The Alaska
BAR RAG
Dignitas, semper dignitas
VOLUME 38, NO. 2 April - June, 2014

Serious Summer Business Afoot

See Page 8

Recreational marijuana will create many new clients

By Jeffrey Davis

On Nov. 4, Alaskans will go to the polls and vote on Ballot Measure 2: "An Act to tax and regulate the production, sale, and use of marijuana." If it passes, Alaskans will likely see a multi-million dollar industry spring up overnight, and lawyers should be prepared to capitalize on it. Whether you agree with legalization or not, the fact is there will be hundreds, and more likely thousands of potential new clients who need legal assistance in an array of practice areas.

So far only Colorado and Washington have fully legalized marijuana for recreational use. Washington is still setting up its regulatory infrastructure, and while businesses may apply for a license to produce, process or sell marijuana, public sales have not commenced. Meanwhile, on January 1, 2014, the public sale of marijuana to Colorado citizens began and the "Green Rush" was on. The Colorado Department of Revenue reported there were $19 million in sales of recreational marijuana in March--up from $14 million in February. Coloradans have seen $7.3 million in tax revenue for the first three months of the year. Total sales of recreational marijuana for 2014 are estimated to be between $750 million and $1 billion. The facts show if you legalize it, industry will come. And it will need lawyers.

Representing clients on the cultivation and sale of marijuana is an ethically hazy issue, but the clouds are clearing. Alaska Rule of Professional Conduct 1.2(d) states:

> A lawyer shall not counsel or assist a client to engage in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

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Should there be a law? *Qui tam statutes*

By Bill Falsey

Alaska, like a dwindling number of other states, does not have a *qui tam* statute. Should it?

Qui tam statutes allow citizens to act as "private attorneys general" and bring civil suits in the name of the government. (*Qui tam* is short for "*qui tam pro domino rege quam pro se ipso in hac parte sequitur*," an eye-crossing parade of Latin meaning "who as well for the king as for himself sues in this matter.")

In the United States, the federal False Claims Act is the mostly widely known *qui tam* provision. Since liberalizing amendments in 1986, over 9,200 *qui tam* lawsuits have been filed under the False Claims Act, resulting in nearly $39 billion in settlements and judgments for the United States, with just over $4 billion of that amount going to the private *qui tam* filers, called "relators."

Like most *qui tam* provisions, the False Claims Act does not give private citizens an unfettered ability to bring claims on the government's behalf. A private litigant must provide a copy of his or her complaint to government before it can be served or made public, and while the *qui tam* complaint remains sealed, the government will undertake its own investigations.

Ultimately, the government may intervene and effectively take over the *qui tam* suit; decline to participate (allowing the private citizen to proceed in the government's absence); or move to dismiss the complaint. The size of the private litigant's recovery depends on the government's choice: of funds ultimately recovered through settlement or judgment, relators receive a maximum of 10-15% if the government intervenes, or 25-30% if the government does not.

Since 1987 (when the first wave was enacted), 29 states and the District of Columbia have adopted a *qui tam* statute similar to the federal law. (Several states' laws apply only to medical-assistance claims, however.)

Those who favor the trend argue that *qui tam* statutes lead to greater detection and stronger deterrence of fraud, both of which strengthen state treasuries. In the first 13 years after Illinois adopted its Whistleblower Reward and Protection Act, the state originated exactly zero false-claim cases. *Qui tam* litigants, by contrast, initiated 136. The Illinois Attorney General intervened in 130 of those 136 suits, ultimately leading to a recovery of over $21 million.

Opponents question the trend. They see the laws as encouraging frivolous lawsuits, and as possibly reducing the government's recovery. The United States intervenes in less than 25% of *qui tam* actions it sees, and opponents suspect that private litigants, in the successful suits, may merely be using the law to siphon money from judgments that the government, with more time, would have obtained on its own.

Others chart a middle course. They argue that *qui tam* provisions are valuable, but should be limited to subject areas that are difficult for a government's bureaucracy and department of law to police. Medical-billing claims are a leading candidate: of the $16 million recovered in *qui tam* suits filed in Tennessee between 1991 and 2005, every dollar was related to Medicaid fraud.

For its part, Congress has come down strongly in favor of state *qui* laws to Medicaid fraud. So much so, that's enacted a financial incentive: states that adopt a local version of the federal statute are entitled to 10% of the federal government's share of any recovery in a successful Medicaid-fraud action brought under the state law. And since Medicaid costs are often split 50%/50% between federal and state governments, those amounts can be significant.

What's the right answer? Should Alaska have a *qui tam* statute? Broad, or limited to Medicaid-fraud claims? Know of another statute that Alaska should consider?

Sources:

http://www.justice.gov/civil/docs_forms/C-FRAUDS_FCA_Statistics.pdf

https://www.doioig.gov/docs/false-claimsact.pdf

Christina Orsini Broderick, *Qui Tam* Provisions and the Public Interest: An Empirical Analysis, 107 Colum. L. Rev. 949 (2007)

http://falseclaimsactattorney.com/false-claims-act/state-fca-laws/

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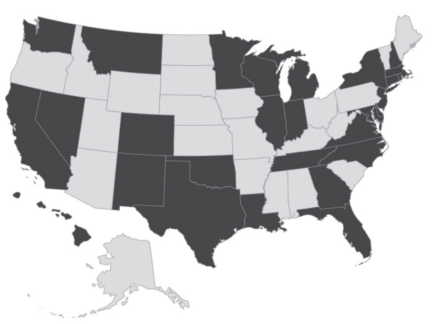

States with *Qui Tam* Statutes
States with no *Qui Tam* Statutes
Source: http://www.taf.org/states-false-claims-acts

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PRESIDENT'S COLUMN

Access to justice: The continuing debate over the role of tribal courts in rural Alaska

By Geoffry Wildridge

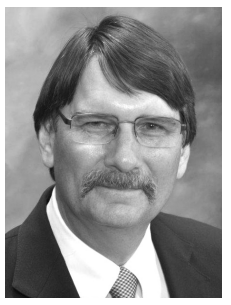
It is a great pleasure to write to you for the first time as bar president.

I have been lucky in my life. Lucky to have wound up as a lawyer in Alaska. Living and practicing law here for the past several decades has been constantly challenging and enormously gratifying. I could not have hoped for more.

As a result, I am thankful for this opportunity to contribute to a profession that I hold in high regard. Its commitment to serving others and to equal justice under the law continues to be inspiring.

The Alaska Bar Association plays an integral role in promoting our competence and insuring our profession's integrity, matters of the utmost importance to the public we serve. It is also charged with the promotion of reform in the law and the facilitation of the administration of justice. Through the Bar Association, we can and should promote responsible change where it will result in a more just society.

Members of our integrated bar come in all shapes and sizes, with diverse beliefs and interests. I fully understand that my personal opinions on matters of concern to the profession may not appropriately reflect those of the bar as a whole. But I hope to be able to focus on issues of agreed-upon importance to all lawyers during the next several months, and to encourage your input in that regard. My columns will be accompanied by articles solicited from others more directly involved in ongoing discourse about those issues. My goal is to promote discussion of those concerns, culminating in symposia at the 2015 convention in Fairbanks. To the degree those discussions result in consensus, the adoption of resolutions at the 2015 convention may motivate progress in a broader sense.



" I am thankful for this opportunity to contribute to a profession that I hold in high regard."

Among the goals we must all share as lawyers is the promotion of access to justice by all persons. It is an objective that is at the very core of our obligations as attorneys. And its social implications are enormous, affecting the most basic human needs of Alaska's people. The lack of access to institutions administering justice has cascading, negative effects on all of our lives.

Insuring access to justice requires different approaches, depending on the circumstances. The need for adaptation is especially apparent in rural Alaska, with its very serious social problems, their proportionately greater impact on small isolated communities, and the nearly complete unavailability of resources to combat them.

Issues of tribal sovereignty—important to Alaska Native peoples for reasons that go far beyond access to justice—bear a direct relationship to meeting basic human needs in bush Alaska. Tribal courts have proven to be integral in addressing public safety and other concerns in rural Alaska, given the absence of other effective means to combat problems of enormous magnitude. But they comprise systems of justice parallel to those of the State, generating concerns which have resulted in many years of litigation between the State and tribal entities.

The proper bounds of tribal sovereignty and the related powers of tribal courts continue to be hotly debated. In this issue of the Bar Rag, competing views of tribal sovereignty are discussed in articles authored by those intimately involved in that debate. They are Attorney General Michael C. Geraghty and Tribal Court Judge and Alaska Native Law scholar David Avraham Voluck. Their articles provide valuable insights into both sides' perspectives. I am grateful to the authors for their contributions, which were prepared at my request with very little notice.

I offer the following, by way of a brief introduction to the tribal sovereignty issues discussed more fully by Attorney General Geraghty and Judge Voluck:

I. As we are all aware, Alaska is a state of great diversity. Its vast expanses embody immense geographic and climactic differences. And our state is also the home of people of great cultural diversity.

Alaska Native peoples are emblematic of the significant cultural

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EDITORS' COLUMN

For the first time in its history, the *Alaska Bar Rag* has appointed Co-Editors-in- Chief. We are pleased to have been selected, and with two of us occupying the position, we like our odds of contributing something positive to this publication.

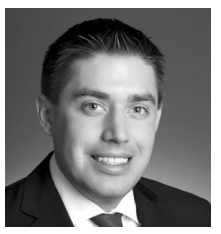
First, a round of thanks are in order. Thank you to Alaska Bar Association Immediate Past President Mike Moberly for appointing us. Secondly, thank you to Bar Association Executive Director Deborah O'Regan and *Bar Rag* Managing Editor Sally Suddock for their time, patience and tremendous dedication to this publication. Finally, thank you to outgoing Editor-in-Chief Gregory Fisher. Gregory started his tenure at the *Bar Rag* with a vision to diversify and expand the scope of this publication and we believe that he succeeded.

Compared to past editors of the *Bar Rag*, we are different in a couple of respects. First, neither of us will qualify for Medicare for quite some time. Second, one of us is a woman (a *Bar Rag* first). More experienced members of the bar need not shudder at the sight of our bar numbers (*c.* the "twenty-tens"). We possess a true appreciation and respect for the history of this publication and seek to preserve its many positive attributes. This does not mean we do not desire to affect our own changes, in fact, this process has already begun. One goal is to reach new members of the bar to get them involved in the *Bar Rag*.

It is clear that a significant segment of the bar, i.e., younger and newer members, do not read this publication due to a perception of irrelevancy. This is an unfortunate observation that we admittedly bring to you anecdotally.

But, as our anecdotal sample size is relatively large given the small number of members in the Alaska bar, we are not too worried about the margin of error. Rather, we are concerned with remedying this lack of engagement. We want engagement from every demographic. We believe it is critically important to the general health of our bar that all its members are genuine stakeholders in this publication's marketplace of debate, discussion, and critique. To this end, we will continue Gregory's policy of diversification among writers and content. At the same time, we will aim to change the way in which the *Bar Rag's* readers interact with its content. We will implement this change in this issue, our first.

Meghan Kelly



John Crone

We are debuting a new column, authored by William (Bill) Falsey, entitled *Should There Be a Law*. This regular column will highlight laws enacted in other states and jurisdictions and pose the question: would such a law be beneficial in Alaska? In this issue, Bill asks whether Alaska would benefit from a *qui tam* statute, raising substantive policy considerations which deserve examination and discussion.

We will also aim to spotlight various sections of the bar in each issue, sharing news of recent legal developments or community activities with the general membership. This month we introduce you to some of our new lawyer sections (The Anchorage Bar Association's Young Lawyers and the Alaska Bar's New Lawyers), as well as the Alaska Association of Women Lawyers.

Another submission, related to the upcoming marijuana legalization ballot measure, is a timely comment on what could be a significant development in the practice of law for some members of our profession.

To provide a forum for discussion, we have created a Facebook page accessible at *facebook.com/AlaskaBarRag*. Please visit the page and weigh-in on Bill Falsey's question as well as any other topics of discussion that arise out of this issue's pages. The hope is that by providing a more interactive forum for bar members to discuss developments in law and policy we will not only reach new members of the bar, but *any* member of the bar looking for a way to participate.

