the window at the lights of the city for just a moment.

There had been no noise, but somehow I knew he was there. Maybe it was the smell; an expensive cologne covering a slightly smoky stench. A chill went up my spine, but I intentionally did not turn around to look at him. Looking at him always gave me the creeps.

"Is there something you want?" I asked, trying to keep my voice steady. "You know I won't work for you, so don't bother to ask."

He chuckled. Or maybe it was more of a cackle. "Not my agenda today, my boy, not my agenda at all. I just figured, it's the end of the month, you're probably working late going over your billings, and I wanted to be here for you."

"I'm flattered," I said, trying to be sarcastic, but not sure if I succeeded. "I don't know why you take such an interest in my financial well-being, given that you're getting no part of it."

"Don't be so sure," he said, ignoring my tone, "but it's not just you. I always take an interest in attorney billings. And not just because so many of them work for me. That monthly billing cycle is when you, and so many of your fellow lawyers, do things that just please the hell out of me." And then he added "no pun intended".

"Then I'm sorry to disappoint you, but my billings are completely honest," I assured him.

"Are they really? Let me make a wild guess here. I'll bet at least every third or fourth entry is two-tenths of an hour for some short phone call, or glancing at a piece of correspondence or routine order. Two-tenths of an hour is 12 minutes, or at least something more than six minutes. And I'll just bet most of those two-tenths items didn't take you even 30 seconds. That's a lot of extra time, isn't it?"

He caught me off guard with that one. "My client agreement clearly says that the minimum billing for time spent in any one day is two-tenths of an hour," I said, sounding more defensive than I had intended to, "so it's entirely fair for me to do that. After all, the client agreed to it".

"Yes, in your written client agreement, and quite a document it is, too," he said, not letting up. "Three pages of legalese. How many of your clients do you think really read that thing? And then way down toward the bottom of page two, the part I like best, where it says that 'time spent creating a document, template, pleading, or other written materials which is used for or on behalf of client, may be billed at the full time which would be ordinarily necessary to create such document, even if time for creating substantially similar documents, templates, or pleadings has been incorporated herein for similarly situated clients'. Wow. What exactly does that mean, anyway?"

I didn't like where this was going.

"It means that if I spend a lot of time creating a document for one client, and then later I just have to make a few revisions to use the same document for another client, I can bill the second client as if I had to create the document from scratch," I said.

"Really?" He said. "And you call this honest billing?"

"The clients agree to it," I responded with what I hoped was an air of finality.

"Agree to it. Indeed," he said, mulling it over. "Have you ever actually pointed those provisions out to a client, and asked them if it was okay? Even once?"

Of course I hadn't. Nobody would. I needed to get out from under this cross examination.

"Alright," I admitted, "maybe I do what almost every other lawyer does, but at least it's in the client agreement, and the client could dig it out if he wanted to. But there are a lot of things I don't do. For instance, on the airplane on that deposition trip to Seattle for the Shlemnick case, I worked through some of the pleadings on the Tillman case, and I subtracted that billed time from what I billed Shlemnick. Most attorneys would have double-billed that."

"Commendable indeed," he responded. "You're right, most attorneys would have double-billed. But what's wrong with billing both clients? After all, if you had read a magazine or listened to music the whole trip, you would have billed Shlemnick for the travel time, right? And it makes no difference to him whether you worked on somebody else's case on the airplane."

"But it's unethical," I objected.

"But you wouldn't get caught," he



"Yes, value billing, the latest thing," he said. "Practically all the business lawyers are using it."

If you think you've done a good job for the client, just bill a little more time. How do they know drafting that affidavit only took you 0.4 hours? Make it 0.7, they'll never know and frankly, if they're happy with the final result, they really won't care."

responded.

"But it's unethical," I said again.

I still had my back to him, but I could see his reflection in the window, and he was smiling. "Very lawyerly of you," he said, "very... pharisaical. If it's a technical violation, you're Mr. Pure and Honest. But if you can slide something past the client on a document, so that it's officially legal, you're a snake."

"I'm not a snake," I said with my teeth clenched, trying to assure myself as much as him, "and I'm not going to change that Shlemnick bill. He gets a break for the time I spent on the other case, and that's that."

"Entirely up to you, my boy. After all, it's really none of my business. If you want to cut the well-heeled

Mr. Shlemnick a break, even while your wife's nagging you to make more money, go ahead. I have better things to do than to add to the nagging. For instance, a lot of the lawyers I know are going into value billing, and I can spend my time working with them instead."

"Value billing?" I knew I should have let him go, but I had heard the term before and wasn't sure what it was about.

"Yes, value billing, the latest thing," he said. "Practically all the business lawyers are using it. Works very well for those litigation matters where you can't take a contingent fee and it's too hard to predict a flat rate. You simply charge the client more if you were successful in the litigation. Since these are cases where it's difficult to figure it out in advance as a formula, the lawyer makes a subjective determination as to whether to add the extra amount."

"But then if you lose, I assume you have to bill the client less than your normal hourly rate?"

He laughed so hard I thought he'd choke. "Of course not! If you lose, you still bill your normal hourly rate. If you win, you add a surcharge. It's the best of both worlds!"

I was stunned. "And the clients are okay with that?"

"It's in the client agreement," he said serenely.

"I'm not doing that. Ever."

"Yes, I suppose," he said, "after all I don't think your clients would let you get away with it. At least, not openly. A lot of these business lawyers just add a surcharge, figuring that if the clients are happy enough with them, they won't object. And half the time, the person approving the lawyer's bill isn't the owner of the business anyway. Your clients, you have to be more subtle. If you think you've done a good job for the client, just bill a little more time. How do they know drafting that affidavit only took you 0.4 hours? Make it 0.7, they'll never know and frankly, if they're happy with the final result, they really won't care."

"That would be unethical," I responded, "and I won't do it."

"Ah yes, the Pharisee is back. In its own way, that pleases me too," he laughed, and then suddenly he was gone. Only the smell remained.

I let out my breath. Alright, maybe I'm not perfectly pure and noble, nobody is, but I have my limits. I have a sacred trust as a lawyer. I have an obligation to my clients to be reasonably honest in my billing practices. After all, they are trusting me with cases that are very important to them, and there is no way I am going to do something blatantly dishonest when it comes time to send them my bill. I was a good lawyer, an honest lawyer. Mostly anyway.

I turned back toward my desk and looked at the stack of bills. It is true, Shlemnick wouldn't really care if he had to pay for all of my time on the flight. And Tillman would have had to pay me a lot more to read all that paperwork if I wasn't such a fast reader. Maybe I should just take another quick look through those billings.

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Convention encounters of the first kind

By Megan Lillick

Fairbanks, Alaska. Three days. 400 plus attendees. An awesome line up. A sold out headliner. Abundant security. Surround sound. Late nights. Free schwag.

One might think music festival, and rightfully so, a music festival has it all; however the description above is of the 2011 Bar Convention. And a festival of continuing legal education it was!

Being it was my first convention, I'd have to say it was a successful one. Maybe I'm a bit biased because I helped coordinate it, but from my point of view, and in the role that I had, everything seemed to flow smoothly. People were happy, even when they were like canned sardines for a few of the sold out programs. The speakers were great. Food was good. There were no AV malfunctions.

Of course I hadn't any prior conventions to compare this one to, but I had a music festival and a couple Garden Fairs under my belt. And from my experience, if it doesn't rain, it's a success. So the 60 degrees and sunshine we had in Fairbanks would make this year's convention a triumphant one if we're going by this no-rain standard.

And two, if a bear doesn't run through the vendors, it's a success and you're lucky. This actually happened at Garden Fair a few years back. In Fairbanks, the only animal strolling around the convention corridors was MacDuff, the explosive sniffing golden lab. And dogs, although just as furry, are definitely not bears. So again, success.

For those that could not make it out to the convention, here's a quick run-through:

Wednesday Morning

"How to Ethically Manage a Law Practice to Enhance Client Relations, Increase Efficiency and Results, and Avoid Ethics and Malpractice Complaints" is a mouthful to say the least, but in three hours Jay Foonberg covered it all. And the 100 in attendance may as well have left with CPA Certificates in hand.

150 people attended the six person panel on "Individual Privacy: Challenges Grow as Technology Flourishes" to find out that the line of privacy rights is a blurry one when gathering evidence of criminal activity through use of technology.

Wednesday Lunch

To celebrate Law Day, Terrance Cole spoke on the legacy of John Adams. 170 attended.

Wednesday Afternoon

260 seats were filled in the seminar on "Cases Involving Co-Occurring Disorders: Tips and Tools for Prosecutors, Defenders, Judges and Litigators." Charlie Sheen made an appearance. Not in-person, fortunately, but in Dr. Melissa Piasecki's PowerPoint, he was the perfect example of someone with co-occurring disorders. The rest of Piasecki's visual aids and celebrity examples helped to explain how and when to refer clients for mental health or substance abuse. Other panelists helped give their advice on the best local and statewide treatment options and how to best deal with persons with these mental disorders in the courtroom.



Panelists discuss cases involving co-occurring disorders, from left are Melissa Piasecki, M.D., University of Nevada School of Medicine, Dr. Ronald Martino, Judge Stephanie Rhoades, Sgt. Mike Couturier, and Pam Borland.

Wednesday Evening

Opening Reception at the Fountainhead Antique Auto Museum housed not only several shiny, souped-up old cars, but the outfits to go with them. The 150 in attendance enjoyed great food, libations, and the history of the cars. Goers even had the chance to put on 1920s garb and hop in one of the rides for a few snapshots.



Antique Auto Museum reception.

Thursday Morning

The ever-popular "U.S. Supreme Court Opinions Update" starring Professor Laurie Levenson and Dean Erwin Chemerinsky (who by the way was speaking at his 20th year at Convention) was a packed house. 350 attended. No big surprise. Levenson came with an interactive PowerPoint with songs that had lyrics pertaining to the specific court cases she was describing. "Bad boys," opened for Kentucky v. King, 302 S.W.3d 649 (Ky. 2010). And like a baseball commentator spits out batting averages, Chemerinsky laid out his Supreme Court opinions.

Thursday Lunch

150 people witnessed a slide show of young faces popping on the screen to the music of 1961 and 1986. Who were these young folk? They were the 25 and 50 year members. When they came up to collect their award they looked like the same young pups.

Thursday Afternoon

The "Alaska Appellate Update" with Chemerinsky seated just as many as the morning program. Again Chemerinsky relaying the Alaska

Appellate updates at the speed of a sports commentator.

About 100 people attended "Rainmaker, Rainmaker, Make Me Some Rain" with Jay Foonberg to learn how to make it pour. Foonberg taught the tricks to bringing in new clients and how to keep them.

For three men who never met, let alone talk until the day of the

Washington to Bush." By evening's end, all had an interesting lesson in history.

Friday Morning

300 curious people sat on the edge of their seats waiting patiently for the highly anticipated debate. Images of 9/11 alternating with photographs of naked inmates of Guantanamo flashed the screen to get that attendee blood pumping. Then Jeff Feldman brought both debaters, Steve Wax and Professor John Yoo to the stage (one at a time) to share their individual stories. Then it began: the greatest debate in the Alaska Bar history. To see the much talked about debate, order the DVD from the Alaska Bar Association's website. And 200 stayed for lunch for the Annual Meeting.

Friday Afternoon

About 40 people attend the last session of the convention, "A Conversation with Jay Foonberg." This program was added after the line-up was out. It was catered to young lawyers, but many seasoned lawyers found it nice to meet the author of the books that got them through law school. Foonberg answered their burning questions, the questions many are afraid to answer.

Conclusion

All in all from the CLE programs and events to the keynote speech and debate, the 2011 Convention topped the charts. I can only hope the conventions to come can live up to my now very high expectations. And I'm sure they will as 2012 Convention already has a great line-up and well-known keynote speaker, Bob Woodward.

Megan Lillick is CLE Coordinator for the Alaska Bar Association since November 2010. This was her first bar convention.

Actions on Resolutions

Resolution # 1 expressing regret that Professor Yoo was invited to be the keynote speaker at the Convention was overwhelmingly rejected with one vote in favor and all others opposed. **Resolution # 2** condemning torture and further condemning any attempt to declare the President above and not subject to law was approved. **Resolution # 3** proposed by the International Law section was ruled out of order because it was not in the proper form of a resolution. In addition, a resolution that proposed to honor the late Judge James Fitzgerald by requesting that GSA consider naming the 7th Avenue U.S. Courthouse in Anchorage after him was unanimously approved.

Reflections on a controversial, yet successful, convention

By Jason Weiner & Paul Eaglin

We are sure planning committees from previous years have asked themselves these same questions. Will people come to Fairbanks or Juneau? Will we make or lose money? How will the speaker be received? This year was no exception. There were times when we questioned our decision to bring up a controversial, yet intriguing, speaker like Professor John Yoo. There were the threats of protests. There was the threat of a boycott. There were several threats that the Bar's reputation and our personal reputations would be forever tarnished. Personally, it appears that the Bar Association's image remains sound. The Fairbanks Community got to be a part of a provocative presentation. We think, as members of the committee, our relatively obscure reputations remain what they were before all the hype — obscure.



Keynoter Professor John Yoo addresses the convention banquet.

We had a great turnout for the convention. Numbers are still being tallied. The Friday debate was standing room only — a rare occurrence for any convention. Wednesday's presentations met with rave reviews. Thursday's programs were sold out. Jay Foonberg entertained us with ethics presentations that will forever protect Alaska lawyers both young and old. The banquet was well attended. There were some who chose to leave the banquet in protest over John Yoo's views, but their departure was peaceful, and plenty of people stayed to listen to an excellent keynote speech that left at least these two lawyers with much to ponder. There were some picketers, but they did so calmly and professionally, and we appreciated the opportunity to celebrate yet again the fact that we have free speech.

We were even fortunate enough to be able to hear from Steve Wax over at the Unitarian Church. We hope those in attendance will never forget the message he conveyed as his riveting speech neared its end. He remarked that he is thankful and proud that he gets paid by the USA to oppose the USA. We are proud of that fact as well. We are a country that challenges itself to be better. To debate and to question. To never be complacent with what we have, and to always seek more information and move forward as a society. We truly live in a wonderful place.

We know there are those who will be disappointed with us for selecting such a controversial figure. In the end, I hope we all consider that the convention was a success. This year's program offered the opportunity for us as Bench and Bar to engage our own consciences and our own attitudes in relation to the pressing issues of today. There is much to be learned in the urgency of our nation's struggle against stateless terrorism, including the respective roles of and the interrelationship of our principal action branches of the national government, the legislature and the executive. John Yoo addressed those relations in a scholarly manner in *Crisis & Command*. He stood willing to endure substantial public scrutiny before the Alaska Bar and Judiciary to respond to his actions and his perspectives. Many would have covered under the same circumstances, but not John Yoo. It was our hope to enlighten and to challenge on the most cutting issues of our nation by his selection and the debate with Steve Wax. Thank you to Professor Yoo and Counselor Wax for coming to Fairbanks and enlightening us all!

