

# The Alaska BAR RAG

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Dignitas, semper dignitas

## Alcohol in Alaska: Evil unto itself or evil by way of law?

By Robin L. Koutchak

Two and a half years ago, the legislature, at the urging of the Rural Justice Commission, passed a series of laws to toughen the penalties for "bootlegging" – the illegal transport, sale or manufacturing of alcohol. Among the penalties were a mandatory \$10,000 fine for a felony offense as well as mandatory jail time for first, second and successive misdemeanor and felony convictions.

The intent was to put teeth into punishment that would hopefully have a deterrent effect on bootlegging alcohol to dry areas – whether one was making their own brew or bringing it in. The punishment instead, outraged enough people for what was seen as overreaching State involvement, that several outlying cities and villages (notably Kotzebue and Kiana) voted to change their status to that of damp - meaning in this case, you can possess or consume it if it comes into town legally.

Bethel voted to abandon the liquor laws but has yet to replace them with anything or allow alcohol to be sold by any entity in town. The folks in Kotzebue, decided that they would "monitor and control" alcohol in their village by having a city run

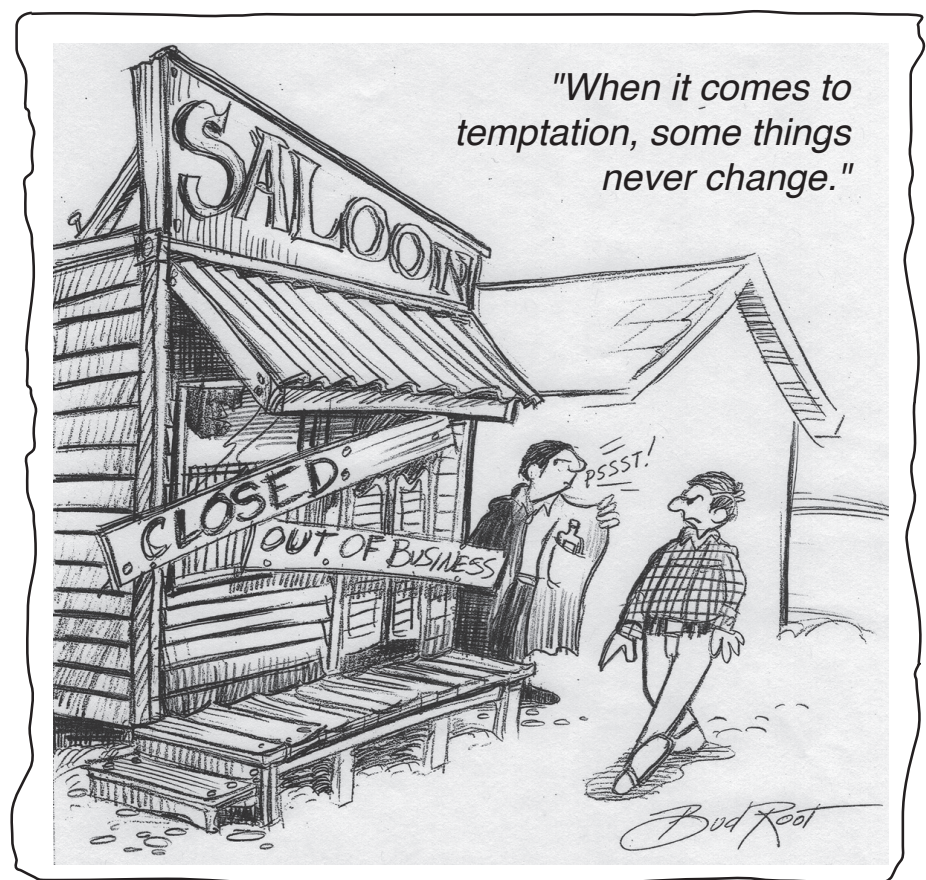
liquor store, which would require that purchasers buy \$50 permits and only be allotted a certain amount of alcohol per month. In addition, a distribution center, like one in Barrow, was set up so that if a person in Kotzebue wanted to buy liquor from somewhere other than the town liquor store, they could order it from Anchorage or Fairbanks and pay a \$25 fee to pick up every such shipment (and is also limited to a certain amount per month and requires a permit) at the distribution center. Kotzebue also voted to have a bar, where again, properly permitted people could drink. Of course the alcohol is taxed and revenue comes back to the city. Midway into the first year of what was called a "grand experiment", the manager of the liquor store was quoted in the media, saying the store was bringing in over \$250,000 a month before expenses.

This begs the questions in a lawyer's mind and maybe the minds of others: Are alcohol violations *malum in se* or *malum prohibitum*? *Malum in se* is a Latin term meaning the act is a crime in and of itself and is almost universally recognized as evil in and of itself, clearly violating an agreed upon community standard. Common *malum in se* crimes are things like rape, murder and incest. *Malum*

prohibita crimes often are argued not to be crimes, but are creatures of legislative and government enactment, or "wrong only because they are prohibited by government". Examples

of these crimes are parking tickets and other regulatory enactments. Which of the two categories drug and

Continued on page 22



## Bar Association wins community volunteerism award

By Peter Maassen

Ask to see the Golden Heart Volunteer Award on your next visit to the offices of the Alaska Bar Association. It's a gold-colored item shaped like a collection plate; if lawyers tithed in

jelly beans, the comparison would be perfect. Chances are the dish will be sitting on the front counter, awaiting its public. Push the candy to one side and stare into its shallow depths. Engraved in the bottom you will see the words, "Golden Heart Service Award – 2012 – Volunteer Program of the Year – Alaska Bar Association."

If the light is good, you will also see, in gauzy reddish silhouette, your own face. This is your award.

In early May many members of the Alaska Bar Association attended the annual Bar Convention in Anchorage. A happy part of what we do at the Convention is acknowledge the contributions that individual lawyers and law firms have made to pro bono work, to professionalism, to access to justice, to legal education. The ceremonies are heart-warming and the awards are well-deserved. At bottom, however, it's all in-house; it is we who are recognizing us, or the best of us.

The Golden Heart Volunteer Award is different. It comes to us from outside the profession; it marks that rare occurrence when lawyers, as a group, receive the praise of the community at large. The Anchorage Association of Volunteer Administration ("AAVA" – not to be confused with the American Academy of Veterinary Acupuncture, whose mission statement has eerie parallels but whose target audience tends toward the quadrupedal) is an Anchorage

service organization that provides training and networking for volunteer administrators. For the past 30 years AAVA has also handed out awards to volunteer programs that have had a significant (and, needless to say, positive) impact on the community. Five judges – volunteers, of course – choose among the many nominees in categories including "Volunteer Program."

The Alaska Bar Association was nominated in this category by Krista Scully, the Bar's own pro bono director. (It's allowed.) Krista has nominated other organizations in the past, and, according to her, her nominees have always won – which (a) shows that she knows how to pick 'em, and (b) begs the question of why she hadn't nominated the Bar Association before.

The nomination was based on two free legal clinics that the Bar Association administered in 2011: the second annual Martin Luther King Day Legal Clinic, held in January in Anchorage, Fairbanks, and Juneau; and the first annual Elizabeth Peratrovich Legal Clinic, held in October during the Alaska Federation of Natives Convention in Anchorage. Both clinics were set up and staffed by volunteer attorneys and other people associated with the legal profession. Both clinics offered free legal advice in areas such as domestic relations, consumer rights, landlord-tenant disputes, and public benefits, and both were specifi-

cally geared to reach people whose access to justice might otherwise be difficult or nonexistent. In the two clinics combined, 231 volunteers donated 950 hours and served 471 clients. In 2012, the MLK Day clinic added Sitka as a site, and the Elizabeth Peratrovich clinic will be held again during the AFN Convention in Anchorage.

AAVA presented the Alaska Bar Association with its award at its annual awards banquet, underwritten by BP Exploration and held at the Anchorage Hilton Hotel in the evening of April 19. The Bar was among illustrious company; receiving awards in the same category were Children's Lunchbox, a school nutrition program, and the St. Francis House Food Pantry run by Catholic Social Services. Children, saints, and lawyers – if not a holy trinity, at least great material for a Warren Zevon song.

Representing the Alaska Bar Association at the banquet were some of the people who brought the two legal clinics to life. Jon Katcher, Zach Manzella, and Russ Winner, all in private practice in Anchorage, have been instrumental in the planning and execution of the MLK Day Legal Clinic each year since its inception in 2010. Melanie Osborne, now Senior Corporate Counsel with NANA, is co-

Continued on page 3

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## On the filling of shoes and focusing on others

By *Hanna Sebold*

This last year, I travelled nationally to conferences as the president-elect and was faced with what my upcoming presidency would be. I'd had the pleasure of watching Don McClintock's presidency from front row seats as he graciously included me in his processes. I take on this role with large shoes to fill, but am determined to continue his example of excellence.

During these travels, I learned a lot; however, I found myself frequently explaining to other bar leaders that we don't have the same issues as other state. Alaska isn't going bankrupt. We are not indicting our judges, and in fact have a fair and impartial judiciary. We are giving back to our community. Mostly.

So I decided my focus would be on maintaining the good works of my predecessors and improving as warranted. Although we can do more and be better, we should recognize and maintain the good patterns we have developed.

I would like to continue support for the good works of my predecessors, which includes the mentoring program, MLK Day in four communities (hope to add yours) and Elizabeth Peratrovich Legal Clinic, to name a few.

I encourage all of you to do more. Continue to coach students for youth court; continue to volunteer on Law Day. Remember that every time you volunteer, you put a positive face to lawyers; but it doesn't need to be

only providing legal advice. Karen Godnick volunteers as a board member for the Gastineau Humane Society. Kirsten Swanson volunteers at hospice. Jan Rutherdale, Leslie Need and Eric Kueffner are "Bigs". I know there are more of you out there. Make it known. Let Alaskans see what great work Alaska lawyers are doing inside and out of the courtroom.

One person who has done more than provide legal advice is Judge Zainey of New Orleans. At the National Conference for Bar Presidents, I participated in a break out session to discuss how bar associations can offer low or no cost pro bono services. At that time I was introduced to the SOLACE program by Judge Jay Zainey. SOLACE, which stands for Support of Lawyers/Legal Personnel - All Concern Encouraged, is a way for local communities to join together, to aid needy members of the legal family (judges, lawyers, court personnel, paralegals, legal secretaries and their families) who experience a death or some catastrophic illness, sickness or injury.

The way the program works is quite simple. Judge Zainey is contacted and in turn sends an email with the information of the person in need to all on his email list. That can range from simply sending the family a card signed by a recognized local and state leaders to providing



**"Although we can do more and be better, we should recognize and maintain the good patterns we have developed."**

a family with meals, needed support, assistance with grocery shopping child care, or whatever the situation might warrant. Sometimes it's airline miles, or connecting a person in need with the right person on the other end of the phone. Confidentiality is protected by Judge Zainey and the contact person is, often times, a friend or colleague who offers to help.

For those who received the email from SOLACE about our Anchorage colleague, the Baton Rouge Executive Director is very close to the family in need. The response by Alaska lawyers was, unsurprisingly, overwhelming. They were inundated with offers of support. Hats off to those who offered assistance. For those who are interested in supporting this program, simply email Judge Zainey at Jay\_Zainey@laed.uscourts.gov He will add you to his list. That's it. He will let you know via email if there is a family in need. Help if you can. Hopefully we can assist him in making this program nationwide.

Finally, I want you to take care of yourselves. We all know the stress and pressure lawyers face. We have all lost colleagues too soon as a result of unhealthy lifestyles or depression. As there was so much focus on the disciplinary issues and colleagues suffering from substance abuse and depressions, I challenge everyone to spend the next year to be "fit" to

## EDITOR'S COLUMN

### Silent anniversary

By *Gregory S. Fisher*

I'm not sure how or why this is happening, but we are passing through the midst of a fairly significant anniversary with little or no official public comment, at least not that I can see.

One hundred fifty years ago President Abraham Lincoln signed the Homestead Act into law on May 20, 1862. Midwifed by Free-Soil Republicans, the concept was to open federal lands west of the Mississippi to development by farmers, miners, ranchers, and small business. It was also intended to choke slavery's growth. The "peculiar institution" required large areas of land in order to economically operate. Pre-war advocates viewed the Homestead Act as a means to make large plantations difficult if not impossible. As finally enacted during the war, the Act granted 160 acres if you could show that you'd lived on the land for five years, made improvements, and had never taken up arms against the Republic. Union veterans could credit years in service to the residency requirement.

The Act essentially sanctioned an early form of credit known as "preemption." From independence to the 1850s, federal land was sold in "sections" composed of 640 acres. The price was \$1.25 an acre, but you had to buy an entire section. The government was less interested in settling land and more interested in revenue. Most people, however, could not afford the \$800 price. That

was a fortune. Farmers looking to develop land often claimed "preemption rights" by which they cleared and settled land, and paid at a later date. I don't believe this was ever actually legal, but it was so widespread it became an undercurrent to the national economy. Preemption's motivating spirit has always bedeviled natural resource development—it is sometimes better to ask forgiveness than seek permission. I guess no one cared or perhaps the government simply could not enforce its rights.

Preemption accelerated in the 1830s and 1840s. Rising crop prices allowed larger farming enterprises to force out small plot farmers. Displaced farmers looked for new land. Returning veterans from the Mexican-American War sought new opportunities. Congress, however, was deadlocked. Southern delegations opposed the concept of homestead legislation because they believed it would result in large numbers of anti-slavery farmers populating western states. Some Northern legislators also opposed homestead legislation thinking it would open immigration floodgates and encourage their existing workers to head west for new fortunes. Cheap labor was a valuable asset.

Everything changed when the United States pivoted onto the world's stage with the first shots at Fort Sumter. Cheap labor was now can-



**"I would argue that it was really the first time that average citizens could obtain hallmarks of liberty—land and a political voice (often leadership) in a new community."**

non fodder. Industry was flush with rich government war contracts. The major obstacle (the Southern delegation) left Congress. And the Act could be packaged as anti-slavery legislation making it even more attractive. What was not to like?

Concept became reality. Now anyone with a little initiative who was willing to invest sweat equity could own land. Think on that. It's June 1863. Your family lives in Geneva, New York working 50 acres of rocky soil your grandfather earned for service during the French and Indian War. Given the choice of portage home or free land, he took land and an American bride and there you are 100 years later standing in a railroad depot in Elmira, New York. You just came home from a rather miserable two years under arms with the 34th New York (Infantry) (Old Herkimer) and this guy is telling you about rich bottomland off the Missouri. Does that explain Manifest Destiny?

Good or bad (and there was bad, but frankly a whole lot of good) this marvelous instrument and its subsequent companion legislation shaped our national policy until 1976. Gerald Ford was President. It also gave form to a good chunk of our national self-image. And it shaped our image for others. My wife grew up watching

*Continued on page 3*

### The Alaska BAR RAG

The Alaska Bar Rag is published quarterly by the Alaska Bar Association, 550 West 7th Avenue, Suite 1900, Anchorage, Alaska 99501 (272-7469).

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#### Board of Governors meeting dates

**September 6 & 7, 2012**

(Thursday & Friday)

**October 25 & 26, 2012**

(Thursday & Friday: July Bar Exam results & budget)

**January 24 & 25, 2013**

(Thursday & Friday)

**May 13 & 14, 2013**

(Monday & Tuesday)

**May 15 - 17, 2013**

(Wed. - Friday: Annual Convention)

[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].

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## Letters to the Editor

### Agrees with editor

I much enjoyed your thoughtful and well written column in the Jan- March, 2012 edition of the *Bar Rag*. Like you, I believe that our merit-selection system is the best way to select judges. I too have been told that for decades, but I have additional reasons for fearing a change to a selection process that has served Alaska so well for so long.

I was on the ATLA (now, AAJ) Board of Governors for years. For those years, and for many before and after, I would attend one or both of ATLA's yearly conventions. I'm active in some other national 'attorney clubs' and participate in a number of national networking lists. As a surprise to few, when trial lawyers get together, the topic often turns to judicial performance—or as often, to disappointing judicial performance. The stories I have heard from careful, thoughtful, and highly regarded at-

torneys about judicial incompetence, misbehavior, and corruption are truly remarkable, and almost always come from those who practice in states without a merit-selection process for selecting judges. I've heard lots of stories "that you just can't make up." I've appeared in the trial courts of this state since 1975. I've never so much as heard a rumor about judicial corruption. I have been disappointed many times by a given judicial decision, but I've never thought it was delivered in bad faith, or because the judge was bought off, even if I thought the decision was patently erroneous.

Like you, I have doubts about whether attorneys are the right messenger. But in my view, we would do well to figure out a way to convince the public of the benefit of the judicial selection process that we have, and to dissuade it from further politicizing a selection process that has consistently populated the bench with fine judges.

—Michael J. Schneider

### Silent anniversary

*Continued from page 2*

"Little House on the Prairie" dubbed into Japanese. Our popular culture breathes its lessons ("Shane! Come back!").

On the bad side of the ledger, homesteaders overdeveloped land and often lacked sufficient skills or experience to act as proper stewards. Some blame the Dust Bowl on homesteaders. Land speculators working for timber or cattle interests filed illegal claims. In practical application, the Act never grasped that 160 acres was often not enough to economically maintain a presence on prairie land. It was too little to farm and not enough to graze. Claims inspectors were sometimes corrupt. Competing land use claimants sparked conflict (ranchers vs. farmers, cattle vs. sheep, timber vs. mines). On top of everything else, the Act included a singularly odd defect—it required construction of a 12 by 14 dwelling but did not specify whether that meant inches or feet. You can guess the result.

However, in my opinion the good powerfully outweighed the bad. The Act rewarded initiative. It promoted a form of meritocracy that gave real meaning to the nation's ideals. I would argue that it was really the first time that average citizens could obtain hallmarks of liberty—land and a political voice (often leadership) in a new community. It gave people hope. Hope is not a policy. But it is never a bad thing. Hope may sometimes be the only effective safety valve. It built character that powered the United States into the Twentieth Century.

In our present age, we're told that self-reliance is an American myth. I don't believe that. You shouldn't either. Homesteaders weathered significant challenges. They relied on themselves, their faith, their families, and their neighbors. Ultimately, somewhere around 1.6 million homestead applications were approved and 270 million acres of federal land passed into private hands. It's an occasion we should remember.

## Alaska paralegals to host convention

Join paralegals from around the state and around the country. Attend the National Federation of Paralegal Association 2012 Annual Convention, hosted by the Alaska Association of Paralegals. The Convention is slated for Thursday, September 27 - Sunday, September 30, 2012, in Anchorage, Alaska at the Sheraton Anchorage Hotel. This will be an opportunity to obtain CLE credit, learn what's new in our field and network with paralegals and others in the legal profession from your community and other states.

What's planned?

Wednesday Evening: Join delegates from Outside and Alaska members at a class in Alaska Native beadwork.

Thursday: CLEs - A full day of seminars running on three tracks. A wide variety of current and substantive topics presented by a lineup of distinguished speakers are confirmed. Topics will include "Environmental Law for Paralegals," "Efficiency & Economics of E-Discovery," "Protection for Identity Theft," "Advanced Legal Research," "Ethical Do's and Don'ts for Paralegals" and other relevant and interesting areas of the law.

Thursday's luncheon: Keynote

Speaker, Judge Morgan Christen, U.S. Court of Appeals for the Ninth Circuit.

Friday: Region Meetings - Each of the five NFPA regions will spend most of Friday covering their agenda, sharing association tips, policy items and elections.

Friday evening: Social Event - Dinner at the Anchorage Museum with access to its fabulous Smithsonian section, and a performance by an Alaska Native dance group.

Members of AAP may observe the policy meeting at no cost. It is scheduled to begin on Saturday and run through Sunday. UAA students may volunteer during the convention and attend a CLE for free.

Convention Charity: The 2012 Convention Committee and the NFPA Board of Directors chose the Alaska Wildlife Conservation Center ("AWCC") as this year's Convention Charity. AWCC takes in orphaned and injured animals, and as part of a "wood bison recovery program" works closely with ADF&G to manage a herd of bison now numbering well over 100. Its goal is to reintroduce wood bison into the wild.

More information at [www.alaska-paralegals.org](http://www.alaska-paralegals.org) or [www.paralegals.org](http://www.paralegals.org)

—Submitted by Ruth Ann J. Jennings

## Bar Association wins award

*Continued from page 1*

chair of the Alaska Bar Association's Native Law Section, a key sponsor of the Elizabeth Peratrovich Legal Clinic. Alaska Legal Services, a partner in both clinics, was represented by Nikole Nelson, its Executive Director, and Eric Cordero, its Director of Volunteer Services. Krista Scully put her unfailingly exuberant face on the Alaska Bar Association's commitment to these projects.

Most lawyers volunteer for all

kinds of things; it is part of who they are as professionals. Maybe because of that, pro bono work is often taken for granted. The MLK Day and Elizabeth Peratrovich legal clinics were noticed outside of our sometimes-insular professional association, and with good reason. The Alaska Bar Association — meaning all of Alaska's lawyers — earned this recognition. If you've volunteered lately, look into that collection plate and congratulate the person who looks back at you.

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# Historical Bar Four questions about the first woman to clerk at the United States Supreme Court

By Judge Larry L. Jordan

## The four questions

I recently learned who the first woman law clerk was at the United States Supreme Court. I was very surprised and elated about my discovery, but I also felt a sense of ignorance. To see if others were more knowledgeable, I started asking the lawyers at my mediations the following four questions:

1. Who was the first woman to clerk at the United States Supreme Court?
2. What year did she clerk?
3. Which justice did she clerk for?
4. From which law school did she graduate?

I have asked approximately 100 lawyers these four questions, and as of this writing, only one lawyer has been able to answer any of my questions. (Douglas Strandberg of Friday Harbor guessed the law school that she attended.) I am confident that some lawyers in Washington State know the answers, but the lawyers I questioned confirmed that they all shared my ignorance.

## The answers

1. Helen Lucile Lomen. (She dropped the Helen and was known publicly as Lucile, Miss Lomen at the Supreme Court, Lucy to many friends, and Lu to her family.)
2. The year was 1944–1945.
3. The justice was William O. Douglas.
4. The law school was the University of Washington.

## Lomen's background

Lucile Lomen was born in Nome, Alaska, on August 21, 1920. Both of her grandparents moved to Nome during the gold rush at the end of the 19th century. Her paternal grandfather was a lawyer who was appointed to the Alaska Territorial Court by Calvin Coolidge in 1925 and again by

Herbert Hoover in 1930. Her father was a prominent businessman with the Lomen Commercial Company and a member of the Alaska Territorial Senate. Her family temporarily moved to Seattle in 1934, but because of a fire that destroyed much of Nome, the family continued to reside in Seattle. Lomen graduated from Queen Anne High School in 1937. She later attended Whitman College in Walla Walla and graduated with honors in 1941. In 1947, Lomen wrote that Whitman "prides itself on its friendliness and...is largely devoted to the grooming of students who will later enter the professional schools." She also wrote that "[n]ow that I look back on my college career the outstanding part of my life at Whitman consists of living, working, and playing with people."

Lomen applied and was accepted to the University of Washington Law School, which had been admitting women from the time it began in 1899. In 1941, some East Coast law schools such as Harvard did not admit women. There were three women in her graduation class. She was Law Review editor, vice-president of the Law Review board, published several articles (including an article on constitutional law for which she had received a prize), and graduated first in her class. Ann Lomen Sandstrom, one of Lucile's three younger sisters, says that "I was always in awe of Lu — my first mentor. She taught me how to study and the fun of learning. She had an intense focus on schoolwork, and later on law."