We want to read and discuss your thoughts on new court rules, policy, decisions and *Bar Rag* articles. This publication lands in your mailboxes quarterly, but the discourse need not stop and start every three months. Additionally, we plan to utilize our Facebook page to post various bits of in-between-issues news. Did you run in Race Judicata this year? If so, head to our Facebook page, the results are already posted.

And of course, we are always welcome to any suggestions, comments or criticisms you may have. After this inaugural *Editors' Column*, we will alternate writing this column, meaning each of us will communicate with you twice per year. Our Facebook page will give you much greater and more frequent access to provide us with ideas. Or if you prefer, write a letter to the editor via mail or email. We look forward to hearing from you.

The Alaska BAR RAG

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October - December	Nov. 10

Board of Governors meeting dates
January 23 & 24, 2014
(Thursday & Friday)
May 5 & 6, 2014
(Monday & Tuesday)
May 7 – 9, 2014
(Wed. - Friday: Annual Convention)
(Anchorage)

Access to justice: The continuing debate

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differences that exist within our state. The cultures of rural Alaska Natives are the result of centuries of survival in some of the most inhospitable locations on the planet. Alaska Natives living in remote villages continue to be tied to the land, with subsistence hunting, fishing, and gathering being both of spiritual importance and a means of basic existence. In many respects, life in rural Alaska has changed very little over the centuries. Despite hardships, the traditional ways of life are loved and honored by those who live them. Most would agree that such lifestyles are also deserving of respect from others. As a result, all signs are that traditional Alaska Native cultures will continue to exist in perpetuity.

II. The distinction between the cultures of traditional Alaska Natives and others is also one of great legal significance. Two hundred twenty-nine Alaska Native communities, given their historic antecedents, have now been formally recognized as sovereign tribes by the federal government and our State courts. Based upon their sovereignty, many tribes have established tribal courts in an effort to deal effectively with local problems in culturally appropriate ways.

The scope of the tribal courts' powers has, however, been the subject of legal challenges by the State of Alaska for many years. The State has taken the position that its jurisdiction is paramount; and that the rights of all Alaskans, regardless of the existence of a tribal affiliation, should be on an equal footing.

Much of the State's argument has centered on the impact of the 1971 Alaska Native Claims Settlement Act. Traditionally, the existence of "Indian country" has constituted a principal basis for sovereign tribal jurisdiction throughout the United States. But ANCSA extinguished aboriginal title in Alaska, and abolished all but one of the existing reservations in Alaska. It instead called for the creation of regional and village for-profit corporations to select and hold land for their Alaska Native shareholders.

Conflict over ANCSA's impact on tribal sovereignty reached a fever pitch in the case of Alaska v. Native Village of Venetie. The Venetie Reservation was among those eliminated by ANCSA, with two new village corporations having been created in its stead through ANCSA conveyances. Thereafter, unhappy with the effects of ANSCA, those village corporations re-conveyed their land to the original Venetie tribal government. Venetie took the position that, as a result of this re-conveyance, the land reverted to "Indian country" status. In 1998, based upon the State's challenge, the United States Supreme Court held that the re-conveyance did not result in the recreation of "Indian country" in Venetie.

It was originally thought by some that villages not occupying "Indian country" could exercise no authority whatsoever. Alaska's tribal courts have, however, successfully exercised their sovereign powers based upon their non-land based jurisdiction over tribal members, and based upon federal grants of authority. Cases handled by tribal courts include domestic relations matters, juvenile cases, Child in Need of Aid cases, child custody cases, and adoptions.

III. The problems that confront small, isolated villages in rural Alaska are extreme: rates of poverty, suicide, domestic violence, sexual abuse, sexual assault, and alcoholism far exceed those in urban areas. Resources available to combat those problems are scarce. Tribal courts are of great value in addressing many of these issues, and do so in more culturally sensitive ways than State courts. Moreover, they are often the only mechanism for social control, given problems with the delivery of services to remote locations.

There is a growing recognition of the need for coordination and collaboration between State and tribal courts.

There is a growing recognition of the need for coordination and collaboration between State and tribal courts. As Chief Justice Fabe made clear in her 2013 "State of the Judiciary" address to the Alaska Legislature:

Tribal courts bring not only local knowledge, cultural sensitivity, and expertise to the table, but also are a valuable resource, experience, and a have a high level of local trust. They exist in at least half the villages of our State and stand ready, willing, and able to take part in local justice delivery. Just as the three branches of State government must work together closely to ensure effective delivery of justice throughout the State court system, State and Tribal courts must work together closely to ensure a system of rural justice delivery that responds to the needs of every village in a manner that is timely, effective, and fair.

IV. The precise contours of Alaska tribal sovereignty are changing. There has been significant news in this regard recently, which involves the potential expansion of Alaska tribes' powers through federal action. Moreover, while the articles authored by Attorney General Geraghty and Judge Voluck reflect continuing debate about those contours, they also reflect promising signs of increased collaboration between the State and sovereign tribal entities.

How access to justice should evolve in rural Alaska is a matter of continuing concern. Your views on this important issue would be appreciated. I hope you will express them in ways that will promote a continuing discourse among Alaska's lawyers. And should you wish to contact me directly, I can be reached by email at wildridgelaw@gmail.com.

Point, Counterpoint: Tribal Courts in Alaska

POINT: Tribal Courts, State Perspectives by Alaska Attorney General Michael C. Geraghty

There are more than 200 federally recognized tribes in Alaska. Each tribe is a separate sovereign government providing support and services to its members. Tribal authority is limited by federal law to the powers of self-government—authority over tribal land and tribal members—and over matters authorized by Congress. While the State has litigated to protect sovereign state interests, to protect the constitutional rights of Alaskans, and to clarify jurisdictional boundaries, the State recognizes tribes and their courts as essential contributors in the effort to improve quality of life, public safety, and access to justice in Alaska.

After ANCSA, little land remained under tribal authority and little land meets the federal definition of Indian country, that is, reservations, dependent Indian communities, and allotments. ANCSA revoked reservations in Alaska, save one. Lands in Alaska do not meet the federal set-aside and federal superintendence requirements to be Indian country. *See Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520, 527-33 (1998). Because of the absence of Indian country, tribal jurisdiction in Alaska is different than it is in the Lower 48. With the exception of Metlakatla, there are no reservation boundaries that alert one to the possible application of tribal law. Alaskans are free to travel throughout the State and reside where they please.

Tribal jurisdiction in Alaska raises a fundamental democratic concern. It is unfair to subject an Alaskan to the jurisdiction of a tribal government that she has no right to participate in. And without a jurisdictional land base, Alaska tribal courts cannot exercise criminal jurisdiction (and even in Indian country, federal law limits tribal criminal jurisdiction over nonmembers and non-Indians). Alaska tribal courts can, however, exercise jurisdiction based on a specific grant of authority from Congress, or through a tribe's inherent authority over tribal members. For example, tribal courts offer significant contributions in the area of child protection cases involving tribal member children. But the scope of this authority, particularly as to nonmember parents, is uncertain.

Under federal law the presumptive rule is that tribal courts have no authority over nonmembers. There are two exceptions. Tribes have jurisdiction when a nonmember enters a consensual business relationship with a tribe, and when a nonmember's conduct threatens the political integrity, economic security, or health and welfare of the tribe. *Montana v. United States,* 450 U.S. 544, 563-66 (1981). The precise scope of these exceptions in Alaska is uncertain. It is the State's position that a domestic relationship between a member and a nonmember does not fall within a tribe's inherent authority. And a nonmember does not subject herself to tribal jurisdiction by residing in a predominantly tribal community.

Despite these jurisdictional limits and uncertainties, the State recognizes

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COUNTERPOINT: Alaska's Sister Sovereign: Federally Recognized Tribal Courts, by Judge David Voluck

Alaska Native communities administer law, resolve disputes, and regulate unhelpful behaviors as they have since time immemorial. The authority to self-govern (often termed 'sovereignty') is inherent to any nation's existence. With regard to the Alaska Native people, the source for inherent sovereignty and judicial jurisdiction pre-dates contact with Czarist Russia or the United States. With statehood, the State of Alaska became party to the U.S. Constitution's "Indian Commerce Clause" and the centuries of federal law seeking to reconcile and regulate our Nation's interface with its pre-existing Indigenous peoples. Not without its complications, Federal Indian law and policy recognizes three sovereigns operating concurrently within the framework of the United States of America: the Federal Government, the Several States, and the Domestic Native Nations (legally termed 'federally recognized Indian tribes'). Each sovereign maintains a distinct justice system to serve its citizens with rules and limitations on subject matter and personal jurisdiction to adjudicate matters. Alaska is home to 229 federally recognized tribes; each tribe has its own tribal court, either through the elected Tribal Council sitting in its capacity as court, or a separately developed court system. Most Alaska tribal courts are maintained through volunteers, although some tribal courts receive U.S. Department of Justice tribal court development grants. The full scope of activity for Alaska's tribal courts remains largely unmeasured, although it is well understood in the field that Alaska's tribal courts divert and reduce some of the crushing weight of the civil docket (particularly in the area of child welfare) from an already overburdened Alaska Court System.

Sovereigns throughout the world have a time-honored tradition of not knowing how to share power or play to a sister sovereign's strengths. Alaska is no exception and the State traditionally chaffs at not only the substantial Federal presence, but also the large number of tribal governments within its borders (Alaska is home to 40% of all recognized tribal governments in the United States). Antagonism, litigation, and controversy burdens the efficacy of Alaska's tribal courts. Our generation is presently witnessing a transformation of this historic pattern of hostility into recognition and ideally cooperation between Alaska and its sister Tribes.

The Judicial Branch is charting a course more aligned with the canons of Indian law through the landmark decisions of *John v. Baker and Alaska v. Native Village of Tanana*; recognizing the retention of non-territorially based sovereignty over matters critical to tribal existence. The Judicial Branch recently amended criminal and delinquency rules to incorporate indigenous restorative justice principles and peace-making circles when addressing anti-social behaviors, and has taken the lead on inviting tribal court judges to participate in peer-to-peer trainings on topics of mutual interest like self-represented litigants and minors consuming alcohol. The Executive

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Recreational marijuana will create many new clients

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Marijuana is a federally controlled substance on the same schedule as heroin and LSD. Thus, even if legal in Alaska, and even in spite of the recent memorandums from the Department of Justice advising limited enforcement (discussed below), an attorney assisting a marijuana business would be assisting that client in violating federal law and therefore would be violating the code of professional conduct.

State bar associations have struggled with this conflict of laws. Colorado initially issued *Ethics Opinion 125* on April 23, 2012, which limited representation to advising clients about past conduct, zoning and regulations and the use of marijuana before, during, and after exercising their parental rights. However, *Opinion 125* forbade attorneys from "assisting clients in structuring or implementing transactions which by themselves violate federal law" such as contracts for resources or supplies or leases for property or facilities. This "split-the-baby" approach did not work in practice and on March 24, 2014, the Supreme Court of Colorado adopted Comment 14 to the Colorado Rules of Professional Conduct 1.2, allowing lawyers to provide full representation in regards to state law while still cautioning clients about potential ramifications:

> A lawyer may counsel a client regarding the validity, scope and meaning of Colorado constitution article XVIII, secs. 14 & 16 and may assist a client in conduct that the lawyer reasonably believes is permitted by these constitutional provisions and the statutes, regulations, orders and other state or local provisions implementing them. In these circumstances, the lawyer shall also advise the client regarding related federal law and policy.

Arizona faced the ethical issue of marijuana representation when it legalized medical marijuana and had no trouble allowing its attorneys to represent marijuana related clients. In 2011, the State Bar issued *Ethics Opinion 11-01* clearly stating "A lawyer may ethically counsel or assist a client in legal matters expressly permissible under the Arizona Medical Marijuana Act ("Act"), despite the fact that such conduct potentially may violate applicable federal law."

The Maine Professional Ethics Commission, in *Opinion #199* on July 7, 2010, determined that lawyers may not assist medical marijuana clients if doing so would violate federal law, stating:

> …the Rule which governs attorney conduct does not make a distinction between crimes which are enforced and those which are not. So long as both the federal law and the language of the Rule each remain the same, an attorney needs to perform the analysis required by the Rule and determine whether the particular legal service being requested rises to the level of assistance in violating federal law.

