The Alaska
BAR RAG

VOLUME 37, NO. 2
April - June, 2013

Dignitas, semper dignitas

No Sunset 'Til 2021

— See page 10

Legislative Wrap-Up

By Gregory Fisher

The Alaska Legislature has adjourned until January 14, 2014. Several measures of interest to the Bench and Bar were considered this session.

Representative Hawker and Senator Coghill sponsored successful legislation that extended the effective term for the Alaska Bar Association's Board of Governors to June 30, 2021. The Act also requires Board Members to complete mandatory and voluntary CLE courses as prescribed by rule. On behalf of the Alaska Bar Association's Board of Directors, Executive Director Deborah O'Regan expressed her thanks and gratitude for the bipartisan effort to strengthen the legal profession in Alaska.

Bills were introduced in the House (HB 200) and Senate (SB 76) that would prohibit the Judicial Council from making any recommendation related to a judge or justice seeking retention, and that would require that any information that was released be "impartial and objective." Sponsor statements did not explain the purpose for the proposed legislation.

However, independent reports ascribe each to legislative concern that the Judicial Council supported a Judge in Anchorage who had been targeted by the Alaska Family Council because of his decisions in controversial cases (primarily reproductive rights or abortion cases). Current law permits the Judicial Council to provide recommendations regarding retention or rejection.

See related commentary below

Both bills were referred to committee where they await the next session. Proponents argue that the Judicial Council should not be perceived as taking political sides during an election campaign and should not use public funds to campaign for any judge's retention. Opponents argue that the Judicial Council has always enjoyed the right to inform the public and that the Judicial Council has useful information to share with citizens. Moreover, judges have little means to protect themselves from last-minute political attacks that may distort their records.

Finally, Representatives Kawasaki and Josephson introduced HB 43, establishing a law school at the University of Alaska Anchorage. It remains in committee, and appears unlikely to advance further. Proponents note that law schools generate revenues with little overhead, and that we will need some place to pasture retired Alaska Bar Rag editors once they have exhausted their usefulness. Opponents observe that there are too many law schools and lawyers as it is, and that the money could be better spent on a new hockey coach.

John Rader: Legal and legislative pioneer on the Last Frontier

By Cliff Groh

It was 1949 or 1950. A law student at the University of Kansas was thinking about where he would make his way upon graduation. The young man thought of Alaska, and decided to make written inquiry about the prospects for lawyers in America's farthest north territory. His letter went to the Attorney General of the Territory of Alaska—an elected position—and in due course the law student got a letter back. The reply of Attorney General J. Gerald Williams told the young man that there were no prospects for lawyers in Alaska.


John Rader

The law student looked at the letter and thought to himself "That's where I need to go."

Less than 10 years later, that law student took the job of Attorney General from J. Gerald Williams as Alaska transitioned from territorial status to statehood.

That young man was John Rader, a native of Howard, Kansas. Now 86, Rader has enjoyed an impressive career on the Last Frontier. This column will cover a few of the highlights:

As a Special Assistant to Governor Bill Egan, as an important member of the first Alaska State Legislature,

Continued on page 6

Judicial Council remains valuable

By Larry Cohn

The framers of our constitution established the Alaska Judicial Council as an impartial, apolitical, geographically diverse citizens' commission and gave it the responsibility to conduct studies and make recommendations to improve the system of justice in Alaska.

The proposed legislation's requirement that the Council publish objective information would simply require the Council to do what it has always done. To evaluate the performance of a judge, the Council applies apolitical criteria including the judge's legal ability, fairness, diligence, and temperament. Based on its objective evaluation, the Council recommends whether voters should retain a judge.

For more than 35 years, the Council's recommendations have helped voters to make informed decisions. Absent Council recommendations, it would be very difficult for voters to consider all of the information used by the Council to evaluate judges. Voters would be less able to distinguish between good and bad judges. A Council recommendation is based on a comprehensive evaluation that is not limited to survey results. Among other things, the Council conducts interviews, solicits public comments, and listens to court proceedings. Recent experience has shown that survey results can mask significant problems and inappropriate behavior unknown to survey respondents.

The Council's retention recommendations improve the quality of justice in Alaska by increasing the public's ability to hold judges accountable. The Council's ability to make retention recommendations provides incentive to judges to improve their conduct or risk a non-retention recommendation. Alaska's retention election history demonstrates that voters value Council recommendations.

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PRESIDENT'S COLUMN

Working behind the scenes

By Mike Moberly

From my time on the Board it has become apparent to me that much of the functioning of the Bar goes on behind the scenes, unbeknownst to most members. While this is generally appropriate, given that the organization is run by a more-than-capable crew, it also allows the contributions of many who aid and advance the Bar to go unnoticed. So, I'd like to start off by spotlighting the efforts of some who have helped the Bar immensely, but might otherwise escape recognition.

The Alaska Integrated Bar Act created the Alaska Bar Association, and empowered it to function much as it does today. However, being a creature of statute, the Bar has periodically faced "sunset," needing legislative approval to extend its existence.

In recent years this has occurred more frequently than usual. The Bar again faced sunset this year, but won't again for eight years thanks to Rep. Hawker who sponsored HB63, and Sen. Coghill who carried the bill on the Senate floor. Both deserve great thanks, as does Bob Evans, who steered things through the corridors in Juneau. Governor Parnell signed the bill into law on June 3, 2013. Thanks is due to these gentlemen, as well as others behind the scenes who saw this through to a successful end (and thanks to those, including Bob Evans again, who have tackled this issue in the past). The Bar can now focus on its business of managing the profession in Alaska.

These dedicated volunteers have instilled confidence in those who run the State that we can "keep our own house." Thank you!

Speaking of the business of the Bar, it has been said that the Sections of the Bar Association form the "lifeblood" of the organization - they provide the most direct benefits to those members who participate. The "backbone" of the association has to be the committees – Admissions, Discipline, Ethics, Fee Arbitration, to name a few. One need only briefly review the Bar's annual report to see that, aside from the provision of continuing legal education and the adminstrative functioning of the Bar, the bulk of services to the members and Alaska citizens take the form of admissions, discipline and fee arbitration. The generous contributions of time, hard work and dedication by the members of those committees in the handling of admission, discipline and fee arbitration matters make successes like the Bar's "sunset" victory possible. These dedicated volunteers have instilled confidence in those who run the State that we can "keep our own house." Thank you!

"I'd like to start off by spotlighting the efforts of some who have helped the Bar immensely, but might otherwise escape recognition."

As I looked forward to the coming year, I could think of nothing better than to emphasize the successes of my predecessors, and to further promote programs begun by them. There is enthusiasm and energy behind the mentoring program, creating opportunities for pairing - and hopefully rewarding and long-lasting professional relationships - between new lawyers and more experienced practitioners. The Bar continues to collaborate with UAA and Seattle University to bring legal studies to Alaska. The number of benefits to members continues to grow – check the Bar website for the latest. We always have a strong showing, and attendant benefit to the public, at the Martin Luther King Day and Elizabeth Peratrovich Legal Clinics. The Alaska SOLACE (Support of Lawyers/Legal Personnel – All Concern Encouraged) continues to grow, providing aid to those in the legal community who experience a death or some catastrophic illness or injury.

Lastly, Hanna Sebold worked on promoting being "Fit to Practice Law" (e.g., being "fit" by doing something that makes you happy or promotes a more "healthy" you, which in turn can make you a better lawyer and a better person; a "healthier" you, means the benefits may trickle in to your work, leading to a healthier legal community). I feel this bears repeating. We all live and practice in Alaska for our own (hopefully good) reasons. Think about what your reason(s) is/are, and reflect on whether you are being true to yourself. If you've drifted from that mark over time, as many of us have, I encourage you to retake some ground, or work towards new reasons that now make sense. Good luck!

EDITOR'S COLUMN

Roads

By Gregory S. Fisher

The Road to Nome remains under study. Opponents argue the project would take years and years to construct, at a cost of nearly $2.5 billion for its 500 mile length (or over $5 million a mile). They argue it will adversely impact subsistence rights as urban or railbelt hunters compete for game. Its environmental impact is unknown. Proponents observe that the project would create thousands of jobs to construct and maintain the road. Greater access would lower costs for food, fuel, and other basic supplies for remote villages. Non-urgent health care needs would be served. Telecommunications would improve. The road would also promote tourism and natural resource development. There's something for everyone to love or hate.

Roads are a pure expression of optimism. People lacking hope don't build roads. Construction is difficult. It takes vision, resources, time, planning, and patience. Each road conveys its own message. We are going there. We have a goal in mind. There is always a reason, but more than a whim. Roads are so difficult to build that it takes an imperative to commit to the project.

But after commitment, roads evolve into a perpetual economic engine. Roads mean jobs. In the modern era, you need engineers, graders, laborers, electricians, operators, surveyors, yes, even lawyers—an incredible array of jobs and skill-sets—just to drive in the first stake. Roads required a legion even in ancient times. And, of course, you need people to maintain the roads. Collateral industries sprout. Gas stations attract motels, then food markets, then, slowly, a community surfaces. It is not unlike E.T. Barnette welcoming his first customer Felix Pedro on the banks of the Chena. Anchorage owes its existence to the Alaska Railroad's construction.

Once in place, roads are like an economic canary in the mine. They tell us something about their builders and society. Little is more depressing than a road in disrepair. There is something apocalyptic about rutted, pot-hole ridden highways. On the other hand, we marvel at the precision by which Roman soldiers carved out roads through the wilderness in Gaul. They used the angle of the sun on long-staffs as a means for staking boundaries. Roads were typically built alongside rivers. It was the path of least resistance, and also a route by which supplies could be ferried to the construction site. Important roads were paved by stone, what we call cobblestones now. Many of these roads were improved upon in the intervening millennia and some are still in use. How incredible is that?

Eventually, in time, a few roads achieve a special place as symbols of a more compelling epic. Saul receives his world-shifting vision on the Road to Damascus. Peter stops an oddly familiar stranger outside Rome on the Via Ardeantini to ask, "Quo Vadis?" Without the Silk Road there is no Marco Polo. The Appian Way began life to support military expeditions, but later facilitated the free and ready flow of ideas and commerce, thereby midwifing the Renaissance. Every nation, every culture, has its roads.

"Each road conveys its own message. We are going there. We have a goal in mind. There is always a reason, but more than a whim.

In America the mobile, roads are uniquely ingrained in our national character. They are a stage upon which we at act out our national myths. We are a restlessly searching people. "Get your kicks on Route 66." We're heading out, preferably with the top down and friendly company for the drive. For my money, the all-time best road trip takes you from Willcox, Arizona to Elfrida looking for sand hill cranes, then back home by way of rural farm routes through Tombstone, St. David, and Benson. But you have your own. Sure you do.

If pursued, the road the Nome would undoubtedly be an ambitious undertaking. In context, however, it is dwarfed by other projects. The Alaska Railroad took 11 years to build from design to spike. The Alaska Highway, or Alaska-Canadian Highway, is 1,387 miles long. Construction started in 1942. By 1948 the road was open to the public. Initially it was little more than a field expedient dirt path. Now, 65 years later, its entire length is paved. The 800 mile Trans-Alaska Pipeline was built in three years from 1974-1977. It remains a marvel of design, engineering, and good old-fashioned, creative problem-solving.

The Alaska BAR RAG

The Alaska Bar Rag is published quarterly by the Alaska Bar Association, 840 K St., Suite 100, Anchorage, Alaska 99501 (272-7469).

Publication Dates	Editorial Deadlines
January-March	Feb. 10
April - June	May 10
July - September	Aug. 10
October - December	Nov. 10

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)

Carpeneti retires from Court

Three former magistrates who now serve as superior court judges present Justice Carpeneti with a hand-made quilt on behalf of the Association of Alaska Magistrates. L-R: Judge Anna Moran, Kenai; Judge Steve Cole, Kodiak; Justice Carpeneti; Judge Bethany Harbison, Fairbanks.

Justice Carpeneti celebrates with members of the "Bud Team" at the close of his retirement ceremony, held May 15 at the Juneau Arts and Culture Center during the 2013 Alaska Bar Convention and Judicial Conference. L-R, standing: Alex Bryner, Christine Johnson, Justice Warren Matthews (Ret), Julie Willoughby, Tracey Buie, Marilyn May, Justice Daniel Winfree, Judge Elaine Andrews (Ret), Judge Michael Jeffery, Judge Morgan Christen, Chief Justice Dana Fabe, Hanna Sebold, Marianna Carpeneti, Bianca Carpeneti, Susan Cox, Judge Larry Weeks (Ret), Judge Thomas Nave, Judge Louis Menendez, Judge Philip Pallenberg, Annie Carpeneti, Neil Nesheim, Lia Carpeneti, James Seidman, Judge William Carey, Donna Goldsmith, Justice Peter Maassen, Justice Robert Eastaugh (Ret), Janell Hafner. L-R, kneeling: Chris Christensen, Blair Christensen, Judge Patricia Collins (Ret), Cathy Bohna, Justice Joel Bolger. Front: Justice Walter "Bud" Carpeneti (Ret).

Justice Carpeneti with his family, L-R: Marianna Carpeneti, Annie Carpeneti, Justice Carpeneti (Ret), Bianca Carpeneti, Lia Carpeneti, and James Seidman. Not pictured: Chris Carpeneti.

Alaska's past and present Supreme Court justices doned special red baseball caps for "Team Carpeneti" at his retirement (joined by team members in the audience).

EVIDENCE CRANIUM

John McKay is unconvinced by Carmen Miranda's ruling.

Fairbanks attorney Nelson Traverso is happy with his team's score.

Shirley Kohls . . . or is it?

Retired Judge Patricia Collins moonlighting as fairy princess with Mark Regan at Evidence Cranium.

Letter to the Editor

The Appointed Attorney General

In the October-December 2012 issue of the *Bar Rag*, my esteemed colleague General Talis Colberg, now doing good work as the Director of the Mat-Su College, University of Alaska, stated part of the case for electing Alaska's attorney general. In doing so he partially misstated my position on the issue.

In my book "Let's Do It Right," containing a critical review of the Constitution of Alaska, I recommended the creation of an independent office of Inspector General not only to investigate incidents of public corruption but to house other offices of government whose existence could not have been foreseen by the convention, that are conflicted with the general executive power. These include the Public Defender, the Office of Public Advocacy, but above all the Division of Elections and the Public Offices Commission who guard the integrity of the democratic process.

The executive power was vested in the governor by the original convention after careful review, including consideration of some of the leading lawyers of the time, rejecting any division of that power with an independently elected attorney general.

— John Havelock

Confrontation and integration

By Drew Peterson,

Like most mediators I know (this is one of our well kept secrets) I am terrified of conflict. Or at least I used to be. Learning to embrace conflict is one of the most important and difficult aspects of becoming a mediator. A successful mediation brings the conflict front and center, allowing the disputants to work through their differences while still doing so in a safe and respectful manner.

One of the definitions of mediation asserts that mediation is a structured method of collaborative negotiations with the assistance of a neutral third party. Definitions are important in mediation, and also difficult, because mediation essentially requires a change to a new and different mindset. Our current language is often based on the old mindset and thus inadequate for the job.

I once did a workshop on collaborative negotiations on an army base, and a master sergeant in attendance noted that he hated the word 'collaborative.' After all, you 'collaborate' with the enemy. Similarly, many of the words that we use to describe this collaborative negotiation process have other connotations that are different from what we are trying to convey.

It is because of this difficulty with language, I believe, that so many different words and phrases have been used to describe the collaborative negotiation process. Some that have been used include "win-win negotiations", "collaborative problem solving", "integrative bargaining", "principled negotiations", "breakthrough negotiations", and "transformative bargaining". And there are many more.

Another short but thought provoking definition I have heard for this collaborative negotiation process was attributed to a corporate trainer named Wayne Longfellow. Longfellow's definition for the process is "confrontation and integration." I have found Longfellow's definition to be useful and have come to often think of mediation and collaborative negotiations in those terms since being introduced to the concept. For indeed, that is what the successful mediation process does. The mediator helps disputing parties confront each other with each other's point of view. And not only with the stated positions of the parties; the mediator helps the parties go behind their positions to confront the wants, needs and interests underlying the positions they take in the negotiation process. Once parties have confronted each other with their respective points of view, the mediator then helps them to integrate their different perspectives – to seek the so called "win-win" solution – or at least a solution that can best meet the needs of both parties.

Definitions are important in mediation, and also difficult, because mediation essentially requires a change to a new and different mindset.

Of course there is confrontation and there is confrontation. Mediators are trained for the most part to frame the confrontational part of the negotiation into a safe and respectful conversation where parties can express their needs freely and openly. No "barracuda mediators" are allowed, or at least they are discouraged. In truth there are some barracuda mediators out there and they can sometimes do an effective job.

Indeed, the confrontation and integration model of problem solving goes a long way for me in explaining the "barracuda lawyer" style of practice among some members of the bar. While I remain convinced that such a barracuda lawyer style is not the most effective way of representing clients, it does have the advantage of confronting the issues of the parties directly (and often brutally). This is better than an avoidance style, which might never bring out the underlying motives and issues of the parties. There is empirical evidence that such a "scorched earth" policy of litigation is not in the best interests of clients (to say nothing of the spiritual price paid by the barracuda lawyers themselves). Yet such a style of litigating does support the "confrontation" side of problem solving, at least to a limited extent.

It is only by confronting our disputes fully, in the presence of our adversaries, and listening to each other as we do so, that we can truly integrate those solutions into solutions that will be mutually beneficial for both sides.

So while I continue to squirm on a personal level when I confront conflict, I can thank the mediation process for teaching me how to become more confrontational in my professional life. It is only by confronting our disputes fully, in the presence of our adversaries, and listening to each other as we do so, that we can truly integrate those solutions into solutions that will be mutually beneficial for both sides. The job of a mediator is to guide people in conflict through this potentially thorny process.

Drew Peterson, J.D. has been mediating family cases since 1987. He is an Advanced Family Practitioner Member of the Association of Conflict Resolution.

Legal Administrators bowl big bucks

Legal Administrators Rock! and roll a good ball during the "Bowl for Kids Sake" fundraiser for Big Brothers Big Sisters in May. The Alaska Association of Legal Administrators has sponsored the event annually since 2010.

The Alaska Association of Legal Administrators (AK ALA) raised $2,500 in this year's Big Brothers Big Sisters "Bowl for Kids Sake" event in May.

In the four years that the legal administrators group has participated in the event, the chapter has raised more than $15,000 to support the Big Brothers Big Sisters program, which provides youth activities and mentoring programs for young boys and girls.

This AK ALA sponsored event connects members and business partners in a social setting while working to raise money for a good cause. The chapter thanks the many firms and its members for their continued support. The Association of Legal Administrators is an organization dedicated to promote and enhance the competence and professionalism of all members of the legal management team. The event was chaired by Dawn Gray with Richmond & Quinn and Karen Schmidlkofer with the Alaska Bar Association.

Quote of the Month

"I am a firm believer in the people. If given the truth, they can be depended upon to meet any national crisis. The great point is to bring them the real facts."

—Abraham Lincoln

NEWS FROM THE BAR

Board of Governors Action Items May 13 & 14, 2013

- Voted to recommend adoption of the Uniform Bar Exam (UBE) with a target date of July 2014, but to allow for flexibility if the implementation is not ready until the February 2015 exam.
- Approved the results of the February 2013 bar exam.
- Approved five reciprocity applicants for admission.
- Approved two Rule 43 (ALSC) waivers.
- Approved one request for special testing accommodations for the July 2013 bar exam. Gave partial approval for another request for special accommodations, and will allow the applicant to submit further information for reconsideration.
- Voted to adopt the advisory poll results and appoint the following members to the ALSC Board of Directors: 1st Judicial District regular & alternate: Janell Hafner and Carole Waters; 3rd Judicial District regular & alternate: Greg Razo & Melanie Osborne; 4th Judicial District regular: Natasha Singh; Board of Governors representative and alternate: Gabrielle LeDoux and Carolyn Heyman-Lane.
- Voted to send the top three names in the Alaska Commission on Judicial Conduct advisory poll to the governor for consideration for appointment: Marc June, Jan Ostrovsky and Sharon Barr; and to send the entire poll results to the governor.
- Discussed Bar Counsel's practice of giving informal ethics opinions to bar members, and the Board asked a member of the Board to draft a standing policy regarding informal ethics opinions by bar counsel.
- Voted to adopt a stipulation for discipline by consent for an 18 month suspension, with the requirements that reinstatement will not be automatic and that the attorney must pass the MPRE.
- Voted to adopt the Findings and Recommendations of the Area Hearing Committee and recommend the reinstatement of an attorney from Disability Inactive status.
- Heard an appeal from the recommendations of a subcommittee of the Lawyers Assistance Committee, and voted to approve the committee's recommendation for in-patient treatment.
- Voted to approve compensation from the Lawyers' Fund for Client Protection for Trustee Counsel in the amount of $22,801.69.
- Voted to approve reimbursement from the Lawyers' Fund for Client Protection for the moving expense for a deceased attorney's files in the amount of $2930.
- Send out a request to all law schools for a statement of interest in publishing the Alaska Law Review.
- Voted to adopt the recommendation of the Area Hearing Committee in the Disciplinary Matter of Henry Graper for a three year suspension.
- Voted to adopt a stipulation for discipline by consent for a public censure, with the additional requirement that the attorney meet with the Lawyers Assistance Committee.
- Voted to send to the Supreme Court an amendment to ARPC 5.8 which imposes a duty on lawyers in general to disclose evidence of innocence.
- Voted to send to the Supreme Court an amendment to Alaska Bar Rule 12(a)(1) which would provide that a Bar member in good standing who resides in the judicial district could be appointed to the discipline committee in that judicial district without the requirement to maintain an office.
- Voted to send to the Supreme Court an amendment to Alaska Bar Rule 5(1)(a)(2) which requires that applicants must take and pass the MPRE at an examination taken not more than seven years prior to the applicant's Alaska application for admission.
- Voted to send to the Supreme Court an amendment to Alaska Bar Rule 12(k) which would remove inefficient requirements to the area hearing committee assignment process.
- Decided to put on the September agenda, the issue of the dollar limitation for Trustee Counsel compensation.
- Voted to postpone indefinitely the issue of retaining all discipline files in digital form, recognizing that this is a resource issue.
- Voted to publish an amendment to Bylaw III(1)(a) deleting the reference to the now defunct Alaska Pro Bono Program.
- Voted to recognize Rep. Hawker for sponsoring the Bar's sunset bill, extending the Board of Governors for eight years, and to recognize Bob Evans who provided pro bono guidance to the Board on this issue.
- Voted to approve the minutes of the January 24 & 25, 2013 board meeting.
- Voted to recommend the following slate of officers: president-elect Jeff Wildridge; vice president Blake Chupka; secretary Nelson Page; treasurer Bill Granger. Mike Moberly will be the new President.