Of course, after the United States entered World War II, many of the

male students did not return to law school, which affected the recruitment of law clerks. In those days the associate justices each had only one law clerk, making the choice particularly important. Prior to that time in history, there had been no women law clerks in the Supreme Court. In 1944, Justice Douglas wrote to Judson F. Falknor, dean of the University of Washington Law School, who had supplied him with four of his prior law clerks. Justice Douglas indicated that he would hire a woman if she "is absolutely first rate." Dean Falknor recommended Lomen. After checking with faculty at his alma mater, Whitman College, and receiving very favorable recommendations, Douglas hired Lomen. Lomen described Justice Douglas as very businesslike at the court and someone who could do legal research faster than anyone she had ever known. In 1964 Lomen wrote that in addition to the professional growth that occurred from associating with Justice Douglas, "a more concrete benefit is the number of doors

that have been open to me as a woman in the profession because of that year." Justice Douglas described Lomen as having "a fine mind" and "a great capacity for work." Lomen often worked 16 hours a day and

would sleep on a couch in her office.

While at the Supreme Court, Lomen socialized with the secretaries, and although the other clerks accepted her, she felt there were differences based on gender, age, legal education, and geography. Most of the other clerks were from the east coast and were educated at such prestigious law schools as Harvard, Yale and Columbia as well as the University of Chicago. Lomen once stated that she and a law clerk from Wisconsin were considered westerners, and the two of them "thought differently...than the way the other eight thought." She said, "I never knew if my problem was because I was a woman or because I was younger, or what."

After clerking for a year, Lomen returned to Washington state and worked as an assistant state attorney general for three years. Thereafter she worked at General Electric from 1948–1983, retiring at corporate headquarters as compensation and benefits counsel. Her sister Ann said that "the entire Lomen family was extremely delighted when, after retirement, she chose in 1989 to return to Seattle." Lomen died on June 21, 1996, at the age of 75.

## Lomen's legacy

Lucile Lomen was a true pioneer in many ways. Certainly life in Nome in the 1920s must have been difficult. From the description of her work ethic, those early frontier years must have helped form her values and penchant for hard work. She clearly demonstrated her legal abilities while a law student at the University of Washington. She wrote several scholarly articles, held many leadership positions, and graduated first in her class. The Honorable Ruth Bader Ginsberg in a speech given at Wellesley College on November 13,



Lucile Lomen

1998, said that Lomen's "Washington Law Review Note on the Privileges and Immunities under the Fourteenth Amendment, published in 1943, has had remarkable staying power. Lomen's student note appears this very semester on Harvard Law Professor Laurence Tribe's Constitutional Law seminar reading list." To say that Lomen was ahead of her time is more than true, as it was not until 1966 that the next woman law clerk was hired in the Supreme Court when Justice Hugo Black hired Margaret Corcoran.

Like many of us, Lomen was lucky to live in a place that afforded her many opportunities, including the opportunity as a woman to attend law school. As Lomen wrote in 1946, "[t]oo many women in the profession have been discriminated against to make a worth-while enterprise for one who is not interested in good hard work." The University of Washington Law School and its graduates should celebrate the fact that Kellye Teste is its first woman dean, and that 1944 graduate Lucile Lomen, was the first woman law clerk in the United States Supreme Court.

Lomen's observations about the differences between her and the other clerks are very insightful. Gender diversity and equality has a positive effect that is not easy to define but clearly exists in most institutions, including the judiciary. As Lomen observed, geographic diversity can also be important. The current U.S. Supreme Court is made up of graduates from East Coast law schools who often hire clerks from the same schools. If Lomen were asked today whether a more diverse geographical perspective is desirable in addition to increased gender equality, I am sure her answer would be an unequivocal "Yes."

Judge Larry Jordan was appointed to the King County Superior Court in 1991 and served until July 2001. Before taking the bench, he served from 1975–1991 as a commissioner of Division I of the Washington State Court of Appeals. He was law clerk to the Honorable Jerome Farris and the Honorable Keith M. Callow, and also served as an assistant public defender for the state of Alaska.

Sources: Conversation with and review of selected papers and letters of Ann Lomen Sandstrom;

"Lucile Lomen: The First Woman to Clerk at the Supreme Court," David J. Danelski, Journal of Supreme Court History, (1999) Vol. 23, No.1.

**If Lomen were asked today whether a more diverse geographical perspective is desirable in addition to increased gender equality, I am sure her answer would be an unequivocal "Yes."**

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Monday, June 25, 2012  
 11:30 a.m. - 4:30 p.m.  
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 \$119 Registration Fee - Includes Lunch  
 CLE # 2012-016  
 4.0 General CLE Credits  
*Also available via webcast*

## How to Turn, or Avoid Turning, \$20 into \$1.3 Million: Punitive Damages Return to Maritime Personal Injury Law

Friday, July 27, 2012 / 8:30 a.m.- 12:45 p.m. / Hotel Captain Cook / \$109.00 Registration Fee  
 CLE # 2012-022 / 1.0 General CLE Credits + 3.0 Ethics CLE Credits

*Also available via webcast*



## Project Management, Teamwork and Practical Time Management for Lawyers

Friday, August 17, 2012 / 8:30 - 11:45 a.m. / Hotel Captain Cook  
 3.0 Ethics CLE Credit / \$109 Registration Fee / CLE # 2012-009



## Multitasking Gone Mad: How to Practice Law Effectively in a Wired, Demanding, Distracting World

Friday, August 17, 2012 / 1:00. - 4:14 p.m. / Hotel Captain Cook  
 3.0 Ethics CLE Credit / \$109 Registration Fee / CLE # 2012-009



## Turbo Charge Your Advocacy: From the Initial Client Interview to Closing Argument

### Pretrial advocacy – Tips, ideas and practical solutions

- Initial client interview: establishing the relationship; getting things right from the start
- The first 90 days: developing a winning strategy
- Initial case analysis: too often overlooked; a critical element for effective representation

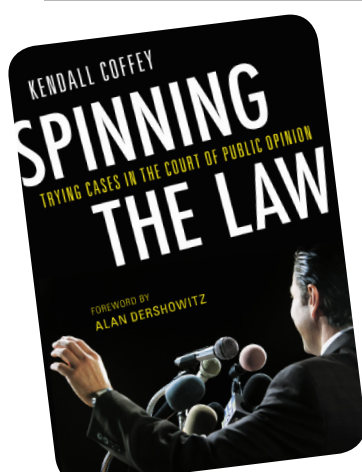
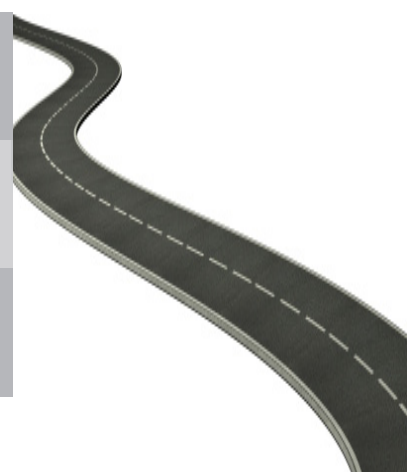
### Being the Best Trial Lawyer You Can Be - Tips, ideas and practical solutions

- Getting the most out of jury selection: integrating your themes and discovering bias
- Opening statements: where your case can be won or lost
- Ethical issues from trials

FAIRBANKS	ANCHORAGE	JUNEAU
Thursday, August 23, 2012 9:00 a.m. - 4:30 p.m. Westmark Hotel \$179 Registration Fee CLE # 2012-019 5.0 General CLE Credits + 1.0 Ethics CLE Credits	Friday, August 24, 2012 9:00 a.m. - 4:30 p.m. Hotel Captain Cook \$179 Registration Fee CLE # 2012-020 5.0 General CLE Credits + 1.0 Ethics CLE Credits	Friday, August 24, 2012 9:00 a.m. - 4:30 p.m. Westmark Baranof Hotel \$179 Registration Fee CLE # 2012-021 5.0 General CLE Credits + 1.0 Ethics CLE Credits

## Technology Roadshow

<i>Juneau</i>	Monday, September 10, 2012 Westmark Baranof Hotel 8:30 a.m. - 4:30 p.m. \$169 Registration Fee	≡	CLE # 2012-032 6.0 Ethics Credits \$129 for Non-Attorney Legal Staff
<i>Anchorage</i>	Tuesday, September 11, 2012 Atwood Building, Room 240 8:30 a.m. - 4:30 p.m. \$169 Registration Fee	◇	CLE # 2012-033 6.0 Ethics Credits \$129 for Non-Attorney Legal Staff
<i>Fairbanks</i>	Wednesday, September 12, 2012 Westmark Hotel 8:30 a.m. - 4:30 p.m. \$169 Registration Fee	≡	CLE # 2012-034 6.0 Ethics Credits \$129 for Non-Attorney Legal Staff



## SPINNING THE LAW: TRYING CASES IN THE COURT OF PUBLIC OPINION

Thursday, September 27, 2012  
 8:30 a.m. - 11:45 a.m.  
 8:00 a.m. Registration Begins  
 Hotel Captain Cook

CLE # 2012-011  
 3.0 General CLE Credits  
 \$109 Registration Fee  
*Also available via webcast*

The changing media landscape is presenting challenges for lawyers interested in navigating the pitfalls of outside influence and persuasion in their practices. Using examples from recent verdicts in the Casey Anthony, Conrad Murray and other celebrity cases, attendees will learn how professionals can use their knowledge of the media to enhance their business prospects and create better connections in the legal community.

## The big questions in the Ted Stevens Case: Part I

By Cliff Groh

Confusion and misinformation continue regarding the Ted Stevens case, even in the wake of the release in March of a court-appointed special counsel's report on the prosecutorial misconduct that produced the case's dismissal and a debate about how discovery works in federal criminal cases.

Following an investigation that lasted well over two years, the report found that "The investigation and prosecution of U.S. Senator Ted Stevens were permeated by the systematic concealment of significant exculpatory evidence which would have independently corroborated Senator Stevens' defense and his testimony, and seriously damaged the testimony and credibility of [Bill Allen,] the government's key witness." The prosecutors under scrutiny acknowledge that failures occurred in discovery, but deny any intent to conceal. Still to come is a report by the Office of Professional Responsibility (OPR), the Department of Justice's internal watchdog unit, on the results of its own probe, and the OPR report might lead to sanctions for some of the prosecutors involved in the trial.

The release of the special counsel's report written by Washington, D.C. attorneys Henry Schuelke and William Shields has sparked renewed interest in what occurred in this landmark case. This article offers answers to the most frequently asked questions about the bungled Stevens prosecution and the fallout. What follows is based on my in-person coverage of the five-week trial in Washington, D.C. in 2008, my continuing coverage of the post-trial litigation and other cases arising out of the "POLAR PEN" federal investigation into Alaska public corruption, my review of the 525-page special counsel's report and the hundreds of pages of responses and rebuttals it generated, and dozens of interviews with participants and observers. This series of questions and answers runs in rough chronological order, and it is the first installment of a series that will appear in the *Alaska Bar Rag*.

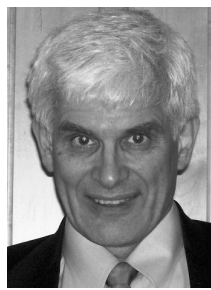
Why do people care so much about this case, more than three and a half years after the trial and almost two years after Stevens' tragic death in a plane crash in 2010?

Ted Stevens was an Alaska icon and a powerhouse in the U.S. Senate. The scrappy lawyer won seven

straight elections for the Senate as a Republican after his appointment to a vacant seat in 1968; the noted political analyst Michael Barone pointed out that at the height of his popularity Stevens carried every precinct in the state. Serving on the Senate Appropriations Committee for more than three decades and as chairman for more than six years, "Uncle Ted" showered so much federal funding on our young state that Alaska newspapers routinely used the term "Stevens money" without quotation marks to describe Uncle Sam's projects and programs. As Stevens said in his farewell Senate address in 2008, "Where there was nothing but tundra and forest, today there are now airports, roads, ports, water and sewer systems, hospitals, clinics, communications networks, research labs, and much, much more."

The legacy of the man tagged "the Alaskan of the Century" was more than the billions shipped from the federal treasury to the Last Frontier. Stevens played major roles in the enactment of the most significant Congressional measures affecting the 49th State. Those bills bearing the Stevens stamp included the legislation that created Alaska Native corporations (the Alaska Native Claims Settlement Act, or ANCSA), helped make Alaska's fisheries sustainable, and allowed the construction of the Trans Alaska Pipeline System (TAPS). The *Almanac of American Politics* observed that "No other senator fills so central a place in his state's public and economic life as Ted Stevens of Alaska; quite possibly no other senator ever has."

The indictment in 2008 of Stevens on seven felony counts brought the first federal trial of a sitting U.S. Senator in more than 25 years. The case matched a prosecution trial team supervised by the Justice Department's elite Public Integrity Section against a squad captained by the \$1,000-per-hour Brendan Sullivan from the prominent Washington, D.C. firm of Williams & Connolly, renowned for its scorched-earth approach to white-collar criminal defense. The jury returned guilty verdicts on all counts that the trial judge overturned in the wake of post-trial revelations of the prosecution's discovery fail-



"The legacy of the man tagged 'the Alaskan of the Century' was more than the billions shipped from the federal treasury to the Last Frontier."

ures. Along with triggering multiple investigations of prosecutorial misconduct, the collapse of the case brought calls for reform in the practices and rules governing discovery in federal criminal cases.

Looking at the trial provides lessons for litigators and those lawyers who actually try cases, and review of the post-trial litigation gives tips for attorneys in all areas of practice.

What was the nature of the relationship between Ted Stevens and Bill Allen, and why did the two men get so close?

The indictment against Stevens relied heavily on the Senator's failure to report his receipt of things of value from Bill Allen and VECO, the Alaska-based oil-services and construction company that Allen built into a multi-national giant with close to a billion dollars in annual revenues. By the late 1990s, Stevens was very personally close to Allen. This relationship went way beyond discussions of politics or petroleum policy on long airplane trips and fishing trips with others.

Ties between Stevens and Allen got to the point that the two of them went on several one-on-one vacations the two men called "Boot Camps." In these regular get-togethers, Stevens and Allen went off in the desert by themselves to try to shed a few pounds by taking walks and drinking wine in lieu of hard liquor. These "Boot Camps" continued after Allen suffered a brain injury in a 2001 motorcycle accident. The last of these retreats appears to have occurred in early 2006, less than eight months before Allen became a cooperating witness for the Justice Department against Stevens and a number of other defendants charged in cases arising out of the "POLAR PEN" probe.

While the motivations of Allen—a business titan with big North Slope contracts and the political point man for the major oil producers in Alaska—seem obvious in this relationship, Stevens' reasons for getting so close to Allen are murkier. A pilot for the Army Air Corps who later graduated from Harvard Law School, Stevens' closest friends tended to resemble him in being World War II veterans who became attorneys. Allen, on the other hand, was more than 13 years younger than Stevens and was never considered a candidate to become a lawyer. The rough-hewn welder-turned-tycoon was eight years old when Japanese officials signed the Instrument of Surrender on the battleship Missouri and 15 years old when he dropped out of high school. Moreover, Allen's reputation was unsavory long before he admitted bribing state legislators and long before allegations about him engaging in sexual relations with underage girls became public (allegations which he has denied and for which he has not been charged). As longtime Alaska journalist Michael Carey noted of Allen, "You didn't have to smell sulfur to know the devil was in the room."

Stevens' tight relationship with the multimillionaire magnate might stem partly or wholly from the Senator's admiration for a rich self-made Alaskan, and observers have noted Stevens' willingness as a lawyer to

associate himself with people—including clients—who would not get a universal seal of approval. Those who prosecuted Stevens suggested that in becoming so personally close to the long-time VECO CEO Stevens also wanted to cozy up to an oilpatch insider who substantially funded Republican political campaigns, provided hundreds of thousands of dollars in lobbying and consulting income to his son Ben, and was eager to give the powerful U.S. Senator valuable gifts.

**What charges did the federal government bring against Ted Stevens?**

The Department of Justice filed on July 29, 2008 an indictment of Ted Stevens charging seven felony counts of failing to report gifts and liabilities on disclosure forms required annually from each U.S. Senator. Six counts covered the annual reports filed for the six calendar years 2001 through 2006, and a seventh count alleged a scheme by Stevens running from calendar year 1999 through calendar year 2006 to conceal his receipt of things of value from Allen and VECO. The mental state in the six counts for individual years was "knowingly and willfully," and the mental state in the count for the alleged multi-year scheme was "knowingly and intentionally."

The Ethics in Government Act sets a low dollar threshold for reporting gifts. The law required the disclosure of gifts from a single source if the aggregate value of the items received in a particular year exceeded a particular dollar value. For the calendar years 1999 through 2002, the requirement was to disclose gifts over a value of \$260; for calendar year 2002, that dollar value was \$285; for calendar years 2004 through 2006, it was \$305.

In addition to charging Stevens with failure to report gifts in all seven counts, the indictment also charged the Senator with failure to report liabilities (debts) in each of the six counts tied to individual years. For each of those six years, the law required the disclosure of liabilities of more than \$10,000 owed at any point in time during the calendar year. The prosecution's theory in the indictment was that if the receipt of a particular thing of value was not reported as a gift for the calendar year in which it was received, that transaction was instead a loan that needed to be reported as a liability for that year and subsequent years.

The indictment alleged that Stevens received more than \$250,000 worth of benefits that he failed to report. In terms of monetary value, the great bulk of the gifts and liabilities alleged in the indictment came from Allen and VECO as renovations and furnishings at a home in Girdwood owned by Stevens.

The indictment alleged that Stevens also received unreported gifts from others, including Alaska businessmen Bob Penney and Bob Persons, both friends of Stevens. At trial, those gifts turned out to include a stained glass window and a runty husky puppy alleged to have come from Penney as well as a \$2,695 massage chair from Persons.

Questions Left to Answer

Why did the Department of Justice charge Ted Stevens with the particular charges in the indictment?

*Continued on page 7*

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## There is wonder here

By Dan Branch

On a calm gray day in Dredge Lakes, while Aki, my poodle mix, searched for squirrel sign I studied the reflection of a glacier erratic. There is wonder in how it arrived here on the edge of a beaver pond. The retreating Mendenhall Glacier abandoned it 100 years ago. Since then it has watched men and beaver fight for water rights in the pond. The rock measures progress in the battle by how much of its surface stands above the water.

The beavers would build their dam high enough to flood out the walking path. Then, men would remove the top few feet of the dam to open up the trail. The beavers, being tenacious night workers, would soon rebuild. They had better winning percentage until men installed a submarine conduit that allowed water to pass under the dam. For the rest of that summer the erratic stood exposed.

After the Forest Service withdrew from the field of battle in the Fall the beavers built a series of wood and earthen dams below the underwater conduit and rendered it useless. The dams also backed up the lake so it

once again flooded the access path. Some human vigilantes must have tried to dismantle the new dams because that Fall we found tacked to a nearby spruce a polite request from the Forest Service not to poke any more holes in the beaver's dam. The spruce was one of the few trees in the area that hadn't been chewed down by the beavers. Another sign asks for fellow hikers to snitch on anyone, presumably wearing wet hiking boots and a look of frustration, trying to undo the beaver's work. The new beaver dams still held when winter forced a Forest Service retreat.

On a visit to Dredge Lakes this Spring I expected flooded trails but found a dry path all the way to the beaver village. We passed mallards and other local ducks paired up. They showed reluctance to move from their chosen nesting ground. Newly attacked spruce trees, gnawed more



"While Aki and I have almost as much at stake in the Juneau government versus beaver battle, neither of us wants to take sides."

than halfway through by beavers surround the village. It's as if they were preparing a barrier to protect the series of their dams beyond when government workers or volunteers disassembled the upper beaver dam and breached the lower one by cutting deep wide notch into its center.

Aki and I walked the now dry bottom of a deep channel the beavers cut into the mud to offer safe underwater access to the lower dam. They lost this spring campaign but I suspect they will rebuild the dams in time to catch the fall floods.

The Forest Service fought a different beaver war in Ketchikan when we lived there. I wanted to take sides in that one. It was fall time and the wild crab apple trees around Ward Lake were in high color with leaves mottled red and golden yellow. Then the beavers gnawed and destroyed

several of the colorful trees. It liked to break a person's heart to see turning crab apple leaves scattered along the lakefront.

After some other hikers complained the Forest Service wrapped the trunks of each remaining tree with wire fencing that was tough enough to withstand beaver bites. While Aki and I have almost as much at stake in the Juneau government versus beaver battle, neither of us wants to take sides. Aki must be tempted to cheer on the Forest Service because she enjoys the dry passage offered by their recent victory. I still preach neutrality even while fearing what would happen if the beavers totally flooded this part of the forest to turn it into a watery wasteland.



The wily beaver cuts a serene wake in the lake.

## The big questions

Continued from page 6

Why did the Justice Department in the administration of Republican President George W. Bush charge the longest serving Republican Senator ever less than four months before Election Day in his hotly contested race for another six-year Senate term?

Who made the decision to prosecute Stevens?

Who was in charge of the prosecution team at the trial?

How did there end up being more than twice as many defense attorneys as prosecutors working on the trial?

What were the arguments, strengths, and weaknesses of the prosecution and defense at the trial?

Why did Ted Stevens testify on his own behalf, and what effect did that decision have on the verdicts?

Why did the jury bring back guilty verdicts on all counts?

How did the prosecution fail in discovery, and why has there been no prosecution of the prosecutors identified as being responsible for the discovery violations?

How would the defense have used the evidence held back in the discovery violations to seek an acquittal on all counts?

Even if the prosecution had provided the defense all the discovery to which it was entitled, what is the likelihood that the jury would still have returned guilty verdicts on some or all of the counts?

Cliff Groh is an Anchorage lawyer and writer who has worked as both a prosecutor and a criminal defense attorney. He has blogged about the "POLAR PEN" federal probe into Alaska public corruption for years at [www.alaskacorruption.blogspot.com](http://www.alaskacorruption.blogspot.com), which in its entry for May 14, 2012 features an expanded and updated list of disclosures. Groh's analysis regarding the Ted Stevens case has appeared in media as diverse as C-SPAN and the Anchorage Press. The lifelong Alaskan covered the five-week Ted Stevens trial in person in Washington, D.C. in the fall of 2008. He welcomes your bouquets, brickbats, tips, and questions at [cliff.groh@gmail.com](mailto:cliff.groh@gmail.com).



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## Never name your pig

By William Satterberg

In 1981, my wife, Brenda, and I began traveling to the Trust Territory of the Pacific Islands. Our island of residence was the tropical island of Saipan. For the year during which we remained in the vicinity, Saipan became our second home.

Where many of the “expats” chose to establish a secure residence in old cement built CIA headquarters housing atop an area known as Capitol Hill, mingling very little with the local populace, Brenda and I chose to immerse ourselves eagerly in the local culture, living in an open air, Samoan-style house, in a local neighborhood, eating local foods, and partaking of local ambiance. Not only did I take the bar exam, something which was not required for government attorneys, but we also befriended many locals. We soon became accepted as part of the local community. Not that Brenda would have gone topless or that I would have worn a Yapese *thu*, which remote islander men wear, very similar to a diaper. (At the time, such styles had been known to develop among various Peace Corps volunteers in remote islands. Then, again, Saipan was only slightly more modern than Yap at the time. Regardless, the local statement, “If the *thu* fits, wear it,” was lost on me.) Still, for the year, we truly enjoyed our new island life and tried to blend in with the community as much as culturally possible.

During our stay on island, we soon became fast friends with two delightful Micronesians, Ben and Ki Concepcion. This married couple, like ourselves, was young and adventurous at the time. As such, we spent many hours scuba diving, reef fishing, exploring the jungle, and simply enjoying each other’s company. Over the years, we became even closer friends, as our lives changed from young couples with young children, to middle-aged couples with rebellious teenagers, to older couples with grandchildren.