The Commission, however, avoided any helpful examples of permitted or prohibited conduct, stating "activities need to be evaluated on a case by case basis" and that it could not "determine which specific actions would run afoul of the ethical rules."

The Connecticut Bar also took the split-the-baby approach in 2013, but allowed the attorney to make the final ethical determination:

> It is our opinion that lawyers may advise clients of the requirements of the Connecticut Palliative Use of Marijuana Act. Lawyers may not assist clients in conduct that is in violation of federal criminal law. Lawyers should carefully assess where the line is between those functions and not cross it.

Thus, the ethics of representing marijuana clients is still being debated and reformed. It will be up to state bar associations and state courts where marijuana is legalized to define the ethical scope of representation. Colorado has recognized that regulated recreational legalization will require the participation of lawyers in order to succeed and has therefore lifted the ethical burden from its attorneys. The Alaska Bar Association has issued no opinions on representation with regards to medical marijuana, so attorneys have no guidance in the event that legalization occurs. If recreational use is legalized in Alaska, hopefully an opinion or rule change will be issued so legalization can go smoothly and comply with state law.

Assuming it is ethical for lawyers to represent the citizens who vote to legalize recreational use in Alaska, a previously underground industry is poised to become regulated; and marijuana entrepreneurs will need a variety of legal assistance. First and foremost, the growers, processors and sellers of marijuana will need to form business entities such as corporations or LLCs. As marijuana is still listed as a federal Schedule 1 controlled substance, these businesses will need to shield themselves from liability and protect their assets. These businesses will also need standard filings such as business licenses and biennial reports. Marijuana businesses will need to file for state marijuana licenses. As of December 31, 2013, Washington had received 4,946 applications for marijuana licenses – that is almost 5,000 potential clients who need help navigating regulatory law.

Marijuana businesses need offices, storefronts and warehouses and so lawyers will be needed to draft leases and contracts. Some of these new business owners may have been operating underground for a long time and be business savvy, but not knowledgeable of legal issues. Again, because marijuana is still a federally controlled substance, these leases and contracts will likely need protections and provisions beyond those of standard leases.

Employment law issues will arise if recreational marijuana is legalized in Alaska. According to Marijuana Business Daily, medical and recreational sales in the United States already total over $1 billion a year – this is a large industry that employs a wide range of professionals. Retail locations require managers, cashiers and sales people. Production or "grow" facilities require horticulturists with specialized knowledge and workers to harvest the crop, a labor-intensive procedure. Scientists and chemists are needed to test and analyze crops for quality and consistency and extract THC for manufacturing other products. Manufacturers will need workers to produce marijuana edibles or other marijuana-based products. Employers will need employment agreements and extra precautions for employees who have access to both large amounts of marijuana and cash. Security services will be needed for grow locations, production facilities and retail outlets, and for transporting products and large amounts of cash from sales.

Once a marijuana business is established, there will be intellectual property issues with trademarks, advertising and branding. Because marijuana cannot be shipped interstate, manufactured products that contain THC or marijuana must be manufactured in-state. Companies are therefore licensing technology to make marijuana-based products in other states. For example, new vaporizer "pens" that use manufactured, THC-filled cartridges have been growing in popularity. However, because of the prohibition on interstate transportation, vaporizer companies must license the technology to manufacture the cartridges to businesses in the state in which it is to be sold. As these marijuana-based products continue to grow and evolve, there will be many more licensing and patenting issues.

Legalization will require marijuana businesses to comply with regulatory rules and will give rise to many opportunities for lawyers practicing regulatory compliance and administrative law. Product liability is an often ignored topic, but will require attorney services for both compliance and litigation. Crops and products must be tested for quality and strength. Depending on the regulatory scheme in place, marijuana and marijuana products must also follow packaging regulations, for example clearly marked or child proof containers may be required. Edible marijuana-derived products will be subject to food safety and production rules.

Legalization will require attorneys well-versed in banking and finance. Both the medical and recreational marijuana industries are almost wholly cash businesses due to federal banking laws and restrictions. The Banking Secrecy Act (otherwise known as the Currency and Foreign Transactions Reporting Act) requires banks to report on aggregate purchases of negotiable instruments in excess of $10,000, and to report suspicious activity that may indicate money laundering or tax evasion. A financial institution must file a suspicious activity report (SAR) if that institution knows, suspects, or has reason to suspect that a transaction (i) involves funds derived from illegal activity or is an attempt to disguise funds derived from illegal activity; (ii) is designed to evade regulations promulgated under the BSA; or, (iii) lacks a business or apparent lawful purpose.

In a memo dated February 14, 2014, the Department of Treasury, Financial Crimes Enforcement Network (FinCEN), issued guidance intended to make it easier for banks to work with marijuana businesses. The memo recites eight priorities given to district attorneys in enforcing marijuana issued by the Department of Justice (the Cole Memo priorities). These priorities focus DOJ's attention on prevention of crimes such as sale to minors, money laundering by criminal organizations, and stemming violence in the cultivation and distribution of marijuana. FinCEN created a "Marijuana Limited" SAR which banks must file for marijuana-based businesses that do not implicate one of the Cole Memo priorities. Financial institutions that suspect a business implicates a Cole Memo priority must file a "Marijuana Priority" SAR. If a financial institution deems it necessary to terminate a relationship with a marijuana business, the institution must file a "Marijuana Termination" SAR filing. Counsel for both marijuana businesses and banking or financial institutions will be needed to navigate specialized filings.

Finally, legalized marijuana will require tax attorneys. Taxation has been one of the most problematic areas of large scale medical marijuana and marijuana legalization efforts. Revenue Code § 208E states "No deduction or credit shall be allowed for any amount paid or incurred during the taxable year in carrying on any trade or business if such trade or business (or the activities which comprise such trade or business) consists of trafficking in controlled substances…" However, in *Olive v. Comm'r,* 139 T.C. 2 (2012), the tax court found that a marijuana dispensary could subtract the cost of goods sold from gross receipts to determine gross income because it was not a business deduction. *Californians Helping to Alleviate Med. Problems, Inc. v. Comm'r (CHAMP)*, 128 T.C. 173 (2007) found that a dispensary actually has dual functions – selling medical marijuana and giving care to patients. The court held the taxpayer could only deduct expenses for the caregiving side of the business. Clearly, attorneys will be required at tax time.

In sum, legalized recreational marijuana in Alaska will create numerous opportunities for attorneys in many diverse areas. It is rare that a multi-million dollar industry springs up overnight and attorneys should be prepared to capitalize on the "Green Rush."

The author is an attorney at Manley & Brautigam, P.C. and chronic client acquiring opportunist.

Howard Trickey and Jeff Feldman.

New Lawyers Section reaches statewide

By Loren Hildebrandt

The New Lawyers Section of the Alaska Bar Association exists to provide Bar members in their first five years of practice an opportunity to: become active in the Bar; benefit from CLEs of special interest to more recent admittees; and network both with each other and with the more experienced attorneys.

Our informal motto is: "It's free for a reason." (It seemed more uplifting than "you get what you pay for"). In all earnestness though, any section is defined more by what it does than by its mission statement. Here are some examples:

The New Lawyers Section is committed to providing opportunities for CLEs in more remote areas of Alaska differentiating itself from the Anchorage Bar Young Lawyers Section. To this end, the Section has dedicated several of its bi-monthly meetings to insider's guides to practicing in Alaskan cities outside Anchorage. Since 2012, we have been delighted to spearhead insider's guides in Juneau, Kenai, Fairbanks, Palmer, and Bethel. These meetings have featured a panel of at least two judges while using experienced local practitioners as moderators. These insider's guides have provided excellent insights into regional differences in practice both for local attorneys and for Anchorage-based attorneys attending remotely.

The Section endeavored to offer a diverse and engaging array of programs for Fall 2013 through Spring 2014. Our September 2013 meeting provided recent admittees and curious newer lawyers the opportunity to learn about the Alaska Bar Association, including a new lawyer's potential role in it, from some key professionals integral to the Bar Association's development and continuing vitality. Presenters included Bar Association Executive Director Deborah O'Regan; Bar Counsel Steve Van Goor; Section/Fee Arbitration Coordinator JoAnne Baker; and CLE Director Mary DeSpain. Guest speakers addressed three broad issues: (1) what the Bar can do for new attorneys, (2) what new attorneys can do for the Bar; and (3) what consequences can result if new attorneys break the rules.

In October 2013, the Section was delighted and honored to sponsor a full-day CLE presentation entitled "Trials of the Century," presented by nationally acclaimed speaker Todd Winegar. This well-attended event offered enlightening lessons from such famous courtroom spectacles as the O.J. Simpson Trial, the Scopes Monkey Trial, and the Nuremberg Trials.

In November 2013, the Section spearheaded an insider's practice guide to Bethel. It featured a lively panel discussion led by Fourth Judicial District Superior Court Judges Dwayne W. McConnell, Charles W. Ray, Jr, and Magistrate Judge Bruce G. Ward.

Our January 2014 meeting focused on legal research strategies at the Alaska State Law Library. We welcomed Reference Librarian Buck Sterling, who provided a helpful overview of the resources available at the library, including a discussion of research hypotheticals.

The theme for our March 2014 meeting was "Perspectives on Legal Practice Related to the Alaska Legislature." We held a panel discussion regarding legislative legal practice in Alaska. Panelists included Douglas Wooliver: Deputy Administrative Director, Alaska Court System; Chad Hutchison: Legislative Affairs, Alaska Senate Majority Office, Assistant to Senate Majority Leader Sen. John Coghill; and Cori Mills: Assistant Attorney General, Alaska Department of Law, Legislation and Regulation Section. Assistant Attorney General Hanna Sebold, immediate past-President of the Alaska Bar Association Board of Governors, served as moderator. Topics included: how the legislative session affects panelists' jobs; the nature of panelists' interactions with the Legislature; paths leading the panelists to their positions; and advice to newer attorneys.

Attendees of the May 2014 New Lawyers Section meeting pose with Assistant Bar Counsel Mark Woelber. Left to right: Josh Resnick, Trever Neuroth, Assistant Bar Counsel Mark Woelber, Co-Chair Loren Hildebrandt, Co-Chair Nick Lewis.

Our May 2014 meeting featured a stimulating analysis of ethics hypotheticals by Assistant Bar Counsel Mark Woelber. Topics ranged from conflicts of interest for law clerks leaving government, mentorship and fee-splitting, to taking on cases in fields in which a newer attorney is unfamiliar.

Our plans for this Fall 2014 include a CLE providing tips on how to create your best record and an insider's guide to the Second Judicial District.

The New Lawyers section aims to spark creative synergy across practice areas and Alaska's vast geographic distances by exposing newer attorneys to insights from more established practitioners, judges, and professionals at the Bar Association. Joining is free, and members of other sections are always welcome at our meetings. We meet on the third Thursday of September, November, January, March, and May. We cordially invite you to stop by any of our meetings, e-mail us with any ideas for meetings, and volunteer for a leadership position in the Section.

--Loren Hildebrandt,
NLS Co-Chair

Point, Counterpoint: Tribal Courts in Alaska

POINT: Tribal Courts, State Perspectives

Continued from page 3

tribal courts and tribal governments as essential partners in improving public safety and increasing access to justice in rural Alaska. Tribal courts may be uniquely connected to their community, and they may be able to fashion more culturally relevant, more effective, and more efficient procedures and remedies. Because of that the State wants to collaborate.

To that end, the State is now negotiating agreements with tribes to allow certain misdemeanor offenses, including domestic violence and alcohol offenses, to be referred to tribal courts for civil diversion remedies. Both members and nonmembers will be able to opt-in to tribal court—and when faced with the alternative of State criminal prosecution and a potential criminal record, it is believed that many offenders will accept the tribal remedy option. The hope is that a culturally relevant remedy will be more effective for first time offenders by allowing them to see the impact their actions have had on their family and the local community. While the State will continue to protect its sovereignty and the rights of all Alaskans, it will also continue to recognize tribal authority over domestic relations matters among members and it will continue to reach out to tribes to collaborate in improving life in Alaska.