Bar Members Honored

50 YEARS



Robert Erwin



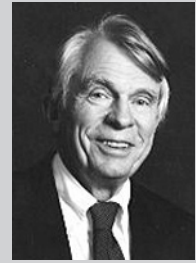
John Havelock



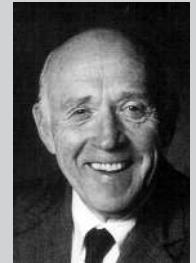
L.S. Kurtz



Joseph Josephson



Theodore Pease



John Roderick



Herbert Soll



James Wanamaker



Karl Walter

Not pictured: Richard Cole, Elton Engstrom, Avrum Gross, Robert Lowe



James Wanamaker, Joseph Josephson, Robert Erwin, and Herbert Soll.

60 YEARS



James von der Heydt



John Rader

Not pictured: Juliana Wilson



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John E. McConaughy
343-6445 (wk)

Anchorage

Brant G. McGee
830-5518

Michael Sean McLaughlin
269-6250

Michael Stephen McLaughlin
793-2200

Greggory M. Olson
830-9792 (cell)

John E. Reese
345-0275
345-0625 (hm)

Anchorage

Jean S. Sagan
263-5414
929-5789 (hm)
952-1785 (cell)

Moira Smith
276-4331

Fairbanks

Valerie Therrien
388-0272

SUBMITTING A PHOTO FOR THE ALASKA BAR RAG?

- Ensure it is in high resolution (aka, "fine," "super-fine," "high res" or "best") setting on your digital camera, scanner, or photo-processing software.
- Rename all digital photo filenames with the subject or individual's name!!! (Example: lawfirmparty.jpg or joe_smith.jpg)
- Include caption information or companion article with it in a separate Word or text file with the same filename as the photo. (Example: lawfirmparty.doc or joe_smith.doc or joe_smith.txt)



UAF Professor Terrence Cole spoke on "The Legacy of John Adams" at the Wednesday lunch.



Judge Meg Greene receives Alaska Bar Foundation Jay Rabinowicz Public Service award from Foundation Trustee Will Schendel.



Outgoing Bar President Jason Weiner passed the gavel to Incoming Bar President Don McClintock.



Mike Moberly, Ryan Fitzpatrick, Clayton Walker and Jason Weiner enjoy a break.



From Southeast & Kodiak, attorneys and clerks compare notes at the reception: From left, August Petropulos, Christopher Orman, Karen Godnick, Hanna Sebold, Amy Mead, and Timothy Ayer.

2011 BAR CONVENTION HIGHLIGHTS

Photos by Karen Schmidlkofer *Bar community gathers in Fairbanks*



FIVE RECEIVE BAR'S ANNUAL AWARDS



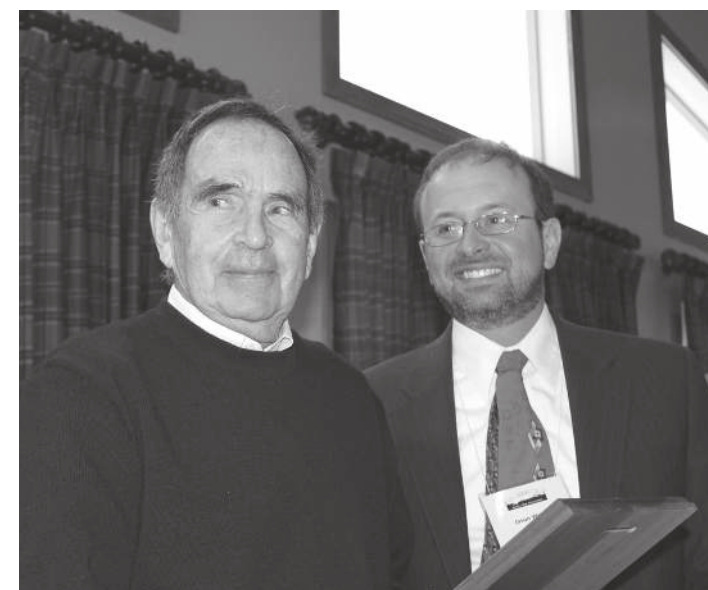
Michael Biderman receives Judge Nora Guinn award from President Jason Weiner.

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.



Judge Gregory A. Miller received the 2011 Distinguished Service Award, but was unable to attend the convention in Fairbanks. Incoming Board of Governor's President Don McClintock presented the award to Miller in advance at the Anchorage courthouse in May. Miller's wife Nancy Mead was there for the occasion.

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



Charlie Cole receives award from President Weiner.

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.



Erick Cordero (R) receives award from President Weiner.

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



Barb Brink receives award from President Weiner.

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.



Judge Michael Jeffery of Barrow receives the Alaska Supreme Court Community Outreach award from Chief Justice Carpeneti.



Federal Public Defender Steve Wax, Jeff Feldman and Professor John Yoo spoke before 300+ Bar members at the convention.



Justice Dan Winfree, wife Cathy and law clerks Katherine Swanson, Gabe Zeldin, and Judd Stone at banquet reception.

Board of Governors Action Items May 2 & 3, 2011

- Voted to publish the amended MCLE rules, Bar Rule 65 and 66.
- Follow up on mentoring program with Young/New Lawyers; Sections; local Bars.
- Amended financial policy to change government to fixed income mutual funds; change percentage allowed from 25% to 33 1/3 %.
- Certified the results of the February bar exam.
- Voted to approve the stipulation for a three year suspension, with conditions, in a discipline matter.
- Voted to approve the ethics opinion: Ethical Considerations in Collaborative Law Practice.
- Voted to approve the ethics opinion: Duties of an Attorney in a Criminal Appeal When the Client Cannot be Contacted.
- Voted to refer to the Court's Access to Justice Committee the issue of whether additional agencies should have waivers under Alaska Bar Rule 43.
- Voted to pay \$7,318.89 from the Lawyers' Fund for Client Protection to Trustee Counsel for his work in the matter of an unavailable attorney.
- Voted to authorize Bar Counsel, at his discretion, to make arrangements with a law firm to pursue collection of payments made in Lawyers' Fund for Client Protection cases, if the cases are appropriate for collection.
- Voted to approve the Lawyers' Fund for Client Protection committee's recommendation for payment of \$750 from the Fund.
- Voted to recommend 14 reciprocity applicants for admission.
- Voted to approve a Rule 43 (ALSC) waiver for David Morse.
- Voted to appoint the following members to the ALSC Board of Directors: 1st Judicial District regular seat Vance Sanders and alternate Kelly Henriksen;
- 3rd Judicial District alternate Melanie Osborne; Kenai/Kodiak regular seat Karen Lambert and alternate Andrew Ott; and Board of Governors representative Gabrielle LeDoux.
- Approved the minutes of the January board meeting and the two conference call meetings in March.
- Requested Bar Counsel to prepare for discussion a proposed amendment to Bar Rule 2 regarding eligibility to take the bar exam.
- Voted to propose the following slate of officers: President-elect Hanna Sebold; Vice President Krista Stearns; Treasurer Peter Maassen; Secretary Mark Andrews. Don McClintock will be come President at the close of the annual meeting.

ALASKA BAR ASSOCIATION ETHICS OPINION 2011-3

ETHICAL CONSIDERATIONS IN COLLABORATIVE LAW PRACTICE

Question Presented

Does a collaborative law "four-way disqualification agreement," providing for the mandatory disqualification of counsel in subsequent potential litigation violate the Alaska Rules of Professional Conduct?

Conclusion

No. ARPC 1.2(c) permits a lawyer to limit the scope of his representation with the consent of the client. So long as the collaborative law practitioner has previously obtained the separate written agreement of the client after full disclosure of the risks of, and alternatives to the limited representation, the disqualification agreement is permissible.

Discussion

Collaborative law is a form of alternative dispute resolution in which lawyers serve as both advocates and counselors during structured, pre-litigation negotiations. Often used in family law, collaborative law is becoming increasingly common.¹ Neither the Alaska Rules of Professional Conduct nor the previous opinions of this Committee have expressly addressed ethics issues in the context of collaborative law.

In collaborative law, the parties, as well as the parties' lawyers, may execute written agreements, generally referred to as "four-way agreements," which provide that, if negotiations are unsuccessful, the lawyers will not further represent the parties in litigation.² Commentators have characterized this disqualification element of the four-way agreement as the "irreducible minimum condition"³ or the "fundamental defining characteristic"⁴ of collaborative law. The goal of the four-way agreement is to encourage open communication, voluntary sharing of information, and a commitment to negotiate rather than litigate, but some people have questioned the ethics of the provision requiring the lawyers to disqualify themselves if negotiations fail.

Multiple state bar associations have considered, and approved, collaborative law arrangements, including the four-way agreement's disqualification provision.⁵ Of these, in 2007, the American Bar Association issued Formal Opinion 07-447 concluding that any potential conflict of interest arising out of a collaborative law agreement under Model Rule

of Professional Conduct 1.7 was addressed by Model Rule of Professional Conduct 1.2(c) permitting a lawyer, with the client's informed consent, to reasonably limit the scope of representation. The ABA Opinion stated:

Responsibilities to third parties constitute conflicts with one's own client only if there is a significant risk that those responsibilities will materially limit the lawyer's representation of the client. It has been suggested that a lawyer's agreement to withdraw is essentially an agreement by the lawyer to impair her ability to represent the client. We disagree, because we view participation in the collaborative process as a limited scope representation.

When a client has given informed consent to a representation limited to collaborative negotiation toward settlement, the lawyer's agreement to withdraw if the collaboration fails is not an agreement that impairs her ability to represent the client, but rather is consistent with the client's limited goals for the representation. A client's agreement to a limited scope representation does not exempt the lawyer from the duties of competence and diligence, notwithstanding that the contours of the requisite competence and diligence are limited in accordance with the overall scope of the representation. Thus, there is no basis to conclude that the lawyer's representation of the client will be materially limited by the lawyer's obligation to withdraw if settlement cannot be accomplished. In the absence of a significant risk of such a material limitation, no conflict arises between the lawyer and her client under Rule 1.7(a)(2). Stated differently, there is no foreclosing of alternatives, i.e., consideration and pursuit of litigation, otherwise available to the client because the client has specifically limited the scope of the lawyer's representation to the collaborative negotiations of a settlement.⁶

Colorado appears to be the only jurisdiction to reach a conclusion different from the ABA Opinion.⁷

Having considered both of the foregoing points of view on this question, this Committee agrees with the ABA Formal Opinion 07-447 that the disqualification provision of a collaborative law four-way agreement does not *per se* violate Alaska's Rules of Professional Conduct. This is consistent with the previous recognition that a lawyer may limit the scope of representation, provided the client is fully advised and agrees.⁸ Once the lawyer has fully advised the client of

the limits of representation, and the client has agreed, the lawyer's being bound contractually to third parties to honor the agreed-on limits is ethically permissible.

The Committee is cognizant, however, that the limitation on representation contained in the four-way agreement has potential future consequences. Not only do lawyer and client agree to a particular limitation on representation, this agreement may be irrevocable. For example, the four-way agreement might provide that, even if *both* clients and one lawyer agreed to a continued representation, the opposing lawyer, standing alone, has the right to block the representation. Because of possibilities like this, we believe it is critical that clients consenting to this limited representation be fully informed of the consequences.

The ABA Opinion described the disclosure and consent process as follows:

[O]btaining the client's informed consent requires that the lawyer communicate adequate information and explanation about the material risks of and reasonably available alternatives to the limited representation. The lawyer must provide adequate information about the rules or contractual terms governing the collaborative process, its advantages and disadvantages, and the alternatives. The lawyer also must assure that the client understands that, if the collaborative law procedure does not result in settlement of the dispute and litigation is the only recourse, the collaborative lawyer must withdraw and the parties must retain new lawyers to prepare the matter for trial.⁹

This process should take place in a meeting between the client and lawyer with the limitation of representation memorialized in a separate written agreement before the four-way agreement, itself, is executed.¹⁰ As one commentator noted:

If that conversation occurs in a four-way meeting with the lawyer and client from the other side, it is unlikely that a client will have the freedom to discuss the issue fully. That discussion would not be confidential (because of the presence of the other side), nor would the client likely feel able to raise concerns about the process with her lawyer. If the client is concerned that her divorcing husband will not fully disclose information, for example, she may not express that reservation as freely with the husband sitting across from her.

[T]hus...it [is] a very bad idea for lawyers to rely on their four-way

documents and discussions to effect their collaborative law limited retention agreements. Doing so creates unnecessary ethical risk for little gain.¹¹

In conclusion, although a collaborative law disqualification agreement does not, *per se*, violate Alaska's Rules of Professional Conduct, the agreement should only be entered after separate discussions between the lawyer and client regarding the limited representation reduced to a separate written agreement.¹²

In memory of our colleague Keith Allen Sanders.

Approved by the Alaska Bar Association Ethics Committee on April 7, 2011.

Adopted by the Board of Governors on May 3, 2011.

Footnotes:

¹John Lande, *Principles for Policymaking About Collaborative Law and Other ADR Processes*, 22 OHIO ST. J. ON DISP. RESOL. 619 (2007); Elizabeth K. Strickland, *Putting "Counselor" Back in the Lawyer's Job Description: Why More States Should Adopt Collaborative Law Statutes*, 84 N.C.L. REV. 979 (2006); Joshua Isaacs, *A New Way to Avoid the Courtroom: The Ethical Implications Surrounding Collaborative Law*, 18 GEO. J. LEGAL ETHICS 833 (2005); Scott R. Peppet, *Lawyers' Bargaining Ethics, Contract, and Collaboration: The End of the Legal Profession and the Beginning of Professional Pluralism*, 90 IOWA L. REV. 475 (2005); Gay G. Cox & Robert J. Matlock, *The Case for Collaborative Law*, 11 TEX. WESLEYAN L. REV. 45 (2004); Sherri Goren Slovin, *The Basics of Collaborative Family Law: A Divorce Paradigm Shift*, 18 AM. J. FAM. L. 74 (2004); see also, Michelle Conlin, *Good Divorce, Good Business: Why More Husband-and-Wife Teams Keep Working Together After They Split*, BUS. WK., Oct. 31, 2005, at 90; Katti Gray, *Collaborative Divorce: There's a Kinder, Simpler—And Less Expensive—Way to Untie the Knot*, NEWSDAY (Long Island), Aug. 15, 2005, at B10; Carla Fried, *Getting a Divorce? Why it Pays to Play Nice: Collaborative Divorce Offers Splitting Spouses a Kinder, Less Expensive Way to Say "I Don't,"* MONEY, July 2005, at 48.