Life moves on and, in 2007, so did Ben, succumbing suddenly to a heart attack. Ben’s loss was tragic and unexpected at a young age. Ben’s death hit us especially hard, since Brenda and I had just finished dinner with Ben and Ki discussing the forthcoming day’s fishing plans on the night that Ben died, parting company only minutes earlier. In less than an hour, an exciting day became a tragedy. Not

only ourselves, but all of those on the island truly mourned the loss of “Mr. Ben,” as he was locally known. It was with Ben’s loss that we furthermore became intimately aware of a part of the island culture that we had never known with respect to the mourning rituals and elaborate funerals.

For nine days prior to Ben’s burial, the family faithfully attended a nightly saying of the Rosary. As adopted family members, ourselves, Brenda and I also attended the Rosaries, although we did not understand a word of what was being said because it was in Chamorro, and we were not Catholic. Nevertheless, each Rosary was a time for reflection and worship, and we respected them highly.

At the conclusion of Ben’s nine days of Rosary, a funeral was held. It was no small affair, and took days to organize. Rather, the event was attended by well over 1,000 people. By then, Brenda and I had known the family for close to 30 years. We had evolved into a full adopted part of the family, receiving honor from all of the children who would respectfully bow the first time they met us, seeking our paternal and maternal blessings. In addition, the family proudly introduced us to others as their family, referring to us as “Uncle Bill” and “Auntie Brenda”. Not that I could ever hold a candle to Alaska’s Uncle Ted, but we were highly honored to be known on Saipan as Ben’s family.

Generally speaking, the locals accepted this reference, although some eyebrows were initially raised when the profound complexion differences were noticed between ourselves and the rest of our family. Although Brenda could usually muster a tan if allowed adequate beach time, the best I could ever do was a painful lobster red.

At Ben’s funeral, we remained with family throughout the entire event. It lasted 12 hours. Fortunately, there were food and potty breaks at various intervals. All 12 hours were filled with activity, from its predawn start to its evening conclusion. At 6 a.m., Ben was moved from the hospital morgue to the church. For his trip, he rested in resplendent repose in the back of one of his bright yellow dive boats, surrounded by his grand-



**“Nevertheless, each Rosary was a time for reflection and worship, and we respected them highly.”**

children. The parade consisted of a procession of cars well over one mile in length, complete with a full police escort and accentuated by a rainbow from a local rain shower and two white doves that arched overhead for a time. Throughout the day, people from all walks of life paid their respects, with speeches and eulogies given. As the sun finally set in Saipan, with a truly glorious sunset, the pallbearers, of which I was one, carried Ben’s coffin to his gravesite where Ben was respectfully laid to rest. By then, I was bushed. But, it was not over.

By tradition, the locals celebrate one’s passing with a one year celebration and then a five year celebration. Each anniversary is preceded by nine nightly Rosaries, culminating in a large banquet. The year 2011 was the five year celebration of Ben’s passing. Early on, Brenda and I committed ourselves to attend Ben’s fifth year anniversary, since we had attended the previous four anniversaries, as well. Moreover, because the fifth year anniversary was a significant event, the family pulled out all of the stops. Despite tight local finances, we were all expected to contribute as we were able. Our requested contribution, in addition to an assumed financial contribution, was to provide an Alaska King salmon, considered truly a delicacy on island. Still, we felt that more was needed.

Three months earlier, Brenda and I had been on island. During our stay, the family had remarked how they planned to cook a pig for Ben’s fifth anniversary. Having never owned a pig in my life, although having identified with them since childhood based upon my mother’s regular scolding, I volunteered to purchase a pig, sight unseen. The family was delighted, except when I mentioned that I was not going to be the one to raise the pig. Someone else would have to do it. Still, the acquisition of the pig was clearly a big help. The decision made, I was soon informed by the family that I had become the proud owner of a punky little pig.

The next day, Brenda and I decided to visit our new critter. For me, at least, it was love at first sight. When I went to my pig’s pen, I looked at the cute little porker. It looked back at me with smiling, intelligent eyes. I then asked one of my family brothers, Jack, what type of pig I owned. Jack casually yet knowingly remarked that my pig was a boar. I concurred that probably the pig was a bore, since it had yet to speak. Jack then explained to me that a boar was a male pig. “In a pig’s eye,” I thought to myself.

Recognizing a long standing friendship with a client which I had in Alaska, who is quite well known, and often in hot water, I immediately chose to name my pet pig, “Bernie.” After all, the name clearly fit. That is, until the pig turned to run away from me when I bent over to kiss it. It then became quite apparent that Bernie was not a “he.” Rather, Bernie was clearly a “she.” However, the name

had been bestowed. I could not now remove it. A local tradition type of thing. Besides, I did not want to insult my all knowing local family member, Jack, by disclosing his mistake, thus causing loss of face. Nor could I now rename the pig, “Charlotte,” and risk having my own children mad at me. The situation was becoming a tangled web. I concluded it was better to leave well enough alone.

Over the next three months, Bernie grew. In fact, Bernie grew a lot. When Brenda and I returned to Saipan in January, the plans for the event had become quite full. And so had Bernie. When I saw Bernie, I was certain that she/he could remember me. To me, it was a joyful reunion of two friends with much in common.

Just as I was trying to pick up Bernie to give him/her a hug, I was reminded by Jack that Bernie was still expected to make the ultimate sacrifice. At first, the concept of Bernie becoming the dinner guest of honor did not hit me that hard. After all, I had known all along that this was one of his/her purposes. Over the next several weeks that I spent on island, as Bernie’s fate neared, however, I began to realize the gravity of the event. In fact, scarcely two weeks earlier, Bernie’s namesake, the Bernie from Alaska, had visited Saipan and had also met his namesake. It was a poignant moment for them, as well, which I shall not forget. Each of my two friends first looked curiously at the other and then accusingly at me, as if both felt betrayed in some way. To me, there was no sense in making excuses.

Ultimately, I elected not to be present during Bernie’s demise. By then, my attempts to obtain a Governor’s pardon were unsuccessful, since he also planned to attend the event. Soon, I resigned myself to the fact that Bernie would be no more.

Two days before the celebration, I decided to visit Bernie one last time. I wanted a final photograph. As I approached the pen, I became concerned. Things were far too quiet. An ominous silence filled the air. Something did not smell the same. As I feared, Bernie had disappeared, as had his/her penmate. And gone was Bernie’s ever prevalent pig poo. In a panic, I approached Jack, Bernie’s constant caretaker, who was busy chopping brush. I asked Jack what had happened to Bernie. Jack advised me, “Don’t worry Uncle Bill. Bernie is fine. He(he) is with Mr. Ben now. Bernie says he(he) is doing well. He(he) says he(he) misses you and to think about him(her) when you eat him(her).” Clearly, Jack had still not figured out Bernie’s gender. Either that, or Jack was still too proud to admit his error. Nor was Jack particularly sensitive to the grief that I was experiencing.

Jack’s last statement struck home hard with me. Saddened and with a tear forming in my eye, I turned to leave. Perhaps, finally sensing my emerging sense of loss, Jack stopped me, putting a now compassionate hand on my shoulder.

“Uncle Bill, can I please give you some personal advice? Trust me. Next time, don’t ever name your pig. It makes it a lot easier that way.”

**When I went to my pig’s pen, I looked at the cute little porker. It looked back at me with smiling, intelligent eyes.”**

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# 100+ enter the 2012 Race Judicata

More than 100 community members and seven canine friends turned out at Westchester Lagoon to run, walk, or trot for the 8th Annual Race Judicata 5k on May 6. In the process, the crowd raised money for a good cause: the Anchorage Youth Court.

Since 1989, AYC has provided middle school and high school students with the opportunity to learn about the law and participate as judges and attorneys in a program that acts as an alternative to the juvenile justice system.

Despite some mild trash-talking and impressive showings by many of the local firms and public agencies, Clapp Peterson Tiemessen Thorsness & Johnson LLC once again beat out the competition for the firm participation award.

First place finishers in the men's and women's categories included Colin Strickland of the U.S. Army Corps of Engineers (16:47) and Jahna Pollock of Davison & Davison (19:43).

Oswegatchie Windt-Pearson, a.k.a. Os, proudly snagged first place for canines. Rumor has it he scored some primo doggie treats as well.

A huge thanks to all of the participants, youth court volunteers, and race organizers. Thank you as well to our firm donors: Perkins Coie; Birch Horton Bittner & Cherot, PC; Clapp Peterson Tiemessen Thorsness & Johnson LLC; Christiansen & Spraker; Davison & Davison, Inc.; Dorsey & Whitney; Foley & Foley, P.C.; Pope & Katcher; Sedor Wendlandt Evans & Filippi; Stoel Rives, LLP. And how could we forget the Anchorage Bar Association!

*We'll see you again next year!*



Competitors and fun-runners take off at the start of Race Judicata in Anchorage in May.



Overall winner Bruce Dotterer (left) poses with Wheels of Justice winner as fastest attorney, Colin Strickland.



Os boldly urges attorney Becky Windt along the Coastal Trail...and receives his Top Dog prize.



Volunteers from the Anchorage Youth Court helped make the race run smoothly. From left are Giovanni Magsayo Sounthone, EJ Tung, Joe Tung, Aidan Blessing, and Dakota Jones.




Runners snag their bibs and 4-legged partners and head for the starting line.

when **CHANGE** is the only **CONSTANT**

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## Judge Morgan Christen welcomed to 9th Circuit

The Honorable Morgan B. Christen, the first woman from Alaska to sit as a judge of the United States Court of Appeals for the Ninth Circuit, was formally invested into her office at a ceremony held Wednesday, May 30, in Anchorage, Alaska.

U.S. Senators Lisa Murkowski and Mark Begich of Alaska along with Chief Justice Walter L. Carpenter of the Alaska Supreme Court were among the guest speakers for the investiture, which drew a large crowd of well-wishers to the Dena'ina Civic & Convention Center in downtown Anchorage. Among the estimated 600 attendees were federal and state judges, many members of the Alaska bar, elected officials and community leaders.

Judge Christen received the oath of office from Ninth Circuit Senior Judge Andrew J. Kleinfeld of Fairbanks, Alaska. Judge Kleinfeld assumed senior status in 2010, creating the vacancy eventually filled by Judge Christen. She was

helped into her black robes of office by her husband, James Torgerson, and her daughter, Erin Christen, both of whom also made remarks. Also participating in the program was Eleanor Andrews, a close friend of Judge Christen.

The Hon. Mary M. Schroeder, a chief judge emeritus of the Ninth Circuit Court of Appeals, read aloud the judicial commission, which was officially conferred on Judge Christen soon after her confirmation by the Senate on December 15, 2011. She has been hearing appeals since April.

Ninth Circuit Judge Sidney R. Thomas presided over the ceremony and several other Ninth Circuit judges were on hand to formally welcome Judge Christen to the court.

The program opened with the singing of the national anthem, led by two members of a local Girl Scout troop, and a performance of the traditional Chief Headdress Song by a native Alaskan dance troupe whose members are descended from the an-

cient Tsimshian people that roamed northern Canada and Alaska.

Judge Christen is the third Alaskan to sit on the Ninth Circuit Court of Appeals, following in the footsteps of Judge Kleinfeld, who came onto the court in 1986, and the late Judge Robert Boochever, who was appointed in 1980.

Justice Christen, 50, previously served on the Alaska Supreme Court from 2009 to until her appointment to the federal bench. She also served as a judge of the Alaska Superior Court from 2001 to 2009, and was the presiding judge of the state's Third Judicial District from 2005 to 2009. Prior to coming onto the bench, Justice Christen worked in the Anchorage office of the law firm of Preston Thorgrimson Ellis & Holman (now K&L Gates LLP) from 1987 to 2001.

A Washington native, Justice Christen received her B.A. from the University of Washington in 1983 and her J.D. from Golden Gate University

School of Law in 1986. She clerked for Alaska Superior Court Judge Brian Shortell in 1986.

The Ninth Circuit Court of Appeals hears appeals of cases decided by executive branch agencies and federal trial courts in nine western states and two Pacific Island jurisdictions. The court normally meets monthly in Seattle, San Francisco and Pasadena, California; every other month in Portland, Oregon; three times per year in Honolulu, Hawaii; and twice a year in Anchorage, Alaska. The court is authorized 29 judgeships and currently has two vacancies.

Judges of the federal appellate courts and federal district courts are appointed under Article III of the Constitution. They are nominated by the President, confirmed by the Senate and serve lifetime appointments upon good behavior.

—9th Circuit Public Information Office. Photos courtesy Clark James Mishler

## Husband and daughter express their pride

**Jim:** In the spring of my sophomore year of college, back in Minnesota, I was elected Student Senate President. One of my first official duties was to introduce a visiting Congressman at a school-wide assembly. I was 19. I didn't have a clue what I was doing. I was very worried about embarrassing myself. At the time, I felt I was under a lot of pressure.

But that pales in comparison to the stakes involved in talking about your wife in public, especially when she is present, especially when she gets the last word.

There are just so many ways this could go wrong.

Fortunately, I have help. I get to share these remarks with our daughter Erin. Not only is she fabulous in every way, but she has "offspring immunity," which is even better than spousal immunity.

**Erin:** I would encourage my father to think back to that time when he was 19 and under a lot of pressure, and then consider how the scenario changes when the person being introduced has a direct influence over one's college tuition. Offspring immunity or not, the stakes are very high indeed.

**Jim:** After a bit of thought, Erin and I realized Morgan's sister, Pat, already had done much of our work in preparing for today. Morgan recently had a — significant — birthday. In preparation for that birthday, Pat asked some of Morgan's family and friends what three words they each thought best described Morgan.

**Erin:** The adjectives used most often to describe Mom were: "intelligent," "loving" and "generous." I know all of these to be true of Mom; I've experienced them.

But for me, no word will ever be more true in describing her than — Mother. Mother is the first and most important thing she will always be to me.

As I'm sure everyone knows, like Mary Poppins, I'm practically perfect in every way. And have been since infancy, really. But I have heard rumors — hearsay I believe it's called — that being a mother to a teenage daughter can be one of life's more difficult trials.

The word "mother" means different things to different people, but to me, it means patience, compassion,

and loyalty. There has never been a second in my life when I have doubted my mother would be there for me. That steadfastness is, I think, one of her strongest qualities, and is the one I most deeply admire. To her family, friends, and colleagues, I have never known her to shirk her duty or to put forth anything but her best.

In addition to raising children, my mother also made time for a "side-job," wherein she valiantly upholds the law with integrity, and righteously smacks gavels. I am aware that the gavel-smacking part mostly happens in my imagination, but the guardian of the law part is no exaggeration. While I have been exposed to fairly little of my mother's work, I have always taken my duty to snoop through her judge-evaluations very seriously. It was my only chance to avenge myself in regards to report cards. But of course there was never anything I could needle her for, and so my only viable option was to feel pride at what she always received: top-marks.

Balancing this level of achievement with meeting all of her family member's extremely important needs should be impossible, but I know for a fact that it is a perfectly manageable task if one lets go of the need for sleep. I have witnessed this strange behavior many a time, as my mother and I passed each other at four in the morning. I was going to bed; she was just waking up. Considering that the only time I will ever wake up at four in the morning is to accommodate flight reservations my father has made without consulting me, I can only marvel at her dedication, determination, and focus.

I once was told that a person is defined not only by their talent, but by their resilience. I was told that those who excel do so not only because of their luck, their background and their skill, but also because they possess a deep and secret strength. That describes my Mom perfectly, I think.

**Jim:** One of my three adjectives for Morgan was "true." Others used similar words, including "steadfast," as Erin just mentioned, and "principled" and "honorable." What do we mean by these words? Well, here is what I mean by "true".

"True" has many aspects: faithful;

genuine; honest; sincere. I mean all of them. True also refers to "alignment" — a true note of music is one with perfect pitch. A window or door frame that is "in true" means it is perfectly aligned and is a perfect fit. And I mean this too.

Over the years, I've witnessed Morgan align herself with care and integrity to all the tasks she's been given, personally and professionally. I bet many of you have seen the same thing: if you've served on a board with her, if you've worked beside her as a volunteer, or if you are a member of our Rotary Club, where Morgan has been the Chair of the Club's Sunshine Committee for years, and frequently sets aside other tasks to make time to send flowers to or visit Club members who are ill or have suffered loss.

It's also true of her work as a judge. Morgan strives to be perfectly aligned with her role — not flinching from hard calls but also not surpassing the proper bounds of her charge. This means working hard to make the right decisions in the right way. It means training and mentoring her law clerks, worrying about and caring about their future success and well-being. And it means caring about her colleagues, about building relationships that are honest, respectful, fun and productive with and among the judges with whom she works.

In her poem, *To Be of Use*, poet Marge Piercy wrote that she wants to be with:

people who submerge in the task, who go into the fields to harvest and work in a row and pass the bags along, who are not parlor generals and field deserters



Husband Jim Torgerson and daughter Erin Christen share the honor of robing newly appointed Judge Morgan Christen.

but move in a common rhythm when the food must come in or the fire be put out.

I think Ms. Piercy would like working with Morgan.

Now, I admit that when I selected "true" as one of my three adjectives for Morgan, I wasn't thinking about this event, nor of Morgan's work as a judge nor her service to our community. I was thinking of our marriage, of the road I've been privileged to walk with her. I had no way of knowing when I took Morgan's hand so many years ago where our journey would lead us, nor the hills and valleys we'd find on the way. And as many of you know, we've had both. I couldn't have imagined then, and can't imagine now, traveling with a life partner more true than Morgan.

One of the other adjectives that was used to describe Morgan is "private." So I think we'll conclude here by saying that on this day, what's true for all of us who are Morgan's family and friends is that we are very proud of her, and very excited to join in celebrating this occasion with her.

**Erin:** We're so glad we're here with you, Mom. We love you.

— Jim Torgerson and Erin Christen Torgerson

# The judge thanks her colleagues

I want to thank Judge Andrew Kleinfeld for flying down to administer the oath, and thank Judge Mary Schroeder for reading the commission. Thanks too to Judge Sidney Thomas for presiding over this ceremony. Being here today will require that Judge Schroeder take a red-eye flight to the east coast to keep another commitment. And Judge Thomas will have to race to get back to Montana to perform his niece's wedding. So I am touched and humbled by the lengths they went to be here. The same is true for everyone here. You are all busy people, and you honor me by attending this ceremony.

The nomination and confirmation process took 11 months, so you would think this would have sunk in by now. But the truth is, I was not accustomed to the awe I felt when I arrived at the Alaska Supreme Court every morning. In fact, I worked as a state judicial officer for 10 years and I never stopped feeling humbled and privileged that I got to work at the courthouse. Today, it is hard to know how to adequately thank people for those years and our shared history together.

Of course I owe thanks to the other members of the Alaska Supreme Court. And to my friends from the trial court. I miss them very much, already. The justices on the Supreme Court were wonderful colleagues and they welcomed me from the very beginning.

I know the public generally sees

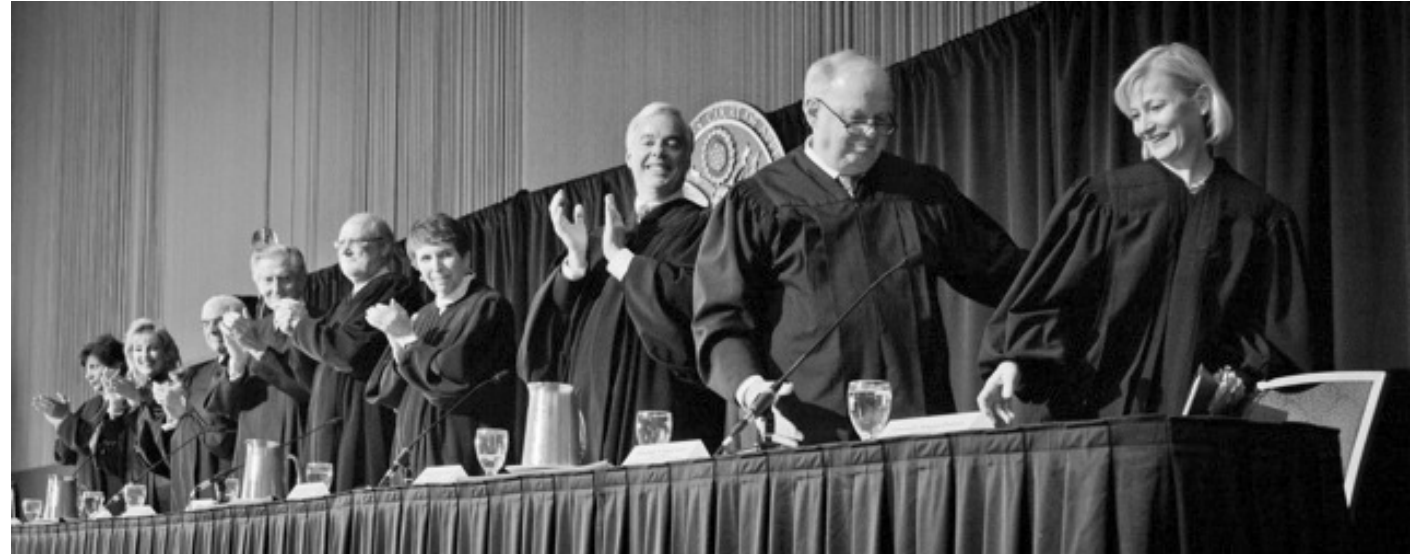


The judge greets former Gov. Tony Knowles and Arliss Sturgulewski.

the court in black robes with serious faces, conducting serious business. So it is understandable that that is the image most people have of judges. But I have an iPhone photo of the Alaska Supreme Court, all four of my former colleagues, standing in line at MA's hotdog stand on Fourth Avenue, wearing big grins and sunglasses. I cherish that picture. Mental images of my colleagues, like that one, are how I will remember my time on the Alaska Supreme Court.

I received a congratulations card the other day that quoted Tennyson saying, "I am part of all that I have met." And it occurred to me that the Ninth Circuit judges here today have a chance to meet some of the people I have met; people who made such a difference in my life. So I am going to tell my new colleagues about a few of these special people.

First, the judges on the Ninth Circuit should meet Judge Brian Shortell. Brian hired me to clerk for him in 1986. Even then he had a very well deserved reputation for being a talented trial court judge and an enthusiastic shortstop on a lawyer's league softball team. Judge Shortell



Judge Morgan B. Christen was sworn into office by Ninth Circuit Judge Andrew J. Kleinfeld of Fairbanks, in May. After being helped into her robe of office by her husband, James Torgerson, and her daughter, Erin Christen, she was welcomed onto the Ninth Circuit bench by some of her new colleagues.

taught me a great deal, including the importance of keeping my eye on the ball, and I am grateful to him.

Katie Hurley and Vic Fisher are also here. They are both partially responsible for the judicial merit selection system in Alaska's Constitution. That system is how someone like me, with no historical ties to this state, gets the opportunity to serve as a superior court judge. That, and the fact that this community has a wonderful tradition of welcoming people and giving them a chance.

Vic Fisher was the youngest delegate to our state's constitutional convention a little over 50 years ago, and Katie Hurley served at the convention as the chief clerk. I introduce you to them today because they have inspired and encouraged many people, including me, with their unwavering dedication to our state. For us, Katie and Vic are rock stars; iconic figures in our young state's history.

Former Governor Tony Knowles is also here. Governor Knowles appointed me to the superior court. In our judicial section process, there is a period after the judicial council forwards nominees to the governor's office, and after the interviews with the governor, when the nominees wait for the governor's decision. I distinctly remember working at my former law firm one day and being told that I had a call from the governor. That is not something that happened to me every day, ... or, really ever. When I picked up the phone, Governor Knowles said he would like to appoint me to the superior bench, and I said, "Really?" Fortunately, the governor was not put off by my reaction. He just laughed, and happily for me, did not change his mind.