Bylaw change proposed

The Board of Governors invites member comments regarding the following proposed amendment to Article III, Section 1(a) of the Bylaws of the Alaska Bar Association. Additions have underscores while deletions have strikethroughs.

Under Article III, Section 1(a) of the Bylaws, an active member who provides 400 hours or more of pro bono services in a calendar year may pay 30% of the annual active membership fee. The bylaw currently requires confirmation of those services by the Alaska Pro Bono Program or approval of those services by the Bar's Pro Bono Service Committee.

Unfortunately, the Alaska Pro Bono Program has ceased operation and this amendment removes that reference.

ARTICLE III. MEMBERSHIP FEES AND PENALTIES

Section 1. Annual Dues.

(a) **Active Members.** (a) Active Members. The annual membership fee for an active member is the amount approved by the Board, $10.00 of which is allocated to the Lawyers' Fund for Client Protection. The annual membership fee for an active member, who is 70 years of age or more and who has practiced law in Alaska for a total of 25 years or more, is one half of the total amount assessed to each active member, $10.00 of which is allocated to the Lawyers' Fund for Client Protection. No annual membership fee shall be assessed to an active member who has been admitted to the Association for a total of 60 years or more.

Active members who provide 400 hours or more of pro bono services in a calendar year (January through December) ~~as confirmed by the Alaska Pro Bono Program, or~~ as approved by the Alaska Bar Association Pro Bono Service Committee, may pay 30% of the annual active fee for the membership year immediately following the year these services were provided subject to the following limitations: 1) the request for 30% active dues must be made in writing no later than February 1st; and 2) ~~confirmation by the Alaska Pro Bono Program, or~~ approval by the Alaska Bar Association Pro Bono Service Committee, must be provided to the Bar Association no later than February 1st.

Please send comments to: Executive Director, Alaska Bar Association, PO Box 100279, Anchorage, AK 99510 or e-mail to info@alaskabar.org by August 23, 2013.

Alaska Bar Association MEMBERSHIP BENEFITS GUIDE

Bar staff has compiled a detailed guide to benefits & services for members.

Included in the guide are services, discounts, and special benefits that include:

Alaska USA Federal Credit Union for financial services
Alaska Communication wireless discounts
Copper Services virtual conferencing
OfficeMax partners discount
Alaska Club health and fitness enrollment options
Premera Blue Cross health and dental plans
LifeWise group discounted term life insurance
Hagen Insurance disability insurance discounts
Avis and Hertz rental car discounts
Professional Legal Copy ABA member pricing
Kelly Services staffing services special pricing

Also included are Alaska Bar Association and partner services that include the Casemaker legal research platform, Lawyers Assistance, Lawyer Referral Service, Ethics Hotline resources, the ABA Retirement Funds program, American Bar Association publication discounts, and Alaska Bar publications (Bar Rag, CLE-At-A-Glance newsletter, and E-News).

For details on these benefits & services and how to access them, download the full Member Benefits Guide at www.alaskabar.org.

FEDERAL PROBE

John Rader: Legal and legislative pioneer on the Last Frontier

Continued from page 1

and as the first Attorney General for the State of Alaska, Rader played a critical role in getting the state government up and running;

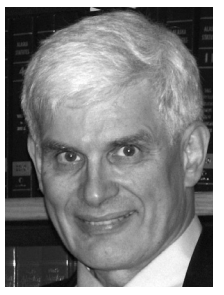
- As a State Representative, Rader conceived and engineered the passage of the Mandatory Borough Act of 1963, which resulted in the formation of the local governments where more than four out of five Alaskans live; and
- As a State Senator in 1970, Rader led the successful effort to liberalize Alaska's abortion law, more than two years before the U.S. Supreme Court issued its decision in *Roe v. Wade*.

Health problems have hampered Rader for the last four decades, which helps explain the unfortunate fact that it's mostly old-timers who recognize his name and know of his accomplishments. This year is the 35th anniversary of Rader leaving elective office, and it's a good time to look back on the achievements of a great Alaskan.

The Youthful Organizer of State Government: 16 Months that Shaped Alaska

After years of struggle, the Alaska Statehood Act passed and was signed into law in the summer of 1958, setting January 3, 1959 as the day Old Glory would get its 49th star. Along with great joy, these events brought a number of big challenges to Alaska.

An entire state government had to be set up, including a structure for the executive branch and a staff for that executive branch. These tasks were made significantly more difficult by the life-threatening illness of Bill Egan, the first State Governor, which left him incapacitated in a Seattle hospital for months.



Fortunately, Alaska had an ace in the hole. Seven years into his legal career that had started with his move to Anchorage in 1951, John Rader had substantial legal and political experience. He had more than six years in private practice and a year as the first in-house City Attorney for the City of Anchorage, a year in which he secured the approximate doubling of the size of the City's territory through annexation. As a candidate in 1958 for the House of Representatives in the first State Legislature, he won the highest number of votes received to that time by a person elected to the House, either in an election for territorial or state office in Alaska. The 31-year-old pulled off this feat while simultaneously managing Egan's successful gubernatorial campaign.

Rader served as a Special Assistant to the Governor-Elect and Governor in December of 1958 and January of 1959 before serving as chairman of the House State Affairs Committee after the first state legislative session opened in late January.

Rader served as a Special Assistant to the Governor-Elect and Governor in December of 1958 and January of 1959 before serving as chairman of the House State Affairs Committee after the first state legislative session opened in late January. Along with his fellow lawyer State Senator Tom Stewart of Juneau, Rader played in that session a critical role in drafting and getting passed the State Organization Act. The statute's intent was "to provide a unified, integrated, and comprehensive plan of organization for the exercise of all executive and administrative functions of the State." This statute established 12 departments and the Office of the State Governor in the executive branch, while abolishing dozens of agencies, including the Territorial Banking Board and the Coal Miners' Examining Board.

As the legislative session was ending, Rader was appointed by Egan to serve in one of those cabinet positions as the first Alaska State Attorney General (and at 32 apparently the country's youngest). He worked with an initial staff of five lawyers to handle the legal affairs of the brand-new state, a big contrast from the more than 285 attorneys now employed by the Alaska Department of Law.

The self-described "country lawyer" had to move quickly to confront a variety of issues. He had to litigate the abolition of fish traps, thought to have been done away with at statehood but whose legality remained a live issue if operated by Alaska Natives. The Ninth Circuit Court of Appeals withdrew more quickly than expected from its role as the appellate court for Alaska, leaving Rader scrambling to help set up an entire new state court system.

The Attorney General personally handled a successful defense of a challenge brought by bar owners against regulations adopted by the new State Alcoholic Beverage Control Board, including a prohibition on liquor establishments being open between 3 a.m. and 8 a.m. on weekdays. This case—*Boehl v. Sabre Jet Room, Inc.*, 349 P.2d 585 (Alaska 1960)—was notable both for the new Alaska Supreme Court's embrace of a broad view of the Legislature's power to delegate authority to administrative agencies and for the identity of the lawyers representing the bar owners—Wendell Kay of Anchorage and Warren Taylor of Fairbanks, Rader's two most prominent rivals to become Attorney General.

In a 1994 interview with University of Alaska Anchorage Professor Stephen Haycox, Rader—then 67—wondered in amazement at the scope of the decisions he made in his early 30s as Attorney General, suggesting that it was the "recklessness of youth" and being "presumptuous" that allowed him to do it.

There's a simpler explanation. Rader is bold, a quality he showed when he resigned after less than 11 months on the job as Attorney General. He said at the announcement of the decision in 1960 that he wanted to return to private practice in Anchorage, and Haycox wrote in his 1998 book *The Law of the Land* that Rader felt that by the time of his resignation "the principal focus of his attention, the transition from territorial to state government, had been accomplished." In a 2013 interview with this column's author, Rader explained the timing of his resignation as also being influenced by his desire to have a successor confirmed during the 1960 legislative session, when that confirmation appeared likely to be more easily accomplished.

Haycox also noted in his book Rader's interest in running for Governor, as Egan was not a certain candidate for re-election in 1962. By late 1961—at age 34 and just 10 years after his arrival in the state—Rader was an announced candidate for the Democratic nomination for Governor.

Although Rader campaigned for months while also practicing law at Hartlieb, Groh & Rader (see the author's note below), he withdrew when Egan finally announced his intention to run for re-election. Rader was still able to get back into policy-making, however, by again getting elected to the State House in 1962.

Dive Bars, Dirty Water, Loose Dogs, and Tax Inequity: Father of the Mandatory Borough Act of 1963

Once back in the Legislature, Rader did something many politicians talk about a lot in theory but often avoid in practice. He picked an important problem and took the lead in proposing a solution he thought was good policy, even though that proposed solution was controversial.

That problem was the lack of regional government, which differs in Alaska from what is seen in almost every other state. Although there are cities in Alaska as in other states, there are no counties in the Great Land. Instead, boroughs are the units of government that stand in between cities and the state government. The Alaska Constitution provides that boroughs "shall be established in a manner and according to standards provided by law," but the establishing process was going very slowly in the years immediately after statehood. By 1963, only one—the Bristol Bay Borough—had been formed. A substantial and growing percentage of Alaskans lived outside of cities with no form of local government.

This vacuum left room for a slice of Wild West in the north, generating numerous problems. Sleazy bars staffed by B-girls operated around the clock outside the city limits of various communities, generating crime that spilled over to local citizens. With no animal control, loose dogs threatened children and adults. Public health was at risk with the difficulty of getting water and sewage facilities to untaxed areas, and tax inequity was increasing. On the other hand, those enjoying their lack of local taxes howled at attempts by cities to grow by annexation and vigorously resisted the voluntary formation of regional boroughs that would bring them into a local government's tax base.

Rader looked at this mess in1963 and saw the matter of boroughs as "the greatest unresolved political problem in the State." With his sharp insight and experience as a local government lawyer, the lawmaker concluded that the combination of the big problems

Continued on page 7

ESTATE PLANNING CORNER

Keep the story alive

By Steven T. O'Hara

If we are rich, we are rich in stories. Money, after all, is limited. But a story, now that is where we all can be rich in hope no matter our circumstances.

We all have stories. Today's technology, on an ever-increasing basis, allows us to keep them alive. Using today's technology for research as well as publication, I recently documented my father's story. Technology allows for updates as research is completed as well as the addition of photographs and other media as they are discovered.

As lawyers we hear great stories from clients. One of my favorites is about a grandson who here I call Joseph. Some years ago the client's daughter, Joseph's mother, died of cancer. Joseph was then in his teens or a young adult. The client and his son-in-law, Joseph's father, were in the kitchen planning the funeral when Joseph came in.

"I want to speak at my mother's funeral," Joseph announced.

The witnesses there humored him. "Sure, Joseph. That'll be fine."

Each day leading up to the funeral Joseph said the same, and everyone humored him. You know kids.

Soon the day of the funeral arrived. The service was at a big church and packed, I believe, and was going well when all of a sudden Joseph made his move. He was front and center, armed no doubt with a microphone. Joseph, who has down syndrome, proceeded to hold everyone spellbound with his insight. He told his mother's story like no one else ever could. Then he quietly returned to where he was seated.

"We all have stories. Today's technology, on an ever-increasing basis, allows us to keep them alive."

Today Joseph's grandfather, my client, finds himself a widower. His daughter and his wife have passed, and he has taken to writing his family's story. He says all the work and the excitement generated by the story help him look forward to each day.

At this time I have not experienced anything like the pain of losing a child or spouse, but in 2002 I lost my father to cancer. When I no longer could see him in the flesh I considered whether it was possible that this person is indeed real or whether it is just a wonderful dream. Lest it is a dream, I recorded his story, *The Jim O'Hara Story: Boxing, Dignity & Street Smarts*, at www.60yearsofboxing.org. Writing anyone's story is an exercise in scratching the surface, but it certainly helps with the pain.

As estate planners we ought to remind children and siblings and certainly parents and widows and widowers to consider recording the story. The record need not be in writing. Hopefully someone taped Joseph's story of his mother.

I can verify that regardless of the number of people who will be interested in the story, the exercise is fun and beneficial. My father certainly never thought of himself as somebody.

Dave Rosen, remembered in Alaska and beyond as an outstanding husband, father, Trust Officer and Certified Public Accountant, dedicated himself in his later years to recording the stories of U.S. veterans and others. He interviewed his subjects with a tape recorder and then shared the recordings.

Rosen had a gift. He was genuinely interested in your story. He found it fascinating to visit with you and draw out the story. He was always so kind in listening to me or reading about my father and sharing his thoughts. Rosen has been an inspiration. His gift can be learned by intentional listening and then, as we are able, by taking action to keep the stories alive.

John Rader: Legal and legislative pioneer on the Last Frontier

Continued from page 6

caused by the areas without local government and the low probability of success of local efforts to form boroughs—particularly those of an appropriate regional size—meant that it was up to the Legislature to require the formation of a number of boroughs. What's more, this formation had to be forced immediately and in a single stroke.

Rader introduced legislation that would require formation of boroughs around the state with sweetening provisions that provided those new boroughs with grants of land and cash from the state. The measure's lack of popularity showed clearly in Rep. Rader's inability to find a single co-sponsor for this bill. The subject of boroughs might sound boring, but this was one of the most controversial and hotly debated bills ever considered in the Alaska Legislature. Picking this issue to go out alone on was a risky move for an ambitious politician like Rader who continued to harbor ambitions for statewide office and looked like what one legislative colleague called "a man to bet on."

Rader had some assets in this struggle. In only his second year in the Legislature, he had a leadership position, serving as House Democratic Leader and chairman of the minority caucus. (Although split 20-20 between Democrats and Republicans, the body was run by a Republican-dominated coalition.) Rader also used some of the best skills of an attorney in the Legislature—reading widely, thinking broadly, researching intensely, writing articulately—to develop and sell the bill.

Not all of what Rader used to get the Mandatory Borough Act of 1963 enacted was the straightforward tactics and strategy found in law books or recommended by professors. The editors of the book *The Metropolitan Experiment in Alaska* reference in an introductory chapter the "intense parliamentary maneuvering" involved in the legislation's passage, but more striking are the adroit political moves Rader sets out in his own chapter in that same book, published in 1968. (That book was published the same year Rader lost a race for the Democratic nomination for Alaska's single seat in the U.S. House to State Sen. Nick Begich of Anchorage, who lost the general election that year before winning it in 1970.) In his chapter—blandly entitled "Legislative History"—Rader recounts that to get the bill out of the House he rallied "the competently-controlled Republican-controlled House" against "an incompetent Democratically-controlled Senate." Then—after the bill had become law but while there was an outcry for a special session to repeal it—Rader told the State Democratic Convention that all Democrats should join to fight off a Republican attack on a bill mostly supported by Democrats.

The law stuck, and it had a big effect. The Mandatory Borough Act produced the formation of boroughs in Ketchikan, Sitka, Juneau, Kodiak Island, the Kenai Peninsula, Matanuska-Susitna, Fairbanks, and Anchorage (unified in 1975 into a municipality). Those local governments cover well over 80 percent of Alaska's population.

Leader of Fight to Liberalize Abortion Laws in 1970

Following his defeat in the 1968 Democratic primary for the U.S. House, Rader managed that same year to get elected again to the Legislature, this time to the State Senate. In his first term in that body, Rader led an effort to liberalize abortion laws that resulted in one of the biggest political reversals in Alaska history.

At the beginning of 1970, abortion was illegal in Alaska except to save the life of the pregnant woman. Rader saw that policy as unjust and resolved to try to change the law.

As with the Mandatory Borough Act seven years before, Rader started off alone in the Legislature, introducing an abortion reform measure without a single co-sponsor. Then came help from a wave of grass-roots organizers who helped build a broad and diverse coalition that included the Alaska Medical Association, conservationists, and a number of religious figures. Just over three months after Rader put in a bill by himself, the Legislature overrode a gubernatorial veto to enact a bill that allowed a woman to obtain an abortion of a non-viable fetus by a physician in a hospital or other approved facility.

Adopted more than two years before the U.S. Supreme Court handed down the Roe v. Wade decision, this law made Alaska one of only four states to substantially decriminalize its abortion laws.

The ACLU gave Rader a Champion of Women award in 2010, and Planned Parenthood of the Greater Northwest makes an annual award for advocacy in Rader's name.

Explanations of Rader's Impact

Health issues led Rader to end his 15-year legislative career by declining to run for re-election at the conclusion of his service as State Senate President in 1977-1978, two of most significant legislative sessions in Alaska history. With the exception of two stints as an advisor, that decision essentially marked Rader's withdrawal from public life.

Rader had great influence in the quarter-century of his public life in Alaska, and it's worth thinking about how he did it. Part of it is his exquisite timing in disregarding the Territorial Attorney General's advice and heading north when he did. In that sense, Rader resembled A.B. "Banjo" Paterson, author of "Waltzing Matilda," who wrote near the end of his life that in living in Australia as it was gaining its independence, he was like an animal that "had the luck to walk on the lava while it was cooling."

But it wasn't just good fortune that made Rader influential. His intelligence and boldness have already been remarked upon. Also important are his deep thoughtfulness, dedication, skills as an orator, and manners of an old-school gentleman.

While endorsing his re-election in 1972, the *Anchorage Daily News* called Rader "one of the ablest legislators Alaska has ever had" and stated that "Alaska has produced few more capable men in public life than John Rader."

Commenting in 2004 on Rader's tenure as Attorney General, Professor Haycox wrote that Rader "set a high standard of legal competence, political acumen and straight-on honesty."

We would do well to think about John Rader's public life as a role model for us as citizens, as lawyers, and as lawmakers.

Cliff Groh is an Anchorage lawyer and writer who has worked as an aide for the Alaska State Legislature and as Special Assistant to the Alaska Commissioner of Revenue. John Rader was a law partner of Cliff Groh's father and was one of his father's closest friends. The author has reason to believe he would have the same view of John Rader even if he hadn't grown up calling him "Uncle John." The author thanks John Rader and the relatives, friends, and former colleagues of Rader who assisted in the preparation of this article, but the interpretations and conclusions are solely those of the author. Cliff Groh will return in future Alaska Bar Rag columns to analysis of the investigations and trials arising out of the federal government's probe into Alaska public corruption. He welcomes your bouquets, brickbats, tips, and questions at cliff.groh@gmail.com.

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)
- If the photo is a simple mug shot, include the name of the individual on the rear of the photo if a hard copy, or in the body of your e-mail.

Opinion: Auf ihren gesundheit

By Gregory Fisher

Voltaire quipped that the Holy Roman Empire was neither holy nor Roman nor very much of an empire. The same metric could be used to describe the Affordable Care Act (actually the Patient Protection and Affordable Care Act or in the vernacular "Obamacare"). With the veils slowly lifting, it's becoming clear that ACA is not really affordable, not likely to facilitate care, and not even much of an Act.

A recent poll reflected the 42% of all Americans did not even know Obamacare was the law.[1] Another 19% thought that either Congress had repealed the Act or that the U.S. Supreme Court overturned it. Only 35% of those questioned reported a favorable opinion of Obamacare. Those favorably viewing the law invariably harbor wild assumptions about its provisions that are simply wrong. Obamacare will not provide free healthcare. Obamacare does not compel employers to pay for coverage. The Act is not ready to roll. In fact, Senator Max Baucus, one of Obamacare's chief Senate stewards, predicts implementing the Act will be a "train wreck." Ouch.

How did it come to this? Healthcare in this country is a mess. Many who supported and voted for President Obama did so because they believed he would be in a position to best advance solutions to long-standing problems. One of the biggest problems was healthcare. Costs are out of control. Insurance is deficient. Average Americans are one illness away from complete ruin. The solution imposed by Washington, however, is the mother of all healthcare problems—an accelerating train wreck of unknown proportions.[2]

In fairness to President Obama, neither he nor his staff shoulders all blame for the eponymous and sole legislative achievement of his Administration. There's something about the American spirit that compels us to seize upon intricately orchestrated solutions. NASA spent millions designing and engineering a writing device that would work in zero gravity. In contrast, the Russians just sharpened their pencils. We had (and have) cheaper and more efficient options to effectively cut healthcare costs. But we insisted upon adopting a legislative fix that only Rube Goldberg could love. It defies understanding. The party of Jefferson rejected that most Jeffersonian of all ideals, that government governs best when it governs least.

Even worse, the manner by which we adopted it rankles. We cut deals that stink. Nebraska's former Senator Ben Nelson became the critical 60th vote to avoid a filibuster after securing an amendment to provide a higher rate of Medicaid reimbursement for Nebraska. Louisiana Senator Mary Landrieu voted in favor after securing a similar amendment that awarded her state an additional $4.3 billion in Medicaid funds. These and other stench-ridden deals were struck against the backdrop of Nancy Pelosi's famous observation, "We have to pass the bill so that you can find out what's in it." The Act itself is over 900 pages. Implementing regulations run 20,000 pages, and the regulations are not yet complete.[3] Are we surprised that opposition remains so steadfast?