²Scott R. Peppet, *The Ethics of Collaborative Law*, 2008 J. DISP. RESOL. 131, 132-33 (2008).

³John Lande, *Possibilities for Collaborative Law: Ethics and Practice of Lawyer Disqualification and Process Control in a New Model of Lawyering*, 64 OHIO ST. L.J. 1315, 1324 (2003).

⁴Uniform Collaborative Law Act, Nat'l Conf. of Commissioners on Unfair State Laws, at p. 54 (2009).

⁵See e.g., Ky. Bar Ass'n Ethics Comm., Op. E-425, 3 (2005); N.J. S.C. Advisory Comm. on Prof'l Ethics, Op. 699, 14 N.J.L. 2474, 182 N.J.L.J. 1055 (2005); N.C. St. Bar, Formal Op. 1 (2002); Pa. Bar Ass'n Comm. Leg. Ethics & Prof'l Resp., Informal Op. 2004-24 (2004).

⁶*Id.* at 4.

⁷According to the Colorado Bar Association Opinion, no lawyer could reasonably believe that representation of a client would *not* be adversely affected by an agreement exposing the lawyer to a direct lawsuit by the opposing party (or even the opposing party's lawyer) if the agreement was breached.

⁸Alaska Bar Ass'n Ethics Op. 93-1 (1991) (permitting lawyer to limit the scope of his or her representation of pro se clients to the preparation of legal pleadings to be filed by the client).

⁹ABA Formal Op. 07-447, *supra* n.7, at p. 3.

¹⁰The requirement of a separate writing is consistent with ARPC 1.5 which requires a writing for all fee agreements, and ARPC 1.2(c)(1) which requires a writing for limitations on the scope of representation "[i]f a written fee agreement is required by Rule 1.5."

¹¹Peppet, *supra* n.2, at p. 158.

¹²Collaborative law arrangements can raise other ethical issues for the participants not addressed in this opinion, including confidentiality concerns and concerns involving procedures for termination and withdrawal. See e.g. Colorado Bar Ass'n Eth. Comm., Formal Op. 115 at 2-3.

NEWS FROM THE BAR

**ALASKA BAR ASSOCIATION
ETHICS OPINION 2011-4
Duties of an Attorney in a
Criminal Appeal
When the Client Cannot be
Contacted**

Question Presented

The Committee has been asked to define the scope of an attorney's duties in a criminal appeal when the client cannot be contacted.

Conclusion

The Committee concludes that an attorney representing a client in a criminal appeal, regardless of whether the attorney is in private practice or a Public Defender, is obligated to conduct a reasonable inquiry as to the whereabouts of the client and to take reasonable efforts to contact the client where the client previously has directed that an appeal be filed.¹

If, after conducting a reasonable inquiry, the client cannot be contacted, then the attorney must file the notice of appeal and points on appeal where the client previously has directed that an appeal be filed.

The attorney, after filing the notice of appeal and points on appeal, ethically may file appellate briefs on behalf of the client even if the client, despite reasonable efforts, cannot be contacted.

Finally, the Committee concludes that the attorney, either simultaneously with the filing of the notice of appeal and points on appeal or subsequently, may file a motion to withdraw where the attorney shows that he or she has made reasonable efforts to contact the client, who, despite those reasonable efforts, cannot be contacted, and that withdrawal is appropriate.²

Applicable Rules and Analysis

Although the Committee previously addressed a somewhat similar question with regard to the obligation of an attorney to file suit when the statute of limitations is about to expire and the client cannot be contacted,³ the provisions of several associated ethical rules once again must be considered in order to determine the attorney's ethical obligations under the specific question presented here.

First, there is the provision regarding the scope of representation and allocation of authority between the client and the lawyer. Under the ethics rules, the lawyer in a criminal case "shall abide by the client's decision, after consultation with the lawyer, as to . . . whether to take an appeal."⁴

Second, a lawyer, in accordance with Alaska Rule of Professional Conduct 1.3, "shall act with reasonable diligence and promptness in representing a client." The Comment to Rule 1.3 explains that "[w]hether the lawyer is obligated to prosecute the appeal for the client depends on the scope of the representation the lawyer has agreed to provide to the client." The Comment further explains that the lawyer should carry through to conclusion all matters undertaken for a client "[u]nless the relationship is terminated as provided in Rule 1.16," or, where the lawyer's employment is limited to a specific matter the resolution of which terminates the lawyer-client relationship (e.g., where either the

retainer agreement or court appointment provides that the attorney shall represent the client only through conclusion of the trial).⁵

Finally, the lawyer's obligation under Rule 1.3 to act with reasonable diligence in representing a client dovetails with the requirements of Rule 1.4, which provides that "[a] lawyer shall keep a client reasonably informed about the status of a matter undertaken on the client's behalf."

Against this backdrop, the Committee concludes that, even if the client cannot be contacted, an attorney who has been directed by the client to file a criminal appeal must file the notice of appeal and points on appeal and make reasonable inquiry as to the client's whereabouts and reasonable efforts to contact the client in order to inform the client as to the status of the appeal. Notwithstanding the dearth of opinions that directly address the issue here, the Committee believes that both the language of the applicable rules and analysis reflected in several analogous opinions and articles from other jurisdictions cited in this opinion support the Committee's conclusion.⁶

For example, the Oregon State Bar Association addressed the issue of whether an attorney may refuse to continue with an appeal unless and until the attorney had heard from the client.⁷ In that case, the lawyer who represented the defendant in litigation that resulted in a judgment against the defendant was directed by the defendant to file an appeal and complied with the defendant's directive. While the appeal was pending, the defendant left the country and the lawyer was unable to contact the client despite several attempts. The Oregon Committee concluded that, because the applicable rules of professional conduct required the lawyer to provide competent representation, act with reasonable diligence and not neglect any matter entrusted to the lawyer by the client, the lawyer must continue to handle the appeal.⁸ The Committee also concluded, however, that the lawyer could withdraw from representation of the client under certain circumstances where the lawyer properly sought and obtained leave to withdraw.⁹

The same approach is in order under Alaska's rules of professional conduct. Where the client has directed that the attorney file a criminal appeal, the attorney must file the notice of appeal and points on appeal. By timely filing the notice of appeal and points on appeal, the attorney will have provided competent representation and acted with reasonable diligence.¹⁰ The attorney also will have prevented prejudice to the client.

The Committee further concludes that, once the notice of appeal and points on appeal are filed and reasonable efforts to locate and contact the client have proven futile, the attorney ethically may file the appellate briefs, or alternatively may file a motion to withdraw where it can be shown that withdrawal is appropriate under Alaska Appellate Rule 517(b) and Alaska Rule of Professional Conduct 1.16. The Committee's conclusion is based, primarily, upon its previous Opinion 2004-3, "Responsibilities of an Attorney When a Client Cannot be Contacted."¹¹

In that opinion, the Committee was asked whether a lawyer may file a lawsuit where the statute of limitations is expiring and the client cannot

be contacted. That situation involved a cruise ship passenger who was injured in a fall from the gangway to the dock. A year after the injury and a year before the statute of limitations expired, the passenger telephoned an Alaska personal injury lawyer and said that he wanted to file a lawsuit. The lawyer interviewed the passenger and explained that an investigation would need to be conducted before the attorney would decide whether to take the case.

The investigation revealed that the passenger had a colorable claim and if liability was proved damages would be substantial, despite some facts that indicated comparative negligence. The lawyer, however, was not in contact with the passenger during the lawyer's investigation and shortly before the statute of limitations ran sent the passenger a letter with questions about the problematic facts together with a proposed contingent fee agreement for signature. The lawyer tried to contact the passenger by telephone several times without success.

The Committee, in reliance upon Rules 1.3 and 1.16, concluded that the lawyer should file the complaint if the lawyer reasonably believes that the client has authorized the attorney to file suit and is relying upon the attorney to do so, or if the attorney believes that failing to file would materially and adversely affect the client's interests. Further, the Committee concluded that "if, after considering all the facts and the factors listed in Rule 1.16(b), the lawyer concludes that withdrawal is appropriate, [the lawyer] may terminate the representation."

The Committee emphasizes that the lawyer's ethical duties can depend upon the particular facts and circumstances and it does not undertake to define standards for the civil liability of attorneys when representing a client in a criminal appeal where the client cannot be contacted.¹² Each case is driven by its own peculiar set of circumstances. And, although the decision as to how to proceed with respect to briefing a criminal appeal, like any appeal, must be made by the lawyer (with some direction from the client), the Committee recommends that the lawyer at the outset of the attorney-client relationship consider the preventative measures discussed in some of the articles previously mentioned in order to better prepare for the possibility – however slight – of a client who cannot be contacted.

Approved by the Alaska Bar Association Ethics Committee on April 7, 2011.

Adopted by the Board of Governors on May 3, 2011.

Footnotes:

¹A "reasonable inquiry" may consist of, but is not limited to, attempts to contact the client by telephone, letter to client's last known address, personal visit to the client's last known address, electronic mail inquiry, internet search, post office search, registry of motor vehicle search, or newspaper publication. See, e.g., Ala. Ethics Comm., Op. RO-87-98 (Oct. 7, 1987) (referencing two prior ethics opinions, RO-84-26 and RO-84-106, suggesting that notice of impending action in client's case be made known by publication where client's location unknown); N.C. Eth. Op. RPC 223 (N.C. State Bar 1996) (involving case where attorney attempted to contact client through several methods such as the telephone, a letter sent to client's last known address, a request to client's former employer to forward letter to client at last known address on file, contacting one of client's treating physicians, contacting client's insurance company, and checking county property listings); R.I. Supr. Ct. Ethics Advisory Panel Op. 93-1 (Mar. 31, 1993) (suggesting, when attempting to locate the missing client, a personal visit to client's last known address, and search of post office or motor vehicle registry records); and Va. Bar Assn. Standing Comm. on Legal Ethics Informal Op. 1088 (June 8, 1988) (involving case where attorney attempted to contact client via first-class mail and certified mail return receipt requested). See also N.Y. Eth. Op. 787, *Conflict of Interest; Missing Client*, at

*2 n.8 (N.Y. St. Bar Assn. Comm. Prof. Eth. June 9, 2005) (stating that, before withdrawing, lawyer "must take all reasonable steps to locate the client," and that these steps "might include sending a letter via certified mail to the last known address, a personal visit to last known address, or a search of telephone directories, public records or the Internet"); Allison Elizabeth Williams, *Missing Clients: What To Do When Your Client Has Vanished*, 28 J. LEGAL PROF. 247 (2003-2004) (providing overview of attorney's obligations to missing client and suggesting anticipatory measures in the event client goes missing and cannot be located); Karen J. Dilibert, *The Mysterious Case of the Missing Client*, 89 ILL. B.J. 663 (2001) (suggesting preventative measures to avoid "missing client" issues).

²See Alaska Rules of Professional Conduct 1.3, 1.16; Alaska Appellate Rule 517(b).

³See Alaska Bar Association Ethics Op. 2004-3 (2004) (concluding that lawyer may file complaint if the lawyer reasonably believes that the client has authorized the attorney to file complaint and is relying on the attorney to do so, or if the attorney believes that failure to file would materially and adversely affect the client's interest). Cf. American Bar Association Comm. On Ethics and Prof. Resp., Informal Op. 1467 (1981) (concluding that a lawyer does not have a duty to file a lawsuit and toll the statute of limitations on behalf of the client who has disappeared, provided that the loss of contact was not caused by the lawyer's neglect).

⁴See Alaska Bar Association Ethics Op. 2004-3 (2004); *Coffman v. State*, 172 P.3d 804, 807 (Alaska App. 2007) (citing Rule 1.2(a)).

⁵See Comment, AK Professional Conduct Rule 1.3 ¶ 4. See also Alaska R. App. P. 209(b)(4) ("Counsel appointed to represent a defendant in the trial court pursuant to Criminal Rule 39 shall remain as appointed counsel throughout an appeal or petition for review at public expense authorized under this paragraph and shall not be permitted to withdraw except upon the grounds authorized in Administrative Rule 12. . . . If an appeal is to be taken, trial counsel will not be permitted to withdraw until the notice of appeal and the documents required to be filed with the appeal by Rule 204 have been accepted for filing by the clerk of the appellate courts.")

⁶See note 3, *supra*. Although the overwhelming majority of the opinions and articles listed in note 3 address the issue of contacting the missing client with respect to civil matters, the recommended methods of inquiry are no less apt in the criminal context.

⁷See Oregon State Bar Association Formal Op. No. 2005-33, "Conflicts of Interest, Current Clients: Withdrawal When Client Not Found" (Aug. 2005).

⁸*Id.* (citing Oregon Rules of Professional Conduct 1.16(b)(1) (providing for withdrawal if it can be accomplished without material adverse effect on the interests of the client), (5) (providing for withdrawal if client fails substantially to fulfill an obligation to lawyer regarding lawyer's services and has been given reasonable warning that lawyer will withdraw unless client's obligation(s) is fulfilled), (6) (providing for withdrawal if continued representation will result in unreasonable financial burden on lawyer or has been rendered unreasonably difficult by client), and (7) (providing for withdrawal if other good cause exists)).

⁹*Id.* Compare Alaska R. Prof. Conduct 1.16(b)(1), (5)-(7) (providing for withdrawal from representation if the same criteria are met).

¹⁰The attorney also may file a motion for extension of time to file the notice of appeal. See also Alaska App. R. 502(b) (providing for extensions of time); Alaska App. R. 521(1) (providing that the appellate rules "are designed to facilitate business and advance justice" and that in a matter involving the validity of a criminal conviction or sentence, the rule does not authorize an appellate court to allow the notice of appeal to be filed more than 60 days late); *Ozema v. State*, 921 P.2d 640 (Alaska App. 1996) (affirming by full court a single-judge order granting motion to accept late notice of appeal).

¹¹See, e.g., *People v. Brown*, ___ P.3d ___, 2010 WL 726038 (Colo. Ct. App. 2010) (stating that defendant had no right to have counsel pursue his appeal while remaining a fugitive); *Hall v. State*, 609 S.E.2d 653, 654 (Ga. App. 2004) (concluding that defendant waived right to appeal, and therefore dismissing the same, where notice of appeal, although timely, was filed while defendant was a fugitive). See also *Katz v. United States*, 920 F.3d 610, 613-14 (9th Cir. 1990); *Dziurgot v. Luther*, 897 F.2d 1222, 1223-24 (1st Cir. 1990); *Wayne v. Wyrick*, 646 F.2d 1268, 1270-71 (8th Cir. 1981); *Johnson v. Caldwell*, 458 F.2d 505, 505 (5th Cir. 1972) (all explaining that prejudice cannot be established where defendant complains of attorney's failure to perfect an appeal while defendant was a fugitive).