On the first anniversary of my appointment to the superior court, I wrote to him and said that I loved this work, though it was very demanding. Today, what I would say is that I loved my job for each of the 10 years I served in the Alaska State Court System. It was a privilege, and I thank Governor Knowles for trusting me.

Senators Murkowski and Begich do not really need to be introduced. But I could not have asked for more steadfast support from either of them. Or from their professional staff who helped me navigate the byzantine

process. My thanks to both of our United States Senators.

Arliss Sturgulewski was introduced at the start of the ceremony, which is no accident because she has been a source of guidance for many years, as have my sisters. You may recognize my sisters in the front: Pat and Betty. If you watched my Senate confirmation hearing, you saw both of them. They loyally trekked to Washington, D.C. last July in 100-degree weather to attend the hearing, along with a lot of other family members. I actually received a call from the Department of Justice after the hearing asking if all of those people sitting behind me were really from my family. They were indeed.

As most of you know, my family means the world to me. In particular, our daughter, Erin. Try as I might, I cannot put into words how abundant my life is because Erin is in it. In the interest of making it through the remainder of my remarks, I will just say that I love her more than I know how to express and I thank her for her kind remarks today.

There are two more people who must be acknowledged individually, though many more would be if time permitted.

This day would not have been possible without my husband, Jim, and our dear friend, June Smith. June started out as a nanny to our daughters. But after our youngest daughter, Caroline, was diagnosed with a serious disability, June took on a much larger role. It required considerable additional training to serve as Caroline's therapist and education coordinator, as well as her companion when Jim and I could not be with her. I will not try to describe the many gifts June gave our family; I just summarize by saying that she was with us for 14 years and we are indebted to her. Forever. Our whole family is very happy June could be here today.

As for my husband, Jim, a close friend of mine from the trial court, Judge Bill Morse – who is quite irreverent and great fun to have as a colleague – probably said it best. For my husband's sake, I preface this story by saying I was presiding judge for several years so I was accustomed to the way Judge Morse expresses himself. One day, Judge Morse was trying to describe my husband to someone who had never met him. Judge Morse searched for words before finally saying, "Look, Jim is such a great guy, I sometimes think I should have married him!" As with many of Judge Morse's pronouncements, his sentiment was

spot-on even if the "packaging" was a little peculiar. My friend was right to perceive that Jim has been a source of joy in my life for almost 25 years; a confidante, a friend, and an incredible source of strength through difficult times as well. I cannot imagine my life without him.

In addition to these fine people, I "met" Alaska itself about 25 years ago and that has made all the difference.

At my former law firm, we closed our cross-country ski weekends, and our retirement parties, and just about every other occasion with Robert Service readings about Alaska and the Yukon. In retrospect, I think we got a little carried away – because some of his magnificent poems are very long indeed – so before anyone bolts for the door, I promise I will read only a short excerpt from his poem, "The Spell of thee the Yukon."

There's a land where the mountains are nameless;

And rivers all run God knows where,  
There are lives that are erring and aimless,  
And deaths that just hang by a hair;  
There are hardships that nobody reckons,  
There are valleys unpeopled and still;  
There's a land – oh it beckons and beckons,  
And I want to go back and I will...

\*\*\*

It's the great, big broad land 'way up yonder,  
It's the forests where silence has lease,  
It's the beauty that thrills me with wonder,  
It's the stillness that fills me with peace.

I have loved exploring this state for the past quarter century. I look forward to sharing more of it with other Ninth Circuit judges in the years ahead – though several of them have already described memorable hiking and rafting trips they have taken here. And Judge Consuelo Callahan Callahan, despite her fondness for exquisite 4-inch heels, reports that she has summited Flat Top!

I thank so many members of the bar who have sent congratulatory messages; I have appreciated receiving each one. But many of you have expressed regret at the thought that Jim and I will be moving to San Francisco. So, if you take nothing else away from this ceremony, please know that Jim and I are not going anywhere. We will live right here in Anchorage, as we always have. I will just have a rather extended commute a few times a month.

Thank you all so much for attending today. You honor me with your presence. And you have made this a special celebration for my family and for me. I am grateful.

## Murkowski welcomes judge to a high workload

Thank you for the honor of joining you as we welcome Alaska's very own Morgan Christen to the Ninth Circuit, US Court of Appeals. Get a good look at Morgan because we may not be seeing her much after today.

The Ninth Circuit has one of the highest workloads in the Nation and has suffered in recent years from an unfortunate number of vacancies. Fortunately, the administration and the Senate have moved swiftly this year and last to fill Ninth Circuit vacancies so Morgan won't have to carry this entire burden alone. She is one of four judges confirmed since last December. Still the Ninth Circuit is two short of its full complement of 29 active judges.

Let me remind Morgan that the jurisdiction of the Ninth Circuit stretches from Montana to Hawaii, Guam and the Northern Marianas. From Alaska to Arizona. 61 million people live in the Ninth Circuit – nearly 20% of the US population.

So Morgan, if you ever get tired of those long plane trips – the generous frequent flyer miles notwithstanding – remember that your good friend Lisa is still trying to create a new circuit just for you, with more reasonable travel demands, and an opportunity to see Jim and the family once in a while.

To be serious for a moment, Morgan Christen is the best and brightest that Alaska has to offer the Nation's judiciary. Alaska lawyers are a critical lot. We know who is outstanding. We know who is ordinary. We expect our lawyers to demonstrate a commitment to the law, to the bar and to the community before we advance them to the bench. And we are equally picky when it comes to advancement to the appellate courts. Morgan reached the Alaska Supreme Court based upon her merit. And her route to the Ninth Circuit predictably followed.

Nevertheless, while Morgan's ascent to the Ninth Circuit was fully earned, we should not lose sight of the fact that it is also historic. Only two Alaskans have had the opportunity to serve on the Ninth Circuit. Both of those judges were men. The late Robert Boochever, appointed by President Clinton in 1980 and our friend, Andy Kleinfeld, nominated by the first President Bush in 1991. Both proved to be exceptional appellate judges and Morgan will be too.

I have known Morgan for almost 25 years. We graduated from law school

at about the same time and both clerked for the Alaska state court system at the same time. We've kept in touch over all these years. Enough for me to form a judgment about Morgan as a person and a professional.

There's no doubt that Morgan Christen is an experienced, well rounded attorney. And she is an exceptionally well rounded jurist with experience on the trial and appellate bench. She is an individual with a keen intellect and an impeccable reputation for integrity. She is highly regarded across the ideological spectrum in Alaska as a judge who keeps politics and ideology off the bench.

But as I told my Senate colleague before they voted to confirm her nomination, Morgan Christen is more than just a good judge. She is a good person. In my judgment, justice has been well served by her confirmation to the Ninth Circuit, US Court of Appeals. In closing, Morgan, I consider it a privilege and a pleasure to celebrate this important milestone in your professional life with you, your family and our extended family of the Alaska Bar. Alaska is beaming with pride for your accomplishments. Thank you.

— Sen. Lisa Murkowski

## Begich adds congratulations

I'm glad to join my Senate colleague, Senator Murkowski, and so many other friends this afternoon in presenting Morgan Christen yet another robe for her collection.

This day has been a long time in coming. I'm so pleased we're making history by elevating one of Alaska's finest to one of our nation's most important courts.

We're all enormously impressed by Morgan's accomplishments:

- Her many years of legal work in Alaska;
- Presiding judge over the busiest court in the state;
- Distinguished service on the highest court in Alaska;
- Appointed to key judicial positions by both Democratic and Republican governors.

Let me briefly go beyond her resume – to explain why I worked so hard to get her on the Ninth Circuit Court of Appeals.

Morgan and I – and her husband Jim – have known each other for more than a decade, working on non-profit boards together in Anchorage.

When I was mayor of Anchorage, our city was fighting against youth gangs, who were committing serious offenses and pushing up crime rates.

As the Alaskans here know, Anchorage has an unusual judicial arrangement where city police provide basic law enforcement while the State of Alaska runs the court and corrections systems.

I worked closely with Judge Christen across municipal and state lines to crack down on these gangs and make Anchorage's streets safe.

Working in partnership – the State and Municipality - we produced

results: a safer city for residents and visitors alike.

I found her to be an energetic innovator keenly sensitive to the broad cultural diversity in our state.

I found her a person of great integrity, ability and compassion.

I found her to have a well-deserved reputation for fairness, thoroughness and sound professional judgment.

In addition to Justice Christen's impressive record of public service on Alaska state courts, she has also finds time to be one of Alaska's most prolific volunteers.

Her volunteer resume may not be quite as hefty as those phone books that pile up on our porches, but it's thick. If there's a volunteer organization in Alaska, Morgan has probably worked with it.

She's a member of Rotary Club, the YWCA, Alaska Community Foundation, the Athena Society. She's been on the Board of Directors for the United Way.

She's been on the Board for Big Brother Big Sisters of Alaska and the Rasmuson Foundation.

In 2004, Morgan and Jim were jointly recognized as Outstanding Alaska Philanthropists of the Year. Truly an impressive honor.

Morgan is one of the greatest legal minds and one of the most caring Alaskans our state has to offer.

That's why I was so pleased President Obama appointed her, and so honored when the U.S. Senate confirmed her as the first Alaskan woman on the Ninth Circuit Court of Appeals.

There's no doubt she will do Alaska and our nation proud.

— Sen. Mark Begich

## ALPS has new president

Missoula, Montana-based ALPS Corporation announced that David Bell assumed the reins as President and Chief Operating Officer on May 1.

Bell comes to ALPS from Allied World Assurance Company (AWAC), a global insurance company founded in the wake of 9/11 by AIF, Chubb and Goldman Sachs. Bell served as the company's Senior Vice President and Global Professional Lines Manager before becoming COO, a role in which he served for the past four years in AWAC's Bermuda offices.

Bell brings extensive knowledge and experience in the insurance industry to ALPS. He began his professional career with The Chubb Corporation as Underwriting Manager-Executive Protection/Assistant Vice President specializing in a number of product lines including public and private D&O insurance and EPL. Bell moved on within Chubb to serve as the Florida Legislative Liaison for the company. Concurrently Bell emerged as a resource for the ever-changing D&O industry. He penned several articles on industry trends including "The Ups & Downs (Mostly Downs) of the D&O Rate Cycle," in The Professional Liability Underwriting Society Journal, and "Probing The D&O Market," PriceWaterhouseCoopers Bermuda Insurance Quarterly.

Bell's diverse knowledge ranging from underwriting to government relations to being a founding executive of a global insurance corporation will serve ALPS Corporation well, said the company in a press release. ALPS (Attorneys Liability Protection Society) was founded nearly 25 years ago during the insurance crisis of the mid-1980s by a group of forward-thinking attorneys in Missoula, Montana. At the time, the options for attorneys to purchase professional liability insurance were often unreliable or unaffordable. Instead of making do with what the industry provided, ALPS changed the industry by providing stable, responsibly priced malpractice coverage to protect the legal community.

Today ALPS writes professional liability insurance policies for more than 12,500 attorneys across the country. ALPS is endorsed by more state bar associations than any other insurance company and is rated A- (Excellent) with a stable outlook by A.M. Best rating service. With the addition of Mr. Bell, ALPS will continue its commitment to constant improvement, expanding its offerings to more people and providing continued education, risk management and professional enrichment to the communities it serves.

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### PUBLIC NOTICE

#### FOR THE REAPPOINTMENT OF PART-TIME MAGISTRATE JUDGE

The current term of the office of the United States Magistrate Judge Leslie Longenbaugh at Juneau, Alaska is due to expire this year. The United States District Court is required by law to establish a panel of citizens to consider the reappointment of the magistrate judge to a new four year term.

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

Comments from members of the bar and the public are invited as to whether the incumbent magistrate judge should be recommended by the panel for reappointment by the court and should be directed to:

Chair, Merit Selection Panel  
United States District Court  
222 West 7th Avenue, No. 46  
Anchorage, Alaska 99513

Comments must be received by close of business August 15, 2012.

# Chief Justice presides for Law Day awards; announces Sandra Day O'Connor visit

Chief Justice Walter L. Carpeneti took the stage for the opening day luncheon at the Alaska Bar convention--an event that celebrated Law Day--and took the opportunity to announce that former U.S. Supreme Court Justice Sandra Day O'Connor will be returning to Alaska in September to engage with Alaska youth.

As the luncheon's keynote speaker, Carpeneti reflected on the state of the judiciary in the public's eyes and suggested that more needs to be done to articulate the role of the courts in the U.S. system of government.

During his tenure as chief justice, he said, he's often found himself attending various conferences around the country, and listening

to the issues that--largely unlike Alaska--are confronting other courts: Shrinking judicial staff, decreasing budgets forcing the closures of courts, loss of confidence in the courts due to judicial misconduct, challenges to the concept of judicial independence articulated so eloquently by James Madison in the Federalist papers, and public skepticism of "fair and impartial" courts.

"It can still happen here," he said, referencing the ideological campaign to unseat Justice Dana Fabe in her 2010 retention election. Carpeneti noted that up to 40% of voters in recent years have voted "no" in retention elections.

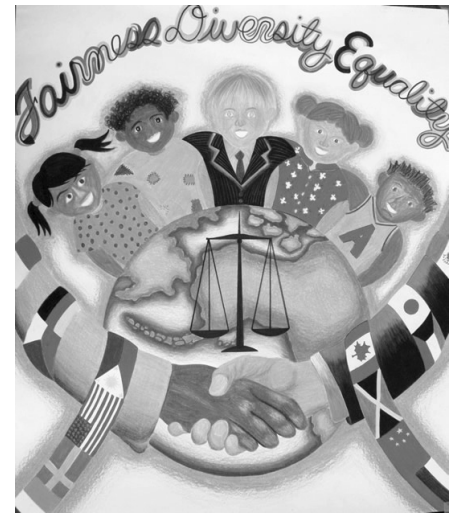
Among the initiatives the chief

justice has embraced is public education to communicate the concepts of the role of fair and impartial courts, grounded on the rule of law, to act independently and render judgement.

With that preamble, the chief justice spent the rest of his lunch hour on the recognition of youth who are participating in several projects for which the Alaska courts are an outreach partner.

First, he presented awards to the winners of the 2012 Law Day student art competition, "Justice for All." Kids from kindergarten to 12th grade statewide submitted more than 160 entries interpreting the theme of "Fairness, Diversity, Equality: Our justice system depends on them. What do they mean to you?" Judge Carpeneti presented the awards to the winners, and put them at ease as parents snapped their photos with the judge for the event.

He next introduced and turned over the podium to project leaders from the Law-Related Education Committee for an upcoming Alaska Youth Law Guide, an online website that will be launched in the fall. Nearly 50 attorneys and others throughout the state have contributed articles exploring topics ranging from the broad to speciality areas, with more than 800 e-mails logged to pull the content together. A few topics are still needed, but the website is sched-



Winning first prize in the 9th-12th grade category was Deborah Bitanga, Grade 9, Kodiak High School. She said of her art, "We are all different; each of us is unique in our own ways. Some have more power and wealth than others but everyone deserves the right to life, liberty and the pursuit of happiness. Everyone needs to be treated with the same respect and must have the same rights as everyone else. There are so many faces and so many races in this world. Diversity shouldn't be the cause of inequality, injustice or separation, but rather be the rope that ties and unites us all."

uled to be launched in September for review, and go live in October.

Finally, Carpeneti announced that Justice O'Connor (ret.) will make the special trip to Alaska Sept. 5 to present an iCivics game at an Anchorage middle school. Five schools competed in the iCivics online Supreme Decision Game, and all were represented at the luncheon awaiting the announcement of the winner--Central Middle School.

O'Connor will address high school students at the West High auditorium, play an iCivics game with kids at Central Middle School, and be the guest at a special ticketed reception at the Dena'ina Center the evening of Sept. 5. (The Bar will update details of her visit in future E-News editions and on the [alaskabar.org](http://alaskabar.org) website.)

The Law Day art contest, Youth Law Guide, and iCivics are among projects the Law Related Education Committee supports, in partnership with other organizations that organize and sponsor programs such as the Mock Trial Championships, Project Citizen, Supreme Court LIVE, We the People, Constituion Day, and Color of Justice.

—Sally J Suddock



Alaska Chief Justice Walter Carpeneti (at left) meets with U.S. Supreme Court Justice Sandra Day O'Connor (Ret.), at an iCivics summit in February 2011. Chief Justice Carpeneti serves as the iCivics Chair for Alaska. At right is Barbara Hood, communications counsel for the Alaska Court System, who serves as Alaska's iCivics Coordinator.

## iCivics uses games to teach citizenship

When Justice Sandra Day O'Connor retired from the U.S. Supreme Court, she recognized Americans' declining civic knowledge and participation. Two-thirds of Americans are unable to name all three branches of government. The National Assessment of Education Progress deemed only 22 percent of eighth graders proficient in civics. Securing our democracy, she realized, requires teaching the next generation to understand and respect our system of governance.

Thus was born iCivics, founded by O'Connor in 2009. Using web-based games and modules for educators to use the site in class, iCivics.org by 2011 had logged more than 5.2 million page views, with 1.7 million games played, with 703,000 unique visitors to the site. It has expanded to all 50 states, each with a chair to promote the mission. Chief-Justice Walter Carpeneti agreed to chair Alaska's participation in the project, and last year persuaded Justice O'Connor to return to Alaska to present an iCivics game in person to a middle school class here.

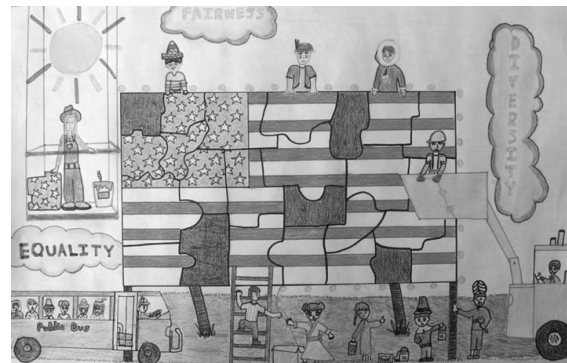
The site, although targeted to middle-school ages, has vibrant graphics and engaging content even for adults. Games range from "sitting" on the Supreme Court to running a law firm, planning for a county, and running for president. Other games teach about the legislative, executive, and judicial branches of government, immigration issues, and managing a company.

The impact and rapid success of iCivics has been achieved on a remarkably low budget--less than \$1 million annually to manage it, launch new games, keep up with web technology, pay salaries, and increase its outreach into classrooms.

One component of the site is to link youth to community "Impact" around the country, where kids are initiating projects ranging from helping the hungry and homeless to providing teddy bears to local police to give to kids traumatized by crime.

"We also know that we are making an impact," said O'Connor in the iCivics 2011 annual report. "A study conducted by Arizona State University researchers showed a 20 percent improvement in student test scores after teachers used iCivics games and the corresponding lesson plans. In the same study, 78 percent of students felt they had a better understanding of the material after using iCivics."

Next on the iCivics agenda will likely be games to prepare young people for the technological skills, critical thinking, and communication skills they'll need in the future.



Michelle Paxon, 6th grade, won first prize in the K-8th grade category in the Justice of All art contest. She attends Ursa Major Elementary School, Joint Base ElmendorfRichardson, Anchorage, and said, "Fairness, Diversity, Equality: What they mean to me is that all kinds of people have equal rights and should be treated the same way as anybody else. In my picture it shows difference people working on making the billboard puzzle of the American flag that represents America complete. As you see they are all working together even though they are young, old, male, female, rich, poor, short, tall, have different beliefs, or even dress differently. They are treated fairly and equally. Justice for all no matter how different they look."

## Disability Reinstatement

In the Supreme Court of the State of Alaska

In the Disability Matter Involving)

Jeffrey A. Gould, ) Supreme Court No. S-14011

) Order

Petitioner. ) Date of Order: 2/16/12

) ABA Membership No. 9306021

ABA File No. 2010B001

Before: Carpeneti, Chief Justice, Fabe, Winfree, and Stowers, Justices

On consideration of Jeffrey A. Gould's 9/10/11 petition for reinstatement from disability inactive status and the Disciplinary Board's recommendation for conditions of reinstatement in response to the court's 11/7/11 order, **IT IS ORDERED:**

Mr. Gould is reinstated to the active practice of law from disability inactive status effective immediately on the conditions contained in the court's separate non-public confidential order.

Entered by direction of the court.

Clerk of the Appellate Courts

/s/ Marilyn May

cc: Supreme Court Justices



Don McClintock (R) and outgoing board member Mitch Seaver.



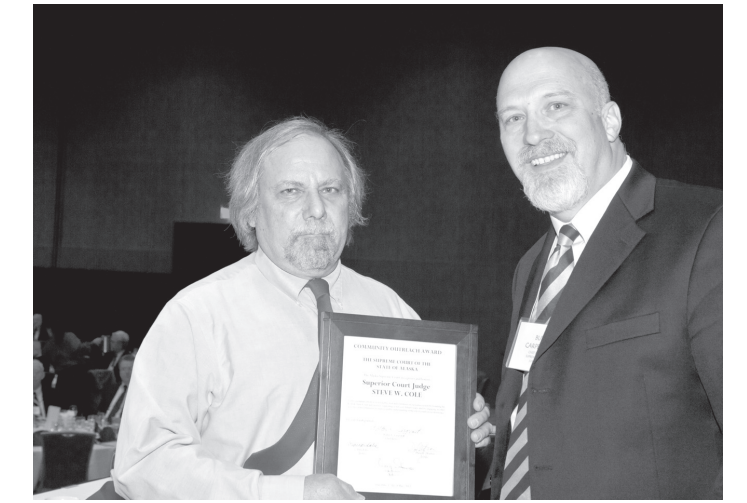
Dan Moore and Frank Nosek reminisce over their 50 years in law practice in Alaska.



Outgoing Bar President Don McClintock passed the gavel to Incoming Bar President Hanna Sebold.



Executive Director Deborah O'Regan marked the anniversary of 30 years at the Alaska Bar Association, with President Don McClintock.



Chief Justice Walter Carpeneti presents the Alaska Court System's Community Outreach award to Judge Steve W. Cole.

# 2012 BAR CONVENTION HIGHLIGHTS

*Bar community gathers in Anchorage*



## FIVE RECEIVE BAR'S ANNUAL AWARDS



Arlene Clay receives Judge Nora Guinn award from Chief Justice Walter Carpeneti.

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.



Barbara Jones accepts the Distinguished Service Award from Don McClintock

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



Penny Zobel receives award from President McClintock.

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.



Esther Cox receives award from President

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

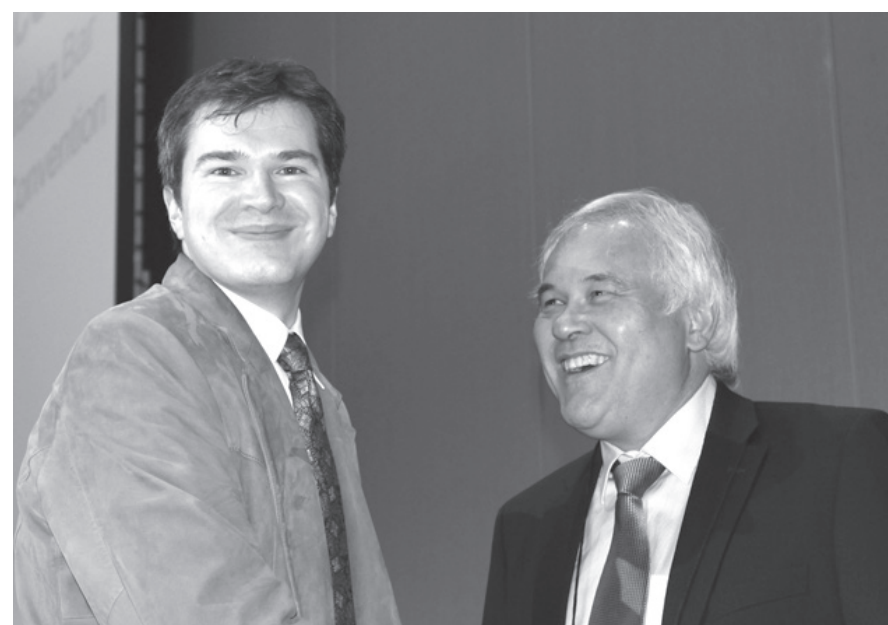


Bill Saupe receives award from President

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.