--Alaska Attorney General Michael C. Geraghty

COUNTERPOINT: Alaska's Sister Sovereign: Federally Recognized Tribal Courts

Continued from page 3

Branch is more reticent to change, maintaining an active litigation posture in opposition to tribal jurisdiction; however there are encouraging signs of thaw with the Department of Law's recent effort to negotiate government-to-government diversion agreements with tribal courts to civilly handle a suite of alcohol-related offenses and misdemeanors through local and more culturally appropriate venues.

While the full contours of tribal jurisdiction in Alaska remain clouded, the beginning of this paradigm shift could not have come soon enough as the steady stream of demographic research details a statistical crisis among Alaska Natives disproportionally represented in every category of social and legal distress. Anglo-American justice based in an adversarial model is, more often than not, a poor fit with Alaska Native culture and the presenting symptoms of historical trauma. Legal scholar Felix Cohen likened the welfare of indigenous peoples to the miner's canary, marking the shifts from fresh air to poison gas in our atmosphere. At present, the songs of the Alaska Native people are increasingly muted with distress, an indicator that our entire State and its administration of safety and justice needs to shift towards fresher air. I applaud Alaska Bar President Wildridge for initiating this conversation with the renewed hope that Alaska will provide the proving grounds for a place where great cultures meet and mutually enrich other.

--Judge David Avraham Voluck

Judge Voluck sits on the benches of the Central Council of Tlingit & Haida Indian Tribes of Alaska, Sitka Tribe of Alaska, and Aleut Community of St. Paul Island Tribal Government, is an adjunct professor of Indian law for the Northwestern School of Law of Lewis & Clark College, and co-authored with David S. Case, "Alaska Natives & American Laws 3d. Ed."

Do you have a topic that you would like to see as the subject of a future Point, Counterpoint? Email your editors!

TALES FROM THE INTERIOR

Judge Jerry

By William Satterberg

Throughout a person's life, there are various people who they have come to either know and revere—or fear. These folks become role models for others. Judge Jerry was one of mine.

After law school, I accepted a job in Fairbanks, Alaska. I was alone and away from my home. A rookie lawyer, I was in awe of the legal system. Everything was a challenge. I would spend hours preparing to argue unopposed motions.

Eventually, I progressed from arguing unopposed motions, which I usually won, to cases of critical importance to the State of Alaska, such as having encroachment signs removed from rights of way in remote townships. And that is when I first appeared before Judge Gerald J. Van Hoomissen, a/k/a Judge Jerry.

Judge Jerry's reputation was well known. Jerry bluntly shot from the hip, calling things the way he saw them. Rumor was that Jerry carried a gun underneath his robes. But nobody dared to ask. Jerry was always attended by his loyal in court clerk, Velma. Velma had her hands full trying to keep Jerry out of trouble with his often politically incorrect observations. It was sort of a hero/sidekick thing. Like the Lone Ranger and Tonto, or Rocky and Bullwinkle, or Hooch and Turner.

My first contested case was in Tok, Alaska. A gas station owner had erected a commercial sign within a highway right of way. It could not be allowed. The State's honor was at stake.

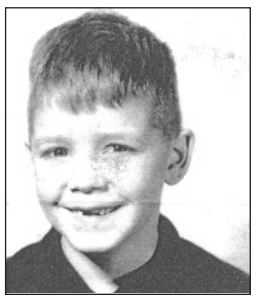
I arrived for trial a day early. At the time, a young Assistant District Attorney was prosecuting two locals for stealing washers and dryers from Alyeska Pipeline Company. Reportedly, the goods had been sold at extremely discounted prices to other locals. It was a Robin Hood type of thing. Interest in the case was so great that the trial moved to the high school gymnasium.

When I entered the gym, the court was in recess. A strange smell was in the air. Popcorn was being sold from the snack bar during the intermission. Just before the court came out of conference, the plywood cover to the concession stand slammed shut following a subtle warning from Velma. Everybody quickly returned to their seats, jurors and spectators, alike. Judge Jerry then entered the courtroom.

Trial had barely resumed when another objection was made. Once again, the litigants retreated to the adjacent locker room for argument. In seconds, the popcorn stand re-opened with a fresh batch. Business clearly was brisk. Following some delay, a recess was declared to deal with a complex issue. During the recess, the young prosecutor saw me and asked if he could speak with me. He asked how his case looked. I told him that an acquittal was likely. After all, the defendants were two modern day brigands who had taken on the corporate giant, Alyeska, distributing washers and dryers to the poor. They would make a clean getaway as I saw it.

After gaining a commitment that I would back him when he had to deal with his boss, "The Dog," Harry Davis, the young man stood up and announced that, in the interests of justice, the case was dismissed. In response, the entire courtroom, including the jurors, broke into a loud applause. Happy hugs were exchanged by all. Everybody then retired to the Parker House where libations flowed generously late into the night.

At the Parker House, I saw Judge Jerry at his finest. He was seated in a chair, obviously having enjoyed more than one drink by the time I arrived. A matronly lady was sitting on his lap, hugging him and advising him in a slur that he was the "besht judge she had ever scheen." Judge Jerry's response was "Ma'am, you may not be thinking that after tomorrow."



"I was alone and away from my home. A rookie lawyer, I was in awe of the legal system. Everything was a challenge. I would spend hours preparing to argue unopposed motions."

The next day, my trial began. The venue was back in the state courthouse in Tok. The room smelled remarkably similar to a stale bar, with bleary eyed patrons to match. The only person with a clear head was the defendant's attorney, who had driven in fresh from Anchorage that morning. Outside, the weather was beginning to close in. A storm was brewing. It was obvious that Judge Jerry was growing concerned. He had flown his own plane to Tok and had earlier announced that he planned to make it home before getting socked in. As such, we skipped lunch. In the early afternoon, while I was still presenting the State's case, opposing counsel made another now redundant relevancy objection. As before, I responded and the defense gave its rote reply. Judge Jerry then announced that he "was ready to rule." I expected that we were simply going to receive another ruling on the recurrent objection. I was mistaken.

This time, to everyone's surprise, Judge Jerry announced that the defendant had 10 days to remove the sign or he would be found in contempt of court. That was Judge Jerry's decision. It was final. There would be no further discussion. Notwithstanding the fact that the defense counsel protested, arguing that he had yet to even begin his case, Judge Jerry stated that he could take his objections up on appeal. Judge Jerry then promptly left the courtroom, climbed into his nearby Cessna, taxied out onto the Alaska Highway, and departed for Fairbanks, leaving the rest of us in the dust and Avgas fumes to ponder his ruling.

Subsequently, I took on more critical cases for the State. One case was against a distinguished Seattle counsel who represented a large contractor. The matter concerned a construction project in a remote village and a delay claim. I had filed a motion for summary judgment. The plaintiff had responded with a series of affidavits which appeared to raise genuine issues of material fact.

We were arguing before Judge Jerry when, once again, he announced that he was "ready to rule." I feared the worst. I had heard that statement before. I was not mistaken. In fact, I can still remember Judge Jerry making the comment, "I am now going to make my findings of fact and issue my ruling on summary judgment." Judge Jerry then proceeded to make several findings of disputed fact and announced his ruling of law, to even include a damages award as I now recall. Needless to say, both counsel had some reservations about the process. By then, the now famous case of *Bowers vs. Alaska State Employees Federal Credit Union* mandated that issues of material fact required a trial.

In retrospect, perhaps Judge Jerry was wiser than us. I suspect that the court recognized his likely erroneous ruling, but also appreciated that it would form the basis for a settlement. In the end, rather than appealing the court's ruling, and getting embroiled in litigation for years to come, we simply accepted the ruling, dispensed with the jury trial, settled the case. I was now becoming used to Judge Jerry's technique of dispute resolution. Was the process legal? Probably questionable. Was it effective? Absolutely.

The next matter involved a contested jury trial in a condemnation case. I was facing a very experienced opposing counsel. He had once been Alaska's Attorney General. Fortunately, I had succeeded in pretrial motions in paring down the landowner's damages claims substantially. But the landowners were not to be dissuaded. They were still intent on placing their excluded damages figure before the jury. To accomplish this, they had retained an appraiser reputed for his inventiveness and ability to push the limits.

During the course of the case, the defendants attempted several times to introduce their damages figure, but were having no success over my objections. So, a new tactic was used. At one point, when asked his opinion of value, the appraiser stood up in the witness box, turned directly to the jury and quickly and loudly yelled out the figure before an objection could be made. It was a dramatic moment, especially for a condemnation case. The answer was stricken. But the excluded evidence clearly had now been stated. Even a couple of the jurors had woken up.

For the rest of the case, each time the attorney would attempt to bring in the previously excluded evidence, I would predictably object. Judge Jerry would then sustain my objection. And the liturgy would continue.

Finally, out of either boredom or a lack of attentiveness, Judge Jerry overruled my objection. The poisonous evidence was introduced. I slumped into my chair. The case had effectively been lost. Now that the jury clearly knew that there was a difference between the $1,500 figure the state was generously offering and the $1.3 million dollar figure that the defendants were greedily demanding, there was little chance that I would bring in a verdict anywhere close to the State's offer.

A few minutes later, Judge Jerry began to fidget. His face would scrunch up. He would look nervously from left to right. Something was bothering him. Not that I was sure, since he could have also been computing his retirement benefits as Judge Blair was often reputed to do. Either that, or his bladder was acting up.

Suddenly, without warning, Judge Jerry announced "Counselors, meet me in the anteroom NOW!"

As ordered, we promptly adjourned to the anteroom, closing the door behind us. Judge Jerry stood there for a minute. He next dramatically unzipped his robe. For a second, I feared that he was going for his gun. I was relieved when Judge Jerry jammed his hands into his pockets. After another long pause, he stated, while slowly shaking his head from side to side, "Gentlemen, I have really fxxxed up." He then explained that he should not have overruled my objection. Nor should my opposing counsel have attempted to sidestep his earlier rulings. It was going to stop then and there. A strained silence followed. It was a solemn moment.

In scarcely seconds, there was a loud, persistent, knocking on the door which interrupted the reverie. Judge Jerry opened the door. Velma stuck her head in. Velma then whispered sternly "Your Honor, we are *still* on the record!"

Judge Jerry politely thanked Velma for her input. After the door closed, Judge Jerry looked at us and said, "Gentlemen, that comment I made was inaudible, wasn't it?"

The young, respectful attorney that I was, I conceded that, perhaps, my hearing was fading as I grew older. I considered the comment to be inaudible. Opposing counsel, however, began to protest, stating, "No, Your Honor, you said . . . ."

As I recall, rather than allowing opposing counsel to complete his statement, Judge Jerry fixed him with a glare and stated, "That comment was inaudible, sir!"

The response was a timid "Yes, your honor." Even the ex-Attorney General for Alaska knew when not to press the limits.

Following several more days of trial, a verdict was returned for the state. Predictably, the landowners appealed. At the time, transcripts were prepared by the state court system. I anxiously awaited to see how the exchange in the backroom would appear when reduced to transcription.

When the transcript was finally delivered, I flipped to the pages for the now famous anteroom exchange. Sure enough, the comment was inaudible. In fact, I recall it reading words to the effect of "Judge: (inaudible)," and that our responses apparently were also inaudible. Virtually everything was inaudible. And whether the lack of clarity was truly a microphone defect from a dedicated court clerk like Richard Nixon's Rosemary Woods, from a transcriber who followed the instructions clearly, or from some other person with nimble fingers who was able to get to the recording will never be known. But what is known is that one of the more classic statements by Judge Jerry never went down in appellate history.

Judge Jerry had other favorite statements that I learned about as time went on. He was always quite opinionated. Rumor had it that he and an out of town judge once had an encounter session at a Reno judicial conference, but I never verified such. After all, what happens in Vegas stays in Vegas, and what happens in Reno never occurred. But I understand that whatever it was rivaled an Old West movie.