The thorn on the rose is that Obamacare might actually work. It could increase care and protect access to medical treatment. The actual and hidden costs, however, will dwarf any modest successes. We will nurture an expanding bureaucracy whose regulatory tentacles will eventually reach into every corner of business and industry. Pretty much everything you need to know about the Affordable Care Act is that Massachusetts (the model for Obamacare) has the highest healthcare costs in the nation, and annually rates at or near the top of healthcare premiums.[4]

With the train picking up speed as it heads clickety-clack towards the cliff, the apparatchiks have emerged from the Beltway with impressive tables and charts to persuade us that long-term savings will follow. No fool believes that. All the fancy gadgetry and bureaucratic double-speak obscures fundamental truths. If one expands covered conditions, increases the pool, and prohibits exclusions for pre-existing coverage, costs must increase. It cannot be any other way. You know this. Increasing costs will lead to increased premiums. That is not a political statement. It is a simple business tenet, the type of basic truth that a tradesman's daughter (Margaret Thatcher) would explain if we had enough sense to listen. Someone will pay. I'm guessing it will not be the insurance companies.

Whether we adopt a single-payer system or return to the prior framework and approach healthcare management in incremental steps through a variety of staged reforms, Obamacare is exactly as Senator Baucus described: a train wreck.

How much premiums will rise is debated. A safe bet is that premiums in the individual market will climb 50%, premiums in the small group market will increase 30%, and premiums in the large group market will go up 15%-20%. [5] These are conservative estimates. As costs climb, employers will evaluate whether to continue health insurance plans or pay the employer mandate (a fine imposed for not offering health insurance).[6]

Of course, there are other options. Employers may simply trim their workforce, converting employees to part-time status, or require employees to pay increased amounts of their premiums. Even part-time employment status under the Act is fudged. Obamacare defines full time employees as those working over 30 hours a week. Employers are incentivized to cut hours and pay, leaving individual workers with fewer hours, less pay, and eroding benefits. It gets worse. The same worker now confronts the individual mandate. However this plays out, the end effect will be the same. The employer mandate will push employees out of the private health insurance market and into the government run health insurance exchanges. Someone will pay. I'm guessing taxpayers.

All of which leads us back where we started—with a system designed of, by, and for the insurance companies and the health industry whose animating spirit is profit. There is nothing wrong with profit. Profit is great. However, the game requires stability—predictable, uniform rules--and a level playing field. Tails I win, heads you lose is no way to go through life.

It pains me to confess, but no rational or reasonable analysis can lead to any other conclusion but that Obamacare was a mistake. It should be repealed. We need to wipe the slate clean and hit the reset button. We need an honest, open, and transparent debate, a debate without backroom deals. Unfortunately, however, nothing short of a cataclysmic shift in Congress would open Obamacare to effective repeal, and such an unlikely event would carry its own unforeseen hazards.

Our best hope is post-cliff planning. I would argue we need a single-payer system. I understand that many characterize the single-payer solution as the product of hopeless idealists riding pink unicorns, but I disagree. Numbers are numbers are numbers. We can have different opinions, but facts are facts. The Physicians for a National Health Program have proposed a blended single-payer system that would provide universal coverage, contain costs, save close to $400 billion in administrative expenses each year, and result in 95% of all people paying less for health care.[7] Read their plan and decide for yourself.

Another option is to return to what we had but adopt relatively modest reforms that would, in theory, lower costs and expand care over time. For example, allow insurers to compete beyond their pre-set markets, require transparent billing to allow consumers to shop the health services market, mandate specific insurance for specific injuries or illnesses, reform tax treatment of employer-sponsored plans, reform Medicare and Medicaid, and/or enact more restrictive medical malpractice reforms.

Whether we adopt a single-payer system or return to the prior framework and approach healthcare management in incremental steps through a variety of staged reforms, Obamacare is exactly as Senator Baucus described: a train wreck. He should know. He drove the train. When the engineer speaks, we should listen.

Footnotes

[1]See Sarah Parnass, "Obamacare Poll finds 42% of Americans unaware its law," ABC News (April 30, 2013): http://abcnews.go.com/blogs/politics/2013/04/obamacare-poll-finds-42-of-americans-unaware-its-law/

[2]See Peter Ferrara, "Look out Below, the Obamacare Chaos is Coming," Forbes (April 7, 2013): http://www.forbes.com/sites/peterferrara/2013/04/07/look-out-below-the-obamacare-chaos-is-coming/

[3]See Elizabeth Harrington, "Hatch: Obamacare was designed to become Single-payer system," CNS News (March 20, 2013): http://www.cnsnews.com/news/article/hatch-obamacare-was-designed-become-single-payer-system

[4]See Shira Schoenberg, "Massachusetts works to address the nation's highest health insurance premiums," Massachusetts Live (January 14, 2013): http://www.masslive.com/politics/index.ssf/2013/01/massachusetts_is_working_to_ad.html

[5]See "The Looming Premium Rate Shock," Final Report to the U.S. House Committee on Energy and Commerce (May 13, 2013): http://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/analysis/insurancepremiums/FinalReport.pdf

[6]See Erika Johnson, "WSJ: Small Businesses increasingly look to avoid Employer Mandate," Hot Air (April 8, 2013): http://hotair.com/archives/2013/04/08/wsj-small-businesses-increasingly-looking-to-avoid-the-employer-mandate/

[7]See Summary on Single Payer Proposal, Physicians for a National Health Program (2013): http://www.pnhp.org/facts/what-is-single-payer

New section cyber-meets in May

The Federal Agency & Congressional Practice Law section met at Perkins Coie and cyberspace in April, taking advantage of long-distance mobility. Co-chair Bill Falsey, Jon DeVore, and American University Law students Bryan Haskins and Brittany Roberts attended via video-conference and posed on-screen for the group photo from Washington, D.C..

In the meeting room in Anchorage: left to right were Suzanne Bostrom and Brook Brisson; Jason Hartz, Kathy Atkinson, below her kneeling, Joe Darnell (guest speaker), co-chair Christine Williams, Cam Leonard, Barbara Fullmer and Betsy Goudreau. (Not pictured are members who teleconferenced by phone.)

CLE — Mark Your Calendar!

August 13	Solo and Small Firm Technology Conference
August 30	Superior Legal Writing: Winning with Words
August 30	Superior Legal Drafting: Every Word Matters
September 6	Immigration Law
September 6	Healthcare Law Highlights: HIPAA, Fraud and Abuse
September 17	Elder Law Hot Topics by Three NAELA Presidents
September 18	Making Your Case with a Better Memory

THE KIRK FILES

The girl who kicked ethics under the bus

By Kenneth Kirk

CHAIR: This is a hearing of the Swedish Attorney Ethics Board. Before us is Advokat Annika Gianinni. Ms. Gianinni, this involves an allegation of improperly aiding a client of yours, Lisbeth Salander.

A (Gianinni): Yes, the 'Girl with the Dragon Tattoo'.

CHAIR: I'm sure we've all heard about that. Fröken Salander has signed a waiver of confidentiality from her current residence in Gibraltar. Are you ready to defend yourself against these allegations?

A: I am. I have done nothing unethical.

Q: According to the affidavits, you filed a set of Requests for Admission in a case in which you were representing Ms. Salander against a defendant who may have been responsible for her wrongful incarceration when she was a juvenile. Your client informed you of a plan to hack into your opposing counsel's computer system and delete the information reminding him that the responses were due. She did so, as a result of which your opposition did not respond to the requests. You then filed for, and won the case on, summary judgment based on the admissions. You understand this is the accusation?

A: That is correct.

Q: And which of these facts do you dispute?

A: None of them. Those facts are correct as stated.

Q: Then how is it you claim you have not committed any ethical infraction?

A: First of all, while Ms. Salander did tell me she might hack into the computer system, she immediately told me she was only kidding and did not actually intend to do that.

Q: Can you recount, as closely as possible, the exact conversation?

A: She said, after I explained to her about Requests for Admission, "So if I hack into the other lawyer's computer, and delete all of the reminders that he needs to respond, and he blows the deadline, then they have admitted everything we want them to admit?" And I said "Yes, but Lisbeth, if you tell me in advance that you are going to hack into the other lawyer's computer, then I will have to tell the court so that I am not actually participating in fraudulent conduct". And then she said "What if I only told you after I hacked into the computer?" And I said "That could still put me in a difficult situation, because under the ethical rules I cannot knowingly make a false statement to the court, and if the other attorney asked the judge to allow a late response and I had to respond to it, that would really limit what I could say". So she asked "When would it be safe for me to tell you that I hacked into the computer?" And I answered "Only after the case is over and any time allowed for appeal has passed."

"Ah, but she told me she wasn't going to do it. So there was no reason for me to do anything to prevent that action."

Q: And that's when she told you....

A: That's when she told me she was only kidding and did not intend to hack into the computer.

Q: When did she tell you she had done it?

A: As she was getting on the plane to Gibraltar after the case was over. I saw her off at the airport.

Q: You do understand that under Rule of Professional Conduct 1.6(b)(2) you had an obligation to prevent your client from committing a crime or fraud which was reasonably certain to result in substantial injury to the opposing party's financial interests, given that she was using your services in furtherance of that crime or fraud?

A: Ah, but she told me she wasn't going to do it. So there was no reason for me to do anything to prevent that action.

Q: You also had a responsibility to rectify that substantial injury under 1.6(b)(3).

A: Granted, but both subparagraphs (2) and (3) are under subsection (b), which says that a lawyer may reveal a client's confidence or secret. It doesn't say that the lawyer has to.

Q: But it says that she may.

A: And I chose not to.

Q: And 4.1(b) does have a mandatory requirement. 'A lawyer shall not knowingly fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client'. Also 3.3(a)(3) prohibits knowingly using false evidence.

A: If she had not said that she was only kidding, that would apply. But as noted in the commentary to 1.6(b)(2), the client can prevent disclosure by refraining from the wrongful conduct. According to her, she had.

Q: Later on in the case, the time came when you saw that the other Advokat did not file responses, and you were preparing to file for summary judgment. Did it occur to you that Ms. Salander may have gone ahead and hacked the computer after all?

A: I had no evidence of that.

Q: You knew your client was a skilled computer hacker.

A: But I had no evidence that she committed this particular action.

Q: Did you even ask her?

A: I did. And she denied it.

Q: Can you please recount the entire conversation?

A: I called her up and said, "Lisbeth, I know you made a joke about hacking into my opposing counsel's computer and deleting reminders about the Requests for Admission. If you tell me you did it, I may have to withdraw, and I certainly cannot file for summary judgment based upon a crime or fraud. On the other hand if you tell me you did not, then I can go ahead and file for summary judgment. Did you do it?" And she said....

Q: Wait a minute. Why did you tell her what you would have to do?

A: RPC 1.2(d) says that while I am not allowed to counsel or assist a client to engage in conduct that I know is criminal or fraudulent, I may nonetheless discuss the legal consequences of any proposed course of conduct with the client. That is all I did, I told her what I would have to do if she said she hacked the computer.

Q: You realize that the commentary to 1.2 says that you may not suggest to the client how the wrongful action might be concealed?

A: But I did not suggest any way in which something might be concealed. I merely asked her a question about the true state of affairs.

Q: (audible sigh) Let us turn to your conversation at the airport. At that point she told you she had hacked the computer. The final judgment in your favor was barely a month old. You did not feel you had an ethical obligation to act at that point?

A: You just said the judgment was 'barely a month old'. In fact it was exactly 31 days old, which was one day past the deadline to appeal. I had checked with the court, and they did not file an appeal.

Q: Advokat Gianinni, the Rules of Professional Conduct require you to take remedial actions when you learn that you have offered false evidence. At that point you knew you had, without any doubt. Why did you not take action?

A: The commentary to Rule 3.3 says that 'A practical time limit on the obligation to rectify false evidence or false statements of law and fact has to be established. The conclusion of the proceeding is a reasonably definite point for the termination of the obligation. A proceeding has concluded within the meaning of this Rule when a final judgment in the proceeding has been affirmed on appeal or the time for review has passed'.

Q: We'll see about that. Do any other members of the panel have questions for the witness?

BOARD MEMBER: Why are we using the Rules of Professional Conduct when this all took place in Sweden?

CHAIR: Literary license. Alright, the Board will take this matter under advisement. Advokat Gianinni, do you want this decision sent to your office in Stockholm?

A: No, please send it to my new office in Gibraltar.

[Author's note: This article should not be relied on by any attorney as legal or ethical advice. In fact if you do the things described in this article, I'm pretty sure the Alaska Bar Association will do to you, what Lisbeth did to Bjurman. Look it up.]

New on HeinOnline:

Historical statutes from all 50 states

By Susan Falk

Hopefully most of you are familiar with HeinOnline, a wonderful legal research database available on public computers in all law library locations. Hein's initial collection was limited to law reviews and journals, but over the years it has expanded and added many different databases, including a wealth of federal material like the Congressional Record, the Federal Register, and the Statutes at Large, with coverage of each title going all the way back to its first volume.

In recent years, Hein has made similar incursions into historical state material. Hein's Session Laws Library contains the session laws of all 50 U.S. states, plus those of Canada, Australia, Puerto Rico, the Virgin Islands, and the D.C. Register. Coverage for the states is exhaustive; all states are current within 60 days of the printed publication, and all state session laws are available back to inception. This coverage includes Alaska, of course. The database offers the Session Laws of Alaska going back to the 1913 Territorial Legislature.

Hein's newest addition to its state materials is State Statutes: A Historical Archive. This database includes superseded statutes for all 50 states, searchable by state, date, description, and text. Coverage for the oldest state goes back to 1717. Alaska material currently is limited to the 1900 Carter Code and the 1933 Compiled Laws of Alaska.

Update on the Anchorage Law Library remodel

The Anchorage Law Library collection moved again in March, and is now in its newest home for Phase 2 of the Boney Building remodel project. Thanks to the creative efforts of library staff, we did not need to place any further library materials into storage for this next phase of construction. All treatises and other materials that have been available for the last year are still available for library users. Books have been relocated to the west and north ends of the reading room, while the central library area on the first floor (where our treatises spent the last year) is now closed for construction. We expect this next phase to last through spring or early summer 2014.

And more good news: While the library's public restrooms are still under construction, public restrooms are now available on the first floor in the Traffic Division, so you no longer need to traipse to the third floor.

Deceased Bar members 2012

Snippen, Roger D.
Peskind, Elliot J.
Jacquot, Darryl L.
McLean, Joseph
Tulin, Charles
Gay, Sarah Elizabeth
Cole, Hoyt M.
Frasure, Carl
Reitman, Stanley
Jermain, William
Weidner, Brock M.
Brenckle, Carol A.
Meachum, Robert F.
Farrell, Martin A.
Belland, Eugene R.
Kelly, Bernard
Coe, Jerry Logan
Wunnicke, Esther
King, Kathryn

The fall of the Holy Roman Empire and what it should mean to Alaskans

By Peter Aschenbrenner

"An elegant setting," Mr. Whitecheese assures us, "and now we await the spectacular arrival of our distinguished guest."

The assembly scans the sky.

"What's with the three-cornered hat? And perruck?" I ask. "Who invited Mozart?"

We rush our congratulations on his safe landing.

"Can you guess who I am?" the mysterious stranger dares us. "Allow me to doff my 'chute, whilst quaffing the 'Spenard-fall' libation my host offers me."

"I am dumbfounded," I gasp.

"I'll give you a hint. I lost my job during the Jefferson administration."

"1806 marks the fall of the Holy Roman Empire!" Jimmy gasps. "Of which you served as Arch-Treasurer!"

"It's George the Third," Dolley introduces our prince. "And, to boot, Prince-Elector to said empire."

"At your service."

"It was the uniform," Dolley signals our King's magnificent lapels and epaulettes. "Dripping gold braid, natürlich."

"What brings you to Alaska?" the Governor asks.

"Peace in our time. Hence, this portfolio of parchments."

"The Treaty of Paris," I shrug. "What's the big deal?"

"You have to make it matter to Alaskans," the Governor backs me up.

"Americans improvised during the late war, leaving the initiative to British arms," our George begins. "Which explains why Gen. Washington's first monument – in Baltimore – lists his victories, which face Charles Street."

"North to the future," Dolley and Sarah agree. "Now we're getting somewhere."

"Improvisation might suggest a certain, *je ne sais quoi*, about the whole affair. After all, if Washington and Rochambeau had fought and won

Yorktown *before* the Articles of Confederation were ratified," the King continues, "the British would be obliged to treat with thirteen states."

"But March 1, 1781 precedes Yorktown, October 19, 1781," Jimmy objects. "Let's stick to the facts, sir."

"The point he was making," Dolley nudges her husband, "is that Maryland was the last-to-ratify. Kind of like Rhode Island, in 1790."

"But the first to monument," Jimmy retorts.

Article I is perused.

" 'His Britannic majesty acknowledges the said United States, viz. New-Hampshire, Massachusetts-Bay'," Jimmy 'blah blahs' the other eleven, " 'to be free, sovereign, and independent states; that he treats with them as such, and for himself, his heirs and successors, relinquishes all claims to the government, property, and territorial rights of the same, and every part thereof'."

"But where do we get anything out of it?" Mr. Whitecheese appeals to the assembly. "I mean, the Queen could walk into Anchorage and claim Spenard – as her, I mean, Her Own. Liz didn't swear off 'claims to the government, property and territorial rights' of Alaska. Or, more precisely, her remote forbearer didn't swear off his claims with that *foreswearing* binding on her."

"It's not like we didn't exist in 1783," the Governor sniffs. "And you could see Russia from Alaska *back then*. So there."

She and Dolley exchange 'high fives.'

"If there was a flaw in how the United States was organized," Jimmy sighs, "I suppose everyone's going to blame me."

"But this does explain why January 14th is celebrated throughout America as 'Ratification Day', " I interject. "Excepting 1784, when it was celebrated on Wednesday, January 21st."

"I don't remember proclaiming any celebration," the Governor ponders. "Well, Jimmy, you discovered this flaw in the universe," she adds. "Solve it."

"Regrettably, it's a bit larger than that. You see, the Confederation (or Continental) Congress went out of business on March 2, 1789. That's the last day a delegate showed up for work."

"In a Manhattan tavern!" Whitecheese chortles. "Saloonkeepers grease the constitutional wheels, as I have always claimed!"

"But Constitution II," George picks up the thread, "or as you call it the Philadelphia Constitution, did not go into effect until March 4th. "

"A whole day without the federal government breathing down our necks," the Governor muses. "We should be celebrating March 3rd. "

"But under Article VI of our second constitution, as you call it," I read from my vest-pocket version, " 'Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation'."

"So if I pay your bills, can I move into your house?" George poses the question. "A stranger to the Treaty of Paris assumes the obligations of one of the parties, without the parties having agreed to bind the successors and assigns of the one going out of business."

"That is a poser," the Governor agrees.

"There's a bigger problem here," Dolley employs the Governor's smartphone to access its 'AoC App.' "King George agreed that thirteen states were 'free, sovereign and independent.' Where does it say that – "

"In the Articles of Confederation this language appears in Article II," I recite: " 'Each state retains its sovereignty, freedom and independence, and every Power, Jurisdiction and right, which is not by this confederation expressly delegated to the United States, in Congress assembled.' "

"Then where does it say that," Dolley asks, "in the next constitution in a row?"

"Instead of those twenty-nine words in the Articles, twenty-eight were crafted into the Tenth Amendment," Jimmy sighs the quote: " 'The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people'."

"Boy, is that a problem," George declares.

"I was cutting the fat out of the Articles." Jimmy shrugs. "A word here, a word there, and it adds up in a hurry. By 1804 we were using 5,224 words. The Articles only ran to 3,466 words."

"But you cut out Article II's declaration that: 'Each state retains its sovereignty, freedom and independence,' and you also didn't write anything into the Philadelphia constitution that even comes close," I add. "Other than the guarantee of a 'republican form of government'."

"And what's worse," our George piles on, "there's the same wording in the Treaty. The benefit of the promise I made as to state sovereignty is not transferable to late-joining states. It's just plain. Alaska's not protected from invasion by Great Britain!"

"Hence your arrival to give us the good news," Whitecheese platters fresh libations for all.

"We're no better than Vermont," the Governor sighs. "They only got admitted as a 'new and entire member' of the union. Act of February 18, 1791."

"Congress should have conferred the benefits enjoyed by the 'old and existing states' in the Vermont statehood act."

"You're right, Aschenbrenner," Whitecheese turns to our King. "Forget Alaska, George. You could invade Vermont with impunity."

"Computing the number of 'Ice Creame Shoppes' in the state," our King replies, "we've already conquered the place. By the way," he turns to the Governor, "just how many victories are listed on Washington's monument?"

"Trenton and Yorktown," the Governor consults her tablet.

"You lost a battle thanks to your Hessians," I guffaw, "and Washington gets 'Trenton' in copper letters on limestone!"

Bar extended for 8 years

Representative Mike Hawker, sponsor of HB 63, Bar President Mike Moberly, Executive Director Deborah O'Regan and Bar Counsel Steve Van Goor meet with Governor Sean Parnell when he signed HB 63, which extended the Board of Governors of the Alaska Bar Association for eight years.