The Alaska Bar Foundation Jay Rabinowitz Award went to Trevor Storrs, who was nominated by Judge Stephanie Rhodes (right).



Loren Hildebrandt, outgoing New Lawyer Liaison and Don McClintock.

*Convention photos by Karen Schmidtkofer & William Fraser.*



Robin Bronin receives the First Annual International Law Section Award from Section member Rich Curtner.



Retired Magistrate Arlene Clay, age 99, received the Judge Nora Guinn Award and is surrounded by members of the Bar Historians Committee, who selected her. Chief Justice Walter Carpeneti (R) joined the celebration.

## To speak and remove all doubt

By *Kenneth Kirk*

You would expect dust in such a place. Indeed, there was a thin layer of the stuff on almost everything in the cluttered office. A fly buzzed in the corner. Stacks of paper sat in their places, awaiting attention. A ceiling fan turned slowly overhead.

Occasionally there was movement from the middle of the room. It was an elderly gent, with rolled up shirt sleeves, a suit vest, and a tie that had long since gone out of style. For a moment he took off his glasses and set them on the desk, rubbed the bridge of his nose, and then picked them back up and began reading again. Outside, a simple sign on the door said "Moab Johnson, Attorney-at-Law".

Unexpectedly the door creaked open. Johnson looked up with a bit of surprise. A man in a white seersucker suit stood in the door. He had carefully polished shoes, a neatly trimmed goatee, and a gold ring that looked like it was worth more than most people's cars. He certainly did not look like he had missed any meals lately. "Mr. Janes," said Johnson, "to what do I owe the pleasure?" He didn't sound like he really thought it was a pleasure.

"Hello, Moab, I don't believe I've talked to you in years," said the well-fed gent. "I wanted to stop by and be sociable".

"Mr. Janes, I've never known you to stop by anywhere, without some particular agenda," responded Johnson. "Now what is it you come for?"

The heavy man chuckled. "You know me well, Moab. I do have a purpose in coming here. Doesn't mean I can't be polite, but yes, I have a reason. I need a little bit of legal work done, and I was hoping I could throw it your way".

Johnson looked skeptical. "You already have a lawyer, Mr. Janes, that does all of your work. Why on earth would you start using me?"

"I don't really have a lawyer, I have an entire law firm. Joabab, Kettle & Wicks. Did you know they actually have more than 300 lawyers, spread around in four states? Pretty impressive, I suppose."

"And very useful for you," said Johnson, "particularly when you need specialized help from one of their main offices."

"Indeed, indeed," said the heavyset man. "A useful tool to have at one's disposal, indeed. But it does lead to an ongoing problem. They keep a one-man office open in this little town, as a way to occasionally bring in bigger cases for the main offices. So they let some young feller get a few years experience in their main offices, then they'll send him out here for a few years to learn how to deal with clients, stand up in court, and so forth. But eventually comes the day when they pull him back into the big city. And that's what happened with young Kimmelman, they've yanked him back to one of the main offices. And until they get somebody else to fill that office, I don't have anybody local to handle smaller matters."

"I can see how that would be a problem," said Johnson. "So you want me to handle some small things for you, until your law firm sends out some other youngster to drum up business here in the sticks?"

The big man smiled. "You do understand my purpose. I have two matters I need handled promptly. Do you object to taking my cases?"

"No," said Johnson. He needed the work.

The gentleman dropped a file on the desk. "The first one should be pretty easy. I just need a commercial lease. I finally got a retail shop for that empty place in the building I own on the corner. The details are all in there. Just draw me up a standard lease at whatever you normally charge."

"I can do that," said the lawyer. "I'll need a \$300 retainer to bill against".

The big man looked puzzled. "Bill against, as in hourly billings? But Moab, you've done dozens of commercial leases just like this one. You used to do it for old man Wilkins all the time. You must have plenty of these all formatted and ready to go. Don't you want to charge me a flat rate?"

Johnson looked like someone had just taken a dump on his shoe. "To quote Abraham Lincoln," he said sonorously, "A lawyer's time is his stock in trade".

The other man shook his head slowly. "I don't think he meant that you have to do everything on an hourly basis. But even so, only \$300? Won't it take a lot more time than that, especially with you not having a secretary?"

"It may take more than that," Johnson said, "but I am certainly not billing my time for any of the typing. And the actual drafting should take less than two hours."

"My goodness, Moab," responded the heavy man. "Alright, I think you should probably be adding a little more to your bill, and maybe charging a higher rate than you apparently are, but I'm not going to object. Joabab, Kettle used flat rates all the time. I never minded, as long as I knew what the fee was going to be."

"I don't believe in flat fees," the lawyer said, "any more than I believe in using those infernal computers for legal work."

Janes almost choked. "You mean to tell me you're going to type up this contract on..." He looked around the room... "that old thing?" He was pointing at a typewriter in the corner.

"That old thing has served me well



"I don't really have a lawyer, I have an entire law firm. Joabab, Kettle & Wicks."

for 25 years now. Up until then I used a manual, but this is an electric one and has a correct-type key. That can come in handy."

"But I've seen your commercial leases," the man said, "and they run a good six or seven pages. Do you really draft up every one of them on the typewriter?"

"Of course I do," said Johnson. "At my age, nobody could read it if I wrote it out by hand. At any rate, I'm not charging you for the typing time, so don't worry about it. What's this other matter you had?"

"Well the second case isn't specifically for me, it's for my son, Buford Junior. He took a slip on the ice in front of the convenience store, messed his knee up. Their insurance company is lowballing him. Assuming you find it to be a good case, do you want the standard one-third?"

Johnson looked downright appalled. "Heavens, no. I never take a contingent fee. However if it is a good case, I will take it on an hourly rate."

## American Bar to retain current ownership policy

At its April 12-13 meeting in Washington, D.C., the ABA Commission on Ethics 20/20 decided not to propose changes to ABA policy prohibiting nonlawyer ownership of law firms.

Co-Chairs Jamie S. Gorelick and Michael Traynor said, "Since its creation in 2009, the commission has undertaken a careful study of alternative law practice structures. Based on the commission's extensive outreach, research, consultation, and the response of the profession, there does not appear to be a sufficient basis for recommending a change to ABA policy on nonlawyer ownership of law firms."

By June 2011, the commission had publicly rejected certain forms of nonlawyer ownership that some other countries currently permit, including multidisciplinary practices, publicly traded law firms, and passive, outside nonlawyer investment or ownership in law firms.

After further consideration and study, on Dec. 2, 2011, the commission released for comment a discussion draft describing a limited form of court-regulated, nonlawyer ownership of law firms. It would have allowed nonlawyers, who were employed by a law firm and assisted the firm's lawyers in the provision of legal services, to have a minority financial interest in the firm and share in its profits. The discussion draft reflected an approach that was similar to but more restrictive than the structure permitted by the District of Columbia for more than 20 years.

"The commission considered the pros and cons, including thoughtful comments that the changes recommended in the discussion draft were both too modest and too expansive, and concluded that the case had not been made for proceeding even with a form of nonlawyer ownership that is more limited than the D.C. model," Gorelick and Traynor said.

Although it will not propose any

And then he intoned Lincoln again: "A lawyer's time is his stock in trade."

The big man shook his head once more. "Moab Johnson, I will never understand you. Or understand how you can ever make a living. Half the time as soon as a lawyer comes in, the insurance company doubles their offer. You might only be able to get paid for a few hours if they settle right off the bat. But alright, if you want to do it hourly, I suppose that's your business. Junior is stuck in bed at the moment, but if you want to come by after supper to see him that'll be fine."

"I'll come around after seven," said the lawyer. "And as to how I bill, I've done alright. Made a living anyway. After all, as Abraham Lincoln said, a lawyer's time is his stock in trade."

The gentleman turned and began to walk out the door. Then he stopped, and turned back, and said one more thing. "You know, Moab, that isn't quite what Lincoln said. He said a lawyer's time and advice are his stock in trade. He didn't mean everything had to be done on hourly rate."

Johnson sat there for a while after the man left. He had lived by that quotation ever since he was sworn into the bar. And he got it wrong.

changes to ABA policy on nonlawyer ownership of law firms, the commission will continue to consider how to provide practical guidance about choice of law problems that are arising because some jurisdictions, including the District of Columbia and a growing number of foreign jurisdictions, permit nonlawyer ownership of law firms.

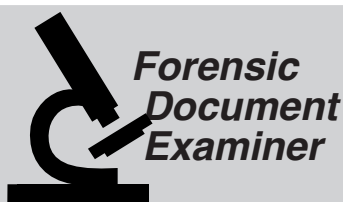
"These are current problems that need pragmatic attention," Gorelick and Traynor said. "The commission previously released draft proposals on these issues, and will decide at its October 2012 meeting whether to submit formal proposals to the ABA House of Delegates for consideration in February 2013. Meanwhile, the commission welcomes additional comments on the previously released drafts."

The ABA Commission on Ethics 20/20 was created in 2009 and charged with performing a thorough review of the ABA Model Rules of Professional Conduct and the U.S. system of lawyer regulation in the context of advances in technology and global legal practice developments.

Members of the commission include judges, law professors who specialize in legal ethics, practitioners (including former ABA, state bar and local bar presidents), and liaison members from the ABA Board of Governors, Center for Professional Responsibility, Task Force on International Trade in Legal Services, Standing Committee on Ethics and Professional Responsibility, and Young Lawyers Division.

Co-chair Gorelick is a partner at Wilmer Cutler Pickering Hale and Dorr in Washington, D.C. Co-chair Traynor, of Berkeley, Calif., is a past president of the American Law Institute and currently chairs the institute's council.

More information on the commission is available online.



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## Welcome to Spenard, Humor Capital of Alaska

By Peter J. Aschenbrenner

The noise on my front porch signals an arrival of weighty intentions. “Mr. Whitecheese!” I gasp. “And you brought your piano!”

“I’ve got a problem,” Whitecheese introduces his entourage, shirted “The Usual Suspects.”

“Your stuff,” Dolley Madison exhibits a copy of my last *Bar Rag* piece, “is too lugubrious, Aschenbrenner. Mr. Whitecheese will lighten things up.”

“A damn fine year,” Jefferson winks my attention to the Cuvée Monticello 1813.

“How come you never say ‘you betcha’ anymore?” Dolley asks Sarah.

“Is that real?” The Sarah retorts.

“Lewis ‘n’ Clark,” The Dolley supplies the provenance. “You?”

“I only wear what I shoot,” the former Governor replies, elbowing Jimmy. “Did she ever call you ‘The First Dude?’”

“I beg your pardon?” James Madison gasps.

I platter the antipasto.

*We love a free dinner  
We love a free snack  
Free food in a palace  
Or a roadside shack.  
Nothing, but nothing  
Says ‘thanks a bunch’  
Like ‘We’ll pay you to live here  
And here’s a free lunch.’*

“Did you know,” Jefferson asks the Governor, “I sent an expedition to Alaska?”

“Ledyard’s idea was to walk across Russia. He never even got close enough to catch a glimpse,” she adds.

Jimmy takes the mike from Mr. Whitecheese.

“I love Alaska!”

*It’s a really big state so I’ll do what I feel.*

*Lunch lunch lunch is my favorite meal.*

*You want a ‘thank you?’*

*We’re glad to oblige*

*Big state gratitude*

*From our northern skies.*

*So take it from us,*

*Alaska’s ‘thanks a bunch!’*

*Pay us to live here*

*And where’s our free lunch?*

“And now to business,” the Maestro intones. “My latest attempt to credential myself on WikiAlaska was rejected.”

The assembly gasps.

“I need a pedigree,” he continues. “Ideas?”

“Get yourself cited in *The Bar Rag*,” I suggest. “Or, as it is known on my resumé, *The Journal of the Alaska Bar Association*.”

“But —”

“Tut, tut,” I interrupt. “You do swear fidelity to text, don’t you?”

“Nobody can tell a joke like me!”

“You leave your audiences begging for more, right?” Dolley Madison asks.

“Don’t you endow,” The Governor asks, “your patrons with wide-eyed optimism? Or at least amazement that the world is what it is?”

“Yes and yes,” Whitecheese tinkles the ivories, deep in reflection. “I’m the High Court of Comedy.”

“Whitecheese’s stand-up comedy,” I reshape the metaphor in progress, “renders him the equivalent of a constitutional assembly.”

“He improvises,” Jimmy agrees. “As can I. Three delegates go into a bar. The first orders —”

“His success depends on the surroundings,” Dolley interrupts.

“I wouldn’t be funny without my bar, my piano and vast quantities of raw material to work with,” Whitecheese agrees. “Mostly from Fairbanks, true. But,” he wonders, “night after night. How can anyone match my output?”

“There have been,” The Sarah studies *Our Constitutional Logic*, “nine hundred and ninety-two such assemblies in American history.”

“Some of them lend,” I point out, “a humorous slant on American history. The states of Connecticut and Rhode Island bravely armed and supported their troops in the field against King George with their royalist charters intact.”

“Oh, that’s rich.”

“Or take the time that eleven states announced that they were leaving the union.”

“I’ve heard something about that,” Whitecheese concedes.

“The other states first announced the eleven *couldn’t* leave the union and then changed their minds. ‘Now you have to apply to be readmitted to the union.’”

“Well, that is a puzzlement,” Whitecheese ponders. “But how come so many assemblies? There are only fifty states. Even with admissions — excluding readmissions — there should be only thirty-seven constitutional assemblies. How’d the number get over nine hundred?”

“He’s counting,” the Governor shoots me a look, “all of the state legislative sessions in which the federal constitution was amended. There have been twenty-seven of those.”

“Are those nine hundred to be considered as state or federal conclaves?” Madison asks.

“Both,” Mr. Whitecheese replies. “When a state legislature participates in amending the federal charter, it amends organic state law as well. Thanks to the Supremacy Clause and its oath of obedience.”

“I’ve always wondered why we don’t recite Article VI in public schools,” Dolley muses.

“How many constitutional assemblies since Alaska’s?” Mr. Whitecheese asks Sarah to consult her netbook.

“Two hundred and sixty-four,” she counts. “But a lot of them are ‘just for the heck of it,’” she adds. “Like Mississippi ratifying the Thirteenth Amendment in 1995. Or Delaware the Seventeenth in 2010.”

“I am like,” Jefferson joins in, “really impressed. I thought Americans would be amending the constitution to ‘keep pace with the advance of the age in science and experience.’ Instead you’re just having a good time down in Sitka. Or wherever your state capital is located these days.”

“Spenard is the comic capital of Alaska,” Whitecheese declares. “But still, I’m lacking citations in a journal of pedigree.”

“I’m regularly cited in the *William & Mary Quarterly*, which is the leading academic journal of the early American republic,” Madison explains. “I could put in a word in for you.”

“Perhaps the Governor has an idea. You’ve read widely,” Dolley asks.

“Any and all of ‘em that have been in front of me,” she replies. “But I’m not the expert on self-parody,” the Governor returns fire.

“What’s that supposed to mean?”

Madison asks.

“There was the time your wife got in her carriage and rode around Washington crying out, ‘The British are coming!’”

“That was the evening of August 24th, 1814,” Madison reflects. “I took the situation with the utmost gravity, riding from Bladensburg all the way to Virginia.”

“I’m sure there are many such moments in constitutional history,” Whitecheese soothes wounded feelings. “It’s all waiting to be mined. How Alaskan!”

“There’s a problem,” Madison declares,

“because the state ratification debates haven’t been published. Or, in many cases, notes weren’t even taken.”

“Jimmy’s just sore,” Dolley explains, “because he and Hamilton agreed that the meaning of the constitution was to be found in ‘the State Conventions, which accepted and ratified the Constitution.’”

“4th Congress, *Annals* 774-80,” I ahem the citation. “And Item 276 in *Farrand’s Records*, volume 3.”

“But Justice Story convincingly demonstrated that most debates weren’t published,” Madison concedes. “Commentaries, Volume I, pp. 388-391,” he adds. “That sure punched a hole in my boat.”

“The debates of the 1986 Rhode Island convention are locked in a

warehouse in Providence,” I point out. “Whatever people say at these assemblies makes constitutional history, but no one is reading it after the convention adjourns.”

“I have the answer. Install a piano bar at these venues,” Whitecheese declares. “Seriously, just announce, ‘It’s Not Supposed To Be Funny.’ You could charge admission to these things. People would be dying to steal your material!”

“Very interesting,” Madison toasts our conclusion. “A law of the land that

was meant to be broken. This reminds me of the time I debated the Liar’s Paradox on the floor of the House. The year was 1796 —”

“Not now, dear,” Dolley

signals for relief Whitecheesean. “Maestro, if you please.”

“Let’s all join in the concluding verse to the anthem of the 1956 constitutional convention.”

Mr. Whitecheese conducts from the keyboard.

*There is one star without the flag  
That never brags her blisters.  
In modesty she dreams and waits  
Election by her sisters.  
Tho’ she’s gleaming far away  
In an un-admitted state,  
It goes without my saying  
That she’s just as good and great.*



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# NORTHERN LIGHTS

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# King Salmon attorney pens his war stories

By Jean Bundy

There was still ice on Pike Lake in front of Richard Ellmers' house as we recently chatted over the phone one May afternoon. He had just put his King Salmon house up for sale and was planning to move to Anchorage after this winter's record snowfall. Dick, who was babysitting a couple of neighbor cats, seemed resigned to leave chopping wood as getting to Anchorage for routine medical appointments was getting harder. He had once owned a boat for halibut and salmon fishing out of Homer. But for the past decades attorney Richard Ellmers has flown around Bristol Bay doing fisheries law.

His love for water began in his boyhood when his salesman father would do business around the Cuyahoga River flats or his brother would let him ride in the Ford V8's rumble seat heading out to Lake Erie where for a few dollars you could rent a horse or a rowboat for fishing. The year was 1941, and older brother Chuck was about to enter World War II as a Navy radar operator, using a new and secret weapon. Oh dear, I've segued from my phone conversation with Dick into his book, *Regular Army Corporal*, as Ellmers is a mesmerizing story teller both vocally and in print. With a hint of past Midwestern authors, the likes of Anderson, and Dreiser, Ellmers takes his readers back to growing up around Cleveland with the backdrop of World War II.

Dick tells a great tale about skipping high school to head south with a buddy. After a train, a bus and some hitchhiking they unexpectedly arrived at the farm of Vera and Jack Melvin near Birmingham. Here is what Ellmer says about the Melvins:

"Walter was a retired and disabled coal miner who had suffered much illness and many injuries in his impoverished childhood and years in the mines...he was virtually illiterate...He showed me how to make basket fish traps, and we would pull them out of the river in the early morning hours and take the catfish to Vera...Vera was a legal drug addict."

Ellmers' parents eventually caught up with him further south in Sarasota. He recounts, "The long train ride back to Cleveland was one of the dreariest and depressing experiences of my life." After attending several different high schools, and Chuck safely home following VJ Day, Ellmers too headed for a military recruiting office that would eventually morph into five tours of duty in Korea. He describes the dynamics of basic training, the picky inspections, living in close quarters with strangers and finally being propelled into a disorganized Korean War as America's armed forces were still depleted from World War II.

What does a baby boomer like me find fascinating with a war long gone? My ideas about modern warfare don't go much beyond what Hollywood has dished out. As a child in the fifties, I heard stories about World War II. My cousin Donald was part of the Black Sheep squadron and spent time

in a Japanese prison camp, while another cousin Thomas was a Yale trained linguist who was killed by a sniper in Luzon.

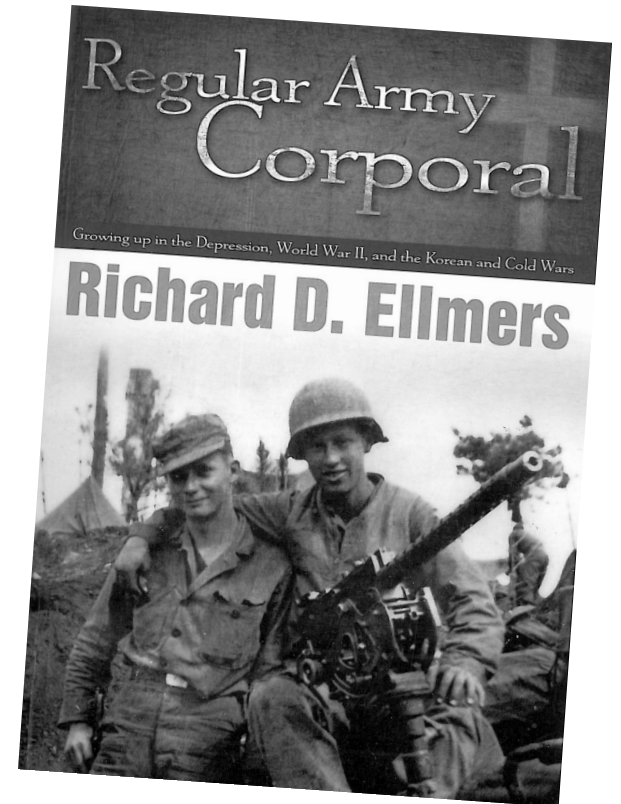
My father Bill never dreamed of being a soldier, nonetheless spending four years in North Africa and Southern France. Dad had lived a country club existence growing up around suburban Boston spending summers racing his sailboat and playing golf on Martha's Vineyard. He volunteered for the Navy right after law school to avoid being drafted, ending up as a communications officer pounding out Morse code. He told of living in a Marseilles chateau the military had confiscated, the Reader's Digest became toilet paper. Once he passed up a chance to see de Gaulle for a piece of blueberry pie and another time almost blew his head off burning classified documents in a barrel filled with gasoline. Other than that, he imparted very little to his three daughters.

There were whisperings around the house about his nightmares. Dad's excessive drinking was always excused by morning after explanations that he had been "slipped a mickey" when out partying with Mother. Sadly, he retreated into a world of cocktail parties and gambling, eventually dying in his mid-fifties, leaving us girls to fend for ourselves.

Although Ellmers' wartime experiences were not like my father's, I found he provided imagery I never envisioned, which perhaps helped to explain some of what was missing from my family puzzle. *Regular Army Corporal* contains graphic descriptions of combat while pointing out the ineptitude of a military who promised warm clothing and hot meals but didn't always deliver.

Dick Ellmers can be amusing. His early days at Fort Bragg's basic training required "spit and polish" inspections. Aluminum canteens and cups would routinely blacken near campfires but had to look like new upon next-day inspections. Ellmers knew about chrome plating as his dad had gotten him a job during the war in a plant-metal plating shop. So on a day off he found a similar plant in Fayetteville. When asked by the colonel, "How did you get your gear looking like that, soldier?" Ellmers, who shortly after was made a corporal, replied, "Elbow grease, Sir!"

For Ellmers, the Korean War began by passing under the Golden Gate Bridge in an overcrowded Military Sea Transport Service ship crammed with soldiers, three men were assigned to a bunk, eight hour shifts. While the ship changed course to avoid possible enemy submarines, the men spent hours in chow lines or playing poker and crap games, strictly illegal. Finding himself assigned to the wrong unit after landing in Yokohama, being promised a winter sleeping bag but having to make do with wool blankets sown into a mummy configuration, shows just how ill-prepared America was for the Far East. Ellmers takes his readers on countless ironic close calls, accidentally avoiding the enemy, the enemy unexpectedly were friendly or accidental killings from friendly fire. Then there were the uprooted civilians running in all direc-



tions, more often than not starving and diseased as were the platoons of rats.