Judge Jerry also had his opinions about attorneys. For one Fairbanks attorney, Judge Jerry created an automatic challenge for cause by stating on the record that he would not trust the attorney "As far as I can throw a refrigerator." From then on, whenever that attorney's case was assigned to Judge Jerry, the attorney would simply file a canned motion with an attachment of Judge Jerry's opinion. A disqualification for cause would summarily enter. When I asked Judge Jerry why he had made the statement, he answered that he and the lawyer had arrived at a mutually satisfactory resolution. The attorney did not want to appear in front of Judge Jerry, and Judge Jerry did not want him to appear, either. Problem solved.

Eventually, Judge Jerry retired. He still is sighted in Fairbanks from time to time. Not as a judge or as an attorney, but as a visitor. There are many young attorneys who will never experience Judge Jerry's courtroom style, his unique sense of fairness, or his philosophy of getting the job done by cutting to the chase. Sadly, it is their loss. Fortunately, I, for one, am able to recall the good old days in Fairbanks, when jurists like Judge Jerry got the job done, come hell or high water, in time for everyone to enjoy the hunting season.

ECLECTIC BLUES

Serious business

By Dan Branch

You have to be serious, as serious as Ebola. You need commitment. You have to be willing to spend enough for a round trip ticket to Seattle on herring and boat gas. Hours must be spent trolling in the rain or through windless nights when gnats try to distract you with painful bites. You must put up even with cigar smoke and bad jokes.

Ignore the breached whale and playful seal. Hate the sea lions and the boats full of other guys that form your competition. It's May and you hunger. You hunger for the cry of a 40 pound line being pulled against the drag of a Penn level wind reel, for the feel of a big shouldered opponent when you lift your rod from the down rigger, for the sight of line being pulled deep by a fish of size, for the thick silver body being lifted from the water with a long handled net. You hunger for these things even if you only caught one spring king salmon in your life--and that before your adult child's birth.

Last night we ate meat from the backbone of a spring king salmon just caught by Capt. Jim, not me. The rest of the fish will be parceled out over the summer for special meals---cooked by simple, direct means. Save your rubs and fancy cookbook sauces for cannery kings, dog salmon or pinks. The state should revoke your king salmon stamp if you dip spring king meat in tartar sauce.

"On the first pass my rod dips and jerks a few times and I think, king salmon but it is only a dolly varden. Hours pass."

By the time you read this the season for catching spring kings will have ended. Capt. Jim will be bobbing and weaving his ancient C Dory between charter boats and local boys on a course from Smuggler's Cove to the mouth of Fish Creek. The local boats will be targeting kings home-bound for the fish creek pond or the Gastineau Channel hatchery.

But, although they are still salmon, fish that close to fresh water when caught don't taste as good as spring kings. Unless it is a strong king run, the charter boats will target the more numerous dog salmon that the locals ignore. At night, charter boat captains have nightmares where they pilot their mortgaged boats into a southwestern swell while rapacious tourists demand fish or their money back.

This May I tried, as I usually do, to catch a spring king. Before the first trip out, I spent 15 minutes leaning into an open freezer section in Foodland picking out two trays of bait herring. I looked for fish with the brightest silver and blue scales and the fearful eyes of true prey.

At 5 a.m. the next morning I stand in the street in front of our Chicken Ridge House; food, herring, and fishing rod in hand. I wear my lucky ball cap and clothing designed to keep me warm and somewhat dry during the long trolling vigil ahead. Because bananas on a boat bring bad luck, I do not wear yellow. Capt. Jim picks me up and we motor, mostly in silence, to a drive-through coffee stand chosen because it happens to be on the route to the boat harbor and not because of the charm of its baristas.

The signs are favorable on the fishing grounds. A small number of boats troll slowly along the shore. Birds fly above schools of bait hearing forced into tight balls by predators, like spring kings. Panicked herring seek refuge from the hunters by leaping into the air.

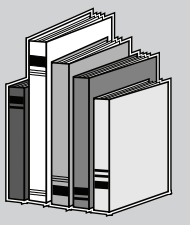
On the first pass my rod dips and jerks a few times and I think, king salmon but it is only a dolly varden. Hours pass. We hear a clunk and Jim's rod bounces. He grabs it, cranks up slack in the line and feels a big fish trying to escape with his bait herring. The line slackens. He reels in and finds nothing at the end of his line---no fish, no bait, no expensive flasher. A sea lion head pops up, shakes a struggling king in his teeth and slips beneath the surface. We curse him and his opportunist kind. He stops following us when it becomes clear that our luck for the day has run out.

Given my tendency to write about bad luck fishing days, readers of this column might assume that Capt. Jim and his crew are the sad sacks of the salmon world. Not so. Catching two spring kings (I count the one stolen by the seal lion) in just two outings makes him a fishing guru. It usually takes an average of 70 hours of trolling to catch one king.

Anchorage Association of Women Lawyers panel. L - R: Tonja Woelber, Renee Saade, Cheryl McKay, Susan Orlansky, Aimee Anderson Oravec and Jennifer Wagner.

Law Library News

Coming soon to the Law Library:eBooks and remodel completion



By Susan Falk

It was great to see so many of you at the 2014 Bar Convention. We had a great time speaking with you and talking about the latest news from the Law Library. Thanks to all of you who stopped by to say "hello", ask a question, or just get a signature on your bingo card. For those of you who missed our booth, we spent most of our time giving away trinkets, jockeying for the Best Exhibitor Candy Award (a coveted honor), and demo-ing some of the electronic resources we offer.

We were most excited to let you know about the latest development on that front: eBooks. Within the next few months, the Law Library plans to offer Lexis's Digital Library. With this new program, almost every Lexis title the library owns will be available as an eBook. Lexis is the only major legal publisher offering a lending platform at this time. This means bar members may check these books out, at any time, from any location. You'll have 24/7 access to these titles, and lawyers in Nome, Sitka, and Kenai will have the same access as those in Anchorage.

Lexis uses the same platform as the State Library's *Listen Alaska* service. If any of you have checked eBooks out through the public library, you already know how easy it is to use the platform. You can open the book in your browser and copy directly into your document. You can highlight or make notes on the text, and these notes will pop back up if you check the book out again at a later date (while never being visible to other users). You can also access the book online, or download it to your computer, your e-reader, or your mobile device.

In other news, the Anchorage Law Library recently completed its penultimate move. In May, library staff moved the available collection from the Reading Room into our new stacks area, in the central part of the library. This new area boasts modern, compact shelving, which holds many more volumes in far less space. In addition to our books, we moved all library services into this newly remodeled space, including public copiers and computers, the microfiche reader and printer, and the reference desk.

Though seating space for public patrons will be somewhat limited during this last phase of the renovations, library operations will be unaffected. Reference staff is available to help you with your research, and all the treatises and Alaska resources that have been on the shelf throughout the remodel remain available in this final phase. The library entrance is currently off the lobby, just to your left after you pass through security.

The final stage of the remodel tackles the Reading Room. The new reading balcony on the north side of the library will be extended, and a second staircase will be added. In addition, the reference desk will be relocated to the center of the room for greater visibility. When construction is finished, the library's entrance will return to its previous location. The renovation is scheduled to be completed in late 2014.

And remember: While we'd love to see you over the next few months, you don't have to spend time in the library to enjoy our services. Bar members may check out secondary sources, and we are happy to email materials to you, when possible. This final phase of construction should be the shortest. We look forward to unveiling and welcoming you to our new space once the dust settles.

Need library help?

- Email us at library@courts.state.ak.us
- Call the Anchorage Reference desk at 907-264-0585, or dial toll free: 888-282-2082 (in Alaska, but outside the Municipality of Anchorage)

The Alaska State Court Law Library serves the legal information needs of Alaskans by selecting, organizing and facilitating access to legal research resources and court system information. The main library collection and statewide administration is at the Anchorage law library, but library services are available to people throughout the state.

The Anchorage Law Library is open to the public six days a week including evening and weekend hours. Professional librarians are available Monday - Friday, 8:00 am - 4:30 pm. Library assistants staff the library during all other hours the library is open.

THE KIRK FILES

Three citations and a cloud of dust

By Kenneth Kirk

Hello, I'm Erica Andress from CNN Podcast News. Your PR department said you'd be the guy to interview?

"Sure, pleased and all that. As long as you can keep up with me. We have a busy few days here."

The story they want me to write is about recruitment of recent law school grads by the major firms, Mr... ah...

"Budczyk, but call me Bud. Or Coach Bud, everybody likes that one."

Sure, Bud. So this is some kind of big annual recruitment event for your firm, I take it?

"Not just my firm. All the major law firms in the US participate. We call it the 'combine'. If you're a top law student, you might get an invite."

And then you test them, it looks like? What are they doing today?

"This afternoon it's a legal research drill. We had persuasive writing this morning and... excuse me a sec. HEY DUMMY! YOU BETTER PUT THAT ATLANTIC REPORTER BACK ON THE SHELF! Sorry, we have to keep them on their toes. Where were we?"

That was a little intense.

"Yeah, the big firms learned a few things in the last decade or so. We used to hire these kids who'd just finished being cowered and intimidated for three years by their law professors, and all of a sudden we're treating them like mature professionals. It was too much of a shift, and the recruits got lazy. LIPSCHITZ, ARE YOU STILL ON JURISDICTION? GET THE LEAD OUT!"

Wait, wait, hold on. You treat them like that, and they're still willing to come to your combine?

"Sure they are. This is all the top law firms. Nobody else can pay them enough to cover their massive student loan debt. They really need these jobs. But in order to pay them this kind of coin, we've got to work them a lot of hours once we hire them. And we've found that intimidation works pretty well in that situation. YOU! I SEE ANOTHER TYPO ON YOUR PAGE AND I'LL THROW YOU OUT THE STINKIN' WINDOW! And so the combine sets the tone. Then the firms can really ride them when they get hired. It beats the old system of wooing them, then surprising them with massive billable hours quotas once they climb on board. HILEMAN, YOU'RE LAST! GET IT MOVING!"

"We take turns selecting the graduates who will best fit into what our specific firms need."

That's pretty tough. I'm surprised they can handle it.

"You should come back tomorrow for the oral arguments. Talk about a 'hot bench'! Our panel are all former Army drill sergeants. The recruits get a 'pass' just for getting out of there without crying."

Sorry I won't be able to stick around. But how does the scoring work?

"Each competition is scored separately. That way the firms can look for what they need. For instance my firm, BakerPerkins, is looking for good research and analysis guys to provide the backup for several departments. But Slate & Norton is trying to shore up a struggling trial section, so they're more interested in the aggressive types who can think on their feet. TEN MINUTES, MAGGOTS! GET THOSE CITES DONE!"

I have to tell you, your methods seem pretty harsh. On the other hand, I suppose the end result is that the most talented law grads are bid on by the top firms. Are some of them promising enough to start a bidding war?

"Bidding? Oh, no, you don't understand. There's no bidding. All of the major firms signed an agreement. We take turns selecting the graduates who will best fit into what our specific firms need."

You mean... you can't mean...

"We got the concept from one of the most popular and successful businesses in America. We call it 'preferential alternating selection'."

Or... a draft?

"Something like that. OKAY, TIME, YOU WUSSIES! PENCILS DOWN AND GET OVER TO THE MOOT COURT ROOM!"

SUBMITTING A PHOTO FOR THE ALASKA BAR RAG?

- 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.
- Send photos with numbers for filenames, such as IMG-1027, DSC-2321, IMG08-19-08, etc.

Todd Winegar presents Trials of the Century at the convention.

Letters to the Editor

Inspire others

On April 24, 2014, National Public Radio reported that lawyers for a computer support technician convicted of possessing ricin to use as a weapon are asking the U.S. Supreme Court to hear his appeal, as a way to send a message about widespread prosecutorial misconduct.

This is the case of *United States v. Olsen*, 737 F.3d 625 (9th Cir. 2013), in which Chief Judge Alex Kozinski dissented from the denial of rehearing and rehearing en banc, writing:

> *I wish I could say that the prosecutor's unprofessionalism here is the exception, that his propensity for shortcuts and indifference to his ethical and legal responsibilities is a rare blemish and source of embarrassment to an otherwise diligent and scrupulous corps of attorneys staffing prosecutors' offices across the country. But it wouldn't be true. Brady [v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963),] violations have reached epidemic proportions in recent years, and the federal and state reporters bear testament to this unsettling trend. Id. 631 (Kozinski, C.J, dissenting) (citations omitted).*

This is why Mike Moberly's article in the last edition of the Bar Rag encouraging the Bar members to make a conscious effort to do something positive, even if it is something as small as letting another merge in the congested traffic, and Dan Branch's article about public perception of attorneys, are so current.