Resolutions of Recognition and Appreciation

Whereas, the Alaska Bar Association has been fortunate to have Robert A. Evans provide his service, pro bono, to the Board of Governors regarding the Board's sunset legislation;

Robert A. Evans provided the Board and Bar staff with the benefit of his experience, guidance, insight, and support regarding the legislation in the Alaska Legislature;

The Board of Governors received an extension of the Board for eight years;

We, as members of the Board of Governors, wish to extend our utmost appreciation for the distinguished service provided in 2013, and in prior "sunset years";

Now, therefore be it resolved, that the Board of Governors recognizes and appreciates the service of:

Robert A. Evans

And thanks him for his outstanding service to the Board of Governors of the Alaska Bar Association.

Unanimously adopted by the Board of Governors at its meeting on May 14, 2013.

Hanna Sebold
President

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Whereas, the Alaska Bar Association has been fortunate to have Representative Mike Hawker sponsor HB 63, the Board of Governors' sunset legislation;

Rep. Hawker took time out of a very busy legislative schedule to appear at House and Senate Committee hearings;

Rep. Hawker's staff was available to communicate with Bar staff to provide guidance and information regarding hearings;

This is the first time the Board of Governors has been extended for eight years;

HB 63 would likely not have gone through the Legislature as it did without the gravitas of Rep. Hawker behind it;

Now, therefore be it resolved, that the Board of Governors recognizes and appreciates the service of:

Representative Mike Hawker

And thanks him for his service and support to the Board of Governors of the Alaska Bar Association.

Unanimously adopted by the Board of Governors at its meeting on May 14, 2013.

Hanna Sebold
President

Bar People

Russell, Wagg, Gabbert & Budzinski announce that founding shareholder **Robin Jager Gabbert** was selected for inclusion in "Alaska Super Lawyers 2012" in the area of Workers' Compensation Law. The Super Lawyers list, published by Thompson Reuters Legal, identifies lawyers through an extensive research and survey process, starting with peer nominations. Only five percent of lawyers in Alaska are named to the list. Robin specializes in complex legal-medical litigation and appellate work in her field.

Davis Wright Tremaine LLP has moved its offices to 188 West Northern Lights Blvd. #1100, Anchorage, AK 99503-3985. (907) 257-5300

Sidney K. Billingslea announces the closure of her solo practice as of May 31. She will be starting with the Alaska Court system as a magistrate judge on June 3. Ms. Billingslea opened her practice in September of 1994 after serving as a state and federal public defender.

The Law Office of Hozubin & Moberly congratulates **Michael A. Moberly** on his election as President of the Alaska Bar Association for 2013-2014. Mr. Moberly has been a member of the Alaska Bar Association since 1996 and has served on the Board of Governors since 2010. The firm also welcomes the addition of **Mary L. Pate** as Senior Counsel. Ms. Pate is returning to her home state of Alaska, where she will continue to focus her practice on labor and employment law and insurance defense.

Jennifer S. Henderson was installed as Judge of the District Court of Alaska on June 7 at the Boney Memorial Courthouse in Anchorage.

Jane F. Kauvar was to be installed as Judge of the Superior Court of Alaska on June 21 in Fairbanks. A reception followed at Pikes Waterfront Lodge.

7 recognized by Chambers

In its annual survey of the U.S. legal market, the prestigious directory *Chambers USA: America's Leading Lawyers for Business (2013)* has recognized seven attorneys from Davis Wright Tremaine LLP's Anchorage office as leaders in their fields.

Published by Chambers & Partners, *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 across the nation.

The Anchorage attorneys were recognized by Chambers across multiple practice areas. They 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
- **Robert K. Stewart,** Labor & Employment

In addition, Chambers awarded Davis Wright's Anchorage office its highest ranking—Band 1—in three practice areas: Corporate/M&A, Labor & Employment, and Real Estate. Among the comments published by Chambers about these practice groups were:

- "A solid firm with broad service capacity. Knowledgeable and effective." *(Corporate/M&A)*
- A "superb team". *(Labor and Employment)*
- "It is the overall high quality and practicality of the firm's work, advice and counsel that ensure its growing client base." *(Labor and Employment)*
- "Their lawyers are both smart and practical." *(Real Estate – Alaska)*

Experienced oil and gas lawyer joins Stoel Rives' Alaska office

Stoel Rives LLP, a leading U.S. business law firm, is pleased to announce that **Tina Grovier** has joined its Anchorage office as a partner in the firm's Environment, Land Use and Natural Resources group. Grovier is recognized as a leading oil, gas and mining lawyer. During her 15-year career she has helped secure federal and state permits for the first non-conditional state right-of-way for a North Slope natural gas pipeline, Alaska's first heap leach facility, Alaska's first third-party natural gas storage facility and Anchorage's first commercial-grade wind farm. Grovier regularly represents pipeline and telecommunication carriers and other public utilities before the Regulatory Commission of Alaska and state courts. In addition, she has broad appellate, litigation, arbitration and commercial transaction experience.

"I am pleased to welcome Tina to the Anchorage office," said Anchorage managing partner Jim Torgerson. "Her strengths will benefit our oil, gas and mining clients here in Alaska and beyond."

An active member of the Anchorage community, Grovier has been involved with the United Way as co-chair of the Tocqueville Society and with the YWCA, and has also volunteered her time with AWAIC Summer Solstice and served as a legal advisor for the Anchorage Youth Court.

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Dorsey & Whitney LLP had five lawyers in its Anchorage office ranked by Chambers and Partners in its annual survey, *Chambers USA: America's Leading Lawyers for Business 2013*. Dorsey Partners **Robert Bundy, Jahna Lindemuth** and **Spencer Sneed** were ranked in the Litigation: General Commercial practice area. Partners **Michael Mills, Richard Rosston** and **Mr. Sneed** were ranked in the Corporate/M&A practice area, with **Mr. Mills** and **Mr. Sneed** also separately ranked in the Corporate/M&A: Bankruptcy practice area. **Mr. Rosston** was also separately ranked in the Real Estate practice area. In all, the five Dorsey Anchorage lawyers received a total of nine individual rankings, including five rankings of Band 1 and a Senior Statesman ranking for Mr. Bundy.

In addition to this individual recognition, Dorsey Anchorage received more Band 1 rankings, the highest ranking available, for its practice groups than any other firm in Alaska. Dorsey Anchorage's Litigation: General Commercial, Corporate/M&A, Corporate/M&A-Bankruptcy, and Real Estate practice groups all received Band 1 rankings from Chambers.

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Stoel Rives LLP, a U.S. business law firm, is pleased to announce that **James E. Torgerson, Joseph J. Perkins, Jr.** and **Tina Grovier** of the firm's Anchorage office have been selected as leading U.S. lawyers by independent legal research team Chambers and Partners. Torgerson and Perkins are ranked in the Band 1 level for Environment, Natural Resources & Regulated Industries and Litigation: General Commercial respectively. Grovier is ranked Band 2 in the area of Natural Resources & Regulated Industries. The Anchorage office also received recognition as being among the best in Alaska in the areas of general commercial litigation and environment, natural resources and regulated industries.

"Chambers rankings again confirm our position as one of the nation's best law firms," said Firm Managing Partner Robert Van Brocklin. "Client comments are weighed heavily in determining the Chambers rankings, and we are very grateful for the many close working relationships we have with our clients. We are singularly committed to their success."

Joel Bolger sworn to the Alaska Supreme Court in April

Back row standing: Superior Court Judge Steve Cole (Kodiak), Alaska Court of Appeals Chief Judge David Mannheimer, District Court Judge Alex Swiderski (Anchorage). Seated: Alaska Supreme Court Justices - Justice Dan Winfree, Chief Justice Dana Fabe, Justice Peter Maassen. Front row: Robert Bolger, brother of Justice Bolger; Carol Bolger, sister-in-law; Jackson Bolger, son of Justice Bolger; Cheryl Bolger, spouse of Justice Bolger; Justice Joel Bolger, Stephanie Bolger, daughter of Justice Bolger; Prof. Ryan Fortson; Don McClintock, Alaska Bar Association Board of Governors. *Photo by Barbara Hood, Alaska Court System*

L-R, Standing: Barbara Ritchie, Carol Daniel (Litigation Attorney/Chief Counsel 1985-1996, Statewide Office), Vance Sanders (Staff Attorney/Supervising Attorney, 1984-1992, Juneau; Board 1992-Present), Mark Regan (Staff Attorney/Supervising Attorney, 1984-1991 & 1996-2008, Barrow, Anchorage, Bethel & Juneau), Jack McGee, Judge Michael Jeffery (Staff Attorney/Supervising Attorney, 1977-1982, Barrow), Linn Asper, Bruce Twomley (VISTA Attorney/Staff Attorney, 1972-1982, Anchorage) Judge John Reese (Ret) (Law Clerk/Staff Attorney/Supervising Attorney/Deputy Director, 1968-1975, Anchorage & Statewide Office), Kathleen Strasbaugh, Justice Joel Bolger (VISTA Attorney/Supervising Attorney, 1978-1981, Dillingham & Kodiak), Geoffrey Wildridge (VISTA Attorney/Staff Attorney, 1978-1981, Anchorage & Kodiak), Mary Alice McKeen (Staff Attorney/Supervising Attorney, 1979-1986, Juneau), Bart Rozell (Board 1974-1977), Janine Reep (Staff Attorney/Supervising Attorney, 1982-1987, Juneau), Ryan Fortson (Staff Attorney, 2008-2012, Anchorage), Marilyn May (Board Alternate, 1992-1994), Maryann Foley (Board, 1985-1994), Ken Jacobus (Board, 1970-1975), Laura Goss (Current Director of Volunteer Services & Community Support, Statewide Office), Judge Steve Cole (Paralegal/Staff Attorney, 1975-1983, Kodiak & Unalaska), Nikole Nelson (Staff Attorney/Supervising Attorney/Executive Director, 1998-Present, Anchorage & Statewide Office), Judge Philip Volland (Staff Attorney/Supervising Attorney, 1976-1980, Anchorage), Justice Warren Matthews (Ret) (Board, early to mid 1970s), Judge Fred Torrisi (Ret) (VISTA Attorney/Staff Attorney/Supervising Attorney, 1974-1978, Dillingham & Fairbanks).

L-R, Front row: Holly Handler (Supervising Attorney, 2006-Present, Juneau), Karen Godnick (Seniors Attorney, 2010-2013, Juneau), Eric Vang (Staff Attorney, 2011-Present, Juneau), Barbara Hood (Staff Attorney, 1983-1986 & 1990-1994, Fairbanks & Anchorage).

Laura Goss joins ALSC

Laura Goss, the new Director of Volunteer Services and Community Support for the Alaska Legal Services Corp., has lived in Anchorage 21 years after growing up in a small Bavarian Michigan town called Frankenmuth. She is a practicing Nichiren Buddhist, alumna of the University of Michigan, a Year 10 graduate of Leadership Anchorage and past board president of the Alaska Chapter of the Association of Fundraising Professionals; former co-chair of the Gay & Lesbian Community Center of Anchorage advisory board which opened in 2002.

How did you come to Alaska?

I was working with Allstate Insurance in Chicago, and was offered a job over the phone while at work by a client in Anchorage. My new Anchorage employer then laid me off after just four months, and I couldn't afford to leave, as I'd used my savings to move here. So I stayed, and eventually fell in love with Anchorage.

What kind of work did you do before becoming a pro bono coordinator?

For the last 12 years, I have been a Nonprofit Development Director at several of the large national organizations with offices in Anchorage.

Why did you decide to move into this area of work?

I was intrigued by a new challenge and a new scope of work. The thing that bothers me the most is injustice. I feel everyone should have access to legal assistance, and I am proud to work every day to bridge the justice gap in Alaska. I also was seeking a job where I would experience joy every day.

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What do you enjoy most?

I enjoy the variety in my day and the awesome people who work at ALSC. I love the feeling I get when I place a case with a pro bono attorney, and can then inform the client they will receive legal help with their matter. Our clients are very grateful.

What surprised you most?

I was overwhelmed at first with all of the new information I had to absorb. I've never worked in the legal field and did not have much experience working with lawyers. I had vocabulary, rules, and procedures to learn quickly. I'd not learned a new job in 12 years – fundraising is fundraising, pretty much, no matter the cause you are supporting. I was also surprised by how young most of our staff attorneys are, and how fired-up they all are.

What is the most difficult part of your job?

It is challenging to find pro bono attorneys that will take Family Law cases. But placing cases with attorneys throughout the state is the most difficult. What makes the process longer is playing phone tag, and then after a few weeks you actually get the lawyer on the phone, and s/he won't take the case or has a conflict. Then I start all over with calling more attorneys. I feel frustrated for the clients, who are waiting to hear if their case has been accepted. And I do not like having to inform a client that I can't find an attorney to assist them with their legal problem.

Laura Goss

What lessons and experiences have you learned from your work so far?

Basically, I've been a sponge! If I listed the main things I've learned thus far, you would laugh, as they are probably rudimentary for you. Besides the amount of legal information I have had to learn to do my job well, I've learned I bring a unique perspective to this position.

There are a number of different pro bono programs, each specializing in different types of cases. What should people know about your programs?

In addition to providing quality civil legal services to our clients on a case by case basis, ALSC also offers these opportunities for pro bono service:

· Early Resolution Project (ERP) - in one afternoon, offer free legal advice to litigants referred by the court system. ERP is currently in Anchorage, Palmer, and Juneau.

· Attorney of the Day (AOD) - Consult with clients once about specific legal issues and questions. This is typically a 4-8 hour commitment, depending on cases.

· Clinic facilitation - meet with several clients dealing with the same matter and walk them through the process of filing on their own. We provide pro se legal clinics for Bankruptcy, Divorce, Custody, and other Family Law matters.

At Alaska Legal Services, we provide our pro bono attorneys with malpractice insurance, a filing fee waiver, cost reimbursement - including travel, plus case mentoring and support as needed. Being a pro bono attorney for ALSC is a great opportunity to not only give back, but to learn a new area of practice and gain some new client interviewing skills.

Are there any projects you are currently working on or would like to undertake?

We are now offering CLE credits for attending our training to facilitate Bankruptcy Clinics throughout Alaska. And ALSC will host a Pro Bono Celebration this fall, as we complete our 45th year serving Alaskans.

What makes you come back every day?

I love what I do!

So, good readers, remember Laura the next time she calls upon you for help. Or, better yet, make the call yourself.

Probate lawyers: What can go wrong for the lawyer

By Mark June

Recent inquiries to the Ethics Committee and Bar Counsel suggest that, if anyone believes that Probate is a genteel area of the law for a lawyer seeking to avoid the cantankernousness of other areas of law, they should think again. One need look no further than *Enders v. Parker,* 125 P.3d 1027 (Alaska 2005) which found itself to be the subject of *three* separate Supreme Court opinions as a personal representative sought to contest a will she was charged with probating and, after being unsuccessful, sought her full attorneys fees to see that emotions following deaths lie just below the surface and may bubble up for years. In fact, Probate lawyers regularly find themselves in the hot seat in their dealings not just with the Personal Representative but also with respect to their efforts to be cordial to heirs and to obtaining payment of their legal fees.

As part of a greater desire to be helpful and to avoid disputes, lawyers will speak to a number of persons before an Estate is opened or a Personal Representative is appointed. Even after appointment, lawyers will deal with unrepresented heirs or claimants. And when those persons are displeased by an action of either the Personal Representative or the lawyer, it is not unusual to hear the statement that the lawyer had breached his professional duties because the lawyer was "their" lawyer. See *Johnson v. Doris,* 933 P.2d 1139, 1140 (Alaska 1997).

In dealing with persons, it is always important that the Probate lawyer appreciate who exactly is the Probate lawyer's client. On this issue, Ethics Opinion 91-2 has specifically recognized that, once an Estate is opened, a lawyer's client is the Personal Representative. This is because AS 13.16.410 empowers the Personal Representative to act on behalf of the Estate as opposed to the Estate acting on its own behalf. The same opinion goes on to state:

> An attorney representing the personal representative of an estate is not prohibited from representing the personal representative in disputes with heirs. The attorney may not, however, represent the personal representative in such disputes if the attorney has obtained relevant confidential information from the heirs while acting for the personal representative; nor may the attorney assist or counsel the personal representative in conduct inconsistent with the best interests of the estate.

Of course, this does not immunize the Probate lawyer from becoming crosswise with the personal representative. In *Matter of Estate of Adkins,* 874 P.2d 271, 273 (Alaska 1994), a personal representative resigned after being charged with murder and later sought to disqualify his lawyer. In affirming the Probate Court's denial of disqualification, the Alaska Supreme Court cautioned: "A possibility of conflict always exists when an attorney represents an estate under different administrators or representatives."

The admonition that the lawyer may not assist or counsel the Personal Representative in conduct inconsistent with the best interests of an Estate raises other issues. Ethics Opinion 2003-2 addressed a lawyer's responsibilities should it be discovered that the Personal Representative is engaged in fraudulent or criminal conduct. Relying upon Professional Responsibility Rule 1.6, the Opinion states:

> The personal representative's attorney may disclose the personal representative's fraudulent or criminal conduct to the court or beneficiaries under ARPC 1.6(b)(1), but is not required to do so

This "right to remain silent" is obviously tempered by the lawyer's independent duty under Rule 3.3 of the Alaska Rules of Professional Responsibility precluding lawyers from making false statements of fact, failing to correct previous statements of fact later discovered to be false, and requiring lawyers to take appropriate remedial measures upon discovering criminal or fraudulent conduct related to the Estate administration.

Unsurprisingly, the greatest scrutiny of lawyer actions occur with respect to requests for payments of fee. In those circumstances, when the Personal Representative seeks to pay the lawyer, the lawyer, in fact, becomes the real party in interest and is required to defend his fees. *Dieringer v. Martin,* 187 P.3d 468 (Alaska 2008).

In a case involving $197,761.30 in legal fees, the Alaska Supreme Court has gone so far as to state that a lawyer owes a fiduciary duty to the Estate to defend the reasonableness of his fees. *In re Estate of Johnson*, 119 P.3d 425, 427 (Alaska 2005). Should it be determined that fees were for the personal benefit of the Personal Representative, payment may be disallowed. In re Gregory's Estate, 487 P.2d 59 (Alaska 1971). In the event of Personal Representative misconduct or unreasonable fees, the Probate Court actually has the power to order that fees paid to the lawyer be restored to the Estate. *Dieringer v. Martin*, 187 P.3d 468, 471 (Alaska 2008).

As always, when great legal minds confer, the possibilities become endless. All the more reason for the Probate lawyer to be aware.

Dispositive relief in arbitration proceedings

By Gregory S. Fisher

At one time in the recent past, motions for summary judgment or other forms of dispositive relief were generally not possible in arbitration proceedings. Although this practice was never analyzed, it was usually ascribed to customary practice or procedural rules addressing evidence being received at oral hearings unless waived by both parties. However, this practice is changing. The currently prevailing view is that, not only may arbitrators grant dispositive relief, but in fact they should do so where dispositive relief is consistent with the goal and purpose of arbitration to expedite resolution of disputes in a time and cost efficient manner. See David Krol, "Dispositive Motions in Commercial Arbitration Proceedings in California," National Law Review (2009); *see also* Edna Sussman and Solomon Ebere, "Reflections on the Use of Dispositive Motions in Arbitration," 4 New York Dispute Resolution Lawyer 28 (2011).

Courts agree. *See Schlessinger v. Rosenfeld, Meyer & Susman,* 40 Cal. App. 4th 1096, 1105-06 (1995); *TIG Insurance Co. v. Global Int'l Reinsurance Co., Ltd.,* 640 F. Supp.2d 519, 523 (S.D. N.Y. 2009); *Sherrock Bros., Inc. v. DaimlerChrysler Motors, Co.*, 2008 WL 63300 (3rd Cir. 2008); *Sheldon v. Vermonty,* 269 F.3d 1202, 1206 (10th Cir. 2001).

As one court noted: "Arbitrators have 'great latitude to determine the procedures governing their proceedings and to restrict or control evidentiary proceedings,' and thus may proceed 'with only a summary hearing and with restricted inquiry into factual issues.'" *TIG Insurance*, 640 F. Supp.2d at 523.

Another court persuasively observed that refusing to entertain summary judgment motions "would require full-blown trials even where, as here, one of the parties believes that no material facts are in dispute. In a case where a legal issue or defense could possibly be resolved on undisputed facts, the purpose of the arbitration process would be defeated by precluding a summary judgment or summary adjudication motion and instead requiring a lengthy trial." *Schlessinger*, 40 Cal. App.4th at 1105.

In *Sherrock Brothers*, the Third Circuit noted:

> Although the AAA Commercial Arbitration Rules do not specifically provide for motions for summary disposition, they do grant the arbitrator flexibility and discretion. Accordingly, federal courts have affirmed arbitration awards where the arbitrator ruled on a motion for summary judgment or on summary disposition. Granting summary judgment surely falls within this standard [that the arbitrator has wide discretion to fashion an appropriate remedy], and fundamental fairness is not implicated by an arbitration panel's decision to forego an evidentiary hearing because of its conclusion that there were no genuine issues of material fact in dispute.

Sherrock Brothers, 2008 WL 63300 at **4.

In ushering in this change of practice, courts and arbitrators have instructed that arbitration rules are not rigid, comprehensive standards. Instead, they are general (and informal) guidelines. Arbitrators have discretion to interpret the rules. *See* AAA Commercial Arbitration Rule 53.[1] Arbitrators also have discretion to vary the manner and method of proof, and to conduct proceedings with an eye towards expediting resolution in a time and cost efficient manner. *See* AAA Commercial Arbitration Rule 30(a) and (b).