¹²See, e.g., American Bar Association Comm. On Ethics and Prof. Resp., Informal Op. 1467.

¹³Examples of some of the preventative measures an attorney may consider taking at the outset of the representation range from obtaining from the client the name, address, telephone number, electronic mail address of one or more responsible persons who will always know how to reach the client, the name of the client's employer, to obtaining from the client their nickname(s), birthdate, Social Security number, or driver's license number. See, e.g., Dilibert, *The Mysterious Case of the Missing Client*, note 1, *supra*.

Sarah and the Old Princetonians: The tigers and the tenthers

By Peter Aschenbrenner

"If I may, Governor, allow me to introduce Kurt Gödel. Herr Doktor Professor, the Governor of Alaska."

"Gnädige Frau, I kiss your hand."

"Delighted I'm sure," the Governor responds, "but to what do I owe the honor?"

"You seek a riposte for loud-mouthed radio jockeys," our Austrian hero replies (please call me Dr. K), "who go under the name 'Tenthers,' if I read the Zeitgeist correctly."

"What's with the 'Dr. K'?" I ask.

"The celebrated *Mister K* performs his tricks on Saturday," our Viennese guest answers me. "But I have an Institute – an Advanced Institute – to call my own. With Albert, natürlich."

"This could be an intellectual property violation," the Governor asides. "Didn't Einstein trademark his name?"

"It's 1819," I reply. "We're outside the statute of limitations."

The former President and Mrs. Madison sweep into the room. The effect is dazzling.

"Late harvest Chardonnay," Paul Jennings assures one and all, pouring at the President's command. "Eighteen fourteen was a good year."

"Let us not," the Governor gets down to business, "traffic in any undecidable propositions."

"The dreaded Unscheidbare?" Dr. K winks at Dolley while accepting the 'topper-upper' Paul offers.

"So if the 'shock jock' dares his audience on any issue-of-the-day, 'Let's look at the Constitution –'"

"It's a null set," Dr. K coughs politely. "I know how to handle these toughts. I'm an Austrian, you know."

"Did you put him up to this, Mr. Madison?" Dolley asks.

"As to America's future," the Governor now turns to our fourth President, "Article Five certainly didn't capture it. Hence the answers aren't in there."

"Governor Randolph delivered my plan on May 29, 1787," Madison backgrounds, "a third of a century after the fall of Constantinople. Resolution No. 13 reads: '[P]rovision ought to be made for the amendment of the Articles of Union whensoever it shall seem necessary, and that the assent of the National Legislature ought not to be required thereto.'"

"The national government would be powerless to defend itself against the course of history," I gasp. "The Future and its hot younger sister,

Progress, might call forth service missions as yet unknown to the men of eighty-seven. And at will!"

"Instead what the convention delivered," the Governor explains, "was a condition merely sufficient, inserted where a necessary condition was called for. I reference the opening chords of Madison's Fifth."

"It was the College of New Jersey at the time," Madison defends his undergraduate course in Prédicaments. "How would I know, seventeen decades after I graduated, they'd build you and Einstein an Institute for Advanced Study?"

"Who'd guess, Herr President," Dr. K replies, "that the physics of fission and the predicate logic of the Constitution would intersect in New Jersey?"

"Congress must forego undertaking a new service mission, one unknown to the men of eighty-seven," Dolley picks up the thread, "or obtain a constitutional amendment authorizing that responsibility. Unless there is a third way."

"Of course," the Governor continues, "there is plenty of work to be done by the national government. 'To legislate in all cases to which the separate States are incompetent,' you phrased it, 'in which the harmony of the United States may be interrupted by the exercise of individual Legislation ...'"

"Madison via Randolph, number 13," I supply the citation.

"We're talking farms and finance, manufacturing and mining," Madison offers a quartet nearly Hammersteinian.

"Distribution of economic benefits and burdens throughout states," Dolley elaborates, "or redistribution. Somebody's got to do it."

Jefferson and Goethe join us. "Some states educate other state's children," one declares.

"Some would ratchet up the price for home-state commodities or rent capital at exorbitant rates," the other chimes in.

"Some would block out-of-state business competitors from their markets," they chorus.

"And, of course, the poor and elderly will always be with us," Jefferson adds. "The less fortunate should be distributed fairly throughout the several states, that is, in light of

available resources."

"As for regulating commerce so that the states do not impoverish themselves," Dolley declares, "if I may point out the obvious, it is a task that they can't do for themselves."

Dolley turns to the Governor of Alaska.

"But is it a flaw? I mean, Article Five. It can't all be my husband's fault."

"It is a riddle," the Sphinx of Wasilla agrees, drawing us into our confidence. "And, therefore, may best be approached in this manner."

"We're all ears," Goethe and Jefferson agree.

"Take the Manhattan Project. A multi-billion dollar effort to build a secret weapon that would end the war in Japan without allied forces charging the beaches of Honshu."

"A million casualties were projected and in 1946 alone," I point out. "My uncle died in a live-fire accident at Cherry Point, North Carolina, training for those landings."

"I take it," Madison ponders, "that Congress did not know it was funding these wonder-weapons."

"No legislation creating our nuclear arsenal could be crafted," the Governor explains. "Let alone a constitutional amendment."

We take in the Governor's well-played point.

"Back to Article Five," Dolley speaks up. "The text 'whenever [The Congress] shall deem it necessary' is not sufficient, if I may pun, to compel Congress to convert sufficiency to necessity."

"If Congress were compelled," the Governor joins in, "then necessity would be expressed as in the Second Amendment: 'A well-regulated militia, being necessary' –"

"But in those amendments, especially those numbered one through eight, the disabilities of federal actors are at stake," Dr. K observes. "Of course, when the Constitution speaks of disabilities it deploys the language of command or prohibition; when it speaks of faculties, permission is employed. Bentham's sieve –"

"Footnoted at page 224 of *The Principles of Morals and Legislation* (rev. ed.)," I interject.

"Demonstrates that these are to be segregated."

"Aren't you going to take offense?" Goethe asks Jefferson. "I believe 'Nonsense on stilts,' was Bentham's swipe at your Declaration of Independence."

"He was paid to write his stuff," Jefferson shrugs. "I wish somebody would buy my papers," he adds.

"Hey!" our fourth President speaks up. "You can pry my record of the constitutional convention from my cold dead hand."

"I'm looking for at least twenty-five thousand," Dolley backs up her husband. "It's my pension."

"If I may?" Paul does the honors. "Back our topic," Dolley continues. "Circumstances required that text be changed. And it was, eleven

times from 1796 to 1933. The last one – that is the Twenty-First – preceeding our atomic disobedience to Article Five."

"The amendatory Almagordo," I add. "And what were the topics of these not-so-dirty eleven?"

"Disabilities of federal and state actors, electoral machinery, and income taxes," Dolley Madison rifles her well-thumbed pocket copy of the Constitution, *Unabridged for Daily Use*, "being the topics at hand."

"Ah, let me rethread for you," the Governor graciously assists her hostess. "Circumstance, delivering present necessity from a then-distant but now-pressing future, obliged that text be changed. On eleven occasions, and so the text was rewritten eleven times. But, at least on one memorable occasion, it wasn't."

"Jefferson's Thirteenth!" the unsung author calls out. "I proposed a constitutional amendment to approve the Louisiana Purchase and its governance."

"And, if I may continue without interruption," Dolley shushes her neighbor, "circumstances – offering a temptation of fissionable dimension – required action. And with no change in constitutional text."

"The other prong presents itself," the Governor muses.

"Text can either be changed, on the fly, so to speak," I suggest, "or it can't."

"What do they all have in common, the eleven we speak of, from the Eleventh through the Twenty-First, inclusive?" the Governor asks.

We all stare at our shoes, some buckled, some laced.

"Unnh," our former President borrows his wife's text. "All touch on subjects stable enough to be addressed and resolved as a matter of

ordered discourse, in both Congress and the state legislatures."

"Except for bringing the liquor back," Jefferson calls out. "Which required state conventions for ratification."

"You banned liquor?" Goethe asks the assembly. "I knew America could be moralistic, but still –"

"We were fighting Germany at the time," Dolley ripostes.

"How'd that work out for you?" Goethe asks.

"It didn't take the first time, so we had to do it again," Dolley replies, and then returns to her theme. "Is it not noble and sublime that Jimmy's Constitution is guided by the vast and eternal future, which has shined so brightly on our common destiny?"

"It dictates," the Governor agrees, "when amendment is a matter of discretion or when such effort would be an exercise in futility."

"No one, however," Dolley signals Paul, "has brought us from the Fifth to the Tenth."

A silence falls over the room. "How many fifths in a tenth?" Montpelier's Major Domo breaks the silence.

"I suppose the latter must be explained in light of the, unh, logical deficiencies of the former," Madison begins.

"All procedures, and especially those that recursively, mind you,

"Congress must forego undertaking a new service mission, one unknown to the men of eighty-seven," Dolley picks up the thread, "or obtain a constitutional amendment authorizing that responsibility. Unless there is a third way."

"Of course, when the Constitution speaks of disabilities it deploys the language of command or prohibition; when it speaks of faculties, permission is employed. Bentham's sieve –"

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Sarah and the Old Princetonians

Continued from page 20

announce the purpose of completing incomplete procedures must be complete," Dr. K explains. "Or don't bother starting down that road."

"The wily Dodgson demonstrated this," Madison sighs. "And only fifty-nine years after my death."

"4 Mind 278 (1895)," I blurt the citations. "*Bar Rag*, November-December, 2003."

"On reflection, you can't make an amendment procedure complete," Madison concedes, "by mere reference to what existed at the time the procedure was adopted."

"Are we switching from white to red?" Paul asks Dolley.

"In honor of the occasion," Dolley offers the label to the assembly for our approval. "Merlot d'Albemarle. Eighteen eighteen."

Jennings and Jefferson offer a generous pour.

"Didn't this come up at oral argument in *McCulloch*?" Madison asks. "The citation is 4 Wheat. 316, 372 (1819). Save your breath Aschenbrenner."

"Having the power antecedent to the adoption of the government, and not being divested of it, by any grant or restriction in the Constitution," Governor phrases what Wheaton let Elliot publish, "the states must necessarily be as fully possessed of such a power as ever they had been."

"John Marshall made that speech at the Virginia ratifying convention," Madison recalls, "but I put him up to it. The year was 1788," he adds.

"2 Elliot's Debates 421 (1836)," I cite.

"If America's future determines the amendability of the text (that of 9-17-1787) or its unamendability," Dolley addresses the assembly, "then writing a reference to the past (viewed from 12-15-1791) into the Constitution is not a flaw."

"Talk Radio seeks what is logically impossible," the Governor parses the points previously exposed. "The future, from 12-15-1791 forward, isn't made amenable to amendment, just because an additional instruction is deployed. If this was in doubt before Professor Einstein suggested racing Germany to get the atomic bomb, it was never in doubt after President Roosevelt decided to build it. He wasn't pussy-footing around."

"States," Dolley suggests, "could argue that they had the power to build a nuclear warhead 'antecedent to the adoption of the government [and] must necessarily be as fully possessed of such a power as ever they had been.' It depends on the history of man's search for the secret of radioactivity."

"You know, Mr. M," Paul asides, "a Geiger-Müller counter south of the Mason-Dixon line would register an additive three-fifths' worth of ions."

"Very funny," Madison sighs.

"'Powers not delegated,'" Dr. K elides the text of the Tenth, "'are reserved.' Well, the past tense wraps it up, rather nicely, and in both German and English. You're a genius, Jimmy. Let me shake your hand. Aschenbrenner, strum that ukulele. Kapellmeister, let your violas soar. Princeton's Tigers have done it again."

*Let reason rule the fleeting hour,
Her charms beguile our awe;
So logic thrills us with her
pow'rs,*

In praise of Old Nassau.

BAR FOUNDATION

Annual meeting awards \$30,000 in grants

By Thomas Wang

The Alaska Bar Foundation is the organization responsible for administering IOLTA (Interest On Lawyers' Trust Accounts) funds. Since 1986, over \$3.7 million has been generated by qualifying interest bearing trust accounts maintained by members of the Alaska bar. These funds have been distributed by the Bar Foundation to support programs providing legal services to the economically disadvantaged and to improve the administration of justice.

The Board of Trustees of the Alaska Bar Foundation held its annual summer meeting on May 11, 2011. Applications for grants to use IOLTA funds were considered. A grant totaling \$30,000 was awarded to the Alaska Legal Services Corporation, the Alaska Pro Bono Program, and

the Alaska Immigration Justice Project, pursuant to a joint grant proposal submitted by those three organizations.

In recent years, the reduction in interest rates on IOLTA trust accounts has had a substantial impact on the funds available for grants. To illustrate the impact of these changes, grants in FY '00 totaled \$367,000. The Board thanks all lawyers and law firms for their participation in the IOLTA program, and hopes the Foundation's financial situation will improve before grants are considered next year. If your firm does not participate in the IOLTA program, your bank or credit union should be able to assist you in setting up a qualifying account. If you need additional



Thomas Wang

assistance you can call Karen Schmidkofer at the Alaska Bar Association, 907-272-7469, or review information available on-line at:

www.alaskabar.org/servlet/content/bar_foundation_iolta.html.

Currently, the IOLTA Board consists of Fairbanks real estate professional Joseph Paulhaber, Anchorage banker Jean McKnight, Juneau attorney Eric Kueffner, Fairbanks attorney William Schendel, and Anchorage attorneys Gary Zipkin, Kenneth Eggers, and Thomas Wang. Mr. Wang, Mr. Schendel, Ms. McKnight, and Mr. Zipkin were selected to serve as officers of the Bar Foundation for the upcoming year.

4 retire from court system



At a retirement reception held January 31, 2011, at the Boney Courthouse in Anchorage, Judge Stephanie Joannides of the Anchorage Superior Court was honored for 15 years of service on the bench. With Judge Joannides are Justice Morgan Christen and Presiding Judge Sharon Gleason, who spoke at the reception.



Three of Alaska's longest serving judicial officers were honored on April 28, 2011, on the occasion of their retirement. Magistrate Ron Wielkopolski and Magistrate Brian Johnson served as Committing Magistrates in Anchorage for over 32 years each. Master Cindy McBurney served as a Standing Master in Anchorage for over 30 years, handling family and CINA cases. Combined, their years of service total nearly a century. At a reception in the Boney Courthouse, each judicial officer was presented with certificates of appreciation from the Alaska Supreme Court, the Alaska Superior Court, and the Office of Governor Sean Parnell. Taking part in the ceremony were, L-R: Yvonne Johnson, Alaska Supreme Court Justice Dana Fabe, Mag. Brian Johnson, Mag. Ron Wielkopolski, 3rd District ACA Carol McAllen, Master Cindy McBurney, Anchorage Child Custody Investigator Cathy Yeotis, Anchorage Superior Court Judge Peter Michalski, and 3rd District Presiding Judge Sharon Gleason.