As Mr. Moberly so keenly observed, mass media's portrayal of our profession in movies and on network television nowadays is a far cry from that personified by Atticus Finch in "*To Kill a Mockingbird*." Of course, the attorney misconduct that makes headline news described above does not help with the negative public perception of our profession. The problem is compounded by the public's fear and distrust of attorneys in general. Fear, in turn, generates the negative opinions and/or makes the public very receptive to the negative messages generated by someone else. Thus, members of our profession face an uphill public relations battle.

Considering this perception of our profession, I am convinced that Mr. Moberly communicated something really important. Not only should we behave kindly and ethically because it is the right thing to do, we should so behave because these actions contribute to the development of good habits and set an example to others. I would suggest that lawyers, who frequently occupy positions of leadership in the society, have influence greater than the general members of the public, and for that reason, we should particularly pay attention as to how we interact with the community.

Developing the Habit of Acting Kindly and Ethically

I would suggest that we should act kindly and ethically not only when we are observed by those who know us, but also when we are observed by strangers or no one at all. As many behaviorists know, most of human routine action is habitual in nature. For example, once you get a habit of buckling in when you sit down in your car, no conscious thought is required for you to put a seat belt on, and you do it almost automatically. Similarly, when you acquire a habit of driving aggressively and curse other drivers, you do so without giving it a second thought. People who are in the habit of holding the door for others also know that this action also, for the most part, does not require a conscious effort. Because a habitual action is so predictable, the evidentiary rules allow the evidence of past practice to show the conformity therewith when that past practice is shown to be habitual or routine. Alaska Rule of Evidence 406.

It is no secret that habits form from a repetitive action, and they begin to form very early in life. There is no reason why the mechanism of habit cannot be used to develop desired behavior, as in the case of opening/holding the door for others or letting others merge in the congested traffic. Some may suggest that there is a difference between acting nicely and being kind, in that the former implies certain passivity and that the latter requires one to actively help others. Nevertheless, I see no reason why the habit of actively seeking to help others or acting ethically cannot be acquired. To get into that habit, the action must be repeated with some regularity and a conscious effort is required to do that.

Setting an Example for Others

To my mind, not only do we have to be kind to others, we also have to find time to foster qualities we admire in those who surround us, especially children. Children observe and mimic all our actions – I am certain that my experience of seeing my mannerisms, facial and verbal expressions in my kids is shared by most parents. When I observe my children, I often feel that they are reflecting my behavior like mirrors. While the process of acquiring good habits is not an easy one, there is some consolation in that our good acts, as mimicked by our children and grandchildren, will make the job of acquiring good habits easier for the little ones. Though undoubtedly children have their own personalities and are persons different from us, very often, in our busy profession, we forget what an enormous influence we have over them.

My mom, who is now 77 years old, very frequently reminds me that if I do not like something or if I wish to change something, I should not complain about it. She advises always to start the change with myself and set an example for others. I would suggest that raising/having a family that could be an example-setting guide to others in the profession and the community at large would go a long way to rehabilitate the public perception of our profession.

In my mom's opinion, which I happen to share, people are more likely to be convinced by what you do, not what you say. Thus, what we do and what members of our family do could be a powerful antidote to the repeated negative messages generated by the mass media about our profession. Furthermore, I would argue that a great example may convert fear into admiration and give reasons to emulate, leading not only to a better perception of our profession, but also to a better society overall.

I am only a recent member of the Alaska Bar, though my family has been living in Anchorage for over 20 years. I have just relocated my household to Anchorage, and the exhilaration of living and contributing to further development of such diverse, accepting, and beautiful place inspired me to write the following poem.

The beautiful forget-me-nots,
The mountains, the sea –
Alaska, you inspire thoughts
Of gratifying spree

The crispness of your air,
The snow's delightful crunch,
The birch-trees' autumn flare,
And frost's good-natured punch

You are a proud monarch
Of nature's greatest gifts:
In flora and in fauna,
Auroras' vibrant lifts

There is no splendor greater
Than your untamed looks
To persons' souls you cater,
Inspire many books

You are a combination
Of beauty, strength, and grace;
The jewel of many nations
You're my beloved place.

--Eva Khadjinova

Women lawyers host two convention events

By Sara Peterson

The Anchorage Association of Women Lawyers (AAWL) hosted two events during the Alaska Bar Convention in May, part and parcel to its rejuvenated efforts to provide women lawyers access to career development and networking opportunities. AAWL is a local volunteer legal professional organization created to promote the interests of women lawyers and facilitate their long-term professional success. Through its volunteer Board of Directors, and strategic partnerships with others in the legal community, AAWL hosts and sponsors a variety of activities, allowing members to exchange ideas, develop relationships and open doors to business development.

Each Fall, the AAWL co-hosts a free Diversity Lunch in conjunction with the Alaska Supreme Court's Fairness Diversity & Equality Committee, the Alaska Bar Association, and sponsored by Perkins Coie. Most recently, these CLEs have focused on telling "Stories of Our Lives" featuring prominent professionals sharing their experiences as they developed their careers in Alaska in the legal community, government, or corporate world.

More recently, AAWL has instituted quarterly networking luncheons, providing a causal roundtable feel and covering issues involving legal topics, work-life balance, or professional and personal skills. In 2012, Dorsey & Whitney made a generous donation to help fund this new program, and it was incredibly successful. "Sometimes is it a challenge to start a new program, and we thought that finding a partner in the legal community would give us a boost," said AAWL co-chair Melanie Osborne. Members can attend these quarterly networking lunches for free, while non-members pay a small fee to cover the costs of food.

AAWL has also held several receptions in recent years, like the one prior to the Bar Convention last week, due to the generous support of Stoel Rives. "Since it opened the Anchorage office a few years ago, Stoel has been a strong supporter of activities designed to advance the Anchorage legal community, and AAWL appreciates their support," said co-chair Sara Peterson.

In the past few years, AAWL has also worked to institute a tradition of holding a Spring CLE. This year, the Bar Association allowed AAWL to hold this CLE at the Bar Convention. The Board coordinated with a loose-knit group of Fairbanks women lawyers, and put on a well-attended panel entitled "What's It Like to Be An Owner?"

AAWL's partnerships aren't just found in the local legal community. Recent CLEs and networking lunches have been sponsored by or supported by other local organizations, such as KeyBank's Private Banking team's discussion on effective retirement planning, and Magellan Behavioral Health discussing how to deal with stress and addiction. AAWL joined forces with the National Association of Women Judges where a panel of Alaska women judges discussed the judicial application process and the life of a judge.

Like Anchorage's diverse legal community, the AAWL Board of Directors spans a spectrum of Anchorage's women lawyers. Board members include Lane Tucker, Tonja Woebler, Carolyn Perkins, Emily Maass, Jessica Graham, Faith Rose, Andrea Girolamo, and Christine Williams. "It takes the whole community. We've had numerous volunteer speakers over the past few years as we started these new programs, and other individuals have made generous contributions of time and talent to make events possible," said Melanie. If you would like to help AAWL with any of these events, participate on the Board or would like to become a member, please send AAWL an email at aawl.anchorage@gmail.com.

How attorneys get hacked (and what you can do about it)

Sherri E. Davidoff

"We hacked your web site and got client data," Brett said. It was the phone call no attorney wants to receive. The good news for this firm was that we were penetration testers, hackers for hire, and our job was to find vulnerabilities before the attackers did. In this case, our client was one of the biggest law firms in the world. Brett found that with an attack on the firm's web portal, he could download client billing information, confidential case notes, usernames and passwords for every client in their database—and so could any attacker in the world.

Attorneys are increasingly targeted by cyber attackers. However, "few law firms will admit publicly to a breach," reports Jennifer Smith of the Wall Street Journal[1]. "Thefts of confidential information strike at the core of the legal profession's obligation to safeguard clients' secrets, and can do considerable harm to a firm's reputation."

In 2013, Bleeker Street Law did a forensic audit of their firm's computers—and discovered that they had been hacked. "A set of aspiring criminals had broken our security and were making everything they stole available by *subscription*," wrote David Collier-Brown[2]. "Several foreign firms and at least one government had subscribed to us. . . ."

Think you're too small to be hacked? Think again. According to Verizon's Data Breach Investigations Report[3], 75% of hacks aren't targeted at all. "Some organizations will be a target regardless of what they do, but most become a target *because* of what they do," reports the VBIR. Breaches occur because an employee clicked on a link in a phishing email, downloaded an infected software utility, or took some other action that gave hackers an easy opportunity. From there, hackers can take over your firm's computers, gather confidential information, and then resell it to buyers around the world.

Attorneys have a duty to protect not only your own confidential information and accounts, but also those of clients—and a breach can be disastrous.

Financial information is especially targeted. In 2013, an Ontario law firm lost a six-figure sum from a trust account when a bookkeeper clicked on a link in a phishing email. Hackers monitored her keystrokes and captured the firm's online banking username and password as she logged on. "The virus copied bank account passwords as she typed them," reported Law Times[4]. In fact, similar thefts happen all the time—but few make the news, as law firms are understandably reticent to disclose.

Attorneys have a duty to protect not only your own confidential information and accounts, but also those of clients—and a breach can be disastrous.

How can small firms and solo practitioners defend against cybercriminal gangs and sophisticated organized crime groups? The good news is that you can dramatically reduce your risk by staying organized and taking a few simple precautions.

LMG Security has put together a 14-Step Cyber Security Checklist for Attorneys, available at www.lmgsecurity.com. Each month, we'll dive into one item on our checklist. Here's the road ahead:

1. Use Strong Policies and Procedures
2. Know Where Your Data is Stored
3. Deploy Effective Antivirus
4. Protect Against Spam
5. Update Your Software
6. Backup
7. Encrypt, Encrypt, Encrypt
8. Limit Your Staff Members' Privileges
9. Train Your Staff
10. Vet Vendors and Third Parties
11. Respond Quickly and Appropriately
12. Keep Your Eye on the Clouds
13. Get Insurance
14. Test Your Security

A smart first step is to get a cyber risk and security breach liability insurance policy. You can't secure your network overnight, but you CAN get coverage to protect you in the event of a privacy breach, regulatory violation, or similar cyber incident. Check out ALPS' cyber risk and security breach liability insurance at protectionplus.alpsnet.com/cyber.

Whatever happened to our client with the hacked web site? Within an hour, the flaw was fixed, and our client had locked up their customers' information. They also reviewed their logs and verified that no one had previously accessed it.

In cybersecurity, as in any industry, an ounce of prevention is worth a pound of cure. You can protect yourself, and your clients, by taking proactive steps to defend against cybersecurity breaches. Stay tuned in the coming months as we walk through the 14-Step Cyber Security Checklist!

Sherri Davidoff has over a decade of experience as an information security professional, specializing in penetration testing, forensics, social engineering testing and web application assessments. She has consulted for a wide variety of industries, including banking, insurance, health care, transportation, manufacturing, academia, and government institutions. Sherri is the co-author of "Network Forensics: Tracking Hackers Through Cyberspace" (Prentice Hall, 2012). She is a GIAC-certified forensic examiner (GCFA) and penetration tester (GPEN), and holds her degree in Computer Science and Electrical Engineering from MIT. She is the founder, LMG Security, which has partnered with ALPS insurance for internal training as well as CLE seminars through ALPS Educational Services.

Footnotes

[1] "Lawyers Get Vigilant on Cybersecurity," Jennifer Smith, *The Wall Street Journal*, www.wsj.com, June 26, 2012

[2] "Thank Goodness for the NSA! – a Fable," David Collier-Brown, www.slaw.ca/2014/01/02/thank-goodness-for-the-nsa-a-fable/, January 2, 2014

[3] "2013 Data Breach Investigations Report," www.verizonenterprise.com/DBIR/2013/

[4] "Law firm's trust account hacked, 'large six figure' taken," Yamri Taddee, Law Times, www.lawtimesnews.com/201301072127/headline-news/law-firms-trust-account-hacked-large-six-figure-taken, January 7, 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 ALPS, 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.