Most ADR rules do not guarantee an actual evidentiary hearing. *See Schlessinger*, 40 Cal. App. 4th at 1105-06. Instead, most courts and commentators now recognize that the concept of a hearing is elastic and simply means having a full and fair opportunity to be heard. *Id*. The touchstone is fundamental fairness—has each party had an opportunity to present evidence and argument? *See* Sussman at p. 29 (citing and discussing cases). Indeed, the Arbitrator may consider evidence by affidavit. *See* AAA Commercial Arbitration Rule 32. Courts and arbitrators have commented that it makes little sense to require numerous non-party witnesses to testify at a proceeding when issues are susceptible to resolution by undisputed testimony and records. Conducting an arbitration hearing under those circumstances needlessly wastes time, money, and resources, and inconveniences non-party witnesses. If the parties have had a fair opportunity to be heard on the material evidence, there is no reason to insist on arbitration hearings.

Footnote

[1]We cite the AAA rules for illustrative purposes. There are other ADR services each with its own governing rules.

Bar Convention Highlights — Juneau

FOUR RECEIVE BAR'S ANNUAL AWARDS

Mary Fisher receives award from Mike Moberly

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

Mary has been on the Bar Fee Arbitration committee since 1993. During that time she has sat on numerous panels, including dealing with a complex, contentious fee arbitration involving volumes of evidence.

Those nominating Mary, and others supporting that nomination, emphasized that she is thorough in her review of the evidence and that she performs her duties in a thoughtful, calm and professional manner. Mary was further described as "a great listener, reasonable and very easy to work with."

Beyond her work as a member of the Fee Arbitration panel, Mary's "day job" is as executive director for ALPAR. I did not know Mary had served on the committee until her nomination. But, anyone who knows Mary also knows that she is constantly popping up in unexpected places – she remains involved in a lot of activities and we are fortunate to have her services her at the Bar.

Thank you for your generous efforts in providing this invaluable service to members of the public as well as the Bar. Public members' roles in Bar services are invaluable, particularly with the Fee Arbitration Committee. Thank you for your service.

--Remarks by Mike Moberly

Vance Sanders receives award from Hanna Sebold

The Board of Governors' Robert Hickerson Public Service Award recognizes lifetime achievement for outstanding dedication and service in the state of Alaska in the provision of pro bono legal services and/or legal services to low income and/or indigent persons.

The person who is awarded the Robert Hickerson award is someone that people repeatedly asked, hasn't he already won that?

He came to Alaska to work for Alaska Legal Services Corporation in the mid-1980's while Robert Hickerson was ALSC's Executive Director. He was promoted from staff attorney to supervising attorney of the Juneau office, he supervised, mentored many. His combination of good legal skills and personal affability soon became well-known, and that period while he was running the southeast office was indeed one of the high point in ALSC's performance in southeast Alaska.

After leaving ALSC as an employee, he has worked in private practice, but never forgetting his ALSC roots. He has served on the ALSC's board for more years than I can remember. He works tirelessly in volunteering his time to promote equal access to justice, both in the legislative hallways and to the public.

He is unfailingly personable and able to maintain a cordial personal relationship with everyone. Someone speculated it the accent

As this recipient was particularly close to Robert Hickerson, it is my pleasure to announce this year's recipient.

--Remarks by Hanna Sebold

Dick Monkman accepts the Distinguished Service Award from Hanna Sebold

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

This year's recipient has been a member of the Ethics Committee for so long that we don't have a record of when he started although we're pretty sure it was after the Committee transitioned from clay tablets.

Our recipient has authored a significant number of well-reasoned opinions that have materially benefited the practice of law in Alaska. But what's even more remarkable is that he has attended and continues to attend over 99% of the Committee's meetings over the phone. His contributions are witty, thoughtful, and constructive and he enjoys the great respect of his colleagues on the Committee. If there was a special award for Committee attendance on the phone, he would have that one as well.

--Remarks by Hanna Sebold

David Voluck received the Professionalism Award

The Alaska Bar's 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.

This year's recipient is a Southeast practitioner. He was in practice with Jude Pate before venturing on his own. He is also the tribal judge for Sitka tribes of Alaska and Central Council Tlingit and Haida, and possesses a balance of strong advocacy while respecting his colleagues. Whether in the courtroom or on the bench, he is respectful of the process and the participants.

--Remarks by Hanna Sebold

Convention photos by Karen Schmidlkofer.

Surprise, Barb Hood! Justice Dana Fabe presented the Alaska Court System Community Outreach Award to Barb Hood at the convention. Judge Keith Levy also received the award.

Steve Van Goor receives 30 year recognition from Hanna Sebold.

Rich Curtner presents the Human Rights Award from the International Law Section to Susan Orlansky.

Peter Maassen receives outgoing Board of Governors Service recognition from Hanna Sebold.

Peter Ashman receives Judge Nora Guinn award from Chief Justice Dana Fabe.

Peter Ashman receives Judge Guinn award

The Judge Nora Guinn Award is presented to someone who has made an "extraordinary or sustained effort to assist Alaska's rural residents, especially its Native population, overcome barriers to obtaining justice through the legal system." Judge Nora Guinn was a pioneering Alaska Native judge who dedicated her life to making our justice system more accessible and fair for the Yupik people of the Yukon-Kuskokwim Delta. I am delighted to present the award honoring her legacy to another pioneering judge, who has devoted much of his professional life, both on and off the bench, to improving the administration of justice in Alaska's rural communities: Judge Peter G. Ashman.

Judge Ashman came to Alaska in 1980 to serve as Alaska Native Allotment Coordinator for Alaska Legal Services Corporation. He followed this work with a stint as rural magistrate in Dillingham. In 1983, he moved to Anchorage, and would serve from an urban base for the next twenty years: first as an Assistant Public Defender, and later as a District Court Judge in both Palmer and Anchorage. Yet throughout these years, he maintained close ties to Bush Alaska, handling cases in Bethel, Kodiak, Kenai, Dillingham, and even remote villages like St. Paul. And he was always mindful of the challenges rural justice presents in a state as large and diverse as ours.

Over the last decade, Judge Ashman devoted himself almost exclusively to rural and Alaska Native issues. He served as General Counsel for Norton Sound Health Corporation and as Attorney of Counsel for the law firm of Sonosky Chambers Sachse Miller & Munson, which specializes in Indian Law. And perhaps most importantly to those of us in the court system, he served as a Superior Court Judge Pro Tem in Anchorage, Bethel, Kenai, and Kodiak for over six years. While in Bethel for an extended stay, he gained the love and respect of the community by taking classes, photographing local events, and even performing as the DJ in a weekly radio show. (And I can attest to the fact that Peter knows his music: I play in a ukulele group with him!) He is also still fondly remembered by Bethel court staff for his home-baked contributions to weekly staff meetings.

Throughout his tenure on the bench, Judge Ashman was never satisfied with a "one size fits all" approach to justice delivery. He was an early advocate of restorative justice principles and a pioneer in early efforts to implement circle sentencing, which can draw whole communities together to address both the impacts and proper outcomes of crime. And he worked tirelessly as a training judge to encourage cultural awareness and respect for Native traditions among magistrate judges, many of whom are the main face of justice in their small rural communities.

Among his colleagues on the bench, Judge Ashman is highly respected for his humility, his quiet leadership, and his courage as a true trailblazer. But most of all, he is admired for the example he set as a servant of the people – all the people. To him, being a judge was never about power, or influence, or authority. It was about figuring out how to help people solve their problems – one person and one day at a time. And it was about reaching out to those who by virtue of their unique culture or language, or isolated location, might not fully understand or trust the system of which he was a part. He did both of these things – problem-solving and outreach – in the best way he knew how: patiently, sensitively, and with great respect for everyone involved. And he cared. He always cared, and it showed.

Our justice system as a whole is better because of Judge Ashman's many years of service. But it is rural justice that has benefitted most from his steady illuminating light. We have a long way to go to meet the legal needs of Alaska's rural people, but any progress the future brings will owe much to his dedication and enduring vision.

Judge Ashman, we are grateful for your years of service to Alaska's rural people, and it is my honor on behalf of the Alaska Bar Association to present you with the 2013 Judge Nora Guinn award.

--Remarks by Chief Justice Dana Fabe

Katie Hurley wins Rabinowitz Award

The Rabinowitz Public Service Award is given each year to an individual whose life's work has demonstrated a commitment to public service in the State of Alaska. I am honored and humbled to introduce this year's recipient, Katie Hurley.

I met Katie in 2001 when I was newly hired at the Alaska Judicial Council and she was serving at one of its public members. When I first understood that Katie was present at the Constitutional Convention, I was a little awed. When I spent time with her and got to know her I became increasingly fond of her, as happens to us all. And the longer I have known her, the more inspired I am by her example.

Katie is a hometown girl. She was born in Juneau on March 30, 1921, and graduated from Juneau High School in 1939. After another year of schooling in Oregon, she returned to Juneau to serve as clerk and secretary to Territorial Governor Ernest Gruening for 12 years.

Most people here likely know that Katie served as Chief Clerk to the Alaska Constitutional Convention. She spent her days and nights during a bone-chilling winter of 1955- 1956 in the company of Alaska's constitutional delegates attending sessions, recording those events, and physically drafting the words of our guiding document.

After the Convention, Katie then observed the implementation of Alaska's Constitution as she served as Secretary of the Senate for the Territorial Legislature and the first Alaska State Legislature. She also served on the Statehood Transition Team under Governor William Egan.

And as our state grew and developed, she continued to serve, working as President of the Alaska State Board of Education, as Chair of the Alaska State Commission on Human Rights, and as Executive Director for the Alaska Commission on the Status of Women. The arc of her service then turned towards representing the people directly. Katie was the Democratic candidate for Lieutenant Governor in 1978. And the citizens of the Mat-Su Valley elected her to represent them in Alaska's House of Representatives from 1985-1986.

After she had taken turns influencing the executive and legislative branches, she next moved on the putting her own touch on the judicial branch when Gov. Tony Knowles appointed her to the Alaska Judicial Council, where she served from 1999 - 2003.

Her public service then turned toward her closer neighbors and community and she next served on the Valley Hospital Home Health Advisory Board and on the Matanuska Telephone Association Board of Directors for nine years.

The Alaska Bar Foundation Jay Rabinowitz Award went to Katie Hurley. L-R: Susie Dosak, Anne Rabinowitz and Katie Hurley.

So that's what a lifetime of public service to the state of Alaska looks like.

But if you ask Katie, what it feels like is fun. Because it's not just the list of her achievements that sets Katie apart. It's her fearlessness and her joy in what she does that makes her truly remarkable.

As I observed first-hand while she served on the Judicial Council, she speaks her mind and follows the path of her own heart. The best part is that Katie never quits. You can find Katie on any given day waving a sign, actively promoting her beliefs in how to preserve Alaska's resources for the benefit of all Alaskans, or, as I saw on Tuesday night, long after the judges and lawyers had gone to bed, you can see her mixing it up at the Baranof Hotel's Bubble Room, making new friends and fans wherever she goes.

Luckily for us, she has always channeled that enthusiasm and energy and commitment to benefit the people of Alaska. I hope Katie's story inspires you, like it does me, to be more yourselves, more enthusiastic, fearless, and joyful in your work; to use your talents to better our world and the people in it; and hopefully, to do so in the service of our great state.

Katie, on behalf of the Alaska Bar Association's Board of Trustees, and on behalf of all Alaskans, thank you for your lifetime of service to the people of our state and for the inspiration you spark in all of us, that we may follow your lead.

--Remarks by Susie Dosik

Book Review — "In From The Cold": an Alaska mystery

Aficionados of the mystery novel probably have thought about writing one, themselves, at one time or another, joining the ranks of Rex Stout, Sue Grafton, Earl Stanley Gardner, or Dashiell Hammett. North Dakota trial attorney and former Alaskan David R. Bliss has.

His first mystery novel (he's incubating a second), "In from the Cold," is a good first effort--a book you want to finish reading.

Doug Wooliver and Nancy Meade sizing up the dance floor.

Nelson Page, Mike Baylous and Hanna Sebold at opening reception.

It features John Wilkins, an unlikely Minnesota attorney "detective," in a two-man law office with nagging bills, quirky clients, and a smart-alec secretary. Wilkins finds himself in the middle of an investigation to find out what happened to a client and friend, George, who has disappeared and is presumed dead in the Alaska Bush.

It's clear from the beginning that Bliss had fun writing the book--conjuring and introducing characters like a nerdy youthful investigator on his staff, the greedy mogul who is trying to take over George's business, George's low-class, high-spending (presumed) widow, lovable judges, a cut-throat D.C. lobbyist as a love interest, and various walk-on characters like seedy lawyers, oddball clients, and Bush Alaska villagers. Add to this a contentious conservative daughter impatient with her dad's decidedly liberal leanings, all of which offers Wilkins the opportunity for political sarcasm and wit.

The parade of characters and lawyer-stories at times get in the way of the mystery; on the other hand, some of them yield a surprise twist to the plot.

The tale opens with George crash-landing in the Alaska wilderness with a Bush pilot in the cockpit. Fade to black and the ensuing months of conflicts among his unscrupulous partner, the wife who wants his inheritance (attempting to have George declared dead), and Wilkins (determined to find his missing friend alive). We know little about George, other than he became the reluctant founder of a multi-million-dollar business enterprise, hired a Wall Street-type CEO to help run the business, and seemed to be losing interest in the rat-race--dreaming of going to Alaska to get away from it all for awhile.

Wilkins is frustrated with the meager clues that will lead him to answers for George's disappearance. His frequent trips to Alaska lead to dead ends and legal wrangling with George's partner and attorneys. The mystery culminates in court, at the final hearing on motions to declare George deceased.

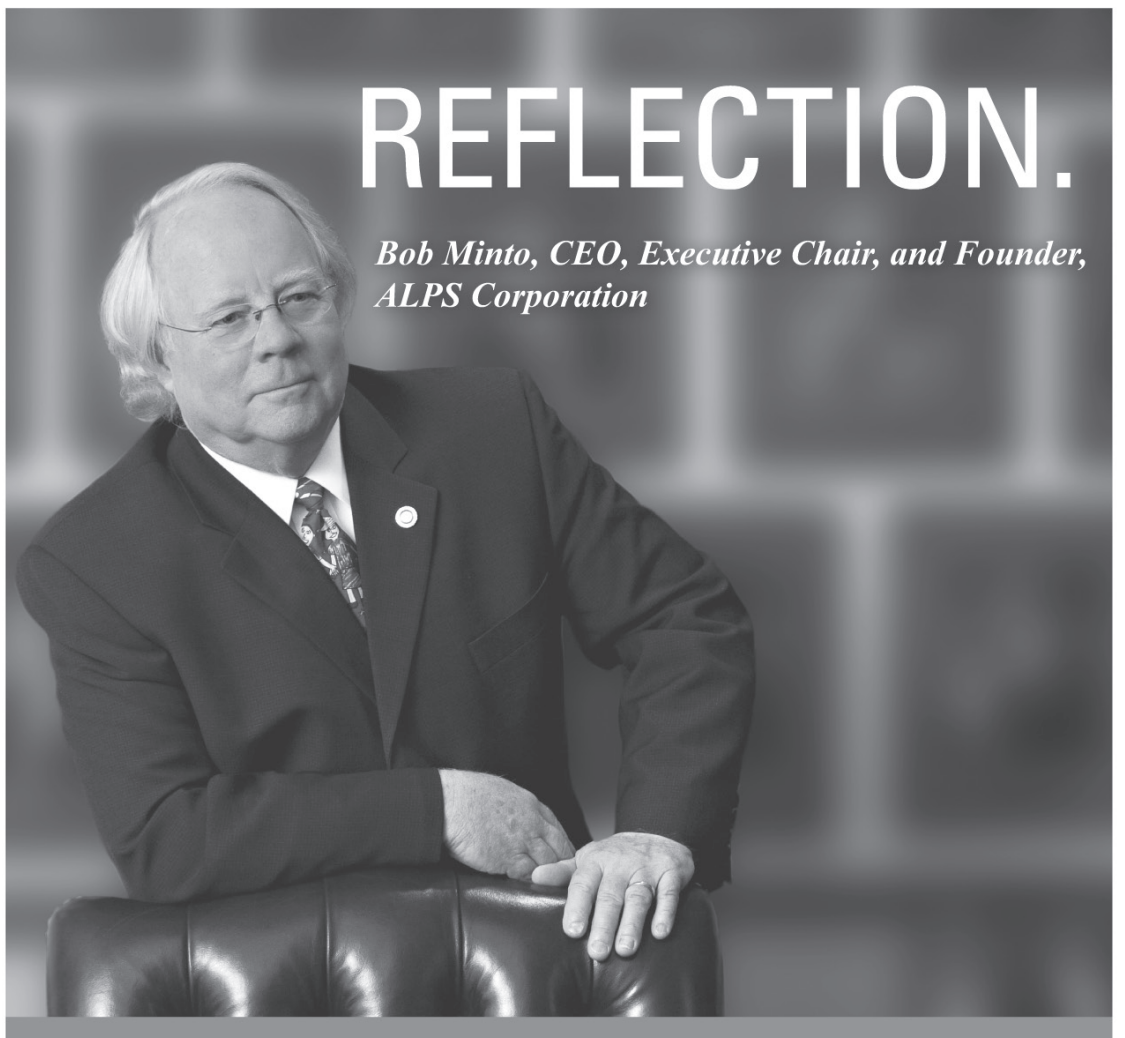
Unlike mysteries that reveal the unexpected at the end of the book, Bliss springs several twists that the reader doesn't see coming, and still delivers the unexpected conclusion.

Having lived in Alaska in the 1970s, Bliss captures the geography, lifestyle, weather, Anchorage, and Bush living flawlessly--from the winter snow-cover that hampers investigation at the crash site to flying in the Arctic and hanging around Merrill Field. He was fortunate, as well, to have an editor who knows his way around suspense: Bill Thompson, who has edited Stephen King and John Grisham.

In From The Cold
David R. Bliss
Bang Printing
ISBN 978-0-615-32656-6
242 pages c 2010

Available at Barnes & Noble Books, Amazon, and Kindle version.

— *Sally J. Suddock*



Federal Bar Association

By Darrel J. Gardner


Darrel J. Gardner

The Alaska Chapter of the Federal Bar Association (FBA-Alaska) continues to grow in membership, and we have added several new events for the rest of the year.

The third meeting of 2013 took place on March 12: "Federal Court Practice: Do's and Don'ts." The speakers were U.S. District Court Chief Judge Ralph Beistline, Senior Judge H. Russel Holland, and District Judge Sharon Gleason. Darrel Gardner, Chapter President, introduced the judges, noting that during a telephonic meeting of Ninth Circuit chapter presidents earlier in the day, the most discussed topic was the effects of sequestration on federal courts all over the country. According to an April newsletter from the U.S. Courts, sequestration reduced the Judiciary's overall funding levels by almost $350 million—a 5 percent cut affecting people, programs, and court operations. Each court decides how to implement the funding cuts, but it is anticipated that nationwide up to 2,000 employees could be laid off this fiscal year, or face furloughs. Fortunately for Alaska, however, Judge Beistline said that it appeared that the Alaska District should be able to manage the budget cuts without resorting to closure of the court one day a week, as is being done in other districts.

Judge Holland started off by discussing practices in civil cases. Some of his points included: 1) Initial civil complaints should include enough detail to make out a "plausible cause of action," but should not include every evidentiary detail, or have numerous exhibits attached. 2) Motions for summary judgment and for other relief should focus the strongest argument and not include "throw-away" arguments, which tend to weaken the strength of party's main argument. 3) In trial, attorneys should lay a foundation, identify exhibits, and move them into evidence as early as possible. 4) Cross-examination that merely repeats a witness' prior testimony is ineffectual, boring, and can easily lead to the attorney being "zinged." Judge Holland also noted that the number of federal civil trials seemed to be in decline.

Judge Gleason followed and said that, from her bench, civil trials seemed to be alive and well, considering the number of trials she has recently handled. Judge Gleason noted that she had spoken at the FBA meeting in January, and instead was there primarily to represent Judge Burgess, who is in trial in Ketchikan. Judge Gleason circulated a handout focusing on two issues of particular interest to Judge Burgess: How to properly refresh a witness's recollection, and how to use a deposition for impeachment.

Chief Judge Beistline finished up the meeting with various comments including: In his court, the allocution of a criminal defendant at sentencing is important. As each judge is different, it is good idea for attorneys to get to know their judges as much as possible. Judge Beistline recalled that when he was a practicing attorney in Fairbanks, he would move to continue an appearance in front of a particular judge if he learned that the judge had recently undertaken one of his many attempts to quit smoking. With respect to briefs, litigants should consider brevity and clarity as hallmarks of good, effective writing. Judge Beistline noted that there was some differences among the judges with respect to handling 5K (cooperation) issues at sentencing hearings and changes of plea. The topic is scheduled for further discussion by the court.

The next FBA-Alaska meeting was held on May 8. Local immigration guru Margaret Stock of Lane Powell PC presented a one hour overview of the pending immigration reform bill. In March Margaret was in Washington DC, where she was summoned by the White House, Congressional Committees, and the Justice Department for input on various aspects of the impending immigration reform legislation. The day before the FBA meeting, senators from the Judiciary Committee added more than three hundred amendments before the 5:00 PM EST deadline. The current bill is 844 pages and if enacted would have a substantial impact on the federal courts. Although many stakeholders, including the Department of Justice, sought changes that would simplify and clarify the existing law, the bill instead adds substantial complexity to a labyrinth of rules and regulations, and would likely substantially increase the caseload of prosecutors, federal defenders, and judges. Margaret noted that the added complexity of navigating the path to legal citizenship would require the assistance of a lawyer in almost every case, thus ensuring future job security for immigration attorneys.

Both of the FBA-Alaska meetings were approved for one hour of general CLE credit by the Alaska Bar Association.

The following FBA meetings are planned for the remainder of the year: Except as noted, the meetings will take place from 12:00 – 1:00 PM at the Executive Dining Room located on the east side of the cafeteria at the Federal Building, 222 West 7th Avenue, Anchorage. Membership applications are available at every meeting. Attendance at meetings is FREE to members; non-members may attend by paying a $25 registration fee at the door (cash or check only, please) New attorneys with less than 5 years of experience may register for $10.