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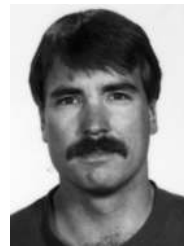
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Back row L-R: Ken Covell, John Burns, Dan Cadra, Judge David Zwink, Jon DeVore. Back row L-R: Judge Anna Moran, Christine Johnson, Diane Smith, Judge Catherine Easter.

You might need help with mentally ill

By Vivian Munson

If your client is mentally ill, and poses a threat to himself or others, what are your options? What can you do? What should you do? Here is one story out of my rather extensive experience in working with mental illness. My client, pseudonym Luke, has given me written permission to discuss his case, provided I do not use his real name.

Last summer Luke began threatening to shoot and kill officers of the Anchorage Police Department. He made a series of threatening phone calls to APD. He put his threats in writing, in e-mails to me.

Luke had come to me about a year before this, for help with his claim for Social Security Disability. He had suffered from serious mental illness for over twenty years. He'd traveled widely, earned a B.A. in psychology and seemed very intelligent, explaining that much of the time he knew how to manage the illness. Sometimes he was well enough to hold a job for a while. But then, every few years, he'd go off the deep end.

He'd had Disability benefits once, but was cut off when he left the country to live in the jungle for a while. He'd also lost medical coverage, so he could not afford his meds.

I explained that the wait time for Social Security appeals was two years, from denial of the claim to the date of hearing by an administrative law judge.

Luke could not wait the full two years. He made it to eighteen months before losing it.

I ignored the first e-mail because I

was on vacation, but when the second and third messages arrived, I decided to act. But how? The last I knew, the duty of confidentiality was absolute, no exceptions. This was before Tucson, but after Virginia Tech.

To my knowledge, Luke had no near relatives to consult. So I consulted the intrepid Steve Van Goor. Bar Counsel introduced me to the new Rule 14.1, which provides that when a client suffers from impaired capacity, "the lawyer may take reasonably necessary protective action." That is, action to protect the client, not the public.

Commentary for Rule 14.1 warns:

Disclosure of the client's impaired capacity could adversely affect the client's interests.... The lawyer's position in such cases is unavoidably a difficult one.

No kidding.

I decided to call the cops. Luke was scaring people in public offices, and when I met with him, he scared me. He didn't mean to, but he was psychotic.

APD dispatch was unconcerned. Officers were busy with more than threats. I was surprised by the lackadaisical response. I declined the offer to send an officer around sometime to take a report.

Two days later I walked into the

Anchorage Police Station on Tudor Road, where I was taken seriously by two officers who informed me that Luke had been making threats to Social Security as well as APD. Thus, the critical question: is he dangerous?

My answer: he could be. I credit myself with some expertise in making an assessment of the threat level posed by a person in the grip of psychosis. I ask: Does the individual scare people? When I met with him, Luke had scared me. APD officers were not frightened by Luke's threats, but obviously they do not scare easily, and they are armed. My recommendation as his lawyer: pick him up.

Three days later, they did. Because of the threat to Social Security, Homeland Security got involved. Luke was arrested, not without incident, and spent several weeks at API, where he returned to sanity. Ultimately, he was charged with one federal misdemeanor: attempt to interfere with administration of the Social Security Act.

When Luke appeared in U.S. District Court, federal authority weighed in on quite a scale. Chief Judge Beistline presiding, Thomas Bradley for the Government, Rich Curtner, Federal Public Defender, for Luke, Scott Waters, U.S. Probation Office, at bar; and in the peanut gallery, an Inspector, Region X, North Command, U.S. Department of Homeland Security, and the Director of the new Social Security Office of Disability Adjudication and Review (ODAR) in Anchorage. Plus yours truly, presence requested by the defendant and no one else.

Nobody recommended jail time. Discussion centered on conditions of probation.

Judge Beistline expressed a fair amount of indignation and outrage at Luke's pattern of behavior. Luke interrupted His Honor's remarks half a dozen times with apologies and assurances that it would not happen again.

The central question: how can Luke's future compliance with treatment and medication be ensured, for the protection of the public?

The decision: Five years probation. Luke will see a psychiatrist at the local community mental health center on a regular schedule, and take meds as directed. His attendance and compliance with treatment will be monitored by the U.S. Probation Office for five years. If he fails to comply, he will spend a year in a federal prison.

"Array of sunshine," says a psychiatrist at API. Luke receives a minimum sentence, but his compliance with effective treatment is enforced. He is not left to go it alone. I thought it was a good result.

Luke's appeal for benefits was heard at Social Security's new Office of Disability Adjudication and Review in Midtown, and his claim was approved. He is covered by Medicaid, and after two years, Medicare. He can

afford his meds. How does Luke see all this now, almost a year later?

As to my involvement, he is grateful. He says he wishes someone had intervened sooner than I did.

Asto the court's reaction, he is not complaining, but he is not happy about it either. Luke feels that the crux of the problem was his uninsured status. Even the low-in-

come clinics demand a fee of \$15 to see a doctor, and shut out patients who have run up a bill. And he had no money for medications. If he had had access to medical care, he would not have lost his mind. Now he has a criminal record.

I believe that our nation's failure to provide adequate access to health care is ridiculous, stupid and destructive to society, but I'm not sure that universal health care would have prevented Luke's decline. I think that oversight by the court is probably necessary when an individual makes homicidal threats all over town.

A person in the grip of psychosis does not have control over his thinking or his feelings. If he has years of experience in dealing with mental illness, he may be less likely to turn violent. A younger person who has not developed intrinsic values prohibiting violence, is more likely to snap, as in Virginia Tech and Tucson.

In any case, the responsible course is probably to call in law enforcement. Your client will be taken to a hospital for evaluation. If you are wrong about the potential danger to self or others, your client will be released from the hospital within 72 hours, and pursuant to AS 47.30.815(a), you cannot be held liable. If your client does pose a danger to himself or others, you are doing him a service when you make the call.

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Judge John W. Sedwick

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5:00 PM - 7:00 PM

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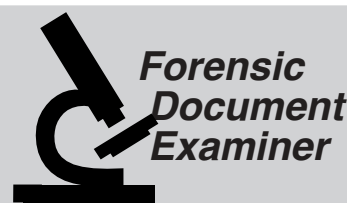
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Tax-free gifts in 2011

By Steven T. O'Hara

This article summarizes various exclusions and credits that shelter gifts from transfer taxes. For purposes of this discussion, consider a client 80 years of age. He is single and has sufficient wealth to undertake a gifting plan as discussed below. He resides in Alaska. All his assets are located in Alaska. He has never made a taxable gift.

The client has four children and 10 grandchildren. One of the client's grandchildren is in college and has annual tuition of \$30,000. Another is in medical school and has annual tuition of \$50,000. Five of the client's grandchildren are in private elementary school. The annual tuition for each grandchild at the school is \$10,000.

One of the client's children, and two of his grandchildren, do not have medical insurance. The annual cost of the desired medical insurance plan for this family of three is \$25,000. One of his uninsured grandchildren needs an operation that will cost \$20,000.

The client would like to undertake a gifting plan with respect to his descendants. He wants to make the maximum amount of cash gifts that he can make for the benefit of his descendants without paying any gift or generation-skipping tax at this time. The client wants to keep things simple. For example, he does not want to combine family giving with charitable planning. He also does not want to fund a family limited partnership or LLC and then gift interests in the entity.

First, the client may use his gift-tax unified credit equivalent amount, known most recently as his basic exclusion amount (IRC Sec. 2010(c)(3)). Effective January 1, 2011, this amount is remarkably \$5,000,000 (IRC Sec. 2505(a)(1)). Just as remarkably, this \$5,000,000 amount is scheduled to shrink automatically to \$1,000,000 on January 1, 2013.

Thus in 2011 the client could form a one-pot trust for the benefit of his descendants and immediately transfer \$5,000,000 to the trust without incurring any gift tax. Here the client believes using his \$5,000,000 basic exclusion amount is a good idea because all future appreciation and accumulated income will generally avoid estate tax. In addition, the client is concerned if he does not use it, he will lose it. As mentioned, the \$5,000,000 amount is scheduled to shrink automatically to \$1,000,000 on January 1, 2013.

The client's lifetime use of the \$5,000,000 basic exclusion amount will need to be figured into the computation when estimating the client's exposure to estate taxes (*Cf.* IRC Sec. 2001(b)(2)).

The next transfer-tax shelter to discuss with the client is the gift-tax annual exclusion. For 2011, this exclusion is \$13,000 per donee (*See* IRC Sec. 2503(b)(2)). In other words, this exclusion would allow our client to make annual gifts of up to \$13,000 to each of his 14 descendants without incurring any gift tax.

The gift-tax annual exclusion is available only for gifts of "present interest." The exclusion does not shelter gifts of "future interest" (IRC Sec. 2503(b)(1)). Suppose in our example that the client does not want to give the \$13,000 directly to each descendant. Rather, the client wants to transfer an additional \$182,000 each year to the one-pot trust he has already funded in 2011 with \$5,000,000.

When creating the one-pot trust, the client could provide that the initial \$5,000,000 is not subject to withdrawal by the beneficiaries. But he could provide that the \$182,000 additional transfer to the trust in 2011 would be subject to each descendant having a \$13,000 Crummey power. Recall that a Crummey power is a demand right with a limited life. Here each descendant is given the right to withdraw \$13,000 by written demand made to the trustee within 30 days after the \$182,000 transfer. If the descendant does not make the demand by that deadline, the Crummey power lapses and the cash relating to that power stays in the trust.

On a technical note, many Crummey trusts limit the beneficiary's Crummey power to \$5,000 per year, for example, even though the gift-tax annual exclusion is currently \$13,000. This restriction is often made in order to stay within the \$5,000 or five-percent safe harbor that exists under the wealth-transfer tax system (O'Hara, *Estate Planning Corner, Alaska Bar Rag* (Sept.-Oct. 1999)). Here the \$5,000 per year limit is not necessary because the trust has assets in excess of \$260,000 (five percent times \$260,000 equals \$13,000).

Suppose under our example that we are now in July 2011 and the client has been able to transfer, on a gift-tax free basis, \$5,182,000 in cash to a one-pot trust for the benefit of his descendants. Suppose the client wants to gift more, and he is not concerned about making equal gifts to each descendant.

The next transfer-tax shelter to discuss with the client is the exclusion for certain payments of medical expenses or tuition. Under this exclusion, *direct* payments of tuition or for *uninsured* medical care are not transfers for gift or generation-skipping tax purposes, regardless of the amount of the payments (IRC Sec. 2503(e) and 2611(b)(1)). Amounts paid for medical insurance on behalf of another are considered medical expenses for purposes of the exclusion (Treas. Reg. Sec. 25.2503-6(b)(3)).

Two words in the preceding paragraph bear repeating. The first word is "direct." Direct payment to the educational organization or medical-care provider is required in order for the exclusion to apply (Treas. Reg. Sec. 25.2503-6(c)(Examples (2) and (4)). The second word is "uninsured." The exclusion does not apply to amounts



"Clients have a number of options in undertaking annual gifting. The sooner they start giving the more effective their plans may be."

paid for medical care that are reimbursed by medical insurance (Treas. Reg. Sec. 25.2503-6(b)(3)).

The educational organization must be qualified in order for the exclusion to apply. For these purposes, a qualifying educational organization is one that maintains a regular faculty and curriculum and has a regularly enrolled student body (Treas. Reg. Sec. 25.2503-6(b)(2)). The exclusion is not available for amounts paid for books, supplies, dormitory fees, board, or other similar expenses (*Id.*).

Therefore, under our facts, the client could directly pay each year -- without incurring any gift or generation-skipping tax -- the \$130,000 in tuition that his family incurs each year. In addition, the client could directly pay each year the \$25,000 needed for the desired medical insurance plan for his three otherwise uninsured descendants. He could also directly pay for his grandchild's \$20,000 operation without incurring any gift or generation-skipping tax.

Clients may wonder where qualified state tuition programs fit within the various transfer-tax shelters. Qualified state tuition programs are sponsored by various states, including Alaska. These programs allow clients to shelter transfers into managed funds, for the benefit of designated beneficiaries, through use of the \$13,000 gift-tax annual exclusion (IRC Sec. 529(c)(2)(A)(i)). Indeed, it is possible for a client to transfer to a qualified state tuition program -- in a single year -- \$65,000 per beneficiary, without incurring any gift or generation-skipping tax (Prop. Treas. Reg. Sec. 1.529-5(b)). In other words, a client may elect to treat transfers made in one year to a qualified state tuition program as made ratably over five years (IRC Sec. 529(c)(2)(B)). If a client makes this election and then dies within the five-year period, part of the transfers made to the program will be included in the client's estate for tax purposes (IRC Sec. 529(c)(4)(C)) and generation-skipping tax could be triggered.

Thus the foundation of qualified state tuition programs is the \$13,000

gift-tax annual exclusion. Unfortunately, transfers into qualified state tuition programs do not qualify for the tuition exclusion under the gift and generation-skipping tax (IRC Sec. 529(c)(2)(A)(ii)).

In our example, the client has decided not to use a qualified state tuition program. He has determined it is more efficient from a tax standpoint for him to pay tuition directly to all schools. Then the payments will qualify under the tuition exclusion, which is in addition to the \$13,000 gift-tax annual exclusion.

The client intends to use his \$13,000 gift-tax exclusion by making annual gifts of \$182,000 to the one-pot trust he has created for his 14 descendants. The client has determined that if he is not alive someday when tuition payments are needed, those tuition payments can be made either out of the one-pot trust or another trust funded at his death. If the trust would otherwise be subject to generation-skipping tax, the trustee could avoid this tax by using the tuition exclusion and paying the tuition directly to the schools. The tuition exclusion is not only available to individuals; it is also available to trusts subject to generation-skipping tax (IRC Sec. 2611(b)(1)).

In other words, if the client participates in a qualified state tuition program, then the client is using part of all of his \$13,000 gift-tax annual exclusion for each designated beneficiary. To that extent, the client will have less shelter to make annual gifts to his one-pot trust. Moreover, for each designated beneficiary in the qualified state tuition program, the client may be giving up the opportunity for him or a trust to make direct tuition payments and thus qualify transfers under the tuition exclusion.