I learned that few enlisted men were issued pistols. To Ellmers' surprise, his parents illegally mailed him one hidden in a foil package marked candy. There were months of wearing the same socks and uniforms resulting in skin problems, or feeling ravenously hungry to the point of sometimes eating what might have been poisonous. Sadly, the occasional bathing in a river during an artillery lull often resulted in parasitic infections. Still there was silliness when someone tied together pup tents that got dragged down the road by an unsuspecting captain and his driver heading to a staff meeting. And surprise when General MacArthur rode by with his signature leather jacket and aviator sunglasses.

It may seem odd, but trench warfare was still used in Korea. Ellmers is at his best when describing life in the mud, "When we tried to dig foxholes we often dug up more bodies in the collapsed trenches and fortifications, and the stench of rotting flesh permeated everything...The worst times were in the heat of the day when the clouds of flies gorging on rotting flesh were all over everything, including any food you tried to eat and crawling into your mouth, nose and eyes if you dozed off." Nearby, Jack Benny and his USO show would be entertaining in the division rear.

Ellmers' book ends just as the Korean War winds down. As we talked over the phone on that cold Alaskan May afternoon, I learned he was a bodyguard in Germany during the Cold War and taught law in Kazakhstan just after the Millennium, which I hope will appear in a subsequent book.

*Regular Army Corporal* by Richard Ellmers is available on Amazon.

## Changes in the law library

We're taking spring cleaning to heart this year! Here are some changes you'll find in the law library:

- **Anchorage Law Library Remodel**

Construction has begun in the Anchorage Law Library! Affected areas are walled off and the work is happening at night. Our space is a bit smaller for now, but we still have books on the shelves and librarians ready to help. All library services will continue throughout the remodel. Come take a look next time you're in the building.

- **Juneau Law Library Remodel**

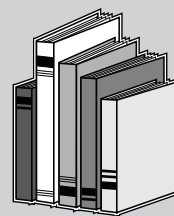
Construction in the Juneau Law Library is nearly complete. When the project is finished, there will be two beautiful new conference rooms in the back of the library which will have a lot of natural light. Wi-Fi access provided by the library will also be available in the new conference rooms. Use of the rooms will be first come first served.

- **New Public Services Librarian**

We are thrilled to welcome Buck Sterling to the law library staff. Buck comes to us from Spokane, Washington, where he was the Senior Reference Librarian at Gonzaga University School of Law. He has many years of reference experience and is excited to learn about Alaska material. Please introduce yourself to Buck next time you visit the Anchorage Law Library.

- **New Content on the Public Computers**

Our electronic tax resource, CCH's IntelliConnect, is now available on law library public computers statewide. The product includes tax statutes, regulations, practice tools, law review articles, treatises, and more, all accessible from one interface. Law library users can now access Westlaw, HeinOnline, and IntelliConnect from public computers in any law library location in Alaska.



### The Board of Governors of the Alaska Bar Association is soliciting names for a lawyer representative to serve a three year term to the 9th Circuit Judicial Conference.

The term of Kevin Clarkson expires September 30, 2012.

The demands of the position affect both an attorney's resources and schedule. Representatives are expected to attend the 9th Circuit Conference in the summer. The U.S. District Court for Alaska will contribute a portion of the lawyer representative's cost to attend the Ninth Circuit conference, up to \$1,500, upon request. They may also be called on for committee work throughout the year.

There will be no bar poll. Interested lawyers are asked to submit a resume and letter of interest. The Board of Governors will appoint a nominating committee which will review the names which are submitted, and taking into consideration the 9th Circuit's goals of diversity in its lawyer representatives, nominate a candidate(s) to the U.S. District Court. The Court makes the actual selection.

Any attorney interested in appointment to this position should submit his or her name to the Alaska Bar Association by July 6. Members should include a resume and a letter of interest in the position.

See the Bar's website for more information.  
www.alaskabar.org

# Bar People

**Dan Fitzgerald**, formerly a shareholder at Atkinson Conway & Gagnon and more recently Special Counsel to the North Slope Borough Mayor's Office, has relocated to Grand Junction, CO. He is practicing with Traylor, Tompkins & Black, a full service law firm that has served the Western Slope for over 100 years and now handles cases throughout Colorado.

**Patricia (Penny) Zobel** has opened a new firm called the Law Firm of Patricia L. Zobel. She can be reached at 907-441-8327 and at zobel@ak.net. She is available to perform mediations.

**Robin O. Brena** has been chosen as a featured speaker by the Institute for Professionals in Taxation (IPT) at its 2012 annual Property Tax Symposium. The IPT is an educational association serving over 4,400 tax professions. The two-and-one-half day property tax symposium is designed to assist participants in acquiring a better understanding of the ad valorem tax field. His presentation will concern the ad valorem taxation of the Trans-Alaska Pipeline System (TAPS).



Robin O. Brena

## Anchorage attorneys selected

### Chambers gives top rankings to Davis Wright

In its tenth annual survey of the U.S. legal market, the prestigious directory *Chambers USA: America's Leading Lawyers for Business (2012)* has recognized seven attorneys from Davis Wright Tremaine's Anchorage office as leaders in their fields. The Anchorage office was also awarded a top (Band 1) ranking in three practice areas.

Chambers USA selects law firms and individuals based on research gathered through extensive in-depth interviews with in-house counsel, industry experts, and leading private practice attorneys. Nationally, Chambers recognized 89 Davis Wright Tremaine attorneys across 32 practice areas and eight offices this year.

The Anchorage attorneys chosen as leaders in their fields are:

Jon S. Dawson (Corporate/M&A; Litigation: General Commercial; Real Estate)

Gregory Fisher (Labor & Employment)

James H. Juliussen (Labor & Employment)

Barbara Simpson Kraft (Corporate/M&A; Real Estate)

David W. Oesting (Litigation: General Commercial)

Joseph Reece (Corporate/M&A; Real Estate)

Robert K. Stewart (Labor & Employment)

The Anchorage office received top (Band 1) rankings in the following practice areas:

- Corporate/M&A
- Labor & Employment
- Real Estate.

Davis Wright was ranked in Band 1 by Chambers in ten other practice areas. Twelve of the firm's attorneys were ranked as leaders in nationwide practice categories.

Davis Wright Tremaine LLP is a national law firm with approximately 500 lawyers representing clients based throughout the United States and around the world. For more information, visit [www.dwt.com](http://www.dwt.com).

## Brena, Bell & Clarkson joins Fortune 500; hires 2 new attorneys

The Anchorage law firm Brena, Bell & Clarkson has been selected as a Fortune 500 "Go-To Law Firm for Commercial Litigation." Brena, Bell & Clarkson's selection will be published in the spring issue of "Litigation" and distributed with "The American Lawyer & Corporate Counsel" magazines to over 190,000 readers.

The firm also is pleased to announce that two attorneys have joined the firm.

**Matthew C. Clarkson** is a lifelong Alaskan. He received his BA in Biological Studies from the University of Alaska and his Juris Doctorate from Washington University St. Louis School of Law. During law school, Clarkson was named on Washington University's Dean's List on several occasions. He was also the co-chair of Washington University's Environmental Moot Court Board for which he participated at the National Environmental Moot Court competition, advanced to the semi-finals, and placed among the top law school teams in the nation. Clarkson received the Best Brief Award in the Environmental Moot Court Competition, the Cali Award for the top grade in Environmental Litigation, and Washington University's Judge Amandus Brackman Moot Court Award for excellence in moot court competitions.



Matthew Clarkson

**Kelly M. Helmbrecht** also is a lifelong Alaskan. She received her BA in Political Science from the University of San Diego and her Juris Doctor Cum Laude from the Thomas Jefferson School of Law in San Diego. She was on the distinguished honor roll and honor roll several times. While in law school, she was awarded the Cali Award for outstanding legal research, Witkin Award for highest ranking student, and Jefferson Medal for the highest grade in many classes including: Business Planning, Jurisprudence, Wills & Trusts, and Law and Society. She has also participated in many different groups in order to give back to her community including Young Republicans, the Disabled Veterans Clinic, Big Brothers Big Sisters, and the Boys and Girls Club of Alaska.



Kelly M. Helmbrecht

## Perkins Coie receives top rankings from Chambers

Perkins Coie is pleased to announce that four attorneys in its Anchorage office and two Alaska practices were recognized in the 2012 edition of Chambers USA: America's Leading Lawyers for Business. Nationwide, the annual directory once again ranked Perkins Coie as a top law firm in the United States with 106 attorneys ranked as leaders in their field and the firm recognized in 37 practice areas.

Perkins Coie was recognized by Chambers as a leader in its Environment, Natural Resources & Regulated Industries and Labor & Employment practice areas in Alaska. In addition, four attorneys from the firm's Anchorage office were ranked as top lawyers in their respective practices. The rankings are the result of extensive surveys of in-house counsel and leading law firm partners.

The Perkins Coie attorneys that were selected as leaders in their field in Alaska are:

Eric Fjelstad and Brad Keithley for Environment, Natural Resources & Regulated Industries;

Thomas Daniel for Labor & Employment;

Michael Kreger for Construction Litigation

"We owe our success to our great clients, who continue to bring us into some of the complex legal matters in Alaska," said Eric Fjelstad, Anchorage Office Managing Partner. "As the firm continues to grow, we are finding more opportunities to help our clients achieve their business objectives."

Perkins Coie was also recognized with top practice area rankings in other key markets across the country, including: Arizona, California, Colorado, District of Columbia, Idaho, Illinois, Oregon, Washington and Wisconsin. In addition to its regional rankings, Perkins Coie ranked #1 nationally for its Political Law, Retail and Transportation: Aviation Litigation practices. The firm was also ranked nationally in the areas of Environment, Investment Funds: Venture Capital, Leisure & Hospitality, Privacy & Data Security and Products Liability & Mass Torts.

Founded in 1912 in Seattle, Perkins Coie has more than 850 lawyers in 19 offices across the United States and Asia. The firm is celebrating its 100th anniversary of representing great companies ranging in size from start-ups to FORTUNE 100 corporations.

## Stoel Rives receives praise from Chambers

Stoel Rives LLP, a U.S. business law firm, is pleased to announce that once again James E. Torgerson and Joseph J. Perkins, Jr. of the firm's Anchorage office have been selected as leading U.S. lawyers by independent legal research team Chambers and Partners. Both are ranked in the Band 1 level. The Anchorage office also received recognition as being among the best in Alaska in the area of general commercial litigation.

Torgerson, managing partner of the Anchorage office, is a trial attorney whose clients describe him as "a tremendous person and a tremendous lawyer." researchers found is widely viewed as a go-to practitioner for mineral industry transactions and dirt mining work.

Nationally the firm was rated among the best U.S. law firms in the categories of *Projects: Renewables & Alternative Energy* and *Food & Beverages: Alcohol*.

Stoel Rives is a business law firm providing corporate and litigation services to a wide range of clients throughout the United States. The firm has nearly 400 attorneys operating out of 11 offices in seven states. Stoel Rives is a leader in corporate, energy, environmental, intellectual property, labor and employment, land use and construction, litigation, natural resources, project development and real estate law. The firm has offices in Alaska, California, Idaho, Minnesota, Oregon, Utah and Washington.

—Law firm press releases

## CONVENTION CANDIDS



Judge Greg Miller, Judge Elaine Andrews, Roger DuBrock and Fred Valdez admire Andrews' phone at the convention.



Scott Broadwell, Don McClintock and Hanna Sebold at the convention opening reception.



# 25 years of Bar Membership



Brad Ambarian



Bruce Babbitt



Douglas Barker



Daniel Brewster



Timothy Burgess



Clifford Cantor



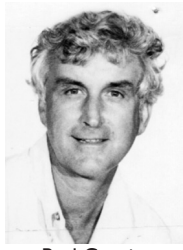
Teresa Chenhall



Morgan Christen



Loretta Cieutat



Paul Cronin



F. Richard Curtner



George Davenport



Daniel Duame



A. Richard Dykstra



Gregory Edmiston



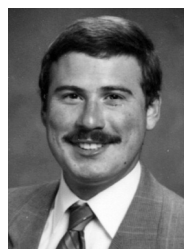
Paul Ewers



Bruce Falconer



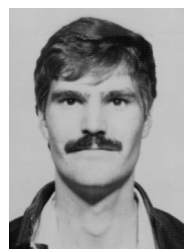
Daniel Fay



John Fitzgerald



Kevin Fitzgerald



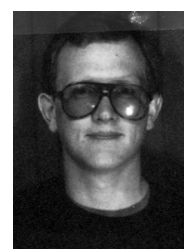
Morris Fortmann



Barbara Franklin



Jamilia George



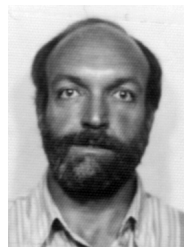
Bradley Gilman



Donna Goldsmith



Steven Green



Richard Hacker



Mark Handley



Bonnie Harris



Robert Herz



Michael Holman



Cheryl Jones



Kathy Keck



Kenneth Kirk



Jean Kizer



S.J. Lee



Joseph Levesque



Kurt Lichtenberg



Leslie Longenbaugh



Amy McFarlane



Nancy Meade



Mary-Ellen Meddleton



Gregory Miller



Philip Moberly



Marjorie Mock



Lisa Murkowski



Kathleen Murphy



Susan Murto



Scott Nordstrand



Susan Parkes



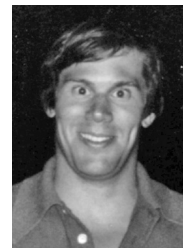
Sean Parnell



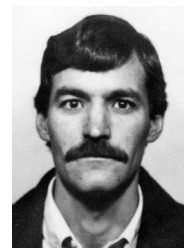
Deborah Parsons



Bonnie Paskvan



David Pease



Jack Poulson



Robert Preston



Deborah Randall



Crandon Randell



Gregg Renkes



R. Bruce Roberts



Constance Sathre



Jane Sauer



David Shoup



Francis Slater



# 25 years of Bar Membership



Regina Sleater



Aleen Smith



Terri Spigelmyer



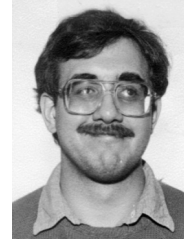
John Steiner



Gillian Stephenson



Ted Stepovich



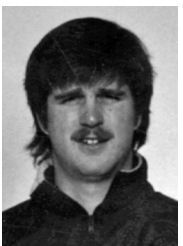
Scott Sterling



Dana Stoker



Robin Taylor



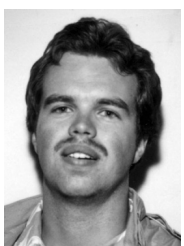
Darryl Thompson



Helen Valkavich



Robert Van Hook



Terry Venneberg



Sharon Young

NOT PICTURED  
Lori Beth  
Julia Coster  
Nancy Wainwright  
Bruce Weyhrauch



11 attorneys received their 25-year pins during the convention in 2012. Back L-R: John Steiner, Joe Levesque, Jamilia George, Rich Curtner, Tim Burgess, Ted Stepovich, Darryl Thompson. Front L-R: Greg Miller, Leslie Longenbaugh, Paul Ewers, Daniel Brewster and Don McClintock, who presented the pins.



Frank Nosek poses with Don McClintock after 50 years in law.

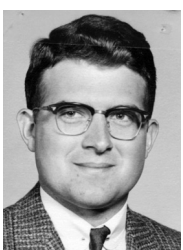


Dan Moore gets Don McClintock's congrats after practicing for 50 years in the Bar.



Shirley Kohls celebrates 50 years of practice with Chief Justice Walter Carpeneti

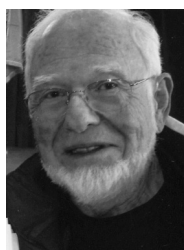
# 50-60 years of Bar Membership



Murphy Clark



Michael Holmes



Stanley Howitt



Shirley Kohls



Daniel Moore



Francis Nosek



Burton Biss

# Alcohol in Alaska: Evil unto itself or evil by way of law?

*Continued from page 1*

alcohol offenses fall into, has always been a source of debate.

When it comes to alcohol, prohibition and bootlegging or illegal manufacture of alcohol, it started out historically, and existed in Alaska as a *malum in se* law – that alcohol was evil unto itself. The Russians brought alcohol to Alaska for fur trading. The common idea was that Natives were given alcohol and once drunk, were basically ripped off.



Alaska, as a territory, followed the lower 48 States into the prohibition era, recognizing all of the evils of alcohol. When prohibition ended, the territory was left with a myriad of laws for each community. In 1959 when Alaska became a State, the Alcohol and Beverage Control Board (ABC) was formed and adopted the mish-mash of laws that were perpetuated by the Territory. Many of the laws were contradictory and unenforceable. In 1979, changes were made to allow communities to prohibit sale, consumption of alcohol and in 1986 it was decided that possession could be banned as well. Many of the dry village laws date back to the late 70s, reflective still of this time when the laws were contradictory and some of the village laws do contradict each other. For instance, a few villages that shall remain nameless, do not allow possession or sale of alcohol but consumption of alcohol is legal. That is, if the alcohol magically appears and you drink it, it's legal. That is the basic history of alcohol in Alaska (a good outline can be found, for those interested, at [www.dps.alaska.gov/abc/history.aspx](http://www.dps.alaska.gov/abc/history.aspx)).

I think we would be hard pressed to argue that alcohol isn't at least a little bit "evil". Those of us that have lived and worked not only in rural areas of Alaska, but in other poverty stricken areas of the world that are subject to rapid socio-economic change have seen the effects of alcohol – drunken, displaced Australian Aborigines, dancing on street corners for money; the tribes of New Zealand, the tribes of Africa, the poverty stricken Irish and the coal miners in the north of England, where child abuse and spouse abuse is rampant but hidden; all at the hands of alcohol. For Alaska, there are those of us who have had families decimated by alcohol, watched young men sentenced to lives in prison, seen close friends and family members commit suicide, all under the influence of alcohol and we can barely argue that there is any good to it. Why then, would a city or village vote to sell their own alcohol? Their argument is: *So they can control it. Bootlegging and manufacturing can never be stopped so "we might as well sell it ourselves and control and limit the amount and distribution."*

After studying prohibition, and being the so-called "bootlegging attorney" for the State for two years,

(before thankfully being removed from my duties involuntarily, ie, fired) I don't think prohibition in any form works and I don't think bootlegging in any form can be stopped. My head still hurts a little from banging it against the wall.

Huge amounts of alcohol still make it into Barrow, which has had a distribution center for over a decade. Much of it is smuggled in on pallets that come from commercial air carriers and their employees who want to supplement their income, and it never makes its way to the distribution center. As the former prosecutor and resident in Barrow, I know this first hand. Instead it goes to someone's home on the back of a truck, where it is parceled out to various community members who then sell it to people who want to drink more than their monthly allotted amount.

In Kotzebue, like Barrow, those who don't need to drink their monthly allotment have no problem finding friends in the outlying dry villages who are more than happy to pay for the surplusage. Sometimes it's even traded among friends for caribou or furs or "paid back" when the next shipment arrives. It can be snowmachined or taken by boat without law enforcement being the wiser. If there is no more booze left, it can be made with canned fruit or juice, yeast and sugar. There's even a law banning the possession of large quantities of yeast and sugar – if you possess it in the Bush, there is a presumption that you are brewing your own "Purple Passion." Just like the Speak Easy from Prohibition, when a neighbor puts a decorative flag on their front door, it means "the booze is in."

When the alcohol trade really heats up in a village, it's not unusual for fellow bootleggers to turn in other bootleggers cutting in on their trade. It's also not unusual for the village council members to "turn up the heat" on the local law enforcement to "start cracking down on bootleggers" because it's cutting into their revenue. Not much has changed really in the bootlegging industry from a historical perspective. It is widely believed, although probably never confirmed, that Joseph Kennedy, Sr. made at least part of the Kennedy fortune as a bootlegger. Although you can't compare the competitive nature between bootleggers in Barrow, Bethel and Kotzebue to that of the Purple Gang in Detroit and Al Capone in Chicago, it is all about the same exact issue: Power, control and money.

The villages themselves vote themselves wet or dry and one might reasonably ask, "why don't the people just vote themselves wet?". As previously stated, many villages have simply kept the ordinances from the 1970s in place. The will of the people with regard to alcohol's status might not be the same anymore but it takes courage to change especially when we have all been indoctrinated that

alcohol is "evil in and of itself"

Advocating for wet status is not a popular position in a village because for so many years, the villagers have seen for themselves the damage that alcohol seemingly does. The root cause isn't alcohol in my opinion, as all of us have been led to believe, but social "anomie" which is a "breakdown of social bonds between an individual and their community ties, ... fragmentation of social identity and rejection of self-regulatory values". Durkheim, 1897. Anomie comes about when sudden social change is thrust upon a minority group. The members of the group become disassociated with each other and what follows is a transient and ever moving and changing society in which people want what the dominant culture has but lack the means to attain it. Cultural norms are no longer enforced and depression, high crime rates, apathy, and especially suicide and substance abuse follow. It is what is seen in all groups of people that are being swallowed by a very different society.

For many Natives, the cash economy and subsistence economy are only a generation apart. Whereas, Natives in the lower 48 started dealing with the white man over 600 years ago, for Alaskan Natives, that change for some, has been less than 50 years. The depression and drug abuse that go hand in hand are part and parcel of this socio-economic change. Alcohol is seen as the problem but the problem is the social disenfranchisement that leads to drug and alcohol abuse and all the other social ills in the villages. It was overlooked by the territorial legislators and it is overlooked now even by many Native leaders and organizations. Tougher bootlegging laws were seen by the Rural Justice Commission as one of the answers. Instead, it backfired as villages voted to opt out. It was nothing but a bigger band aid. Band aids can't cure the cancer of social anomie.

What we are left with as it relates to alcohol, is the shift that has taken place in Barrow, Kotzebue and Kiana, all with Native majority, opting to start their own alcohol businesses –

distribution centers, stores and bars under the guise that they can control consumption and use the money they make in the process to build the infrastructure of their villages. Their belief, just as mistaken as that of our forefathers is that 1) they can control it and 2) by controlling it they can stop the suicide, crime, and cultural destruction. I believe that all they are doing is controlling the profit. Alcohol is no longer *malum in se* (evil in and of itself), it has now become evil only if you make it yourself or or you buy it somewhere else. It is only an evil if the village council can't tax it and make a million dollars a year off of the addiction of its residents.

Suddenly it might dawn on you as it did me: This isn't about protecting us from each other, protecting our children from abusers and keeping our families together and protecting us from the evil known as alcohol. This is about making money. Suddenly your village government is no different than the State government you abhorred. Worst of all, the village government can use the State resources (Troopers and prosecutors) to enforce the law: Not to keep YOU safe or protect you and your children from the evil known as alcohol, but to protect their profit. The millions of dollars that are being made by the villages with the idea that new buildings will be built and new services will be offered to the citizens, better include a state of the art drug and alcohol rehabilitation center because the social disenfranchisement that is causing the drug and alcohol abuse is not going away anytime soon as long as we continue to focus on the effect instead of the cause.

*Robin has practiced law for over 20 years in Michigan and Alaska and recently was the assistant attorney general in the alcohol interdiction unit. She is now back in private practice, doing criminal defense work in her new office in Wasilla. She has taught criminal justice and theory classes at UAA and Mat Su college and as an associate, assisted Edgar Paul Boyko in his last 3 trials.*

## Attorney Discipline

In the Supreme Court of the State of Alaska

Petition for Reinstatement of	)	
Keenan R. Powell,	)	
	)	Supreme Court No. S-14650
Petitioner.	)	
	)	<b>Order</b>
	)	
	)	Date of Order: 3/23/12

ARA Membership No. 8306057

ARA File No. 2012R001

Before: Carpeneti, Chief Justice, Fabe, Winfree, and Stowers, Justices  
On consideration of the Petition for Reinstatement filed on 3/1/12, and the nonopposition filed on 3/12/12,

**It is Ordered:** Keenan R. Powell is **REINSTATED** to the practice of law, effective immediately.

Entered by direction of the court.