• May 21, 2013: "An Hour with the Ninth Circuit Court of Appeals." This will be an informal meeting with members of the visiting Ninth Circuit Court of Appeals Panel. There will be a short presentation by the judges, followed by a question and answer period. This special event will be held from noon – 1:00 PM, in the courtroom at the Anchorage Historic Federal Building, 605 West 4th Avenue.

• June 25, 2013: "The Wide World of Bankruptcy." Bankruptcy Judge Gary Spraker will talk about his experiences as a bankruptcy judge since his appointment to the bench in October 2012. Judge Spraker will also give a general overview of bankruptcy law and procedure as it relates to general civil and criminal practitioners who do not regularly handle bankruptcy cases. Bring your questions!

• Week of August 12, 2013: "Formal Bench/Bar Meeting with the Visiting Ninth Circuit Court of Appeals." This will be the second and last Panel visit to Alaska for the year. This will be a CLE event co-hosted with the Alaska Bar Association and will include a reception afterward. Special event pricing and other details to follow.

• September 10, 2013: "Technology in the Federal Courtroom." Judge Burgess will present the latest technology related topics as they impact on practice and trials in federal court, including a discussion of the Jury Evidence Retrieval System (JERS) currently installed in one of the jury deliberation rooms.

• October 8, 2013: "Round Table with the Judiciary." This will be a bench/bar meeting with a panel of our local District and Magistrate Judges. Bring your questions, comments, and suggestions, particularly with respect to magistrate matters. There will also be a court report regarding fiscal year 2014, which starts October 1.

• November 12, 2013: "Taking It Up - Appellate Practice and Procedure with Judge Morgan Christen." Our own Ninth Circuit Court of Appeals Judge, Morgan Christen, will be sharing her experiences and observations after more than a year with the Ninth Circuit. There will also be a question and answer session.

For more information, or to join the Federal Bar Association, please contact Darrel Gardner, Chapter President or visit the Chapter website at www.fedbar.org

ATTORNEY DISCIPLINE

Court suspends laywer

The Alaska Supreme Court suspended attorney Bruce Stanford from the practice of law for an eighteen month period. The court ordered the suspension to run retroactively from the date of Mr. Stanford's interim suspension on November 16, 2011.

The Supreme Court had earlier imposed the interim suspension after Mr. Stanford's conviction of a felony charge in Idaho. Mr. Stanford was convicted of malicious destruction of property for firing a gun in a residential kitchen and damaging various appliances. No persons were injured. The Idaho judge who sentenced Mr. Stanford acknowledged that the destructive behavior was partly a consequence of following a doctor's directive to stop taking a prescribed medication without anticipating adverse side effects due to the sudden cessation of taking the prescribed drug.

Mr. Stanford completed his unsupervised probation and complied with conditions imposed by the Idaho court. In Alaska the court imposed conditions prior to reinstatement, including meeting with the Lawyers' Assistance Committee and following its recommendations, if any. When Mr. Stanford reinstates to practice law in Alaska, he will be on probation for two years from the date of the Supreme Court's reinstatement order.

Radiance continues her trans-Pacific journey

By Laurence Blakely

Second in a series

Second stop -- Radiance.

When Mark and I started planning our two-year circumnavigation of the Pacific Ocean, one of the first things we wrote on our gigantic planning wall-map was that we would stay in New Zealand for the 2012-13 South Pacific tropical cyclone season. The second thing we wrote down was the Victoria, B.C., to Maui race. But between Hawaii and New Zealand, we had only vague notions of other potential landfalls. What we did know is that our insurance required us to be out of the tropical cyclone zone by November 1, so we had to keep moving. In mid-September, almost 4 months after having left Seward, we had reached the northern Cook Islands at a latitude of about 13 degrees south. We still had a lot of ocean to cover to get to New Zealand, and lots of islands we wanted to explore. It was time to push on.

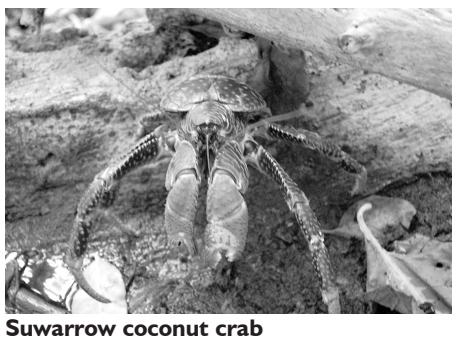
So we bade goodbye to the pearl divers of Manihiki, raised our anchor and set sail for Suwarrow, an atoll a little over 200 nautical miles away. We had heard a lot about Suwarrow, a bird and wildlife sanctuary owned and managed by the Cook Islands. We made the passage in under two days, enjoying fifteen to twenty-five knot winds from the east-southeast. This was pretty much ideal as we were steering a course of 250 degrees magnetic.

Suwarrow is officially a Cook Islands National Park, hosting two caretakers during the non-hurricane season (southern hemisphere winter) to check boats in and keep an eye on things. It is a big, low-lying atoll consisting of very little land—mostly submerged reef and small motus—and the only visitors are individuals on their boats, like us. When we arrived, we were greeted by the two caretakers: Harry, a Manihikian, and Ants, a New Zealand Maori. We also found fourteen other sail boats in the anchorage—a virtual metropolis to us, having virtually been on our own since leaving Maui. The boats ranged from 26 to 110 feet, and hailed from ports all over the world. A bit overwhelmed at first, the crew from *Radiance* was soon happy to mingle and exchange stories and tips with other crews. As boats were beginning to run low on provisions, people bartered for supplies. The majority of the other boats had sailed west from Mexico or the Panama Canal and through French Polynesia. A happy result from this was that many arrived with a selection of French cheeses, one of the things we were able to exchange for brownie mix, popcorn, bread yeast, and other random items we happened to be well stocked on.

Aside from the two caretakers during the winter, Suwarrow is uninhabited. Like Fanning, Palmyra, and Manihiki, there is little soil—coconuts and fish are the main food source. Unlike Palmyra, the other wildlife refuge we visited, Suwarrow had not served as a naval station during World War II. And instead of now hosting a research station and the odd yacht, Suwarrow hosts almost only visiting yachties, sometimes dozens at a time. But both Palmyra and Suwarrow have been the site of many men's dreams. Suwarrow's most famous inhabitant was New Zealander Tom Neale, who lived alone on the atoll for a total of sixteen years, in three periods. His book, *An Island to Oneself*, is a classic among sailors, especially those sailing the South Pacific. Another famous Suwarrow visitor was Robert Louis Stevenson, who made landfall here near the turn of the century. The Cook Islands government claims that his wife dubbed Suwarrow "the most romantic island in the world." Although Suwarrow was apparently not Stevenson's inspiration for *Treasure Island*, it is, like most remote, uninhabited atolls in the South Pacific, the subject of its own treasure legends.

Another famous Suwarrow visitor was Robert Louis Stevenson, who made landfall here near the turn of the century. The Cook Islands government claims that his wife dubbed Suwarrow "the most romantic island in the world."

Although we had to ask our hosts before fishing, we *were* allowed to fish, and Harry and Ants also allowed for modest and controlled coconut crab harvesting—crabs that were decidedly not for the taking in Palmyra. Illegal, unreported, and unregulated fishing is nevertheless a concern in Suwarrow, as it has been in every place we have visited. According to Harry, illegal fishers sometimes anchor inside the lagoon at Suwarrow during the off-season. Harry also told me that the Cook Islands planned to undertake the same extensive rat eradication measures that Palmyra had implemented. I recently learned that the eradication procedures are now underway! I wonder how they plan to prevent rats from re-immigrating.



Suwarrow coconut crab

Having spent two weeks in Suwarrow snorkeling with manta rays, diving for shells, and sharing potluck dinners onshore with other sailors, we were ready to push on toward Samoa. After spending several months at sea stopping only at atolls with altitudes topping out at barely a few meters above sea level, it was strangely comforting for us to behold the lush green

Continued on page 18

Trans-Pacific journey

Continued from page 18

mountains of the Samoan islands. Although we spent just a couple of weeks in Samoa, it was enough time for me to develop a fascination for the colorful Samoan fabric. I spent days going to fabric shops and speaking to street vendors. In my explorations, I learned that the patterns on the fabric are also the patterns of the traditional Samoan tattoos, or "pe'a." The tradi-

Manta mouth

tional Samoan pe'a covers a man's body from the waist to the knees, and a woman's covers her thighs. The designs of the pe'a, as well as those of the "siapo" (cloth made from tree bark) hold a prominent role in the Samoan visual arts, and they often represent a person's extended families or ancestors. After enjoying some city culture in Apia and re-provisioning, we left Samoa—without tattoos, but with several swatches of cloth—and sailed on to the Kingdom of Tonga.

The Tongan islands lay in roughly a north-south direction, and our plan was to work our way down the chain, stopping at the various island

Tonga schoolboys

groups, to arrive in the southern-most group, Tongatapu, at the beginning of November, ready to sail to New Zealand. We meandered through the Vava'u group, a favorite for visiting yachties, but we opted to spend more time in the less visited Ha'apai group to experience a more authentic Tonga. The low-lying Ha'apai offers little protection in anything but settled weather. This and the presence of many unmarked, uncharted reefs deters visiting yachts from stopping.

Our first stop in the Ha'apai was at the main village, Pangai. We'd had a pretty rough day—an easy day sail from Vava'u had turned into something entirely different when the wind turned northerly and built steadily. We'd managed to tear our mainsail almost in half—rendering it unusable—during an uncontrolled jibe and had to take it down. As we struggled to lash the pieces of the mainsail to the boom, we hooked a huge mahi-mahi on the line we'd been trolling all the way from Vava'u. By the time we tucked behind a little breakwater in front of the village and dropped our anchor, it was raining buckets and nightfall was approaching. Mark finished cleaning and filleting the mahi-mahi, came inside, soaked to the bone, and shed his wet clothing. At this precise moment, we felt a huge wind gust suddenly hit the boat. The boat heeled way over, and I knew we were dragging anchor and it wouldn't be long before we'd be

Catching a mahi mahi

on the rocks. We ran up on deck just as the boat hit shore. Mark started the engine and I went forward to try to use the windlass to pull us off the shore. As I looked back at Mark, I realized that he hadn't had a chance to put any clothes on! It was Saturday evening, and dozens of townspeople were gathered on the shore not twenty feet away from our boat, swimming, playing, just hanging out, and watching us. The Tongans didn't seem very concerned, either with the nudity or with the fact that we thought we were losing our boat. Mark managed to pull some shorts on, and we managed to pull ourselves off the shore, first with the windlass, and then with the engine. At the time, the thought did strike me that we were in the tropical cyclone zone, but that it wasn't yet November, so our insurance should cover our damages. Although it was a strong gust, it did not last, and we were able to re-anchor. Our nerves were frayed, but, amazingly, the boat seemed ok. There was nothing we could do now that night had fallen. The next morning, Mark dove on the boat and detected no significant damage. When we went ashore, we noticed a path of destruction: roofs missing from houses, signs torn down, uprooted trees. The Pangaians said the gust was actually a small tornado. Notwithstanding this rough start, we enjoyed the Ha'apai immensely and had fine sailing weather the rest of the time.

Between the Ha'apai and Tongatapu, we stopped for the night at a small islet called Kelefesia. We thought the islet was uninhabited, but when we went ashore for a look around, we found a fishing camp of about a dozen or so men. They told us they were harvesting sea cucum-

Moonwalker during storm.

bers to sell to the Chinese. We also, somewhat disconcertingly, noticed a the mast of what had to have been a large sailboat sticking out of a sand drift. Kelefesia is not a good place to be in any kind of strong weather! The following day, November 1, we sailed to Nuku'alofa, the main town in Tongatapu and the capital of Tonga, and anchored in front of "Big Mama's," a small resort outside of the main town.

Big Mama's was a pleasant place to wait for a suitable weather window for the passage to New Zealand. On a dry day, Big Mama let us spread our mainsail out in her backyard where we used our hand crank sewing machine to patch it up—well enough, we hoped, to get us the 1,000 nautical miles to New Zealand. Big Mama was curious to hear about the fish camp we had encountered in Kelefesia, and explained that the Chinese were paying a very high price for harvested sea cucumbers. Sea cucumbers are important for the health of coral reefs, so she was not pleased to hear that Kelefesia was getting fished. We also happened to see a cargo of shark fins on a boat in Nuku'alofa harbor.

The conversations at Big Mama's were mostly about weather and the pending passage to New Zealand. One day, we saw four boats arrive in the anchorage. They had left Tonga for New Zealand a few days earlier and turned around because a tropical depression had evolved into a deep low projected to cross between Tonga and New Zealand. Instead of riding it out at sea, they would ride out the low with us, at anchor. This was a good call. Many other sailboats that left and continued on had very unpleasant passages, with winds in the 70 knot range and 30 foot seas. One yacht was abandoned after it was rolled and the crew sustained head injuries. Several months later, the yacht washed up on the shore of Australia.

We set two anchors and hunkered down for an exciting couple of days as the low was forecast to pass just to the south of us. We experienced a gust of seventy-four knots, but no boats dragged anchor. Big Mama's sustained some damage, and the yachties helped with the clean-up the day after the storm. It occurred to me that, because it was after November 1, our insurance would not have covered us for any damage …

Samoan little queen

A couple of days later, we set sail for New Zealand. We had one of our most pleasant passages to date, and arrived on November 19. It was cold and rainy, and it felt like home.

ECLECTIC BLUES

Moving on

By Dan Branch

I've racked up some numbers since that day in 1977 when Judge Cook administered the oath than we all take to join the Alaska Bar Association. It being October in Bethel, the weather was probably terrible but I looked good in the three piece suit purchased for full price by a mother with hopes that it would be worn daily in some California law firm. The suit disappeared without further use, having no place in Bethel or Aniak where any blazer-tie combination, no matter how hideous, satisfied judicial decorum as long as not worn with dungarees. That's one three piece suit for 35 years of legal practice that may have just ended with my retirement from the Attorney General's Office.

Like many of my generation, I stumbled into law school and a resulting legal career. We all had access to cheap post secondary education. Some, like me, had working class parents insisting that we get a college diploma and accept the resulting opportunities that were said to flow magically from it like water from the Sinai rock. No employment opportunities burst forth from my U.C. Berkeley poly sci degree in 1973, a fact driven home by each Vietnam green case of out-dated plasma I unloaded in a Squibb warehouse the summer after graduation. When offered a placed at the University of San Diego Law School I grabbed it.

"Like many of my generation, I stumbled into law school and a resulting legal career. We all had access to cheap post secondary education."

Life at USD was turned surreal by two roommates who drank up all my cheap Canadian whiskey while moving backwards, page by page, through my first year textbooks---trying, they explained, to flush away any knowledge that seeped into their sophisticated brains during their first year of law school. There was also an overly intelligent basset hound named Morris, a civil procedure professor with the demeanor of a Marine drill sergeant, and San Diego's consistently nice weather that brought me unease. Moving north to the University of San Francisco and north again to Bethel, I found more suitable climates.

The move to Bethel was also inadvertent. When I left California on a flight paid by the VISTA program I had no idea where in Alaska I would practice, only that it was be in an Alaska Legal Services office for a year. ALSC executive director Jim Grandjean was using VISTA to staff his bush offices with "warm bodies." After a welcoming handshake he told me, "We need a soldier in Bethel or Kotzebue, take your pick." Wanting to do a bit of gardening I opted for the more southernly Bethel.

For showing up in Bethel I was given the honor of taking over Don Mitchell's caseload. A great lawyer, kind but inclined to sardonic humor, Don gave me a verbal pat on the head then flew to Anchorage with his drug addicted dog Smoky where they set up residence. Back in river city I and some other Vista attorneys worked to finish up what Don and Chris Cook had started and file a few class actions suits on our own. We didn't know enough to be scared or even that we had had been given more opportunities and responsibilities than we deserved. This was the bush before the oil money and I was working in a legal aid organization before it was hampered by Ronald Reagan's top down practice restrictions.

I learned about death in Bethel when one of my fellow lawyers succumbed to pneumonia; when friends, neighbors or clients drowned or froze to death; from the Tundra Drums with it frequent reports of violent endings. We grew up quickly in the midst of death and responsibility. After 5 years at ALSC I opened up a one person law office with plans to spend as much time dog mushing as lawyering. The local court's demand for warm bodies to serve as appointed counsel soon skewed the line in favor of lawyering. Even without extensive training in any of the areas, I was thrust into felony trials, child protection hearings, and appellate cases.

After a stint in Aniak as the magistrate my wife and I moved to Ketchikan where I worked as an assistant attorney general. We liked it there. People were friendly and the pulp mill still ran multiple shifts, giving the town a familiar middle class feel. The work was dark----child protection, juvenile delinquency prosecutions, child support. At the end of each rain-hammered winter I'd be almost overcome with homesickness for the people of the river and the clean primary colors of the Kuskokwim under sunny March skies.

A gloom of uncertainty hung over our Ketchikan house, induced by the layoff notices I received every other Spring after the legislature sliced the Department of Law budget. I learned about the first one while listening to the local morning radio news. We had just signed a mortgage on a house and my wife was 6 months pregnant. The openness of our Ketchikan community and the rain forest life kept us in K-Town until the final layoff came in 1995. Then we moved to Juneau where I worked for the last 17 as an assistant attorney general.

Since leaving the AG's Office, people have been congratulating me on my retirement. Initially this puzzled. Did they know that my father never graduated from high school or my mother from college or that my father had a deep distrust of the legal profession? Did they realize that I gained the experience qualifying me for work in the office in places where anyone with a pulse and an valid law license would have been given responsibility for most of the first big cases I took to term? Did they know about the layoff notices and the arbitrary danger of job loss that settled over the Department of Law at each change in governor? Did they know about the self-doubt? No, I came to realize, they were just saying, "Congratulations on a long job well done." That's one of the joyful benefits of lawyering in a large state so thinly covered by licensed advocates.

For now my bar license remains on active status but I am enrolled in the University of Alaska, Anchorage distance learning MFA program in creative writing (creative nonfiction). For those who consider creative nonfiction in legal memoranda a Rule 11 violation, be assured that at UAA it is more an act of clarifying with creatively than obscuration.

Lars Johnson received the Anchorage Bar Association Ben Walters Award at the convention, but he could not attend.

Book Review—Do you have an app for that?

Anyone with a smart phone or tablet has likely visited the AppStore that is populated with thousands of software applications for work, home, or play. Apple's Apps Store has 850,000. Android apps number nearly as many at 800,000. And Microsoft has entered the smart-device fray with 145,000. Trailing the field is Blackberry, with just over 120,000 of them.

Apple's iOS and Android are by far the leaders--both in devices activated and the apps they use. The ubiquitous devices make it easy to be productive and mobile. Their versatility is largely due to the relative low-- or free--cost of applications. It's much less painful to discard a downloaded app that doesn't work as hoped, and simply search for another.

Two recent publications by the American Bar Association's Law Practice Management Section are handy guides for lawyers with little patience for spending hours scrolling through search results in the apps store of choice. Tom Mighell's "iPad Apps in One Hour for Lawyers" and Daniel J. Siegel's "Android Apps in One Hour for Lawyers" are curated selections and descriptions of a series of smart device applications that range from the mundane (calendars, note-takers, and contacts) to the practical (organization, file management, research, photo-editing) and playful (games and puzzles). Each of the books also include direction on how to download, update, maintain and sync data on deevices.

Each author enlisted the help of staff, colleagues and family to winnow their "best" lists, testing the apps, and comparing their price and features, although Siegel does not list prices for the apps he reviews.

Both authors' principal focus is on productivity in general, but added to these universal "business" apps are discussions and recommendations for applications designed specifically for the law office--plus a selection of apps just for entertainment. There are numerous graphics, screen shots, and hints for apps use in the iPad edition, giving it close to the one-hour read time in the title. And while Apple has "only" 350,000 apps native to the iPad, the half-million others for the iPhone can also be used on the iPad; screen resolution and size may suffer on the tablet, however.

At publication in 2012, Mighell was exploring a universe of just 80,000 iPad-native apps. He keeps up with updates and new releases on his blog: www.tommighell.com/ipad.

Siegel's job is a bit tougher, since the Android mobile operating system is open source, allowing multiple apps developers and hardware manufacturers' architecture to use it. The app may perform differently on different manufacturers' devices. As the operating system is upgraded, and app may not be backward compatible on your device With the thousands of independent software developers, the distribution of malware is also a concern (thus, Siegel recommends installation of an anti-virus app on Android devices.). And, an app developed in a smart phone version may not work on your tablet.

The largest app stores for the Android operating system are Amazon and GooglePlay (Google acquired the Android OS in 2007). These tech giants attempt to ensure that an app in their stores is safe, but given the open source OS, other app stores may not be as rigorous, and a developer is free to distribute an app anywhere he can. Siegel thus recommends other sources for apps that have high reputations for reliability and malware screening.

Both books are available at www.shopaba.org. The iPad version is priced at $34.95; the Android at 39.95. Both are excellent reference handbooks for both the veteran and new smart-device user.

Alaska Bar members receive a 15% discount at the American Bar's web store. Use discount code PAB6EAAB at checkout.

—Sally J. Suddock

Raising the Bar CLE -- Bev Beeton, Marilyn May, Grace Schaible, Barb Hood, Shirley Kohle, Judge Russel Holland and Katie Hurley in front.

TALESFROMTHEINTERIOR

What do you say to a judge?

By William Satterberg

What do you say to an attorney with an IQ of 40?

Answer: "Your honor."