Clients have a number of options in undertaking annual gifting. The sooner they start giving the more effective their plans may be.

The advantages of lifetime giving are not limited to taxation. As the old saying goes, *Do your givin' while you're livin' so you're knowin' where it's goin'.* This saying rings true whether the giving is within a family or among charities.

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What we have here is a failure to communicate...

By William Satterberg

The letter came without any warning, like a new public defender's first bar complaint:

"Hello ... Bill...

Before too much time went by, I wanted to both introduce myself ... and to thank you all for your fine contributions to the *Alaska Bar Rag* in the past and/or *hopefully* in the future...

Meanwhile, quite a few different people have contacted me. One recurring theme I am hearing is that people would like to see more and *shorter* articles. *I tend to agree.*

For those of you who may be running beyond 5 double-spaced pages (*I mean way beyond*), I'd like to ask that you please see if you can trim and self-edit your submissions to bring them as close as possible to the 5 double-spaced page limit. I would not want to damage your submissions through inartful editing.

Thank you again for your past (*and hopefully future*) valuable contributions to the *Alaska Bar Rag*.

Gregory" (Emphasis added)

I fell into a deep melancholy. My familiar, old self-esteem issues emerged. To me, the signs were clear. All good things must come to an end. Admittedly, what is a good thing is subject to a person's perspective, but I was profoundly hurt. In the surprise announcement, Gregory Fisher had dictated to all contributing editors that the Rag was taking a new direction under his rule. The previously established, but regularly ignored, "Writers Guidelines" were now to be the norm, rather than the exception. All regularly contributing authors were to adhere to such restrictions, on pain of Gregory's admittedly inartful editing. So much for the legal concepts of waiver and estoppel, and years of doing it "the other way." No one would be spared.

On the surface, Gregory may have concluded his letter cordially, but the subtle implications and target were obvious. The young pups were kicking out the old trial dogs. Those

crusty venerables who either could not or would not follow the rules.

I should have known that the end was in sight. In retrospect, the warning signs were there. Seemingly innocent acts now spoke volumes. In the last issue, my contribution no longer occupied the coveted centerpiece of the paper. Instead, "Grumps, Too" had been moved to the Rag's last two pages, almost as an afterthought. Moreover, I shared space with two large display ads, one peddling malpractice insurance. At the time, I had dismissed my change of literary venue to editorial inexperience. I now realized that there was something more nefarious to the matter. I was being quietly ushered out. An innocent lamb to the slaughter.

Upon reflection, I realized that my article's placement was not all. The cute front page "teaser" cartoon which often hawked my pedantic prose also was gone. Where I had expected a creative drawing of a stodgy, old grandpa having his finger pulled by a mischievous two year old boy while grandma sat holding her nose in the background, another contributor had now usurped the coveted front page cartoon. Even my artist had deserted me for some bald headed, younger, lawyer movie star who I had never met. Movie stars always seemed to rate the glamour.

I should have also noticed the hints when one unknown elderly attorney complained to the editor in an earlier edition about the length of my articles, or when another old guy turned in his bar license, citing in his affidavit of surrender that one reason for his decision was because he did not want to pay a measly \$210.00 a year to read about my "endoscopy" (Ex-contributing author's note: Try *colonoscopy*, old codger — wrong end entirely!) and other "exploits." I recalled the snipe hunts of my youth,



"Fortunately, given the eccentricity which exists in the Alaskan practice of law, the field was ripe for submissions."

and how I regularly won the family hide and seek games, spending days in the closet while my parents and sister, Julie, were supposed to be looking for me.

Yet, for every detractor, there were those who complimented my work. Once, a federal judge actually wrote a kind personal note encouraging me to continue my submissions. Maybe, that also was a subtle warning. Reverse psychology. But, that was before certain Fairbanks locals had plotted to kill him. He has now quieted down as well and is likely in hiding.

I began to grieve. I mused about the sagas I had shared over the past 18 years. The first was in 1993 about becoming a lawyer. At the time, I was simply having an epiphany, whatever an epiphany was. I altruistically wanted to make a small contribution to the profession. Until then, my secret mentor had been Gail Roy Fraites. Gail was a respected Anchorage trial attorney who regularly wrote "All My Trials." For years, Gail's column had been required reading for me. Sadly, Gail had unexpectedly passed away, leaving a profound hole in an otherwise traditionally boring Bar Rag publication.

Following my first article's publication, I was encouraged to submit another work. The second piece was about my canoe eating riverboat, Ramboat. It also was received with widespread acclaim. Either that, or the editors were desperate. So was I. After all, I longed for peer acceptance, hoping that my days of hide and seek were finally over. And, thus, began years of contributions - some good, some not so good, and some downright bad.

For years, the Bar Rag was a monthly publication. The schedule was demanding. I was relentlessly solicited for more contributions. In time, I evolved into a regular contributing

author. I even had my own section. Fortunately, given the eccentricity which exists in the Alaskan practice of law, the field was ripe for submissions. Factual accuracy, furthermore, was entirely optional. As such, I often babbled into the late hours of the night imparting my wisdom. Admittedly, I did have one short stint of writer's block. Fortunately, a bunch of new judges were sworn in, a slew of new crimes committed, and the logjam quickly vaporized.

Surprisingly, I actually employed a modicum of quality control. For many of the articles that were published, many more were not because they did not even meet my most rigorous standards for taste and decorum. Others were censored by my wife, Brenda. And, sometimes, the Rag would publish only half of an article, simply overlooking the follow-on installment entirely. To my chagrin, no one ever complained about the oversight in such cases.

When I received Gregory's email, my life's literary exploits were far from finished. I still had "in the can" articles about renegade attorneys Don Logan and Mark Grober, several about my wife, Brenda, and a whole bunch about a number of judges who had somehow upset me. I also had one about an attorney whose name I cannot ever mention again in the Bar Rag for fear of a lawsuit. I was on a roll. Moreover, as old age approached, I was becoming more outspoken. After all, I had earned the privilege. I would not be denied my inalienable right to be a crusty curmudgeon like Jim McLain or Harry Davis, both of whom have now retired from law, but who still like to grouse regularly about just about anything (in my subjective opinion, of course).

Conceptually, there were other articles planned. For example, I had an almost completed article about travel tricks for the frequent flyer. I also had almost finished an article about my recent experiences in the 2011 Japanese earthquake. And an exposé about my brief one-year tenure as a legislative aide and the scandals of Juneau was to be another fun one.

I now accept that my future articles will likely pass on with me, just like Steven Hawking and his theories of the universe. When I attained the revered age of 60 on April 1, 2011, I begrudgingly accepted that I was leaving my literary past behind. A new era had begun. Gregory's letter made it excruciatingly evident that it was time to end my regular contributions to the Rag. Although some diehard fans suggested that I consider installment articles, I realized the impracticality of such. Besides, the Rag has never been known for its quality or consistency. Rather, I decided that it was better to die a quick and painful death, exiting gracefully. I would be the lawyer's equivalent of Charlie Sheen - a literary rejected nuclear torpedo hoisting new, narrow minded Bar Rag editors on the quills of my vicious vengeful prolific pen as my sensual spiritual writer goddesses looked lovingly on. Given time, I would go on national tour.

Recently, when I was in Saipan, I received an old age discount card. It was given to anybody who had attained the ripe old age of 55. When

Alaska Bar Association 2011 CLE Calendar

Date	Time	Title	Location
6/16/2011	9:00 a.m.- 12:15 p.m.	Handling ERISA Disability Claims	Hotel Captain Cook
6/17/2011	8:30 - 11:45 a.m.	Trust Accounts with Jay Foonberg	Hotel Captain Cook
6/23/2011	3:00-4:30 p.m; 4:30- 6 p.m. (reception)	Creating Collegiality Among Adversaries (Seattle Univ.)	Dena'ina Center
7/13/2011	9:00 a.m. - 12:15 p.m.	What NASCAR, Jay-Z and the Jersey Shore teach about Attorney Ethics	Hotel Captain Cook
8/26/2011	9:00 a.m.- 10:30 a.m.	2011 Ethics	Hotel Captain Cook
8/30/2011	8:30 a.m. - 9:30 a.m.	Grace Under Fire: ABOTA	Hotel Captain Cook
9/9/2011	8:30 a.m. - 4:00 p.m.	How to Win Your Next Trial Using the Power Trial Method	Hotel Captain Cook
9/15/2011	8:30 a.m. - 12:45 p.m.	Internet Research	Hotel Captain Cook
9/16/2011	8:30 a.m. - 11:45 a.m.	This Really Happened: The Ethics Game Show	Hotel Captain Cook
9/16/2011	1:00 - 4:15 p.m.	What You Need to Know to Help Clients with Social Security Disability Claims	Hotel Captain Cook

Continued on page 27



An installation ceremony for new Anchorage Superior Court Judge Greg Miller was held on March 16, 2011, in the Boney Courthouse. Judge Miller joins the bench after a long career in private practice in Anchorage. With him after the ceremony are, L-R: Justice Dana Fabe, Alaska Supreme Court; Judge Alex Swiderski, Anchorage District Court; Judge Miller's wife Nancy Meade, Court Rules Attorney; Judge Miller; Judge Sharon Gleason, Presiding Judge of the 3rd Judicial District; and Judge David Mannheimer, Alaska Court of Appeals.

TALES FROM THE INTERIOR

Failure to communicate...

Continued from page 26

I asked the public servant who gave me the card for the expiration date, he cheerfully announced "It expires when you do!"

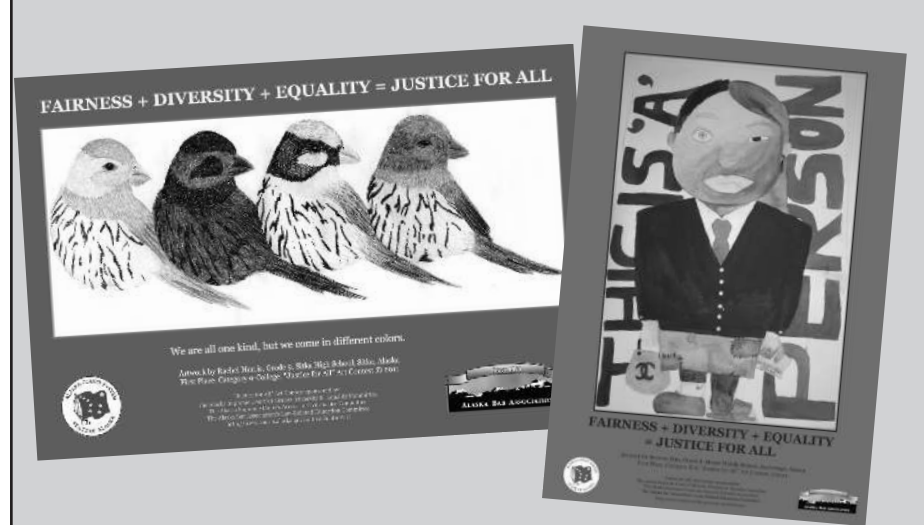
By analogy, from my perspective, it is much better that I cease my contributions to the Rag before my old age card expires, as Gail Fraites' did. Still, there is one blockbuster I should share before I exhaust the newly resurrected, five page, double-spaced allocation for regular honored Rag contributing authors. It concerns the outlandish sexual escapades of certain court personnel of the Fourth Judicial District. One of those deep, dark secrets I have been longing to disclose for several years, but have been too timid to reveal. I suspect that it will undoubtedly be my proverbial Swan Song. So, please let me begin (This one's for you, Charlie!)

Without doubt, the most memorable event involved a gaggle of gaily frolicking middle-aged jurists. The impromptu bash took place late one evening on the allegedly deserted fifth floor of the new courthouse. On the lower floors, each judge had their

own newly appointed chambers from which they could smugly look down on the intoxicated street people below who were predictably sleeping peacefully beneath the bridges, awaiting the next batch of tourists. The judges were proud of their lofty perches, feeling quite secure in their private chambers, guarded by sophisticated keyless entry systems and shielded by reflective windows. Their desks were spacious, the genuine naugahyde couches soft and inviting. But, the feeling of security was only a ruse. Unbeknownst to the scantily clad revelers, adorned in their sexy, black silk robes, several stories below, hidden in the dank bowels of the imposing black monolith, digital security cameras were painstakingly capturing each sordid moment for YouTube.

It was a hot, sinister August night. One which would later become famous for Fairbanks fetishes. Rumor was that even the late Don Logan had been invited to the sultry chambers of the highly respected Judge... (oops, damn! — out of allocated space. But the rules are the rules!)

— C'est Finis! —



Art contest focuses on fairness & equality

The "Justice for All" Art Contest asked students to submit works in any medium on the theme "Fairness, Diversity, Equality: Our justice system depends on them. What do they mean to you?" The contest received over 125 entries from students of many grade levels from all across Alaska.

Finalists were selected by members of the court system's staff, then winners were selected by a judging panel that included representatives from each of the contest sponsors and prize donors. Members of the final judging panel included Justice Dana Fabe of the Alaska Supreme Court, Chair of the court's Fairness, Diversity & Equality Committee; Justice Daniel Winfree of the Alaska Supreme Court, Chair of the court's Access to Civil Justice Committee; Barbara Jones, Chair of the Alaska Bar Association's Law-Related Education Committee; and Patti Simmons of the law firm of Perkins Coie, LLC, a contest prize donor. For more information, and to view the artwork by contest finalists, visit <http://www.courts.alaska.gov/outreach.htm#art>.

Grades K-8

First Prize: \$500 SEOWOO HAN, Grade 8, Mears Middle School, Anchorage. A watercolor painting featuring the theme "I am a person." The painting was incorporated into posters distributed to courthouses statewide.

Second Prize: \$300 LAURENA HANK, Grade 7, Big Lake Elementary, Big Lake

Third Prize: \$200 KIRSTEN McLAIN, Grade 2, Galena City School, Galena

Honorable Mention: KALEB KORTA, Grade 7, and CAROLYN SAM, Grade 7, Sidney C. Huntington School, Galena; MICAELA MILLER, Grade 8, Houston Middle School, Houston

Grades 9-College

First Prize: \$500 RACHEL HARRIS, Grade 9, Sitka High School, Sitka. a pencil drawing of birds with the theme we are all the same, but we come in different colors. It was also incorporated into a poster distributed in the court system.

Second Prize: \$300 BRANDON LONG, Grade 11, Anthony Andrews School, St. Michael

Third Prize: \$200.00 HANNAH EVERETT, Grade 11, Thunder Mountain High School, Juneau

Honorable Mention: CHELSEA MILLS, Grade 12, Kake High School; GABRIELLE BRAGG, Grade 11, Skyview High School, Soldotna; KAYLEEN PRESTON, University of Alaska Anchorage.