Clerk of the Appellate Courts

/s/ Marilyn Mayy

cc: Supreme Court Justices

### Fairbanks Lawyer Placed On Interim Suspension

The Alaska Supreme Court on April 27, 2012 placed Fairbanks lawyer Theresa Lynn Williams on interim suspension. The order followed Williams's conviction for resisting or interfering with arrest and for submitting a false report or false information to a police officer. Submitting a false report or false information is a crime involving dishonesty under Alaska Bar Rule 26(b), triggering interim suspension. The Court referred the matter to the Alaska Bar Association for disciplinary proceedings, which will result in a final disciplinary order.

### SUBMITTING A PHOTO FOR THE ALASKA BAR RAG?

- Ensure it is in high resolution (aka, "fine," "superfine," "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)

## 2012 may be unique

By Steven T. O'Hara

The last issue of this column was entitled *2.1 Million Reasons to Gift in 2012*. The article highlighted wealthy clients who had undertaken the funding of an Irrevocable Life Insurance Trust, also known as an ILIT. The article discussed that the present year, 2012, may be the only year where certain individuals may fund an ILIT or otherwise make taxable gifts with as much as \$5,120,000 without incurring federal gift tax.

Below is an illustration of a written reminder to a hypothetical client with sufficient wealth to undertake the gifting discussed. Although this article also uses an ILIT for purposes of illustration, life insurance is not a requirement. The tax benefits of gifting can be achieved without life insurance.

Life insurance serves as a great tool for purposes of this article, as well as in the practical lives of our clients. Besides creating precious liquidity, life insurance can serve as a nudge for clients to make annual gifts and thus achieve the goal of reducing taxes.

This article illustrates the inter-relationship among the benefits of the annual exclusion, the unified credit, and the annual gift tax return.

The following letter is for illustration purposes only and must not be used without being tailored to the applicable law and circumstances of the client. For example, not all ILITs qualify for the federal gift tax annual exclusion. O'Hara, *Understanding the Gift Tax Exclusion, The Alaska Bar Rag* (Sept. Oct. 1989). For a copy of this article, please call Karen Burgess at Bankston Gronning O'Hara, P.C. (907 276 1711).

Dear Client:

This recommendation is designed to save you, possibly, an estimated \$1,500,000 out of your pocket, based on the facts listed below. The bottom line is that even if you have to borrow to do it, we recommend you consider gifting at least \$3,185,000 to the Irrevocable Life Insurance Trust ("ILIT") as soon as possible this year.

This recommendation is based on the following facts:

1. The ILIT pays annual premiums of about \$400,000, including on the additional insurance the ILIT recently purchased.

2. So over the next 10 years that is \$4,000,000. Over the next 20 years that is \$8,000,000. Over the next 30 years that is \$12,000,000.

3. By contrast, we understand the ILIT has about \$3,200,000 in cash reserves, including the accumulated cash value under the life insurance policies.

4. The present year, 2012, may be the only year where you may fund the ILIT with an additional amount of as much as \$3,185,000 without incurring federal gift tax. This estimate is based on the following facts and figures:

(a) \$5,120,000 is the amount of cumulative taxable gifts that the gift tax unified credit shelters from gift tax in 2012 only. This amount is scheduled to shrink automatically to \$1,000,000 on January 1, 2013.

(b) \$65,000 is the amount that you may gift to the ILIT each year, using the shelter of the federal gift tax annual exclusion, assuming you make no other gifts to your descendants



**"Besides creating precious liquidity, life insurance can serve as a nudge for clients to make annual gifts and thus achieve the goal of reducing taxes."**

during the year. You may gift each of them \$13,000 per year under the annual exclusion.

(c) \$2,000,000 is the amount of cumulative taxable gifts that you have reported to the IRS through 2011. As you know, over the past 20 years you have gifted sufficient amounts such that the ILIT now has cash reserves of about \$3,200,000. You have been careful to file an annual gift tax return - with adequate disclosure - not only to keep track of the cumulative amount of taxable gifts but also to preclude the IRS from raising any valuation or other issue in later years. Treas. Reg. Sec. 25.2504-2(b) and 301.6501(c) 1(f)(2).

(d) \$0 is the amount of other taxable gifts you have ever made.

(e) \$3,185,000 is \$5,120,000 (unified credit equivalent amount) plus \$65,000 (annual exclusion of \$13,000 times 5 descendants) minus \$2,000,000 (prior taxable gifts).

The theory is that if you could borrow or do whatever you need to do to fund the ILIT as soon as possible this year with as much as \$3,185,000, you may feel like you do not have to consider making any extra gifts to the trust in the future. We would still recommend you gift at least \$65,000 to the trust each year to minimize estate tax in the event of your death. Whereas taxable gifts are included in the estate-tax computation, as we have discussed, annual exclusion gifts are not.

Suppose you make no gifts to the ILIT in 2012. Suppose in future years

you make \$3,000,000 in taxable gifts to the ILIT. Here you will need to budget at least \$1,500,000 to pay the IRS on those gifts (figure a 50% tax for simplicity). Note in this connection that the top federal gift tax rate has been reduced from 55% to 35% for 2012. This top rate is scheduled to return automatically to 55% on January 1, 2013.

Please keep in mind that Congress could repeal the \$5,120,000 gift tax unified credit equivalent at any time, even retroactively. That is why we say "as soon as possible this year" with the hope that your gifts might be grandfathered if made as soon as possible.

Also keep in mind that Congress could extend the \$5,120,000 unified credit equivalent beyond 2012.

Nobody knows what Congress will do. Anything is possible. Therefore, if you wish to consider gifting in light of 2012 tax law, we recommend we meet well in advance of any gifting. We would be pleased to assist you in customizing a plan that fits your particular facts and circumstances, including your tolerance for risk. When we meet, we can confirm our understanding that you do not wish to gift LLC interests or other possible income-producing assets to the ILIT. We understand you wish to continue to keep things as simple as possible.

In sum, 2012 could be unique. Whereas you ordinarily do not save money for yourself when you gift large sums to or for your descendants, this year could be different. Your gifting \$3,185,000 to the ILIT this year could save you \$1,500,000 out of your pocket, as discussed above.

As always, my very best.  
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# It's been an emotionally trying year of uncertainty and confusion for U.S. citizens married to undocumented immigrants

By Heather L. Poole, Esq.

It is a scary time to be an undocumented immigrant in the U.S. In the last four years under a Democratic U.S. Presidency, the U.S. has had more deportations occur under one Administration than in any other time in history – more than 1 million to date.<sup>1</sup> Despite the U.S. Immigration & Customs Enforcement's published June 2011 memo directing the use of "prosecutorial discretion" in low priority cases, only 1% of the cases of the over 300,000 under review in Immigration Courts nationwide have been granted this special relief that temporarily stays deportation.<sup>2</sup> Even those who want to fight for relief from removal in proceedings must wait years for their day in court. An average case in immigration removal court for Alaska-based immigrants remains pending for nearly 500 days before it can be resolved due to the backlog in available judges to handle all the cases, creating longer detention periods for some and applications for relief for others seem a distant dream.<sup>3</sup> States have also jumped into the traditional federal domain of immigration law in the past year, with 42 states and Puerto Rico having enacted 306 new restrictive immigration laws or immigration resolutions.<sup>4</sup> But instead of promoting comprehensive immigration reform, even Democrats in the legislative branch have been leery to broach the subject in an election year. Yet, largely underreported is how the lack of meaningful immigration reform and state measures are taking a significant toll on the lives of U.S. citizens and their children, the families who live every day in fear that their loved one may not come home from picking up their child from school or even walking to the park because their spouse is undocumented.

Yet, in a surprising turn of events, a sign of hope for real immigration reform that benefits this particular audience — U.S. citizens who are married to undocumented immigrants — emerged earlier this year from the most unlikely of sources, the U.S. Department of Homeland Security (DHS).

For years, U.S. citizen spouses have lived with anger and frustration towards how the Federal immigration laws treat marriages to undocumented immigrants ("illegal immigrants"). Contrary to the popular misconception that if one is married to a U.S. citizen, the immigrant can easily obtain permanent residency, the process is not automatic and is far

from easy. Spouses of U.S. citizens who cannot prove legal entry into the U.S. must leave the U.S. to process their marriage-based immigrant visa at a consulate abroad to gain U.S. permanent resi-

dency based on the marriage.<sup>5</sup> The act of traveling abroad may create a new set of problems for the immigrant including long-term separation from their U.S. citizen spouse. If an immigrant spouse has been in the U.S. illegally for 180 days but under 1 year and departs the U.S. to interview for their green card at the U.S. consulate in their home country, the act of departing the U.S. - the ultimate catch 22 - triggers a three year bar to re-entering the U.S.<sup>6</sup> If the immigrant has been in the U.S. illegally for one year or more and then departs the U.S. to interview for their green card abroad, the bar to re-entering the U.S. is 10 years.<sup>7</sup> The only way around either of these "unlawful presence bars" is to apply for a discretionary "waiver" at the CIS office attached to the consulate abroad. This requires that the immigrant demonstrate that their U.S. citizen or lawful permanent resident spouse or parent would suffer "extreme hardship" if the immigrant is not allowed to return to the United States within that 3 or 10 year period and that the immigrant deserves the waiver (is a person of good moral character) through an act of discretion.<sup>8</sup> The immigrant must wait outside of the United States while the case is pending. Current wait times for the waiver to be decided fluctuate from 3 months to 14 months of some consulates. This can be an exceptionally long time for a U.S. citizen spouse to be separated from their immigrant spouse, especially if the U.S. citizen spouse relies on their spouse's financial contributions to the household or needs their spouse for the care of their younger children and cannot

afford daycare and has no other family to help. Despite the potentially long waiting period and additional, realistic concerns for the immigrant spouse's safety by returning to a violent or turbulent nation that s/he fled from as a child, U.S. citizens have been sending their spouses abroad soon after the law became effective in April 1, 1997 and unlawful presence (illegal days in the US) began to count for purposes of these bars.<sup>9</sup> Couples, to this day, take their chances and hope for a safe and successful adjudication abroad of their waiver so the immigrant spouse can return home.

DHS' new provisional waiver proposal introduced in January 2012 would, if enacted, take away the most frustrating and scary part of the international waiver process - the long separation period awaiting a decision abroad. The new provision would allow the U.S. citizen spouse to file for the unlawful presence waiver while their immigrant spouse remains in the United States prior to the immigrant visa interview at the consulate abroad.<sup>10</sup> Once the waiver is approved, the immigrant would then travel with a provisional approval notice to the U.S. consulate abroad for their immigrant visa interview. If all else goes well, the couple would only be separated for a matter of days or a few short weeks as opposed to months (as is standard practice now) for the processing of their green card abroad.

This new proposal does have its drawbacks. A significant omission is that this provision is only limited only to unlawful presence waivers and only to immigrants who are married to U.S. citizens, are being sponsored by U.S.

citizen parent and are under the age of 21, or are a parent of a U.S. citizen adult child (considered "immediate relatives" under immigration law). Further, an immigrant is only allowed to use a U.S. citizen spouse or parent as the qualifying relative to demonstrate hardship towards in applying for the provisional waiver as opposed to a standard unlawful presence waiver filed outside of the U.S. (which allows for the broader qualifying relative category of permanent resident spouse or parent as well). For example, an immigrant who is married to a U.S. citizen who cannot make a strong hardship showing towards their U.S. citizen spouse but wishes to utilize their permanent resident parent for the hardship arguments, cannot qualify for this special in-country processing (the hardship must be to a U.S. citizen spouse or parent) and must file the waiver abroad. The relief is also not available to immigrant spouses of U.S. citizens if additional grounds of inadmissibility must be waived (such as prior misrepresentation or use of false documents to enter the U.S.)<sup>11</sup> The in-country waiver can only be used to waive unlawful presence. The immigrant spouse cannot use the provisional waiver process and must file the waiver abroad and wait outside the U.S. for at least as long as the CIS office abroad takes to favorably decide the case (and perhaps, much longer, if the case is denied). Lastly, the new proposal is not an amnesty provision. It does not grant work authorization

or lawful status to the immigrant awaiting U.S. Citizenship & Immigration Service's (USCIS) decision on the waiver. The immigrant may still be picked up by ICE at any time. It's a procedural policy shift, not a change in the law. The proposal is also not available to immigrant spouses of U.S. citizens if they are currently in removal proceedings. Heartbreaking to many is USCIS's refusal to allow immigrant spouses of U.S. citizens to apply for the provisional waiver process if the immigrant already has an appointment at a foreign consulate abroad for the immigrant visa interview and has not yet filed their waiver and may not have even left the U.S. yet for their interview.

Despite its limitations, this provision still just looks too good to be true. The dilemma weighing heavily on the mind and emotions of a U.S. citizen spouse contemplating filing an immigrant visa for their spouse now to start the process so their spouse may be first in line to file the waiver if the provisional process does become available (now expected by the end of 2012) is: "Should I expose her to immigration now if this isn't guaranteed?" This was a repetitive concern expressed in the January 6, 2012 USCIS hosted teleconference with the public discussing the proposed provision.<sup>12</sup> CIS diverted answering questions from U.S. citizens, immigration attorneys, and advocates on the call asking CIS, "Is this really going to happen?" All DHS representatives on the call could say was that the proposed policy was introduced in direct response to President Obama's Executive Order 13563 calling for

"agencies to consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned."<sup>13</sup> This begs the question, what happens if a Republican assumes the Presidency in November? Will any positive policies in place be reversed?

Yet another DHS proposed procedural shift affecting U.S. citizens applying for inadmissibility waivers for their spouses soon followed the provisional waiver proposal announcement, again raising hopes. This latest proposal, which is now in the comment period prior to finalization as a regulation in the Federal Register, calls for pulling all foreign waiver adjudications from consulates abroad and consolidating all waiver filings into one central location ("lock-box") inside the U.S.<sup>14</sup> This new proposal is expected to cut down on some of the long waiting periods at certain consulates abroad while also creating a more uniform adjudication of waiver cases. Since the waivers have been required, the system has seemed inherently flawed and unfair to many immigrants as the decisions seemed so inconsistent, largely depending on where they were born, a factor immigrants obviously cannot control. Immigrant visa waivers connected to pending foreign marriage-based immigrant visa cases are currently

**The act of traveling abroad may create a new set of problems for the immigrant including long-term separation from their U.S. citizen spouse.**

**If all else goes well, the couple would only be separated for a matter of days or a few short weeks as opposed to months (as is standard practice now) for the processing of their green card abroad.**



## General aviation accidents to major airline disasters

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Continued on page 25

## CONVENTION CANDIDS



Mary Patrick, CLE Director, cutting a rug.



Jon Katcher with dancer at the award banquet dance.



Barbara Hood and Andy Harrington at the dance following the banquet.



John McKay is in the spotlight, snapping his fingers to the beat at the convention dance.

# It's been an emotionally trying year of uncertainty and confusion for U.S. citizens married to undocumented immigrants

*Continued from page 24*

filed with the foreign USCIS office that is closest to the immigrant's home consulate. But the approval rate in Ciudad Juarez, Mexico ("CDJ") — which has seen the most waivers of any country in the world — is far higher than in Lima, Peru or Vienna, Austria or Manila, Philippines.<sup>15</sup> Certain offices like CDJ have officers who regularly decide only these cases whereas other USCIS offices worldwide range in size (some being very small) and do not see these cases very often or suffer from fluctuating staff or have different, unknown internal standards for adjudicating hardship. These factors have led to inconsistent adjudications. Besides the hope of more consistent decisions, with the new policy in place, USCIS expects the average turn-around time for waiver adjudications to average six months, a far cry from the backlog in Ciudad Juarez that can exceed a year, when this new proposal becomes effective.

It's understandable why so many U.S. citizens are hesitantly hopeful but mostly left with more questions than answers. First, many U.S. citizens are confusing the two proposals. The U.S. lockbox centralization of waivers does not grant the immigrant the option to stay in the U.S. while the waiver is pending. The waiver has to be filed as it is now, after the immigrant spouse travels abroad for their Immigrant Visa interview and only after the U.S. consulate officer determines that the spouse has triggered an unlawful presence bar and tells the spouse s/he may apply for a waiver. Their U.S. citizen spouse files the waiver at that point in the U.S. The immigrant must still stay outside of the U.S. until the waiver is approved in the U.S. and the consulate notifies the immigrant to continue processing of their immigrant visa and provides instructions necessary

to follow before lawful re-entry into the U.S. Second, any new immigration proposal brings with it a high season for "notario" fraud and the unlawful practice of law. USCIS has already published an alert on its website warning immigrants and their families not to send in a waiver filing to USCIS now as the provisional waiver proposal has not turned into an actual procedural policy. But this hasn't stopped unlicensed immigration consultants from taking advantage of people's hopes and taking their money. As USCIS explains, a notario scam already exists:

Be aware that some unauthorized practitioners of immigration law may wrongly claim they can currently file a provisional waiver application (Form I-601) for you. These same individuals may ask you to pay them to file such forms although the process is not yet in place. Please avoid such scams. USCIS wants you to learn the facts about protecting yourself and your family against scammers by visiting [uscis.gov/avoidscams](http://uscis.gov/avoidscams).<sup>16</sup>

Immigration attorneys continue to struggle to undo the damage done by notarios (unlicensed consultants, unsupervised document preparers & paralegals, and notaries) who do not know the law, routinely set up shop in ethnic communities taking cash from immigrants and their families, and expose undocumented immigrants to immigration when they fail to qualify for any benefit. With all the confusion, scams, and the fluctuating political climate affecting true immigration reform, U.S. citizen spouses of an undocumented immigrant will continue to ride the rollercoaster of emotional ups and downs trying to follow the law and figure out the process. Knowing how and when to take the right course of action is getting more and

more difficult to discern.

\* \* \*

### Footnotes

<sup>1</sup> "ICE Prosecutorial Discretion Initiative: Latest Figures", Transactional Records Access Clearinghouse, available at <http://trac.syr.edu/immigration/reports/278/> (A special Immigration and Customs Enforcement (ICE) program (for Prosecutorial Discretion) has resulted in the closure of 2,609 cases with a backlog reduction less than one percent of the 298,173 cases pending before the Immigration Courts as of the end September 2011).

<sup>2</sup> Morton, J., "Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens", Field Office Director Memorandum, Policy Number: 10075.1, FEA Number: 306.112.0026, U.S. Immigration & Customs Enforcement, (June 17, 2011); See also "Holding DHS Accountable on Prosecutorial Discretion", American Immigration Council, AILA Infonet Doc No. 11110947 (Posted 11/10/11). See also "Immigration", Transactional Records Access Clearinghouse, available at <http://trac.syr.edu/immigration/> (During FY 2011 ICE initiated removal proceedings against 188,770 individuals who were charged only with violating immigration rules (83.4% of cases) and were not deportable for criminal violations or other high factors ICE claimed as its priority).

<sup>3</sup> Transactional Records Access Clearinghouse, Immigration Court Backlog Statistics, available at [http://trac.syr.edu/phptools/immigration/court\\_backlog/](http://trac.syr.edu/phptools/immigration/court_backlog/) (current as of May 7, 2012) (revealing average backlog for pending cases in Oregon immigration court which handles all Alaska-based removal cases).

<sup>4</sup> "2011 Immigration-Related Laws and Resolutions in the States (Jan. 1–Dec. 7, 2011)" National Conference of State Legislatures, GO 23960 (Posted December 2011), available at <http://www.ncsl.org/issues-research/immig/state-immigration-legislation-report-dec-2011.aspx>

<sup>5</sup> INA section 204(a), 8 U.S.C. 1154(a); 8 CFR 204.1 and 8 CFR 204.2.

<sup>6</sup> 212(a)(9)(B)(i)(I), 8 U.S.C. 1182(a)(9)(B)(i)(I)

<sup>7</sup> 212(a)(9)(B)(i)(II), 8 U.S.C. 1182(a)(9)(B)(i)(II); See also *Matter of Rodarte-Roman*, 23 I. & N. Dec. 905 (BIA 2006) (Act of departure triggers the bars)

<sup>8</sup> FNS. INA section 212(a)(9)(B)(v), 8 U.S.C. 1182(a)(9)(B)(v).

<sup>9</sup> "Consolidation of Guidance Concerning

Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act", Interoffice Memorandum, HQDOMO 70/21.1 (AFM Update AD 08-03), U.S. Citizenship & Immigration Services (May 6, 2009) at p. 13.

<sup>10</sup> "Notice of Proposed Rulemaking: Provisional Unlawful Presence Waivers of Inadmissibility for Certain Immediate Relatives", U.S. Citizenship & Immigration Services (USCIS), CIS No. 2519-2011, DHS Docket No. USCIS-2012-0003, RIN 1615-AB99 (March 12, 2012), available at <http://www.regulations.gov>; See also "Notice of Intent", 77 Fed. Reg. 5, 10-40-1043 (01/06/2012) (to be codified at 8 C.F.R. pt. 212), AILA InfoNet Doc. No. 12010660 (posted Jan. 9, 2012).

<sup>11</sup> See 212(a) of the INA, 8 U.S.C. 1182(a) for grounds of inadmissibility.

<sup>12</sup> Transcript of USCIS Teleconference: USCIS To Propose Changing The Process For Certain Waivers Based

On Unlawful Presence" U.S. Citizenship & Immigration Services (January 6, 2012 1pm EST), available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=3b9f2fdadce4310VgnVCM10000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>.

<sup>13</sup> Id. See also "Notice of Proposed Rulemaking" at p.44.

<sup>14</sup> "Form I-601 Centralized Lockbox Filing" Stakeholders Teleconference, Office of Public Engagement, U.S. Citizenship & Immigration Services (March 9, 2012, 3 p.m. EST).

<sup>15</sup> "I-601 Waivers of Inadmissibility: Does the Current Process Work? When is Hardship Extreme? Do Alternative Models Exist?" CIS Ombudsman Roundtable, U.S. Citizenship & Immigration Services (updated December 26, 2011), available on <http://www.dhs.gov/files/publications/cisomb-roundtable3.shtm> (citing reported approval rates of 54% in the Bangkok District, 50% in the Rome District, and 84% in the Mexico District, the three districts encompassing the smaller international CIS offices deciding the waivers).

<sup>16</sup> "I-601 Provisional Waiver Is Not in Effect" USCIS Alert, [www.uscis.gov](http://www.uscis.gov) (updated 5/3/2012)

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# What must prosecutors do after convictions?

The Board of Governors invites member comments regarding the following proposed amendments to Alaska Rule of Professional Conduct 3.8 and Alaska Bar Rule 26. Additions have underscores while deletions have strikethroughs.

**Alaska Rule of Professional Conduct 3.8.** The proposal is intended to clarify a prosecutor's responsibilities regarding convicted defendants. Readers will note that this proposal has gone through a number of revisions. The Alaska Rules of Professional Conduct submitted its latest proposal to the Board at its April 30—May 1, 2012 meeting and the Board voted to republish. The Committee's memo and the latest draft follow.

## MEMORANDUM

With this report, the Alaska Rules of Professional Responsibility Committee (the "Committee") transmits to the Board of Governors (the "BOG") the Committee's proposed amendments to ARPC 3.8 for consideration.