Convention 2014

Bryan Garner & spouse Karolyne Cheng with Chief Justice Dana Fabe.

Eric Croft and Joanna Burke Croft and vendor.

Chuck Kopp, aide to Sen. Dyson; Alaska Judicial Council Executive Director Susanne DiPietro; and public Board of Governors member Bill Gordon.

My Five

Asking somebody to name their top five favorite songs presents a uniquely difficult challenge. It also provides insight (if you consider yourself an amateur psychologist) into the personalities of the various members of the Alaska Bar. In this installment we highlight the top-fives of: Jeff Wildridge, President, Alaska Bar Association; Meghan Kelly, Co-Editor of the *Alaska Bar Rag;* and John Crone, Co-Editor of the *Alaska Bar Rag*.

Jeff Wildridge

1. Wooden Ships - the Crosby, Stills, and Nash version
2. Willin' - Little Feat
3. Let It Be - The Beatles
4. I Still Miss Someone - Johnny Cash
5. These Days - Jackson Browne

Meghan Kelly

1. Jolene - Dolly Parton
2. Blue Jeans - Lana Del Rey
3. Psycho Killer - Talking Heads
4. While My Guitar Gently Weeps - The Beatles
5. Blue Eyes Crying in the Rain - Willie Nelson

John Crone

1. Old Girl/Shining Star - Slum Village
2. Where I'm From - Jay Z
3. 2nd Childhood - Nas
4. We Don't Care - Kanye West
5. Dear Mama - 2Pac

NOTICE OF PUBLIC DISCIPLINE

By order of the Alaska Bar Association
Disciplinary Board,
entered May 5, 2014

JOHN G. GISSBERG
Member No. 7103002
Seattle, Washington

is publicly reprimanded
effective May 5, 2014
based on discipline imposed by the Washington
State Bar Association Disciplinary Board for
failure to take adequate steps to ensure
that a contractor's conduct complied with the Rules
of Professional Conduct

**Published by the Alaska Bar Association,
P.O. Box 100279, Anchorage, Alaska 99510
Pursuant to the Alaska Bar Rules**

NOTICE OF PUBLIC DISCIPLINE

By order of the Alaska Supreme Court,
dated March 20, 2014 and the
Alaska Bar Association Disciplinary Board,
entered May 5, 2014

WILLIAM D. McCOOL
Member No. 7710137
Walla Walla, Washington

is placed on probation effective September 19, 2013, and publicly reprimanded effective May 5, 2014 for failure to adequately reconcile his trust account records, failure to promptly return funds to clients, failure to record deposits in his check register and maintain a running balance in his check register, and disbursement of funds on behalf of clients in excess of the funds those clients had on deposit based on discipline imposed by the Washington State Bar Association Disciplinary Board.

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ESTATE PLANNING CORNER

Who's your favorite heavyweight?

By Steven T. O'Hara

Part of estate planning is reminiscing. For those of us who can remember the 1960s and 1970s, consider that we lived through arguably the greatest era of the heavyweight division. Who has not heard the names Cassius Clay and Muhammad Ali? What a story, and there are so many other names! Floyd Patterson. Ingemar Johansson. Sonny Liston. George Chuvalo. Joe Frazier. Jerry Quarry. Jimmy Ellis. Oscar Bonavena. George Foreman. Ken Norton. Leon Spinks. Mike Weaver. Larry Holmes.

I was born in St. Paul, Minnesota, a famous boxing town. With an eighth-grade education, my father, Jim O'Hara, was an ex-fighter from the streets with the genuine hard-luck story. His fans said he'd been the Minnesota professional heavyweight champ. When I was growing up he was a promoter and all things Golden Gloves. While I was in my teens, he became Boxing Commissioner and Executive Secretary.

During the 1970s Minnesota had at least two heavyweight contenders, Scott LeDoux and Duane Bobick. In 1980 Minnesota hosted Larry Holmes vs. Scott LeDoux, with Holmes retaining the title. Previously LeDoux had drew with Leon Spinks (1977) and Ken Norton (1979). (A draw is a bout neither fighter deserves to lose.) For his part, Duane Bobick had defeated Holmes on the way to the 1972 Olympics. Bobick was favored to take Gold in Munich but lost in the quarter finals after the shock of witnessing from his dorm window events relating to the Israeli team massacre. (Mike Hayes, *"Watch Bobick Closely," Says Angelo Dundee, The Ring,* August 1974, 10, 32.) As a professional Bobick beat LeDoux twice and retired in 1979 with 52 recorded pro bouts: 48 wins (42 by KO) and only four losses.

Missing the days, I have written my father's story at *www.60yearsofboxing.org*. Below is an excerpt on him and Joe Louis.

Who's your favorite heavyweight?

That's the question you grew up asking back in the day. Here the question was asked by future Minnesota welterweight champion Don Weller, a third-generation boxing man, to his father, Emmett Weller, himself a former Minnesota champ. It was the 1950s, recalled Don in 2013, so he was expecting to hear the name Rocky Marciano. Instead he heard a tale he'd never forget.

As a boxing promoter Emmett Weller had brought Joe Louis to Minnesota in the late 1940s for an exhibition tour. The final show was good, featuring Joe in a six-rounder with Hubert Hood out of Chicago. The trouble was attendance. Later Emmett was driving Joe and his seconds to the airport.

"Who has not heard the names Cassius Clay and Muhammad Ali? What a story, and there are so many other names! "

"How much did you lose on the gate?" asked Joe.

"$2,200," answered Emmett.

"Write him a check," Joe said to his man. "Nobody loses money on Joe Louis."

If you figure a conservative four percent annual inflation rate, $2,200 in 1949 might be about $27,094 in 2014 dollars.

An amazing amount of money passed through the champ's hands. In 1949 alone Joe grossed $304,000 from his exhibition work, including his South American and Far East exhibition tours. (*The Ring Boxing Encyclopedia and Record Book* 87 (The Ring Book Shop 1979).) Three hundred four thousand dollars in 1949 might be about $3,743,952 in 2014 dollars, using a four percent annual inflation rate.

Born May 13, 1914 in LaFayette, Alabama, Joseph Louis Barrow was as complete a boxer as the world has ever known. Consider the following observations:

Joe was a master of distance and deception. Louis used his footwork to put subtle pressure on his opponents and then would take small steps back to draw his opponents into him. By pressing forward he would close the distance and then by stepping back Louis would appear vulnerable, but when his opponents moved in they were setting themselves up for his lethal counterpunches. Joe Louis hit you twice as hard as you were coming in.
(Monte Cox, *Understanding Boxing Skill,* www.coxscorner.tripod.com/boxingskill.html.)

•

Biographer Randy Roberts describes some of the Detroit Brown Bomber's final days as a boxer: "He officially abdicated his crown on March 1, 1949, after eleven years and eight months as heavyweight champion and twenty-five title defenses. His life, however, did not change dramatically. He continued to box exhibitions…." (Randy Roberts, *Joe Louis: Hard Times Man,* Chapter 9 (Yale University Press 2010), Kindle Edition.)

Louis is ranked number four on the Bert Sugar list of the top 100 fighters of all time, after only Sugar Ray Robinson, Henry Armstrong, and Willie Pep. (Bert Randolph Sugar, *Boxing's Greatest Fighters* 10 (The Lyons Press 2006).)

So it was an honor for Jim in 1949 when he was matched with Louis in a four-round exhibition at Fort Snelling. Jim said that he never feared any man. His manager, Murray McLean, commented that Jim would fight anyone anywhere. "Jim never asked who the foe was, only what time was the fight and what was the payoff," said McLean. (McLean is quoted by Don Riley, *Don Riley's Eye Opener, St. Paul Sunday Pioneer Press*, June 13, 1976.) McLean, who managed Minnesota's heavyweight contender Lee Savold, also is quoted in the same column as saying: "O'Hara's guts and Savold's body would have made a super machine."

Joe Louis

Along with guts, Jim had street smarts and ultimately made his own decisions. After meeting Louis at the weigh-in the night before the bout, Jim realized there was no way he was going to out-think the champ. He told the promoter, "Find another Palooka. There's nothing going to be accomplished in that ring." At the time Joe Palooka was a lovable, if not the brightest, heavyweight boxer depicted in the then popular comics of the same name.

Emmett Weller, the promoter, was a nice man, recalled Kitty O'Hara in 2013. Back in 1949 she and Jim were still newlyweds.

Emmett and Jim were close, confirmed Don Weller in 2013, and Emmett and Murray McLean were close. McLean had managed him, too. There wasn't any arguing. Everyone knew Emmett cared more about his fighters than himself. After Jim bowed out Emmett went to work finding another heavyweight. After some phone calls a gladiator was driven up from Milwaukee.

If street smarts is the ability to beat a guy at his own game, it's also the ability to size up a situation and walk away when it's prudent to do so. Everything is timing. You might first look everyone in the eye, then walk away. There's no shame. In fact Jim taught there's dignity in walking away. The shame is risking what can happen, such as in boxing. "One should know," wrote Joyce Carol Oates, "that a well-aimed punch with a heavyweight's full weight behind it can have the equivalent force of ten thousand pounds...." (Joyce Carol Oates, *On Boxing* (HarperCollins e-books 2006), Kindle Edition).) Hyperbole?

"His chest was this thick," Jim recounted, placing his hands sufficiently apart to suggest you'd have to be a numbskull to mix it up with Joe Louis. A couple years later Jim would mix it up with a world champ all right, but one with less of a punch. In 1952 he was hired as a sparring partner by the then world light-heavyweight champion Joey Maxim, who naturally retaliated when Jim got in a good shot. Maxim was elected to the International Boxing Hall of Fame in 1994. He's ranked number 12 on the list of the top defensive fighters of all time. (Bert Randolph Sugar and Teddy Atlas, *The Ultimate Book of Boxing Lists* 161 (Running Press 2010).)

"Don't try to play someone else's road game," Jim said often. His advice includes boxing the puncher, as Gene Tunney did when he took the crown away from Jack Dempsey in 1926, as well as sidestepping the over-match.

Back in 1949 Louis wasn't done boxing. Two years later, in June 1951, he knocked out Lee Savold in the sixth at Madison Square Garden, demonstrating he could still put together effective combinations. Two old pros giving all they got, this main event holds the distinction of being the subject of the essay entitled *The Big Fellows: Boxing with the Naked Eye* in A.J. Liebling's book *The Sweet Science* (The Viking Press 1956). In 2002 *Sports Illustrated* ranked this book the number one sports book of all time.

If an independent thinker, the newly-married Jim may have been too cautious in sidestepping the Louis vs. O'Hara exhibition. "Joe would've taken it easy on him," said Don Weller in 2013. "Joe was that kind of guy."

On April 12, 1981, Joe Louis died a month shy of his 67th birthday. President Ronald Reagan made sure that Louis was buried with full military honors at Arlington National Cemetery. Throughout World War II and for a period following the war the champ had put on boxing shows to support his fellow servicemen and women. (John E. Oden, *Life In The Ring* 156 (Hatherleight Press 2009).)

Arguably the greatest heavyweight of all time, Joseph Louis Barrow reigned over boxing with dignity, never letting fame go to his head. Muhammad Ali observed: "Everybody loved Joe. From black folks to redneck Mississippi crackers, they loved him. They're all crying. That shows you. Howard Hughes dies, with all his billions, not a tear. Joe Louis, everybody cried." (Patrick Myler, *Joe Louis vs. Max Schmeling: Fight of the Century,* Chapter 19 (Arcade Publishing 2012), Kindle Edition.)

Book Review: Terror Detentions and the Rule of Law

By Teresa Carns

Robert Wagstaff's new book, Terror Detentions and the Rule of Law: US & UK Perspectives [Oxford University Press, 2014], while an exceedingly scholarly work, is very readable. But it is not for the faint of heart because it examines disturbing issues whose existence many acknowledge yet shrug off thinking "what can I do?" and move on. The book's topics of terrorism, officially sanctioned torture, and the decisions to place national security above the rule of law after 9/11 are sobering and merit full attention.