In the Supreme Court of the State of Alaska

In the Disciplinary Matter Involving)
) Supreme Court No. S-14-14
)
 Wewley William Shea) Order
)
 -----) Order No. 72 - May 18, 2011
)
 ABA Membership No. 7705060
 ABA File No. 2008D091

Before: Carpeneti, Chief Justice, and Fabe, Winfree and Stowers, Justices. [Christen, Justice, not participating.]

The Disciplinary Board of the Alaska Bar Association, based on its adoption of an area hearing committee's findings of fact and conclusions of law and a final report of recommended sanctions, recommended that attorney Wewley William Shea be suspended from the practice of law for 25 months and be subject to certain conditions for reinstatement. Shea appealed that recommendation.

We review disciplinary recommendations under Alaska Bar Rule 22(r).¹ We independently review the record, but give great weight to the Disciplinary Board's findings of fact.² We apply our independent judgment to questions of law and the appropriateness of sanctions,³ guided but not constrained by the American Bar Association's Standards for Imposing Lawyer Sanctions and by the sanctions imposed in comparable disciplinary proceedings.⁴

The Area Hearing Committee, and, by adoption, the Disciplinary Board, found by clear and convincing evidence that Shea violated Alaska Rules of Professional Conduct 1.9(a) (conflict of interest), 3.1 and 3.3 (false statements of fact in court pleadings), and 4.4 (unprofessional pleadings). After reviewing the record and giving due weight to the relevant findings of fact, we agree those violations were proved

by clear and convincing evidence.

The Area Hearing Committee, and, by adoption, the Disciplinary Board, recommended, in relevant part, that: (1) Shea be suspended from the practice of law in Alaska for 25 months; (2) prior to reinstatement, Shea be required to comply with Bar Rule 29(c)(1);⁵ and (3) prior to applying for reinstatement, Shea be required to demonstrate that he has "the character and fitness to practice law by meeting the . . . requirements of Alaska Bar Rule 2, Sec[ti]on 1(d)," and "via evidence from a psychiatrist or psychologist, that [he] is mentally fit to return to the practice of law."⁶ Applying our independent judgment to the appropriateness of this sanction, we adopt the recommended discipline.

IT IS ORDERED that Wewley William Shea is suspended from the practice of law in Alaska for 25 months effective June 17, 2011, subject to the stated conditions for reinstatement.

An opinion will follow.
 Entered at the direction of the court.
 Clerk of the Appellate Courts
 /s/Marilyn May

¹Alaska Bar Rule 22(r) (stating that this court "will review findings of fact, conclusions of law, and recommendations of discipline made by the [Disciplinary] Board").

²In re Cyrus, 241 P.3d 890, 892 (Alaska 2010).

³Id.

⁴Id. at 893-94 (quoting In re Friedman, 2 P.3d 620, 625 (Alaska 2001)) (internal quotation marks omitted).

⁵Alaska Bar Rule 29(c)(1) provides that an attorney suspended for more than two years must petition for reinstatement and demonstrate, by clear and convincing evidence, that the petitioner "has the moral qualifications, competency, and knowledge of law required for admission" and that his "resumption of the practice . . . will not be detrimental to the integrity and standing of the Bar, or to the administration of justice, or subversive of the public interest."

⁶Alaska Bar Rule 2, Section 1(d) sets out "character and fitness" standards for application to membership in the Bar.

Color of Justice goes to Southeast



Color of Justice participants from Mt. Edgecumbe High School gather with presenters and special guests during the two-day program at the school in February.

Over 80 high school students from across Alaska gathered at Mt. Edgecumbe High School in Sitka on February 15-16, 2011, for the first Color of Justice program to be held in Southeast Alaska. Color of Justice is a law-related education program sponsored by the National Association of Women Judges that seeks to encourage young women and youth of color to pursue careers in the judiciary. Law school professors and admissions officials from Pacific Northwest law schools joined Alaskan judges and attorneys to present workshops and hands-on activities during the two-day program. Highlights included an interview by Chief Justice Carpeneti of former Kodiak Superior Court Judge Roy Madsen, the first and only Alaska Native superior court judge in state history; a session entitled "From MEHS to the Halls of Justice" that featured a panel of Mt. Edgecumbe graduates now pursuing legal careers; and "Constitutional Cranium," a game show testing students' knowledge of Alaska's Constitution presented by 1st District Presiding Judge Patricia Collins. The next Color of Justice program will be held in Anchorage June 22-24, 2011, and is open to all interested high school and college students. The program is FREE, but space is limited, so early registration is advised. For more information, visit the court's outreach webpage at <http://www.courts.alaska.gov/outreach.htm#coj> or contact the program coordinators at bhood@appellate.courts.state.ak.us or mnewman@appellate.courts.state.ak.us.



Sitka attorney Jude Pate, R, plays the role of the stepfather in a mock tribal court hearing as Tribal Social Worker Peg Bloomer of the Sitka Tribe of Alaska looks on. The mock hearing was part of the workshop entitled *The Indian Child Welfare Act: A Case Study on Alaskan Tribal Courts*.



First District Presiding Judge Patricia Collins, L, developed and presented *Constitutional Cranium*. Here, Prof. Jay Kanassatega of Gonzaga University School of Law, R, helps with the questions and candy.



Three Mt. Edgecumbe graduates now pursuing legal careers participated in a panel discussion moderated by Justice Dana Fabe, entitled *From MEHS to the Halls of Justice*. L-R: Doanh Tran, a pre-law student at UAA; Justice Fabe; Jacqueline Esai, law clerk to Justice Craig Stowers of the Alaska Supreme Court; and Nicole Borromeo, currently a Staff Attorney with the Legal Aid Society of Hawaii.



Special guest Judge Roy Madsen (Ret.) (third from right) traveled to Sitka from his home in Kodiak to take part in the Color of Justice program. Judge Madsen is the only Alaska Native since Statehood to serve as a superior court judge. Here, he visits with Mt. Edgecumbe students at the close of the event.

2010 Mandatory CLE plus Voluntary CLE Compliance list

All active members of the Alaska Bar are required to earn three continuing legal education credits in ethics each year pursuant to Alaska Bar Rule 65.

In enacting Rule 65, the Alaska Supreme Court also recommended that Bar members earn an additional nine voluntary CLE credits. Approximately 70% of active Bar members earn the mandatory three plus the voluntary nine credits each year. Bar members who earn 12 credits are eligible to participate in the Bar's Lawyer Referral Service. Failure to earn at least 12 credits can be taken into account in any Bar disciplinary matter relating to the requirements of Rule

of Professional Conduct 1.1, Competence.

The Alaska Judicial Council may consider a member's compliance in connection with a member's candidacy for any judicial office or other position for which the Council screens and nominates candidates. The list of active Alaska Bar members who earned three mandatory ethics credits plus nine or more additional voluntary credits during 2010 is now on the Bar website. Look on the homepage under "What's New?"; or go to https://www.alaskabar.org/servlet/content/2010_mcle_vcle_compliance_lists.html The lists for 2008 and 2009 are also on the web page.

Bar People

President nominates 2 Alaskans

President Barack Obama on April 6 nominated Judge Sharon L. Gleason as one of two nominees to federal district courts. "Throughout their careers these individuals have shown a dedication to justice," said President Obama. "I am proud to nominate them to serve the American people from the district court bench."

Judge Gleason was nominated to the U.S. District Court for the District of Alaska. She currently is the Presiding Judge of the Third Judicial District of the Alaska Superior Court in Anchorage, a position she has held since 2009. Judge Gleason was appointed to the Superior Court in 2001 and was retained by Alaska voters in 2004 and 2010. Prior to being appointed to the bench, she spent 17 years in private practice. She was a sole practitioner from 1995 until her judicial appointment. From 1984 to 1995, she worked at the firm of Reese, Rice and Volland, which later became known as Rice, Volland, Gleason and Taylor. Judge Gleason served as a law clerk to then-Chief Justice Edmond Burke of the Alaska Supreme Court from 1983 to 1984. She received her J.D. in 1983 from UC Davis School of Law, and her B.A., magna cum laude, in 1979 from Washington University in St. Louis.

President Obama on April 6 also nominated Susan Owens Hickey for the western Arkansas district court.

Christen nominated for Court of Appeals

President Obama also nominated Justice Morgan Christen for the United States Court of Appeals for the Ninth Circuit on May 18.

"I am proud to nominate this outstanding candidate to serve on the United States Court of Appeals," he said. "I am confident Justice Morgan Christen will serve the American people with integrity and distinction."

Justice Morgan Christen was born and raised in the state of Washington. She attended the University of Washington, where she received her B.A. in 1983. While an undergraduate student, Justice Christen studied in England, Switzerland, and China. She later attended Golden Gate University School of Law and obtained her J.D. in 1986. Justice Christen moved to Alaska in 1986, when she began a clerkship for Judge Brian Shortell of the Alaska Superior Court.

In 1987, she joined the law firm of Preston Thorgrimson Ellis & Holman (now K&L Gates LLP) in their Anchorage office. While at the law firm, Justice Christen handled a variety of civil matters, including representation of the State of Alaska in the wake of the Exxon Valdez oil spill. In 1992, she was elected to the firm's partnership.

In 2001, Justice Christen was appointed to the Alaska Superior Court. Beginning in 2005, she served as the presiding judge of Alaska's Third Judicial District in Anchorage. As presiding judge, Justice Christen supervised approximately 40 judicial officers in 13 court locations. In 2009, Justice Christen was elevated to serve as one of five Justices on Alaska's Supreme Court.

--White House press releases

Wagstaff gets degree

The Law Faculty of the University of Oxford has granted Robert H. Wagstaff leave to supplicate for the Degree of Doctor of Philosophy (DPhil). The doctoral diploma will be awarded at a formal ceremony on September 23, 2011 in Oxford.

Governor appoints Menendez, Chung

Gov. Sean Parnell appointed Louis Menendez to the Juneau Superior Court on May 23, filling the vacancy created by the upcoming retirement of Judge Patricia Collins.

Menendez, of Juneau, has practiced law for more than 29 years. He is currently in private practice focusing on criminal defense. Menendez has also worked as a state prosecutor in Anchorage, Kodiak, Dillingham, Kotzebue, Ketchikan, and Juneau. He earned his juris doctorate from the University of California's Hastings College of Law, and his LL.M. in criminal law and justice from New York University.

"Mr. Menendez is an accomplished trial attorney who treats the court, juries, and all interested parties with respect and clearly has a love for the law combined with an understanding of people," said the Governor.

Gov. Parnell also appointed assistant municipal prosecutor Jo-Ann Chung to the Anchorage District Court on May 26. She has practiced law in Alaska for more than 15 years and has worked as a prosecuting attorney for the Municipality of Anchorage since 2001, supervising the municipality's trial attorneys since 2008, and leading the domestic violence unit since 2004. Chung earned her juris doctorate from the Northeastern University School of Law.

Chung has provided pro-bono legal assistance to Alaskans through the Anchorage Network on Domestic Violence and Sexual Assault hotline and previously served as an assistant attorney general for the State of Alaska in child protection cases, as a public defender representing indigent defendants, and as a law clerk at the Alaska Court of Appeals.

"Ms. Chung has worked throughout her legal career to uphold justice and preserve the safety and dignity of Alaskans," Gov. Parnell said. "Her experiences have prepared her to handle the district court's caseload, and I'm confident that she will excel as a judge."

Tom Daniel named Lawyer of the Year



Perkins Coie is pleased to announce that Anchorage Partner Tom Daniel was named by Best Lawyers as Alaska's Labor and Employment Lawyer of the Year. Each year the publication selects one lawyer in each state for each of the practice areas in which lawyers are ranked.

Tom focuses his practice on labor and employment law, particularly employment discrimination litigation, and wrongful discharge law and litigation. For many years he was co-chair of the Employment Law Section of the Alaska Bar Association. He also served as office managing partner for Perkins Coie's Anchorage office from 2000 to 2007.

Stoel Rives welcomes Jon Iversen as tax partner in its Anchorage office

Stoel Rives LLP, a full-service U.S. business law firm, is pleased to announce that Jonathan E. Iversen has joined its Anchorage office as a partner in the Litigation group.



Iversen focuses his practice on litigating tax matters. Before joining Stoel Rives, he served as Director of the Tax Division of the Department of Revenue for the state of Alaska (2007-2011). He has deep experience in complex tax matters and has litigated and negotiated settlements of major tax and royalty cases. Iversen served as a core team member in drafting Alaska's oil and gas production tax and property tax laws and regulations. His practice also has an emphasis on oil and gas exploration, development and production matters, including royalties, leasing and unitization.

"Many of our resource industry clients frequently face significant tax disputes with the state. Adding Jon enables us to help them avoid, negotiate or, if necessary, litigate those disputes," said Anchorage office managing partner James E. Torgerson. "Jon has unparalleled insight into the development and structure of the state's current tax regime. We're delighted that he has joined us."

Iversen is a graduate of the University of Colorado School of Law (J.D., 2002), the University of Colorado Graduate School of Business (M.B.A., 2002) and the University of Wyoming (B.A., 1997, with honors). He is admitted to the state bars of Alaska and Wyoming.

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ECLECTIC BLUES

A walk in Shangri-La

By Dan Branch

About a week before my daughter graduates from her Lower 48 college Aki and I hike the East Glacier Trail. While Aki, a poodle mix, roams ahead I think about how I approached life at my child's current age. Things like movies had a great influence over me. There was that time I watched *Lost Horizon* on the family's black and white TV. (Too young to catch it on the silver screen). That beautiful film seemed to lay out all of life answers and provide a great stage for the lovely Jane Wyatt and dashing Ronald Coleman. I dreamed of dating Ms. Wyatt and vowed to grow a pencil-thin mustache like Mr. Coleman. Neither happened but I still remember the plot.

Mr. Coleman plays a talented diplomat who is needed in London to end the threat of war. He is abducted and taken to Shangri-La, a magical valley high in the Himalayan Mountains where the dying high lama asks him to take over his responsibilities. The movie asks the audience to examine what is truly important and to consider adopting a different set of values.

I think of *Lost Horizons* today because the East Glacier Trail takes you to a Southeast Alaska version of Shangri-La. First you travel on the Trail of Time, passing markers commemorating the glacier's edge in 1916 and 1920, far from its

current face. Then you climb, sometimes negotiating, Ronald Coleman-like, granite cliffs with the help of wire cable hand lines. You also pass miniature moss-framed waterfalls that cascade over granite grooved by the receding glacier. One is terraced like the orange orchards of Kyushu Island.

A mile or so in, the trail winds through moss-covered boulders scattered like they fell from a giant's pocket. These erratics form the doorway to a flat plain drained by a clearwater stream. The noise of town and the airport that were constant companions on the climb up the hill are gone, replaced by the sound of moving water and bird song.