At its October, 2011 meeting the BOG most recently considered a proposed amendment to ARPC 3.8 (Special Responsibilities of a Prosecutor) the Committee recommended that would have added two subsections, ARPC 3.8(g) and (h). These subsections set out the obligations of a prosecutor upon learning of information indicating a person had been wrongfully convicted. Following significant discussion, the BOG referred the matter back to the Committee for further consideration and appointed two prosecutors to the Committee to assist in that effort.

The Committee met three times since September and made substantial changes to its proposed amendment to ARPC 3.8. The Committee recommends that its now further refined proposed amendment be transmitted to the Alaska Supreme Court with a recommendation that it be adopted.

The Committee's proposed amendment adds a new subsection (g) to current ARPC 3.8. It differs in a number of ways from the American Bar Association Model Rules 3.8(g) and (h) adopted by the ABA House of Delegates in 2008. Anticipating that the explanation will be of interest to the BOG and the Court, this memorandum explains the Committee's reasons for the differences.

### 1. The ABA Model Rule 3.8(g) and (h).

The United States Supreme Court in *Imbler v. Pachman*, 424 U.S. 409, 427 n.25 (1976), stated that prosecutors are "bound by the ethics of their office to inform the appropriate authority of after-acquired or other information that casts doubt upon the correctness of the conviction." In view of this statement and noting recent experience with the fallibility of the criminal justice process, the ABA House of Delegates adopted an amendment to Rule 3.8, Model Rules of Professional Conduct (Special Responsibilities of a Prosecutor) that added subsections (g) and (h). The new subsections to Model Rule 3.8 set out the obligations of prosecutors who come to know of new and credible evidence of innocence after a person has been convicted and sentenced. See ABA Report to the House of Delegates, No. 105B (Feb. 2008) ("The obligation to avoid and rectify convictions of innocent people, to which the proposed provisions give expression, is the most fundamental professional obligation of criminal prosecutors. The inclusion of these provisions in the Rules of Professional Conduct . . . will express the vital importance that the profession places on this obligation."). Specifically, ABA Model Rule 3.8(g) requires that a prosecutor who learns of "new, credible, and material evidence" creating a "reasonable likelihood" that a convicted person is innocent must disclose the evidence to the appropriate court or authority. If the conviction occurred in the "prosecutor's jurisdiction," the prosecutor must disclose the evidence to the defendant and initiate an investigation to determine whether the conviction was wrongful. When the conviction had been obtained in the "prosecutor's jurisdiction," Model Rule 3.8(h) imposes the additional duty on the prosecutor to seek to "remedy the conviction."

### 2. The Committee recommendation.

The Committee reassessed its previous recommendation to the BOG that would have added two new paragraphs to ARPC 3.8 similar to the ABA Model Rule approach. The Committee now recommends adding only one paragraph, ARPC 3.8(g). The Committee's proposal requires prosecutors to make appropriate disclosures, and defines operative terms that the ABA had left undefined. The Committee believes its current recommendation accomplishes the goals of reinforcing the prosecutor's unique responsibility as a minister of justice and recognizes the practicalities of the criminal justice system, particularly those specific to Alaska. A discussion of the specific differences between the ABA Model Rules 3.8(g) and (h) and the Committee's proposed ARPC 3.8(g) follows.

### 3. Comparison of the ABA Model Rule 3.8(g) and (h) and the Committee's proposal for ARPC 3.8(g).

#### A. Quantum and nature of evidence necessary to trigger the prosecutor's duty.

ABA Model Rule 3.8(g) requires a prosecutor know of "new, credible, and material evidence that a convicted defendant did not commit an offense for which the defendant was convicted" to trigger the prosecutor's obligation of disclosure and investigation. ABA Model Rule 3.8(h) requires a prosecutor know of "clear and convincing evidence" of a defendant's innocence to trigger the prosecutor's obligation to "remedy the conviction."

Proposed ARPC 3.8(g) requires a prosecutor know of "new and credible evidence creating a reasonable likelihood that a defendant did not commit an offense of which the defendant was convicted" to trigger the prosecutor's disclosure requirements.

The term "material" contained in ABA Model Rule 3.8(g) is not used in the Committee's proposed language. The term is thought to be unnecessary as any credible evidence creating a reasonable likelihood of innocence is necessarily material.

ABA Model Rule 3.8(g) does not define the terms "new" and "credible" in either the rule or in the commentary. The Committee concluded those terms should be defined to provide greater guidance. See, proposed ARPC 3.8(g)(1)

("new") and proposed ARPC 3.8(g)(2) ("credible"). The Committee includes those definitions in the text of the rule consistent with the Committee's practice of including substantive provisions in the text of the rules rather than in the commentary.

#### B. Duty to disclose.

ABA Model Rule 3.8(g)(1) requires a prosecutor disclose exonerating information to the "appropriate court or authority" regardless of the jurisdiction in which the defendant was convicted. ABA Model 3.8(g)(2) requires a prosecutor additionally disclose the exonerating information to the defendant, but only when the conviction occurs in the "prosecutor's jurisdiction," a term the ABA Model Rules leave undefined.

The Committee's proposed ARPC 3.8(g) requires a prosecutor disclose the information to the appropriate court (defined in ARPC 3.8(g)(3)) and to the defendant's attorney (defined in Paragraph 3.8(g)(4)) without a distinction based on the jurisdiction in which the defendant was convicted.

The Committee perceives that the distinction between the "prosecutor's jurisdiction" and other places is unnecessary. Given Alaska's statewide prosecution authority and the nationwide reach of federal prosecutorial authority, the distinction adds little to the overall goal of remedying wrongful convictions. Moreover, defendants are often incarcerated or reside in states or regions distant from the original trial court or prosecutor's office, so the additional notification of the defendant when the original conviction occurred in the "prosecutor's jurisdiction" may not be effective notice.

The Committee's proposed ARPC 3.8(g) requires that, regardless of where the defendant was convicted, a prosecutor who knows (as defined in ARPC 9.1(h)) of exonerating evidence disclose it promptly to the court that entered the conviction (and any appellate court in which an appeal is pending) and to the defendant's attorney. The defendant's attorney is defined to include the law firm, agency or organization that represented the defendant. The Committee's proposed ARPC 3.8(g) does not require direct disclosure to the defendant. The substantial majority of defendants in Alaska are represented by public agencies (Alaska Public Defender Agency, Office of Public Advocacy, or Federal Public Defender) and notice to the court and current or former defense counsel should elicit an appropriate response to the prosecutor's disclosure. Unlike many states, Alaska has well established indigent defense organizations that should recognize the importance of the prosecutor's disclosure and act on it. Moreover, notice to the appropriate court will ensure at least two responsible individuals or institutions are notified. In removing the requirement that the prosecutor disclose directly to the defendant the Committee also recognized that information on the location of a defendant is likely as available to counsel and the court as it is to the prosecutor, particularly given the amount of information easily accessible electronically. Prosecutor members of the Committee also expressed concern that direct communication with a defendant might be viewed as a violation of ARPC 4.2.

#### C. Duty to investigate.

ABA Model Rule 3.8(g) requires a prosecutor who knows of exonerating evidence relating to a conviction obtained in the "prosecutor's jurisdiction" to undertake, or cause to be undertaken, further investigation of the matter. The Committee's proposed ARPC 3.8(g) contains no such requirement.

The Committee eliminated the prosecutor's obligation to investigate for three reasons. First, both the Department of Law and the U.S. Attorney's Office do not have investigative staff or authority to direct state or federal investigative agencies to conduct any particular investigation. Thus, they lack the resources to investigate or cause an investigation to be commenced.

Second, Alaska has statewide professional agencies that provide criminal defense services. Since, as discussed above, the Public Defender Agency, the Office of Public Advocacy, or the Federal Public Defender serve as defense counsel in most cases, the incentive and resources to conduct an appropriate investigation should be available through those agencies. The Committee consulted one of the principal drafters of the ABA Model Rule and learned the Model Rule's duty to investigate imposed on the prosecutor rests on the assumption that no professional defense service agency is available to a convicted defendant, a situation that exists in many jurisdictions in the Lower 48 but not Alaska.

Third, investigations can most effectively be conducted by persons or agencies free from the appearance of any institutional reason to support a questioned conviction.

#### D. Duty to "remedy the conviction."

Under ABA Model Rule 3.8(h) a prosecutor who knows of clear and convincing evidence establishing that a person convicted in the "prosecutor's jurisdiction" did not commit the offense must "seek to remedy the conviction." What steps a prosecutor must take to remedy the conviction are not specified in the rule. Comment 9 to ABA Model Rule 3.8 suggests appropriate steps may include "disclosure of the evidence to the defendant, requesting the court appoint counsel for an unrepresented indigent defendant and, where appropriate, notifying the court that the prosecutor has knowledge that the defendant did not commit the offense of which the defendant was convicted." The Committee concludes the duty to remedy the conviction is unnecessary. Having a prosecutor notify the court and defense counsel of exonerating evidence should in itself lead to appropriate action to remedy a conviction. Moreover, the absence of a requirement that the prosecutor "remedy the conviction" does not prevent or discourage the prosecutor from taking whatever action the prosecutor believes is appropriate.

*Memorandum from the Alaska Rules of Professional Conduct Committee, April 12, 2012.*

## Board of Governors action items April 30 & May 1, 2012

- Voted to publish ARPC 3.8 as revised by the ARPC Committee.
- Voted to adopt the ethics opinion, "Deposit of Advanced Fee Retainers in Client Trust Account."
- Voted to send to the Supreme Court the amendments to Bar Rule 4, Section 5 clarifying that NCBE policy would govern the review of MBE & MPRE tests and scores.
- Voted to adopt an amendment to Bylaw VII, Section 1(a)(11) listing the committee's name as the Committee on Fair & Impartial Courts.
- The motion to publish an amendment to Bar Rule 2 allowing graduates of on-line, non-accredited law schools to qualify for the Alaska bar exam failed.
- The Board was updated on the search for new office space.
- Reviewed a demo of the Law Related Education Committee's online Youth & the Law Guide and heard an update on the September visit of Justice O'Conner regarding her iCivics program.
- Voted to publish an amendment to Bar Rule 26 regarding a respondent attorney's response to a motion for interim suspension.
- The Board was given a status report on the legislative audit.
- Voted to allow electronic fund transfers for the purposes of paying the Premera Blue Cross bill and the rent for the amount of those items.
- Voted to approve 15 applicants for admission via reciprocity.
- Rejected a stipulation for discipline and advised that Assistant Bar Counsel and the respondent should put on a full evidentiary record regarding mitigators and other factors.
- Heard a proposal to add a Bar Rule 44.2 to allow for Alaska Registered Paralegals; Bar Counsel recommended that the paralegals have a subcommittee to work with staff to put the proposal in a publishable format; and it was suggested that the Board find out if the Supreme Court is interested in the Alaska Bar pursuing such a rule.
- Voted to appoint the following to the ALSC Board of Directors: 2nd District regular & alternate: Margaret Thomas & Conner Thomas; 3rd District regular & alternate: Marc June & Tina Grovier; Board of Governors representative regular & alternate: Gabrielle LeDoux and Carolyn Heyman-Layne.
- Voted to appoint Lynn Allingham as the ABA Delegate.
- Reviewed the member survey results on the value of Casemaker to members; want to review a renewal proposal in September.
- Voted to adopt the recommendation of the Lawyers' Fund for Client Protection Committee to reimburse \$985 to the client.
- Reviewed the results of the February bar exam and voted to certify the results to the Supreme Court pending the completion of all the paperwork.
- Voted to inform the membership via e-mail and the Bar Rag about the SOLACE program.
- Voted to allocate up to \$1,000 to the Historians Committee for supplies to preserve historical items in the Bar archives.
- Approve the minutes of the January and April 9, 2012 board meetings.
- Voted to endorse both resolutions for the annual business meeting: to support naming the federal court facilities in Juneau after Judge Boochever; and to support the ABA resolution on FASD education and training.
- Voted to recommend the slate of officers: president-elect Peter Maassen; vice president Mike Moberly; secretary Gene Gustafson; treasurer Bill Granger. Hanna Sebold becomes President following the convention.

## What must prosecutors do after convictions?

Continued from page 26

### Rule 3.8 Special Responsibilities of a Prosecutor.

...  
 (g) When a prosecutor knows of new and credible evidence creating a reasonable likelihood that a defendant did not commit an offense of which the defendant was convicted, the prosecutor shall promptly disclose that evidence to the appropriate court and the defendant's attorney, if known, unless a court authorizes delay or unless the prosecutor reasonably believes that the evidence has been or will otherwise be promptly communicated to the court and the defendant's attorney. For purposes of this rule: (1) the term "new" means unknown to a trial prosecutor at the time the conviction was entered or, if known to a trial prosecutor, was not disclosed to the defense, either deliberately or inadvertently; (2) the term "credible" means evidence a reasonable person would find believable; (3) the phrase "appropriate court" means the court which entered the conviction against the defendant and, in addition, if appellate proceedings related to the defendant's conviction are pending, the appellate court which is conducting those proceedings; and (4) the phrase "defendant's attorney" means the attorney, law firm, agency, or organization that represented the defendant in the matter which resulted in the conviction.

#### COMMENT

[1] A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice, and that guilt is decided upon the basis of sufficient evidence, and that special precautions are taken to prevent and to rectify the conviction of innocent persons. Precisely how far the prosecutor is required to go in this direction The extent of mandated remedial action is a matter of debate and varies in different jurisdictions. Many jurisdictions have adopted the ABA Standards of Criminal Justice Relating to the Prosecution Function, which in turn are the product of prolonged and careful deliberation by lawyers experienced in both criminal prosecution and defense. Applicable law may require other measures by the prosecutor and knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of Rule 8.4.

[2] The exceptions in paragraphs (d) and (g) recognizes that a prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest.

[3] Paragraph (e) is intended to limit the issuance of lawyer subpoenas in grand jury and other criminal proceedings to those situations in which there is a genuine need to intrude into the client-lawyer relationship.

[4] Paragraph (f) supplements Rule 3.6, which prohibits extrajudicial statements that have a substantial likelihood of prejudicing an adjudicatory proceeding. In the context of a criminal prosecution, a prosecutor's extrajudicial statement can create the additional problem of increasing public condemnation of the accused. Although the announcement of an indictment, for example, will necessarily have severe consequences for the accused, a prosecutor can, and should, avoid comments which have no legitimate law enforcement purpose and have a substantial likelihood of increasing public opprobrium of the accused. Nothing in this COMMENT is intended to restrict the statements which a prosecutor may make which comply with Rule 3.6(b) or 3.6(c).

[5] Like other lawyers, prosecutors are subject to Rules 5.1 and 5.3, which relate to responsibilities regarding lawyers and nonlawyers who work for or are associated with the lawyer's office. Paragraph (f) reminds the prosecutor of the importance of these obligations in connection with the unique dangers of improper extrajudicial statements in a criminal case. In addition, paragraph (f) requires a prosecutor to exercise reasonable

care to prevent persons assisting or associated with the prosecutor from making improper extrajudicial statements, even when such persons are not under the direct supervision of the prosecutor. Ordinarily, the reasonable care standard will be satisfied if the prosecutor issues the appropriate cautions to law-enforcement personnel and other relevant individuals. [Reporter's Note: Paragraphs 6 and 7 are Committee additions which do not appear in the Current Comment.]

[6] Under paragraph (g), the reasons for the evidence being unknown (and therefore "new") are varied. It may be "new" because: the information was not available to a trial prosecutor or the prosecution team at the time of trial; the police department investigating the case or other agency involved in the prosecution did not provide the evidence to a trial prosecutor; or recent testing was performed which was not available at the time of trial. There may be other circumstances when information would be deemed "new" evidence.

[7] A prosecutor does not violate paragraph (g) of this rule if the prosecutor makes a good faith judgment that the new evidence is not of such a nature as to trigger the obligations of paragraph (g), even though the prosecutor's judgment is later determined to have been erroneous.

**Alaska Bar Rule 26.** This proposal addresses a procedural omission in Bar Rule 26 regarding motions for interim suspension. At present, the rule is silent regarding the ability of a respondent to object to the motion. This proposal allows a respondent to file an objection within seven days after service. The Bar would then have seven days after service of the objection to file an opposition. The Court would then consider the objection and any opposition and take whatever action it deemed warranted.

#### Rule 26. Criminal Conviction; Interim Suspension.

(a) Interim Suspension for Criminal Conviction. Upon the filing with the Court of a certificate that an attorney has been convicted of a serious crime as defined in Section (b) of this Rule, the Court will enter an order of interim suspension immediately suspending the attorney. The order of interim suspension will be entered whether the conviction resulted from a plea of guilty or nolo contendere, or from a verdict after trial, or otherwise, and regardless of the pendency of an appeal. The Court will notify the Bar and the attorney of the order placing the attorney on interim suspension. The order of interim suspension shall be effective immediately upon filing and entry and will continue in effect pending final disposition of the disciplinary proceeding initiated by reason of the conviction. The attorney may file an objection to the order within seven days after service of the order on the attorney. The Bar may file an opposition to the objection within seven days after service of the attorney's objection. The Court will consider the objection and any opposition and may take such action as it deems warranted.

...  
 (e) Interim Suspension for Threat of Irreparable Harm. Interim suspension will be imposed by the Court on a showing by Bar Counsel of conduct by an attorney that constitutes a substantial threat of irreparable harm to his or her clients or prospective clients or where there is a showing that the attorney's conduct is causing great harm to the public by a continuing course of misconduct. The attorney may file an objection to the order of interim suspension within seven days after service of the order on the attorney. The Bar may file an opposition to the objection within seven days after service of the attorney's objection. The Court will consider the objection and any opposition and may take such action as it deems warranted.

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 Please send comments to: Executive Director, Alaska Bar Association, PO Box 100279, Anchorage, AK 99510 or e-mail to [info@alaskabar.org](mailto:info@alaskabar.org) by August 24, 2012.

## 2012 Pro Bono Awards

*Alaska's legal services providers - Alaska Legal Services Corporation, Alaska Network on Domestic Violence and Sexual Assault, and the Alaska Immigration Justice Project - select attorneys each year who have donated extraordinary time, resources and talents to pro bono efforts in Alaska.*



Christine Pate, retired Judge Rene Gonzalez, Erick Cordero, and Anne Gonzalez.

### Retired Judge Rene Gonzalez

Most pro bono volunteers come to their work in response to a desperate plea from one of the providers but not Rene Gonzalez. After retiring from the bench in 2003 he took the initiative to contact the agencies to volunteer after years of seeing so many unrepresented—many with little to no English speaking skills—litigants trying to navigate the court system. In the last nine years Judge Gonzalez has represented 14 clients in cases involving domestic violence, divorce, custody, and protection orders primarily for Hispanic clients. In addition he helped create the Pro Bono Spanish Committee that launched the Spanish speaking legal hotline through Alaska Legal Services Corporation to help Alaskans understand how to access the legal system.

Judge Gonzalez has not been alone in his efforts: his wife Anne acts as his office manager and legal assistant that assists with each case. The Gonzalez's have truly made this a labor of love for Alaskans in need.

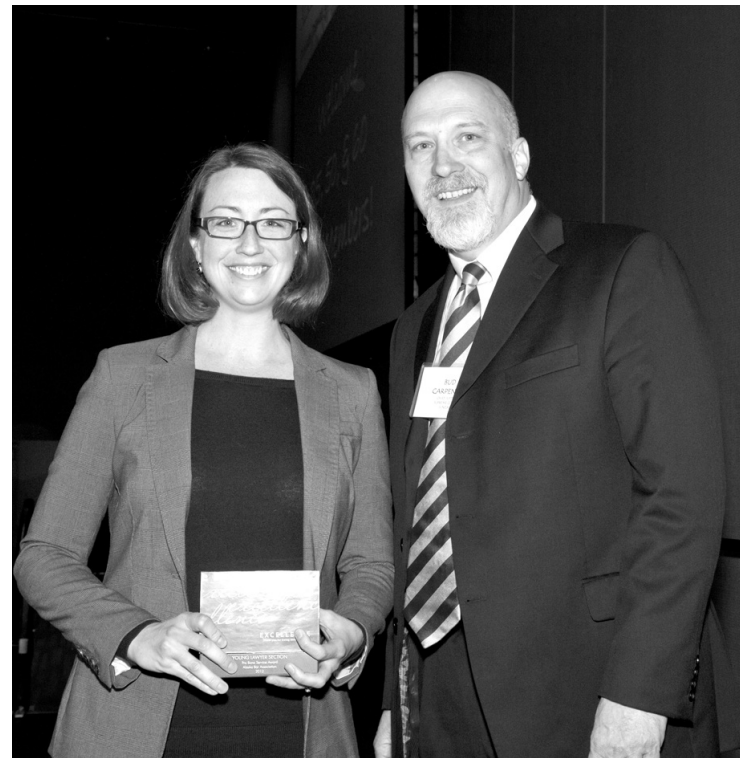


Government Attorney award recipient Andy Harrington. Featured are Christine Pate, Erick Cordero, Andy Harrington and Nikole Nelson.

### Andy Harrington—Government

Good things come in threes. For instance, Andy Harrington is the third person to receive an award in this category. And he's a triple threat when it comes to doing good work: former Executive Director of Alaska Legal Services Corporation, co-chair of the Robert Hickerson Partners in Justice Campaign, and current pro bono volunteer. In fact, when Andy started his new job at the AG's office, he also began work on two pro bono cases AND joined the newly formed in-house pro bono committee for the AG work force. His commitment to serving Alaskans is deeply rooted and he shares his talents in many ways; from mentoring new pro bono volunteers, reviewing training materials, providing service at the MLK Day events, and infusing every one of those efforts with humor, intelligence and sometimes even song.

**Desks for sale:** the Alaska Bar Association has four 6' x 3' office desks for sale, with matching credenzas. Also for sale are miscellaneous chairs. Good condition. Very reasonable prices or make an offer! Contact the Bar office at 272-7469, info@alaskabar.org or come to 550 W. 7th Avenue, Ste. 1900.



Young Lawyer Section president Lindsay Van Gorkum and Chief Justice Walter J. Carpeneti.

### Anchorage Bar Association's Young Lawyer Section

This award is more than 10 years in the making. During this time the Young Lawyers' Section has performed countless hours of pro bono service on behalf of Alaskans. Their presence and action is seen everywhere it counts: projects for Alaska Legal Service Corporation's community legal education clinics, Attorney for the Day devoted to family law issues, the former Tuesday night Bar clinic, and elder law clinics at the Senior Center. They routinely run announcements for pro bono cases within their membership that are often placed. They have been involved with the Bar's statewide MLK Day project for the last three years assisting with community outreach, intake triage, and client assistance navigating the event. Their contribution this year alone included 20 volunteers, totaling 77 hours of volunteer service equaling \$5,500 worth of donated services. They are well known for their generosity in serving meals at Bean's Café, raising money for Anchorage Youth Court, and most recently beautifying the new office space for the Alaska Network on Domestic Violence.



Featured in the photo is Chris Slottee, Sarah Marsey, Pat Gilmore of Atkinson Conway & Gagnon with Christine Pate of the Alaska Network on Domestic Violence and Sexual Assault.

### Atkinson Conway & Gagnon—Law Firm

2005 was a big year for the firm of Atkinson Conway & Gagnon: their 30 year anniversary and a leap out of their comfort zone to take on an area of law completely new to them. Responding to the great need for victims of domestic violence and sexual assault to have representation at long term protection hearings, they agreed to start a novel project to take on these cases in exchange for mentoring and training by the Alaska Network on Domestic Violence and Sexual Assault. Under the leadership of firm partners Pat Gilmore and Chris Slottee, the firm has represented 26 clients who have obtained long term protective orders and thus, long term safety for their families. The project has served as a reliable source of pro bono work important to the firm, especially as they train new associates and it is not unusual for the dedicated attorneys to drop everything and come at a moment's notice to help a victim with an upcoming hearing. We are very grateful for their service.