For several years, I have been asked why I did not become a judge. There are numerous reasons as to why I have declined to follow that career path. First, I do not believe that I am capable of passing the proverbial spat line. Ever since I was a child, I have not played well with others. My potty training was an abysmal failure and I still have problems hitting the target, floating Cheerios notwithstanding.

Similarly, sitting politely on an elevated bench and listening to two young pups argue would not work. Undoubtedly, I would be unable to keep my mouth shut.

I remember one bench trial when I was vainly attempting to examine a difficult witness in front of now-retired judge Jay Hodges. As usual, Neil Kennelly was objecting to every question. Neil was a formidable adversary when he wasn't sleeping. I was having a terrible time. It did not help that Judge Hodges was growing openly frustrated with my lack of success. Finally, Judge Hodges stated, "Mr. Satterberg, please just watch how I do this!" The judge then proceeded to not only qualify my expert, overruling Neil's objections, but also went to the fundamental point. It was a lesson which I did not forget. I won the case.

Another time, after a trial before Judge Blair, I decided to experience the view from the judge's bench. After all, it was a lofty perch, and Judge Blair occupied it resplendently.

I had noted during the case that Judge Blair had been taking extensive notes. He was obviously scribbling down his careful observations. Because Judge Blair had left the courtroom with his notes in hand, I did not see any harm in standing behind the bench to survey the arena. My intentions were innocent. However, when I looked discreetly at the judge's desk, I realized the goal to which Judge Blair had been devoting his effort. He had been computing his months left to retirement and his anticipated retirement salary. So much for a convincing case.

Several years ago, I was a campaign coordinator for then-to-be governor Walter J. Hickel, who ran on the Joe Vogler Independence Party ticket. I enjoyed the job as something to do during my off hours. After the governor had been elected, I was encouraged by his staff to apply for a judgeship. I answered that the likelihood of me ever getting an appointment was dismal. After all, I did not have the experience at the time, having only been practicing for fourteen years. In addition, my self-esteem had always suffered. I did not want to see the results of the Bar Polls.

I was told that I should still submit my name. If my name did not get referred from the Judicial Council, the governor would simply just keep rejecting names until mine eventually showed up. Although I appreciated the offer, I did not believe in participating in such a process. I politely declined. Which brings me to the process, and my personal opinions to follow.

Our selection process for judges in Alaska is a cruel joke. There has been an organization formed called the Judicial Council. It is a highly politicized organization which presumably analyzes the qualifications of various candidates, and then forwards "the most qualified" to the governor. The governor's obligation is to then pick a candidate only from that list. But the process does not start there.

Rather, before prospective candidates are reviewed by the Judicial Council, they must submit themselves to the "Bar Poll." The Bar Poll is a chance for every attorney in the state to take a free shot at any attorney that they may dislike. For years, the Bar Poll has been nothing more than a sophisticated blog, long before blogs even became commonplace. To make the insults worse, the respondents can submit their comments anonymously. And, because disclosing one's name is optional, the Poll has very little practical credibility.

"The considerations which go into evaluating attorneys for potential judgeship as expressed in the Bar Poll have nothing to do with the qualifications of the candidate."

The considerations which go into evaluating attorneys for potential judgeship as expressed in the Bar Poll have nothing to do with the qualifications of the candidate. To the contrary, Bar Polls are often skewed to take advantage of geographical, gender, and other political considerations. Traditionally, Anchorage votes against Fairbanks candidates and Fairbanks votes against Anchorage candidates. But Fairbanks also votes against its own, since Fairbanks likes to eat its own. Ex-Attorney General Wil Condon used to call it "the Fairbanks paranoia." As for Juneau and Ketchikan, I have never really figured out how the mentality works in those jurisdictions, and likely never will.

The Bar Poll attempted to do away with political skewing several years ago by requiring attorneys to certify that they would answer the poll honestly. Of course! As long as one does not have to give their real name.

Quite often, the Bar Poll weeds out those who simply are disgusted with the process, or finally accept that they stand no chance of peer group success. I am aware of one attorney in Anchorage who pulled his name several years ago, when recognizing that his results in the Bar Poll were abysmal. He likely was not alone.

As for myself, I have actually thought about applying for judgeship simply to experience the wrath of the Bar Poll. Not that I would ever interview with the Judicial Council or even make it that far. Rather, my purpose would be to gather some good material for future Bar Rag articles. Undoubtedly, the comments would be well worth reading, especially given my masochistic and self-deprecating tendencies. But, the Bar Poll is just the first step.

After the Bar Poll, the names are submitted to the Judicial Council. The Judicial Council is also a political joke. For example, recently, only two names were sent to the governor for a position on the Fairbanks Superior Court. Although both of these candidates were well-qualified, I still was disappointed that more names had not been sent up to the governor. When I complained, I was then reminded that Fairbanks lacked female judges. The Judicial Council had apparently decided that it would remedy the problem by giving the governor only two female picks. I asked one of the male individuals who, in my opinion, I believed was well qualified for a judgeship why he did not get selected. He answered that the bulk of questioning from before the Judicial Council had centered upon why women were not invited to his men's poker party. Why any such question would have any relevancy to the person's qualifications for judgeship was well beyond me. Nevertheless, it appeared that this was a major focus of the process. Clearly, he should have folded early on.

Assuming that an attorney has survived the Bar Poll and the Judicial Council process, their name then is forwarded to the governor. It is that point that most remaining candidates ordinarily become quite user friendly, understandably currying for favor and political support. After all, the appointment of the judge, is, indeed, a political decision. And, if anybody has connections, that is the time to play them.

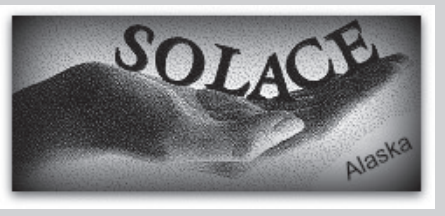
Eventually, the governor is supposed to interview the candidates. The reason that the word "supposed" is used is because the governor ocasionally has delegated that job, as well, to a subordinate.

After the interviews, the governor announces the successful candidate and the process concludes. That is, unless the candidate is an existing judge, whereupon the cycle repeats.

After the judge is selected, an installation ceremony takes place. At that ceremony, the new jurist's family almost always shows up, and their husband, wife, parents, or some other family member places the robes upon the now-successful candidate. Boring speeches are given stressing the solemnity of the job, and the candidate promises to be the best judge ever, rivaling a Dean Martin roast. Everyone then adjourns to a reception, and the candidate soon realizes that their old life is gone. No longer will they be able to party hearty and openly express themselves. No longer will they be able to frequent the local dance bar and tip generously, or enjoy a Chippendale's show, except at the judicial college in Reno, where things are supposed to stay. And, no longer will they ever have their lives to themselves. Rather, the candidate must now be of reputable judicial character, strolling pompously through the streets, utilizing secret accesses to the court building, and keeping their opinions to themselves.

So do I want to be a judge? To quote Sarah Palin: "You betcha!" After all, the concept of people genuflecting when I enter the building does a lot to overcome a profound lack of self-esteem.

Trouble, no? Fairbanks attorneys Ken Covell and Bill Satterberg mug at the convention.



DO YOU KNOW SOMEONE WHO NEEDS HELP?

If you are aware of anyone within the Alaska legal community (lawyers, law office personnel, judges or courthouse employees) who suffers a sudden catastrophic loss due to an unexpected event, illness or injury, the Alaska Bar Association's SOLACE Program can likely assist that person is some meaningful way.

Contact one of the following coordinators when you learn of a tragedy occurring to some one in your local legal community:

Fairbanks: Aimee Oravec, aaolaw@gmail.com

Juneau: Karen Godnick, kgodnick@alsc-law.org

Mat-Su: Greg Parvin. gparvin@gparvinlaw.com

Through working with you and close friends of the family, the coordinator will help determine what would be the most appropriate expression of support. We do not solicit cash, but can assist with contributions of clothing, frequent flyer miles, transportation, medical community contacts and referrals, and a myriad of other possible solutions through the thousands of contacts through the Alaska Bar Association and its membership.

Choosing judges is a serious matter

By Larry Cohn

Ours can be a somber profession, so over the years I have appreciated Bill Satterberg's efforts to offer up some levity. However, those parts of the adjacent article pertaining to our system of selecting judges did not strike me as funny. More importantly, they are not accurate.

Nearly 50 years ago, the founders of our state chose merit selection of judges as Alaska's best hope for a highly qualified, independent yet accountable judiciary. The framers established the Judicial Council as a non-partisan group of citizens to screen the qualifications of judicial applicants and to nominate those who are the most qualified.

Alaskans do not have to guess at the founders' intentions. The framers of our Constitution believed that designing a justice system of the highest caliber was one of their most important duties to the citizens of the new state. The Convention minutes emphasized the framers' desire to have the Council nominate only the most qualified applicants to the governor. The Convention's fifty-five delegates, only thirteen of whom were attorneys, adopted the merit selection system by near unanimous consent.

Mr. Satterberg claims that many people consider the Judicial Council to be a "politicized organization. To be sure, Mr. Satterberg is not the first person to express this misperception. Yet the vast majority of Alaskans recognize that our merit selection system limits political influence and protects us from the types of problems experienced by states where elected judges make promises to--and raise money from–the very same people, corporations, and attorneys who appear before them.

Alaska's Constitution requires that Council members be appointed without regard to political affiliation. All eight of the public members of the Council appointed during my tenure with Council have been appointed by governors of the same political party, yet this fact has not affected the high quality of the Council's membership or the high quality of the Council's nominations. Under the Council's bylaws, Council members may not, and do not, inquire about an applicant's political affiliation or religious beliefs, unless to explore whether an applicant's prior political activities or expressed personal beliefs could affect the applicant's ability to apply the law impartially.

Mr. Satterberg writes that judicial applicants must submit to a bar survey before their qualifications are reviewed by the Judicial Council. The bar survey is a part of the process, but it is only one tool used by Council members. It is definitely not dispositive, and the Council does not always nominate the applicants with the highest ratings. The Council considers abundant information reflecting on an applicant's professional competence, integrity, fairness, temperament, legal and life experience, as well as the applicant's demonstrated commitment to public and community service. To promote public understanding of these criteria, the Council defines them in considerable detail in selection procedures published on the Council's website.

These same procedures plainly state that the Council may not rely on anonymous bar survey comments unless they are corroborated, independently substantiated, or acknowledged by the applicant. A very high percentage of the comments received by the Council are signed. Applicants are provided with the comments which are edited to preserve the anonymity of the comments, and applicants are informed which comments were signed and which were not. To preserve working relationships and to encourage candid responses, the Council maintains the anonymity of those who comment, but the Council is very careful to provide applicants with an opportunity to address any comments, particularly negative ones.

It is true that the Council cannot associate a name with numerical ratings provided by an individual. However, Council members are discriminating consumers of the bar survey and there are many ways to track its reliability. The Council can and does analyze demographic information to help identify the potential for bloc voting. Survey ratings typically track the comments and bear a relationship to other documented information provided to Council members. Although there may be some attorneys who do not take their ethical responsibilities seriously enough, our experience suggests that this situation is rare.

It is not true, as Mr. Satterburg asserts, that Anchorage attorneys routinely and uniformly rate Fairbanks attorneys lower or vice versa. That is not to say that there may not be valid reasons to take location into account. Attorneys may and should consider the needs of the particular community where the new judge will serve. It would be appropriate for an attorney to be concerned about an applicant who lacks familiarity with a community and its legal culture. An attorney may wonder whether the applicant can do the job as well as someone from the community or whether the applicant will like working in a particular community. These are factors that Council members may consider.

The example that Mr. Satterberg cites as evidence that the Council is motivated by politics concerns a recent vacancy on the Fairbanks Superior Court. Mr. Satterberg claims that the Council's nomination of two applicants was "reportedly" due to its alleged intent to force the governor to appoint a female. Although Mr. Satterberg has not identified his source and failed to check with the Council about the veracity of this rumor, I can state with confidence that it is simply untrue.

One nominee for that vacancy had seven years of experience as a judicial officer and had been nominated three prior times for a position on the Fairbanks Superior Court. She was appointed by the governor. The other nominee had been a district court judge in Fairbanks for more than thirty years and had been nominated four prior times for the Fairbanks Superior Court. She was subsequently appointed by the governor for a different vacancy on the same court out of a field where the other two nominees were men. There were plenty of reasons aside from gender for the Council to have concluded that these two women were the most qualified applicants for the initial superior court vacancy.

It may interest Mr. Satterberg to know that the Council has nominated the same percentage of male applicants as female applicants over the past twenty-nine years for which it has data. Historically, the Council has nominated about 40% of applicants for all vacancies. The Council has only nominated the minimum two applicants about 25% of the time, and this occurs more often for rural positions where the applicant pool is smaller.

Mr. Satterberg also finds fault with the Council for not nominating a particular candidate whom he apparently regarded as well-qualified. He claims that most of the Council's questions of that candidate focused on why women attorneys had not been invited to the applicant's poker parties attended by male judges and attorneys. This characterization of the interview's primary focus is untrue. The interview in question was not public at the candidate's election and what occurred during that interview and what was discussed with the candidate both during the interview, and after the interview when I called the candidate to discuss the Council's decision, is confidential. But I can state that Mr. Satterberg's characterization of the applicant's interview is inaccurate. If Mr. Satterberg wants to know more, I encourage him to discuss the matter further with the applicant in question.

While my experience suggests that most people would disagree with Mr. Satterberg's perception of the process, the Council does not merely rely on perceptions to insure the fairness of the process. Since 1984, the Council has compiled data about judicial applicants to better understand the characteristics associated with nomination and appointment. In 2008, the Judicial Council published a report, downloadable from our website

(http://www.ajc.state.ak.us/reports/JudgeProfile08.pdf), that analyzed the prior 24 years of data. For example, we examined how breadth and length of experience, specific types of employment, age, and gender affected an applicant's chance of nomination and appointment. The findings reflect that the Council has consistently applied its criteria when evaluating judicial applicants. This summer, the Council will publish an update to the report.

We deeply appreciate the time and thought that thousands of bar members have spent responding to the Council's requests for information about applicants' qualifications and suitability for judicial positions and about the performance of judges. We value your perspectives, without which we would be far less able to adequately evaluate applicants and judges and preserve the high quality of our justice system.

Received in the Bar's e-mail from a Bush attorney: Better than a moose in the driveway

RE: Please send me the 5/21 Business/CC/Real Estate Meeting Call in Number

Thank you! I was supposed to be in town for the 9th Circuit meeting with the Alaska bar tomorrow...but noooooo, I had to cancel all reservations. And do you know why? For the simple reason that my Plans A through D dog-care providers all happen to be hunters who are either on stand-by in case ice conditions change so that the whaling crews can go out-or else they're camping out already, inland, subsistence geese hunting.... :(

Historical Bar — Remembering the Old Days

By Kenneth Atkinson

Early in 1954, the United States Congress authorized the creation of the position of Deputy U. S. Commissioner for Anchorage in the then-Territory of Alaska. Since the early 1940s, Anchorage had been growing in population, and by 1954, the U. S. Commissioner in Anchorage obviously needed help in performing the duties of that office, especially the judicial and quasi-judicial functions that only the Commissioner by statute could perform.

In 1948, when I came to Anchorage, the city didn't extend much south beyond the Delaney Park Strip; electrical power was supplied by half of a ship–the SS Sackett's Harbor–stranded on the mud flats near the mouth of Ship Creek and the only pavement in town was a concrete strip in the middle of Fourth Avenue between C and L Street, a strip not encompassing the entire width of Fourth Avenue. The population of Anchorage in 1948 was probably 10,000 or under. By 1954, the population had risen to 20,000 or 30,000, and paving and other public services had improved, including an expanded, land-based electrical power source.

The Territory of Alaska was divided into four judicial districts, as is now the State of Alaska. Each was presided over by a U. S. District Judge, appointed by the President of the United States, although not for life terms served by a U. S. District Court Judge in the States. The U. S. District Judge in the Third Judicial District when I arrived was the revered Anthony J. (Tony) Dimond, a Democrat, who died in office in 1953 when Eisenhower was President.

Dimond had appointed Rose Walsh, a Democrat, as U. S. Commissioner in Anchorage. Walsh served for many years until late 1953 or early 1954. Due to his popularity with everybody in Alaska, including both political parties, Dimond was not replaced by a Republican until Eisenhower appointed Anchorage lawyer, J. L. McCarrey, Jr., as U.S. District Judge after Dimond's death. McCarrey appointed Gordon Hartlieb, a recent migrant Ohio State Law School graduate, as U. S. Commissioner.

I entered law school at the University of Iowa in September 1948, after spending that summer in Alaska. I returned to Alaska in the summer of 1949 and worked as a construction laborer at Rainbow at what is now Mile 108 on the Seward Highway, where Morrison-Knudsen Construction Co. had a contract for a five-mile segment of highway construction and railroad relocation. I lived in the construction camp there, worked six days a week, hiked the mountains on Sundays, and saved all my wages and cemented my affection for Alaska.

I graduated from the University of Iowa law school in June 1951 without honors or scholarly distinction. Because my parents in Iowa had a problem with a family member, I stayed there to work on that problem and didn't get back to Alaska until the Spring of 1953, where I planned to take the Alaska Bar exam, which was given only once a year (in October, as I remember). At the time, admissions to the Alaska Bar were controlled by the Territorial Law Commission, composed of three Alaska lawyers, one of whom was the Territorial Attorney General, who was ex-officio Chairman. That Attorney General was the unlamented, despotic, and choleric J. Gerald Williams, now deceased, a long-serving elected Democrat.

When I applied to take the Alaska Bar exam in 1953, I listed Alaska-born Stanley McCutcheon, attorney, as one of my sponsors. I had met Stanley and Buell Nesbett in 1948 at Nancy Lake and was friends with both of them. Although both were Democrats, McCutcheon and Williams were bitter political enemies, a fact not known to me when I applied to Williams to take the Bar exam. After returning to Alaska in the spring of 1953, I had returned to Iowa for a short time to help with the family problem that had detained me there in 1951. I disclosed this short break in my Alaska residence in 1953 in my application to take the Bar. Williams said this was an unexcused absence from Alaska, which kept me from taking the exam in 1953. I had to wait until October of 1954 to take the exam. Williams cited me no written rules that governed his decision. I am sure that my friendship with McCutcheon motivated him to do what he did, which dovetailed with his generally hostile attitude towards new lawyers coming to Alaska.

I took the Alaska Bar exam in October 1954 and was admitted in March 1955. In 1953, I worked various nonlegal jobs in Alaska to support myself and the wife I had acquired in 1952.

I met many Anchorage lawyers through being in town and my friendship with McCutcheon and Nesbett. None of them would hire me because I wasn't licensed in Alaska. One morning, early in 1954, I met Gordon Hartlieb on the street. He said, "Want a job, kid?" He told me about the newly created Deputy U. S. Commissioner position, which would pay $540 per month. Gordon's salary as Commissioner was $600 per month. Gordon requested that Judge McCarrey appoint me, and after federal government background checks, I was appointed in March or April 1954. I was happy to get the job.

By this time, I had a young son and needed a steady wage. I had no car or bank account, but after cashing my monthly pay check, I paid all my recurring bills in cash by walking around to the places of payment, which were all close to the old Federal Building where the U. S. Commissioner's Office was located (where the Bankruptcy Court is now located).

The Commissioner had a variety of duties statutorily imposed by federal and territorial legislation, ,many judicial and many others administrative, housekeeping, or record keeping, sort of a portmanteau office to which various functions were assigned by statute as the need for those functions became apparent, without the necessity and expense of opening a new office for each such function. The fees charged to the public helped support the office, but had they been insufficient, the Feds would have stepped up to the counter to subsidize the office, as they already did with free rent, heat, and utilities in the Old Federal Building as part of its paternal duties to the Territory.

The Commissioner and Deputy Commissioner had jurisdiction to try all misdemeanors under U. S. And Territorial law, and acted as a committing magistrate for felonies under those laws, including setting bail for all criminal defendants and holding preliminary hearings on felony charges. The U. S. Attorney had its office in the old Federal Building and that attorney and several assistants represented the government in all prosecutions in Commissioner's Court.

Seaborn Buckalew, later a State judge, was the last Democratic U. S. Attorney, succeeded by William Plummer in the Eisenhower Administration. I remember Cliff Groh and James Fitzgerald as Assistant U. S. Attorneys during my tenure as Deputy U. S. Commissioner. In addition to criminal matters, as noted above, the Commissioner and Deputy Commissioner had jurisdiction to try civil matters if the dollar amount did not exceed, as I remember, $3,000: adoptions, probate matters, sanity hearings, inquests, presumptive death hearings, and juvenile court and/or coroner matters.

The office also served as document recorder for the Anchorage Recording District, and the repository of vital statistics records. The office also issued marriage licenses. The Commissioner and Deputy Commissioner were authorized to perform marriage rites and to collect a fee of $10 for the service, a fee kept by the office. We had a leaflet prescribing the words to be used in the ceremony.

All of the foregoing nonjudicial tasks were handled by a female staff of about 10 capable, full-time employees. Incidental to our judicial functions, the Commissioner and Deputy Commissioner had authority to issue writs of attachment and execution in the civil matters within our jurisdiction. It was a busy office. I remember being tested by local attorneys by being asked to sign writs or orders not allowed by statute. One such attorney tried to get a writ of attachment based on a tort claim complaint. When I explained to him that I could not do this because there was no contract claim involved, he said, "The defendant promised to pay the claim." The attorney didn't get the writ.

Bail bond hearings were often contentious, both as to the amount of bail involved and the adequacy of the often noncash security being proffered for the bond. Often, friends of the defendants, or persons dabbling in the business of bail sureties offered real estate as security–real estate which had mortgages on it and of questionable equity in the proposed bailor.