I stop next to a chickadee just a foot from the trail and enjoy a rare opportunity to study one of these tiny earthtone masterpieces. He cocks his head and I find myself imitating the gesture. "Peace to you, brother," I say before moving off. In too short a time we approach the foot of a yellow cedar 221 steps to the summit. This too echos Shangri-La, with its grand staircase to the monastery where Mr. Coleman meets the high lama.

We climb the 221 steps but find no fount of wisdom at the top, just two complaining ravens amid relics



"A mile or so in, the trail winds through moss-covered boulders scattered like they fell from a giant's pocket."

of an old mining operation that emerge here and there from the moss covered ground. I think again about my daughter and how we climbed these same 221 steps when she was a child while she and a friend of the family sang "Make new friends, but keep the old, one is silver and the other gold." I can almost hear the echo of their refrain in the rushing of nearby Nugget Creek.

Stopping to photograph the glacier on the way down

I find myself standing on a large pile of spruce needles, a sign of insect damage that we didn't see before the current series of warm winters. The glacier also reflects the warming trend, having retreated quite a ways from where it stood when my child sang her song of friendship.

We find one more echo of childhood down the trail when the scuffling sound of children playing sends Aki scurrying to my feet. I expect two kids to plummet past us on bicycles. When they don't, I listen again and realize that we are hearing the sound of bear cubs playing. Fortunately they are behind us so we press on to the car.



Aki ascending the 221 yellow cedar stairs. Actually she is waiting somewhat patiently for me to catch up. That's a lot of stairs.



Entrance to the place I call Shangri-La.

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Contact the Alaska Bar Association at 272-7469 or info@alaskabar.org to receive an application.



Don Logan departs in (his own) style

From Cub Reporter Bill Satterberg (ex-contributing author to the auspicious, but now going-to-be-more-boring Bar Rag)

Dateline: Fairbanks, Alaska

Noted renegade attorney Don Logan passed away this past April 16, from unnatural causes, in true Logan style.

On May 7, following the cessation of hostilities at the Fairbanks Alaska Bar Convention, an impromptu group assembled in the closed Chena River Wayside to pay their "respects" to Logan. Although the wayside was officially closed, permission was obtained to use the shelter, much to the chagrin of some locals who had previously staked the area out for an impromptu party of their own.

Present were federal and state jurists, hopeful jurists, past bar presidents, two curious onlookers, a gaggle of friends and other notables, including Logan who, for once, had nothing to say but stayed quietly in his wooden box, placed as an afterthought on a folding chair. Logan arrived at the wayside after a flotilla of kayaks, canoes, and leaky rubber rafts brought him downstream to the park from the Graehl landing.

Following appropriate libations and victuals, Logan's Last Will and Testament was read, with feeling, by Master Alicemary "Ally" Rasley to all present. The version was not censored, but children were forewarned, as well they should have been. The unexpurgated version of the Will is submitted with this report for all possible devisees.

At the reading of the will, no tears were shed, due to Logan's repeatedly expressed oral wishes that, should anyone shed tears over his demise, they would have to snort a line of his remains. At the end of the evening, Logan was last seen still comfortably resting in his campside easy chair. Rumor had it that someone eventually took Logan home that night and he is reportedly being safely kept somewhere. (Stay tuned.)

Donald F. "Logan" Logan

Longtime Fairbanks resident, Donald "Logan" F. Logan, 60, died Saturday, April 16, 2011, at the Denali Center in Fairbanks.

A celebration of his life will be announced with his full obituary to be published at a later date. Arrangements were entrusted to Fairbanks Funeral Home & Crematory.

—Fairbanks Daily News-Miner

LAST WILL AND TESTAMENT OF DONALD F. LOGAN

I, DONALD F. LOGAN, born January, 14, 1950, presently of Fairbanks, Alaska, Fourth Judicial District, State of Alaska, of lawful age and being of sound and disposing mind and memory, and not acting under duress, fraud, menace or the undue influence of any person or persons whomsoever, do declare this to be my Last Will and Testament, hereby revoking all former Wills or codicils previously made by me.

INITIAL INSTRUCTION

QUICK, CALL THE MORTICIAN -- I MEAN THIS!! -- TELL HIM I

INSIST THAT I WANT HIM TO PUT A "SHIT EATING GRIN" ON MY FACE! I'VE HAD A HELLO OF A TIME AND I WANT IT TO SHOW!!!

This entire will is to be read verbatim at the wake.

II. DEFINITIONS

1. "Representative" means any personal representative of my Estate.
2. "Issue" means ... [Ya --right!]

III. PURPOSE

I intend, by this Will, to dispose of all my assets, wherever located.

III. APPOINTMENT OF FIDUCIARIES

I appoint Del Ackels, of Fairbanks, Alaska, as Representative of my estate. This, because I have utmost faith that he will appreciate the spirit in which I have written this Will, lived my life and wish to depart your memory. In the event that he is unable or unwilling to serve, then, in the following order, I direct that each of the following individuals be offered the position, together with its obligations and benefits.

1. Robert John of Fairbanks, Alaska
2. Jane Pierson of Fairbanks, Alaska
3. Pete Moskowitz if he's conscious and out of bed.

IV. PAYMENT OF DEBTS AND TAXES

I direct my Representative to pay the following before any division or distribution:

1. All debts for which my estate is liable, including the expenses of my last illness, the Party, cremation and airtime for the skydivers;
2. All of the expenses of the administration of my Estate;
3. All taxes payable by reason of my death. My Representative shall not require any beneficiary, as to any real-property or any other property passing under the terms of this Will, to reimburse my Estate for taxes paid in accord with this subparagraph.

V. DISPOSITION OF ESTATE

It is my intention, by this Will, to dispose of all of my property, real, personal and mixed, including any and all property of any nature acquired after the execution of this Will, wherever situated, and my estate is to include property as to which I have an option to purchase or a reversionary interest and property over which I have a power of appointment, as follows:

1. All of my assets not otherwise provided for herein shall be given to Jane Pierson for distribution to my friends after she shall use whatever amount is appropriate for necessary expenses and one hell of a party to be held at the Howling Dog Saloon in Fox, Alaska.
2. I specifically bequeath the following property to the individuals named below:

My ocean kayak and related items to Chuck Carpenter.

My river kayak and related items to Jane Pierson.

My climbing gear and climbing skis to the Alaskan Alpine Club.

My racing cross-country skis, with related goodies, to Satterberg, because he'll never buy a good pair for himself.

My bicycle and related goodies to Maureen Dey.

My walrus tooth carving to Maureen Dey.

The old momento box to Joyce Goodman or Grace Goodman of Tucson, Arizona.

All the other stuff in storage to be spread around by Jane Pierson in whatever manner seems the be the most preposterous.

VI. THE PARTY

There is always a wake. Let's have this thing at the Howling Dog Saloon in Fox, Alaska. The Reverend Michael Brock shall officiate. This document will be read, verbatim. All ye of faint heart, depart. After a short intermission so that those of weak stomach or tender morals may split, let's get on with this thing. If I've

got something on ya, let it be known that Mike has received a separate document containing all the secrets. Hell, if I didn't have something on ya, I probably made it up.

VIII. POWERS OF FIDUCIARIES

I give my Representative and the Trustee the powers set forth in the Probate Code in the State of Alaska.

X. DISPOSAL OF MY REMAINS

1. If it can be done legally or accomplished otherwise without getting anyone in trouble, I will the skin to Peter Moskowitz who says he'd like to have it tanned and hang it on the wall. The penis should be removed, enlarged and stuffed. It should then be given to Jane Pierson who always wanted to remove it anyway. My left hand goes to Tripod. The "sense of humor" to Dick Savell. The "belly" to Gerry LaParle. The hair is to be distributed to Robert John. The heart should be given to Bill Satterberg, Jr. who needs one. The guts go to Jim McLain so he'll finally have some. The balls go to Maureen Dey because hers are bigger than most already. The ass goes to Ed Niewohner so he'll get off his own and do things on time once in awhile. The brain goes to Valerie Therrien for obvious reasons.

2. Such body parts as remain after distribution, I wish to be disposed of by burial at sea if that's most convenient. God knows we don't want to stink up the boat while we get to shore! If I'm within 500 miles of Fairbanks, Alaska, then fry it to ashes and have the ashes scattered by two sky divers, in free fall, over the Fairbanks city landfill. Otherwise, just get rid of the damn things in the most inexpensive manner unless someone comes up with a truly absurd idea, in which case Jane Pierson is to have full discretion to direct it done. Some possibilities include an oversize ashtray; a hollow golden dildo; or a place of honor at the Howling Dog Saloon.

LAST COMMENT

"What a long, strange trip it's been."

The Grateful Dead.

ATTESTATION

I, DONALD F. LOGAN, the Testator sign my name to this instrument this ~ day of May, 1992, and, being first sworn, declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly, that I execute it as my free and voluntary act for the purposes expressed in it and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence.

S 4/12/92

We, Linda Mason, George Mason and, (illegible) the witnesses, sign our names to this instrument and, being first sworn, declare to the undersigned authority that the Testator signs and executes this instrument as his last will and that he signs it willingly and voluntarily and that each of us, in the presence and hearing of Testator's signing, execute this attestation, and that to the best of our knowledge the Testator is 18 years of age or older, of as sound of mind as possible for him after the 60's, or possibly after last night, and under no constraint or undue influence.

S 4/12/92

Notarized 5/12/92, State of Alaska 4th Judicial District

Pro Bono



Robin Fowler.

Robin Fowler—Government

Robin Fowler took the pro bono world by storm. Since becoming an attorney in 2009, she has taken five cases for ANDVSA. It began innocently enough...she contacted them to assist with casework which turned into protection order work and soon she was helping the same victim of domestic violence to gain custody of her children. She is a pro bono director's dream: she's courageous to leave her comfort zone and learn new areas of law as her clients need it.

And only the second to receive the award for pro bono service for a Government attorney.



L-R: Danielle Gardner, Craig Partyka, Dennis "Skip" Cook, Bob Groseclose, Barbara Schuhmann and Chief Justice Walter Carpeneti. Not pictured: Chad Hutchison, Jo A. Kuchle, Zane D. Wilson.

Cook Schuhmann & Groseclose—Lifetime Achievement

Equal justice in Alaska wouldn't be the same without the firm of Cook Schuhmann & Groseclose. For several decades the founding firm members and associates that have joined have cultivated pro bono service into their business practices. You don't work for this firm without the expectation of giving back.

Our friends at Alaska Legal Services Corporation summed it up beautifully when they said, "The firm has gone above and beyond to support the provision of civil legal services in Fairbanks and rural areas. They represent the best of their profession; their contributions make a difference for victims of domestic violence, seniors, tenants, or people who have lost a loved one."

Cook Schuhmann & Groseclose join a short list of Alaska history makers: only four other firms or individuals have received this distinction.



Shelby Mathis of Borgeson.

Borgeson and Kramer—Firm

The law firm—formerly Borgeson & Burns—answered the call for help from the local Fairbanks domestic violence shelter in 2009. Through assistance with the Bar's Pro Bono Director, Krista Scully, a pro bono project was created to provide shelter clients with limited pro se assistance in partnership with ANDVSA. The firm agreed to donate up to 10 hours per month to these clients through the shelter's legal advocate. It was originally staffed by three attorneys, two of whom left shortly after the project began, and with the support of the firm, associate Shelby Mathis continued the project. Two years and more than 300 volunteer hours later the firm continues their important work of helping victims of domestic violence and sexual assault navigate the family law courts.

Margaret O'Toole Rogers

Margie and her colleagues at Foster Rogers had an already impressive history of contributing pro bono service even before a pivotal case came to them in 2006. It was in 2006 that Margie began a case for the Alaska Network on Domestic Violence and Sexual Assault that would eventually span several years, 1,000 hours of pro bono service, and ended in 2009 with a domestic violence survivor retaining the custody of her children.

Our Facebook sources tell us that Margie often posted status updates about working in the office on weekends and she was rarely alone. Her law partner, administrative staff and other key players would often potluck together at the office to stay motivated, well fed, and focused on their pro bono clients.

It's been two years since the close of that case and one might think that Margie might have been a little gun shy about continuing their volunteer work but you'd be wrong. She has remained steadfastly committed to her pro bono work and provided continued assistance to ANDVSA clients in protection order and custody cases.



Margaret O'Toole Rogers.

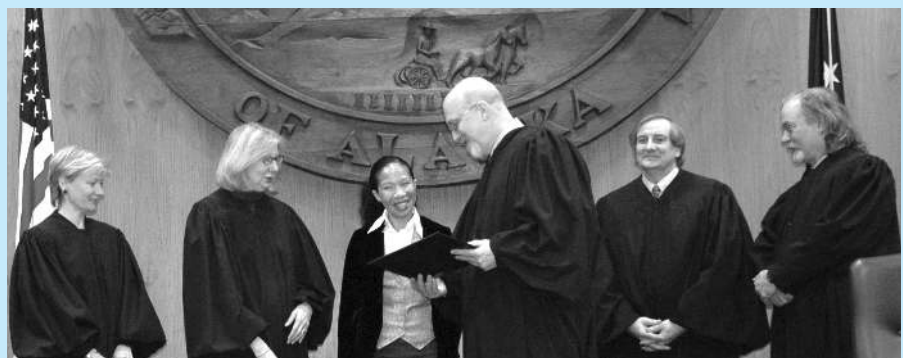
First certified court interpreter honored

Yolanda M. Martinez-Ley recently passed the Spanish oral exam developed by the national Consortium for Language Access in the Courts, becoming the first interpreter to receive court certification in Alaska and the first interpreter candidate to be fully trained in Alaska by the Language Interpreter Center.

Martinez-Ley participated in a three-year curriculum of study developed by the Alaska Court System and the Language Interpreter Center, which included an orientation program; specific training in legal terminology, court process and interpreter ethics; and an interpreting practicum.

To be recognized as a certified court interpreter, Martinez-Ley was required to pass two exams. The written exam tests command of the English language, understanding of professional ethics, and knowledge of court terminology and idioms. The oral exam tests the ability to perform the three types of court interpreting: sight translation, consecutive interpreting, and simultaneous interpreting. Martinez-Ley successfully passed all segments of the two exams.

In early April, the Consortium for Language Access in the Courts - a



project of the National Center for State Courts - presented the Alaska Court System with an innovation award for its collaborative efforts to establish the Language Interpreter Center and to expand the pool of qualified language interpreters statewide.

For more information about becoming a certified court interpreter, contact either Brenda Aiken (baiken@courts.state.ak.us) at the Alaska Court System or Barb Jacobs (barb.jacobs@akimmigrationjustice.org) at the Language Interpreter Center.