There was a waiting list for telephone service when I became Deputy. Because my duties required that I be available at all times, I got a telephone in the small one-bedroom home I rented at 1329 E. 15th Avenue soon after I became Deputy. Having a telephone was a mixed blessing, as I discovered when law officers and private citizens began calling me at home at all hours with problems or questions. A series of late-night calls from a woman police officer who dealt with juvenile matters, often with complicated fact situations that didn't seem to require emergency measures, were particularly irksome, as I responded to the calls, groggy from being awakened.

When I mentioned the frequent late-night calls and identified the caller to the Commissioner, he smilingly informed me that the caller had hoped for a job from him as a special assistant for juvenile matters, which she didn't get. I thought when I answered the late-night calls, there was a note of schadenfreude in her voice, knowing that she had disrupted my sleep.

With the information from the Commissioner about the possible reason for her calls, I would tell her, when I didn't believe the calls required immediate action from me, that I would call her back soon after I researched the matter. Knowing that

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NEWS FROM THE BAR

Proposed rule change for comment

The Board of Governors invites member comments regarding the following proposed amendment to Alaska Bar Rule 12. Additions have underscores while deletions have strikethroughs.

Alaska Bar Rule 12(k). As presently written, Bar Rule 12(k) requires the Executive Director in her capacity as clerk of the Disciplinary Board to select and assign discipline area division members from a roster of those appointed by the Chief Justice. If a member declines an assignment, the rule requires appointment of the member next in order. The Director may ask the Chief Justice to drop a member if two consecutive assignments are declined.

In practice, the Director has used her discretion to make assignments. For example, the next member in line might be a new member inexperienced in chairing a three person panel, a member who within the prior year has served on a long, complicated matter, a member who's acted as special bar counsel, or performed other similar duties. Further, the Director has never asked for the removal of a member for declining assignments. Eliminating the last two sentences removes inefficient requirements from the assignment process.

Rule 12. Area Discipline Divisions and Hearing Committees.

(k) **Procedure for Selection and Assignment of Area Division Members by the Director.** The Director will select and assign Area Division Members as required by this rule from a roster of the members appointed by the chief justice. ~~If a member declines to serve an assignment, the Director shall select the next member in order and place the declining member in line for the next assignment. The Director may request that the chief justice remove a member from the roster if that member declines assignments on two consecutive occasions.~~

Please send comments to: Executive Director, Alaska Bar Association, PO Box 100279, Anchorage, AK 99510 or e-mail to info@alaskabar.org by August 23, 2013.

Historical Bar — Remembering the Old Days

Continued from page 24

she worked the night shift, I would call her back the next morning at 9 or 10 o'clock. I let the phone ring many times but there was never an answer. The late-night calls to me from her stopped.

At the time of I write, access to public offices and officials was not subject to the security and formality that obtains in 2013. Everything was more casual and less scripted. A person who appeared frequently in our courtroom was one Frank Evans, a jovial black man who, with his wife, Mama Jo, owned and operated a popular after-hours nightclub called "The Oasis," which catered heavily to many already under-the-influence drinkers who migrated to "The Oasis," after the bars within the city limits were required to close. "The Oasis" was the initial Alaska venue for "Miss Wiggles," whose act drew many customers to the spot.

I do not recall that Frank Evans was ever a defendant in our court. His nightclub was the focus of frequent law enforcement activity incident to crowds and alcohol consumption. Frank often appeared as a witness to incidents at his club, partly, I am sure, to protect his liquor license. His appearances at our office were so regular that he and I developed an affable, though businesslike, relationship. Somehow he knew where I lived. One Saturday afternoon in April 1955, Frank appeared unannounced at the front door of the home I rented in Fairview. When I let him in, my then one-year-old son started to cry, as he had never seen a black person before. Frank explained to me that he wanted me to accompany him to his home "to calm Mama Jo down," as she had brandished a handgun during a marital tiff that afternoon. I explained to Frank that I had no authority to do what he wanted and no skill in that area. Frank accepted this cowardly, though wise decision, and left. He and Mama Jo must have made up because I saw them together thereafter.

Hartlieb and I performed many weddings in the office. In 1996, I was helping my 16-year-old granddaughter buy a used pickup truck. The salesman at the lot told me that I had performed his marriage ceremony in early 1955. He told me that he was still happily married to the same woman. He retired as a salesman a few years later after we bought the truck. I saw him plowing the snow from a neighbor's driveway one day and he saw me. He began plowing my driveway after every significant snowfall without cost to me, although I offered to pay. I invited him and his wife to my 80th birthday party at Orso, which they attended.

I also performed several marriage ceremonies at my small rented house. These usually were on a Saturday for some young GI and his prospective bride. My wife acted as a witness. I didn't have the leaflet for the prescribed, or suggested, language for the rites, but I remembered enough of the language to make it legal. I collected the $10 fee for the office and was sometimes given a small tip. My wife recalls one couple arguing as they left the house after the wedding.

Hartlieb quit as Commissioner to enter private law practice early in 1955, as I recall. I neither aspired to be, nor was considered, as his successor. I learned that I had very little judicial temperament, hated to decide between conflicting claims, and to sentence people. I did fancy the role of advocate and, because of my March 1955 bar admission, I began to think of quitting. About that time, George Malcolm Sean Patrick McLaughlin, a local attorney and part-time City Magistrate, approached me about joining him as his junior partner. One reason was that he had won election as a delegate to the Alaska Constitutional Convention to be convened late in 1955 in Fairbanks. He became the Chairman of the Judiciary Committee at the convention and was instrumental, if not responsible, for getting the Missouri Plan method of selecting judges, rather than having them elected by popular vote. McLaughlin graduated from Fordham Law School in 1938 and practiced in New York City, his hometown, for several years before he entered the U. S. Army in 1941. He knew all about the systemic evils of popularly elected judges and was able to prevail against Convention delegates who favored elected judges.

McLaughlin entered the Army as an enlisted infantryman and emerged as a Major in 1945. He served with Merrill's Marauders behind the Japanese lines in Burma and China and was a genuine war hero. He seldom talked about his war experience with me, although he did tell me once that his weight dropped to 97 pounds from severe persistent dysentery due to the primitive conditions behind Japanese lines.

George became a close friend of Bill Egan, who chaired the Constitutional Convention. George was Egan's campaign manager in 1956 when Egan ran against Robert Atwood as a candidate for U. S. Senator under the Tennessee Plan in a statewide election in which Alaskans elected a "shadow" delegation of two senators and representatives to be sent to Washington, D.C. to lobby Congress for Statehood. George loved politics and I had an inside window on the tactics and gossip of that campaign. Egan, who lived in Valdez, was forced one time by bad flying weather to hitch a ride on a freight truck from Valdez to make a scheduled campaign appearance in Anchorage. The *Anchorage Times*, Atwood's newspaper, printed a front-page item about Egan's hitchhiking truck ride to Anchorage. The item was somewhat derisive, as if the action demeaned the dignity of the office Egan sought. George was ecstatic about the article, which George correctly believed showed Egan as a regular guy prepared for all emergencies. Egan won the election by a landslide.

I became McLaughlin's junior partner on July 1, 1955, and was an equal partner at the time of his untimely death on June 22, 1958, at the age of 44. In my first month of private practice, I earned $133. Fortunately, it picked up after that, although George hated to ask for money up front or dun clients even though he rendered first-rate legal services.

After his death, I found a file in our law office containing letters between Egan and McLaughlin, letters emanating from the time Egan was in D.C. lobbying for Statehood. The letters mentioned Egan meeting with Sam Rayburn and Rayburn explaining his strategy for persuading Lyndon Johnson and other southern congressmen to vote for Alaska Statehood. About 10 years ago, in 2003, I decided those letters belonged to Alaskan history and should be in a repository open to the public. The archivist at the University of Alaska Consortium Library in Anchorage said that he would be happy to have them. On a late summer day that year, I rode my bike from the Westchester Lagoon area where I live to the University of Alaska campus with the letter file. As I got near the Consortium Library, I met Vic Fischer coming out of the building and I stopped to talk to him. Vic asked me what I was doing out there. I told him about the letters I had with me and what would be done with them. Vic said, "God damn George McLaughlin!" I was shocked. I knew George and Vic were friends, even before their days as Convention delegates. I asked Vic what he meant by his strong language. Vic said, "For dying so soon. He was a great asset to Alaska and would have done even more under Statehood." My sentiments exactly. When he was Governor, Egan named the McLaughlin Youth Center in honor of George.

After George's death, I practiced solo for six years from our old office above the old First National Bank on Fourth Avenue. My practice grew, something I attribute to people I met in Alaska before I went to law school and my stint as Deputy U. S. Commissioner.

Before George died, I had defended two high-profile felony cases, heavily covered by both local newspapers. One was a second degree murder case resulting in a conviction of manslaughter and a five-year sentence instead of the 10-year sentence and a plea to second degree murder demanded by the prosecutor.

The other was a Mann Act charge against a black man who was charged with helping two Caucasian women set up a whorehouse in Kenai by purchasing an airline ticket to Kenai for one of the women. My client was a gainfully-employed security guard in Anchorage. The woman friend of the putative whore was an 86-year-old woman who had been a dance hall girl in Nome during the Gold Rush. I got the indictment dismissed twice for technical deficiencies. By the time a legally sufficient indictment was handed down, the so-called victim had disappeared, leaving only her 86-year-old friend and the FBI agent to move the case forward. The 86-year-old had expressed her hatred of black people to me when I located her for questioning as part of my trial preparation. She had either not been warned not to talk to me, or ignored that warning, and had told me in graphic terms what she thought of my black client. At cross-examination of her at trial, she repeated that language. Also, during cross-examination as to her background, she stated that, in addition to her dance hall days in Nome, "I've worked in high-class sporting houses in Galena and Ruby and all along the Yukon, but I haven't turned a trick since I was 70."

The FBI agent handling the case had been stationed in Anchorage for many years, and still had the tinge of a southern accent, which, with the overt racism of the 86-year-old witness, may have led the jury to infer that my client was being prosecuted because of his color. The FBI agent had told me, prior to trial, that my client had an unlisted telephone number, a fact he felt was sinister. After he told me that, I interviewed the chief telephone operator of the local telephone company and asked her how many unlisted telephone numbers there were in Anchorage. She said, "Quite a few. I have one," a statement she repeated when I cross-examined her at trial after the prosecution had used her to establish the unlisted number of the defendant.

I should mention that, because Alaska was a Territory then, interstate commerce or the crossing of state lines incident to prostitution was not required for a Mann Act violation. Transportation by a pimp of a prostitute on the streets of Anchorage for the purposes of prostitution would suffice.

The prosecutor in the Mann Act case was a lawyer, born in the southern United States, but had the misfortune to have had a year at the Inns of Court in England as a part of his legal education. He affected a clipped British accent at all times as part of his persona. In his final argument to the jury in my case, he called my client's explanation of his association with the two women "a monstrous tissue of implausibility." I looked at the faces of the jury as he said this, and they showed no indication that they were impressed by the phrase, or even understood it. My client was acquitted after a brief jury deliberation.

I defended some criminal cases, both court-appointed and private clients, through the 1960s. By then, my civil practice had grown, and the pervasiveness of drugs in criminal cases lessened my appetite for criminal law. In 1966, I was appointed in U. S. District Court to defend a man charged with the theft of an electrical generator from a U. S. Air Force station in Kotzebue where he worked. He shipped it to himself in Anchorage, under a false name. He was a rough-hewn homesteader in Eagle River Valley. From what he told me, and his expansive way of explaining his actions to me, I felt certain that a jury would convict him. The inexperienced prosecutor saved the government witness, an FBI agent, who would have incriminated my client, for rebuttal, without calling that witness in chief. I made a motion for a directed verdict, which the judge took under consideration during a brief recess. During the recess, I told my client that I didn't plan to put him on the witness stand. The motion was granted on the grounds there was nothing to rebut.

After the trial, the client, his wife, and I had a couple of drinks at the Old Mur-Mac Bar. The client told me, "I was wondering who you was workin' for when you told me you wasn't gonna put me on the stand."

I was fortunate to represent successful businessmen over the years in private practice, and learned a lot about investing, while being paid to learn it, an experience that I and many lawyers have had to their benefit. I didn't need an MBA degree. I give a lot of credit to my lucky choice of partners, coming to Alaska before I went to law school, and my tenure as Deputy U. S. Commissioner. I spend a lot of time remembering "the old days."

ALASKA BAR ASSOCIATION 1988 - 2013

25 years of Bar Membership


Anita Alves


Nathaniel Atwood


Thomas Ballantine


Jonathan Blattmachr


Kristen Bomengen


Maryanne Boreen


Scott Brandt-Erichsen


Robin Bronen


Ann Carey


Susan Carney


Connie Carson


Douglas Carson


Cynthia Cartledge


Randall Cavanaugh


BethAnn Chapman

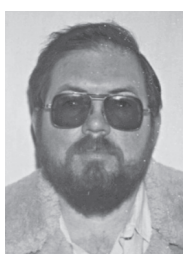

Mark Christensen


Matthew Claman


Eric Cossman


Allen Dayan


Susanne DiPietro


George Dozier


Cynthia Drinkwater


Jay Durych


Darlene Erickson


Jill Fernandez

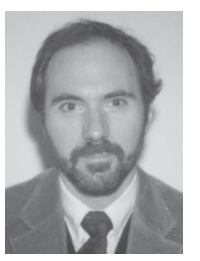

Martha Fink


Richard Goldfarb


Glenn Gustafson


Kenneth Gutsch


James Hopper


Richard Illgen


Darryl Jones


Mary Kancewick


Barbara Kraft


Nancyann Leeder


Lynn Levengood


Robert Lindekugel


Michael Logue


Michael MacDonald


Thane Mathis

Scott Mattern

John McCarron

James McComas

James McGuire

Mindy McQueen

Howard Meyer

Kevin Miller

J. Stefan Otterson

Rick Owen

Elizabeth Phillips

John Raforth

Herbert Ray

William Renno

Stephanie Rhoades

Ryan Roley

Jean Sagan

Mark Scheer

John Sedor

Michael Seville

Michael Stahl

Rebecca Stevens

Richard Sullivan

Steven Sumida

Susan Thomsen

ALASKA BAR ASSOCIATION 1988 - 2013

25 years of Bar Membership


Bryan Tipp


Ellen Toll


Richard Ullstrom


Jennifer Walker


David Wallace


Craig Watz


Linda Webb


Vanessa White


Elizabeth Ziegler

NOT PICTURED
Carmen Clark
Jeffrey Friedman
Richard Welsh

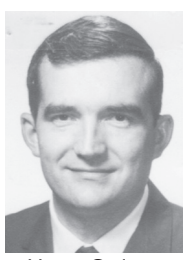
25 year pin recipients

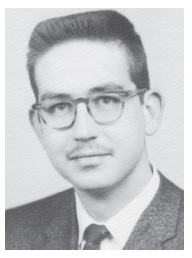
Members receive their 25 year pins at the convention.

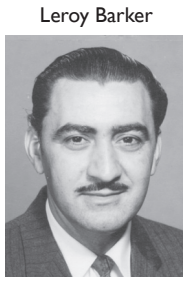
50 & 60 years of Bar Membership

50 Year Members

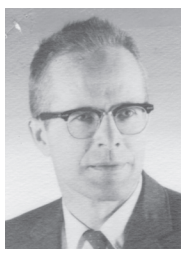

Leroy Barker


Victor Carlson


H. Russel Holland


C.J. Occhipinti


David Ruskin


Howard Staley


Warren Tucker

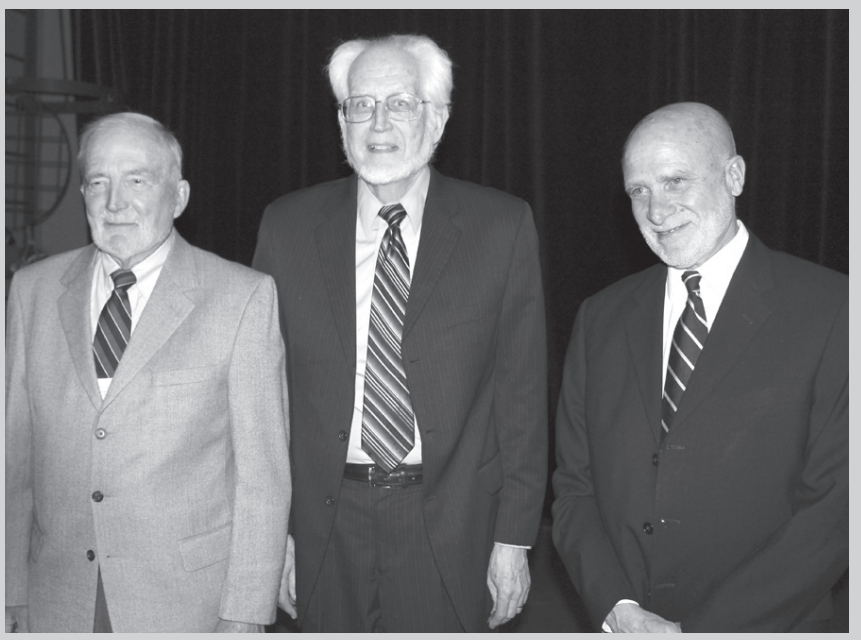
NOT PICTURED:
George Gucker

60 Year Members


Albert Maffei


Seaborn Buckalew

50 year pin recipients



Vic Carlson, H. Russel Holland, David Ruskin receive their 50 year pins. Interestingly, they all attended the same law school in Michigan.


Outgoing Bar President Hanna Sebold passed the gavel to Incoming Bar President Mike Moberly.


Retired Judge Larry Weeks joins us from France; talking with Marilyn May.


Katie Hurley and Gracie Schaible.

Bryan P. Timbers Pro Bono Awards

Feldman Orlansky & Sanders and Mark Kroloff--Firm

Feldman Orlansky & Sanders has always been dedicated to doing pro bono. They have been on the forefront of impact litigation in several areas including death penalty, reproductive rights, voting right and environmental litigation. And yet 2012 found them once again embarking on a cutting edge pro bono assignment. Corporate counsel Mark Kroloff offered to take on a family law case and he realized that he was outside of his area of expertise. Enter Alex Bryner from Feldman, Orlansky & Sanders. The Alaska Network on Domestic Violence and Sexual Assault paired the two up as a unique co-counsel of private practitioner and corporate counsel team to represent a mother in a complicated divorce and custody matter involving issues of physical and sexual abuse. Together this dynamic duo – with assistance from super paralegal Mary Summers - put in hundreds of hours on this difficult assignment. Through their dedication, perseverance and talent, they were able to ensure that their client and her four children are now living a life free from fear and violence. They also proved that difficult assignments can succeed with creative solutions. This year's firm award goes to Feldman, Orlansky, & Sanders for their years of innovative pro bono work, and to corporate counsel Mark Kroloff, for jumping into the unknown to help an Alaskan family in need.

Dario Borghesan—Government

Dario is known among the legal services provider as the "go to" man at the Attorney General's Office. Since joining the Alaska Bar Association in 2010, he has been on the forefront of pro bono in both institutional leadership and volunteerism. He was instrumental in the development of Governor Parnell's call to action to attorneys in his Choose Respect campaign by organizing pro bono summits throughout Alaska. He co-chairs the Attorney General's in-house pro bono committee which has spent the last year polishing the policy encouraging and allowing Assistant Attorney General's to do pro bono and routinely walks the halls at 1031 West 4th cajoling his colleagues to take pro bono cases. His pro bono cases have had the challenges of geography—Unalaska from Anchorage—and language barriers yet it has never kept him from moving forward.

We're incredibly thankful to Dario for his steadfast commitment to Alaskans in need.

Teka Lamade—Solo Practitioner

Starting out a new practice involves mastering many tasks at once: learning new areas of the law, how to run a business, and how to build a client base. For new Sitka solo practitioner Teka Lamade, "helping others" was at the top of her to do list upon opening her practice in the winter of 2012. Teka was no stranger to giving back; as a staff attorney for the Sitka Tribe of Alaska, she had helped numerous victims of domestic violence and sexual assault escape abusive relationships. Given this experience she well understood the great need in rural Alaska for pro bono work and immediately put her skills to work. Over the last 15 months she has helped many victims through the Alaska Network on Domestic Violence and Sexual Assault with a myriad of matters including protection orders, divorce, paternity, probate, and bankruptcy issues. She is tenacious in obtaining safe and long-lasting results for her clients. Most importantly, she understands that pro bono makes good business sense. For her dedication to pro bono in her first year of solo practice, we are delighted to award Teka Lamade as this year's Solo Practitioner award recipient.

Perkins Coie— Lifetime Achievement

101 years. That's how long Perkins Coie has been in existence and 30 of those years have been devoted to bettering the lives of Alaskans through pro bono. Each of those 30 years, Perkins Coie has been generous in both time and money to ensure that the critical legal needs of the less fortunate are met. They are a true guiding force when it comes to Access to Justice and pro bono issues.

The importance of such support simply cannot be overstated. It's not a happy story but it's a true one: Federal funding for legal services is at a historic low and poverty at a historic high. This means that legal services providers are forced to turn away hundreds of families with critical legal needs each year simply because they lack the staff, volunteers and resources to help. Perkins Coie has been a leader in action of how to bridge the justice gap.

What does bridging the justice gap look like at Perkins Coie? Imagine this: spear-heading Alaska's Civil Gideon movement, representing a local domestic violence shelter, assisting yet another low-income tenant. Lawyers pitching in to do research for a pro bono attorney needing assistance, making the case to Alaska's congressional delegation for funding and innovative efforts to encourage other practitioners to take a pro bono case.

The story of Perkins Coie can't be told in bullet points because it's about their leadership of being both catalysts and change makers.

It's because of their commitment, courage, and generosity that we are honored to award Perkins Coie with a pro bono Lifetime Achievement award.