The book's topics of terrorism, officially sanctioned torture, and the decisions to place national security above the rule of law after 9/11 are sobering and merit full attention.

Thirteen years have gone by since the 2001 attacks, yet Guantanamo remains open for business. The current 9/11 military commissions established to hear the cases of detainees are caught up in a dense thicket of FBI monitoring defense counsel conversations and emails and the covert machinations of the CIA. [http://www.theguardian.com/world/2014/apr/21/911-tribunals-guantanamo-hang-balance]. Terrorist cases continue to wind their way through the U. S. and U.K. courts, although most now remain out of sight. And a dishearteningly sizable contingent of the American public cheers on Sarah Palin when she says, ". . . if I were in charge, they would know that waterboarding is how we'd baptize terrorists" [http://www.theatlantic.com/politics/archive/2014/04/why-sarah-palins-sacreligious-torture-nostalgiamatters/361289/].

Robert Wagstaff, a longtime Alaska lawyer, received a Doctorate from the University of Oxford in 2011. His doctoral thesis provided the foundation for this book. Dr. Wagstaff suggeststhat "the constitutionally viable and time-tested criminal law is the normatively correct and pragmatically more effective means for dealing with suspected criminal terrorists" [Preface, page xvii]. Post-9/11, however, the United States's executive and legislative branches used a war paradigm to justify preventive detention of terrorist suspects, and engaged in torture, rendition, and other tactics that directly violated national laws, international humanitarian law, treaties, and customary international law. The UK government similarly adopted antiterrorist policies and laws, often rife with secrecy and flying in the face of democratic principles, but ultimately the UK courts have appropriately applied criminal law and human rights principles to their judicial reviews of legislative and executive action.

Terror Detentions and the Rule of Law thoroughly documents the foundation of the "Rule of Law" that underlies the legal and political systems of both the US and the UK. From the Magna Carta (Runnymede 1215) on, the tenets of due process have supposedly guided the judicial, legislative, and executive branches of the UK and US governments. They have at times been more honored in the breach, but are always officially recognized as the unalterable basis of a free society. Dr. Wagstaff details the deliberate and widely supported deviations from these principles that marked the days and months following the Al-Quaeda hijackings on September 11, 2001, as well as other historical panic-induced deviations from the rule of law in both countries.

Dr. Wagstaff characterizes his work as "a comparative analysis of the judicial review given by the US and UK highest courts to the executive and legislative actions taken in response to the events of September 11, 2001" [page 290]. "TerrorDetentions and the Rule of Law" presents a detailed analysis of the four UK high court Belmarsh prison decisions and the four US Supreme Court Guantanamo opinions regarding the rights of suspected terrorist detainees, applying the lens of judicial perspective to examine aspects of international, domestic and constitutional law that apply to the rights of aliens. He also reviews several lower US federal court cases including Masri v Tenet, Arar v Ashcroft, Rasul v Myers, Al-Marri v Pucciarelli, Al-Kidd v Ashcroft, and Mohamed v. Jeppesen Dataplan in which detainees have been held without charges or due process, at times tortured, and in each case denied an opportunity to obtain damages for the abuse of their rights by the application of the state secrets doctrine and immunity of government officials.

Dr. Wagstaff demonstrates that the UK judiciary's application of a criminal law paradigm in response to the post-9/11 actions of the executive and legislative bodies was more effective in protecting both human rights and security than the war paradigm adopted in the U.S. As Georgetown Professor David Cole puts it "The Brits do it better."

The four UK high court cases involved detainees held in the Belmarsh Prison. In the first Belmarsh decision, the court decided that the laws passed to protect security were invidiously discriminatory, disproportionate, and incompatible with the 1998 UK Human Rights Act and the European Convention on Human Rights. The three subsequent Belmarsh decisions addressed issues related to torture evidence (absolutely prohibited) and treatment of aliens (basic human rights upheld) and procedural due process (no significant secret evidence allowed). In each case, the court found that the rule of law must prevail over security questions. In contrast, although the US Supreme

Court in Boumediene (2008) found that detainees had a U.S. constitutional right to habeas corpus and due process, the justices left decisions about how to implement this to the lower courts. The result has been that the lower federal courts have ignored and essentially reversed Boumediene, with the Supreme Court then denying review.

Dr. Wagstaff points out that the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) was signed by President Reagan on April 18, 1988 and ratified as a treaty by a two-thirds vote of the US Senate on October 21, 1994. The CAT provides that "No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification oftorture" (Art 2, § 2). And CAT Article 12 requires signatories United States and United Kingdom to "ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction." Article VI of the US Constitution provides that such treaties "shall be the supreme law of the land."

Dr. Wagstaff agrees with Charles Fried, Harvard law professor and Solicitor General under President Reagan, and his philosopher son Gregory Fried, that torture can never be justified and that it is never a "lesser evil." The Frieds, co-authors of "Because it is Wrong: Torture, Privacy and Presidential Power in the Age of Terror,"assert that "the Bush administration broke the law in ordering torture, mocked the Constitution in its interpretation of executive authority, and outraged common decency," maintaining that "if we do not condemn, prosecute, punish the torturers and those who ordered them to torture, we become accomplices after the fact." Charles Fried insists that at a minimum "there should be an accounting, exposure and repudiation." Dr. Wagstaff observes that nonetheless many US courts are shielding the perpetrators of abuse and torture with immunity, and invoking the "state secrets" doctrine, while in contrast, the United Kingdom is committed to conducting a public investigation as to what has occurred, and torture victim litigation seeking redress has been successful and compensation paid.

In his conclusion, Dr. Wagstaff discusses newly emergent current issues related to the US use of drones against both its own citizens and aliens in the name of national security. He reiterates the need for the US to comply with the rule of law and its constitutional foundations, and highlights the appropriateness of turning to the established mechanisms and institutions of the criminal law to deal with persons suspected of terrorism. "Innocent until proven guilty" has been the principle most violated in the search for security and "victory" in the war against terrorism that the US has undertaken since 9/11. Dr. Wagstaff sees those violations of due process as unsustainable in the long run for a people who have pledged to provide "liberty and justice for all."

The book is available from Oxford University Press at http://global.oup.com/academic/product/terror-detentions-and-the-rule-of-law-9780199301553?cc=us&lang=en&. The price is discounted 20% by the Oxford University Press for readers of the

"Alaska Bar Rag" with promo code 32307. Its 368 pages include a lengthy bibliography, an extensive list of cases and statutory authority, and a helpful index. Dr. Wagstaff writes with clarity, engaging the reader with his depth and breadth of knowledge, calling on history, the Magna Carta, precedent-setting US Supreme Court cases from the 1800s on including a 1900 Cuban fishing vessel "prize" case, decisions of the UK high court, the European Court of Human Rights, and the Dixie Chicks alike to support his positions. University of London professor Philippe Sands, Queen's Counsel, says of the book that it "reminds us of the crucial role of our judiciary in safeguarding the principles and values that might save us from the greatest danger . . . "

Robert H. Wagstaff practices litigation and constitutional law from his law office in

Anchorage, Alaska. He successfully argued two cases before the US Supreme Court, presented over 70 appeals, and tried numerous civil and criminal cases. He recently spent ten years at Oxford University earning three post-graduate law degrees including a Doctorate. He was formerly Alaska Bar Association President, Alaska Judicial Council member, and a member of the National Board of Directors of the ACLU, New York [http://global.oup.com/academic/product/terror-detentions-and-the-rule-of-law-9780199301553?c].

Book review by Teri White Carns. Ms. Carns works on special projects for the Alaska Judicial Council; however the present book review is unrelated to Judicial Council work. Contact: tericarns@gmail.com.

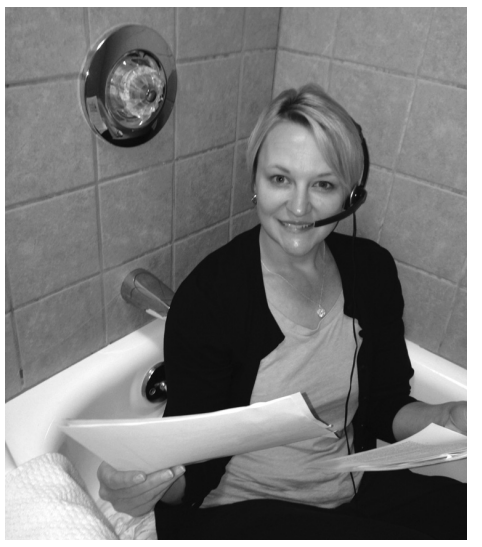
Neither wind, rain, nor tornadoes...

As tornadoes and storms fell upon the central U.S. in mid-May, Alaska didn't exactly escape.

Colorado attorney Michelle B. Ferguson was scheduled to deliver a presentation to the Alaska Bar's Corporate Counsel Section via telephone on May 21. And present she did, in the middle of the storms, ultimately from the "shelter" of her bathtub.

Through hail, tornado warnings, and the wailing of at least seven tornado sirens, she briefed the Section meeting attendees on "The Implications of the Legalization of Marijuana on Employers and Colorado Employment Law" as related to Alaska's pending ballot initiative to legalize recreational marijuana use."She was a terrific sport to keep going for us, and to send us a photo of her retreat to the bathtub," said employment law section member John Crone.

Despite the conditions, Ms. Ferguson delivered an excellent and informative presentation. She is



the co-chair of Colorado's Labor and Employment Law Section, Should you have any questions on the topic, she may be contacted at: Michelle B. Ferguson, Ireland Stapleton Pryor & Pascoe, P.C., 717 17th Street, Suite 2800, Denver, CO 80202, Phone: (303) 628-3658. www.irelandstapleton.com

In Memoriam

George L. "Jerry" Gucker

George "Jerry" L. Gucker, lifelong Alaskan and retired Alaska District Court Judge and U.S. District Court Magistrate, died peacefully on Mar. 16 at his daughter Rena's home after a long fought battle with leukemia. He was 84.

Jerry was born on Nov. 13, 1929 in Juneau. His father was a traveling salesman who arrived in Alaska by steamship and his mother was the head nurse at the Sand Point Naval Air Base in Seattle during WWI. He was raised in Juneau and also lived in Fairbanks. He spent most of his adult life in Ketchikan, Meyers Chuck, and Healy Lake.

Jerry graduated from Juneau High School, traveled throughout Europe for a year, and served in the Army in Delta Junction, teaching climbing, skiing, and outdoor survival. He attended Gonzaga University School of Law in Oregon, Montana State University, and graduated in 1959 from DePaul University College of Law in Chicago, with a J.D. in law.

He worked as a law clerk in Anchorage where he met Theresa Herda. They were married at the Shine of St. Theresa near Juneau where Jerry had served mass for Bishop Crimont as an alter boy. They moved to Anchorage where Jerry practiced as an attorney and later moved to Ketchikan. While practicing law in Ketchikan, he also chartered his boat the "MyTime." In 1982, Governor William Sheffield appointed him to the bench as a District Court Judge in Ketchikan, where he also served as a U.S. District Court Magistrate.

Jerry was a lifelong Catholic, who was a member of the Knights of Columbus and volunteered countless hours to the Catholic Church. He served as president of the local bar association's annual parties, received service awards from the Chamber of Commerce, and has several trophies from his younger years as a downhill ski racer.

Jerry lived the Alaskan lifestyle and loved hunting, fishing, boating, flying, family, and discussing the law. He taught his children to duck hunt at the family cabin on the Stikine Flats near Wrangell, and how to fish and hunt deer and bear from the "MyTime." He especially loved spending time with his beloved wife, Theresa, and they went on countless adventures from hunting ducks in Mexico on their honeymoon, goat hunting in Hawaii, and continuing throughout Alaska with ocean fishing, moose and deer hunting, and spending months each year at their beloved duck hunting cabin at Healy Lake in the Interior. Over the course of their 53 years of marriage, Jerry still introduced and referred to Theresa as "my bride."

Jerry will be remembered as a loving husband, wonderful father, good cook, great hunter, and lover of boating. "He was happiest sharing his love of Alaska with his family." He lived a life fully and inspired those around him to do the same. He had a very spirited nature and would frequently exclaim, "I'm living!" He had a natural way of drawing people to him in public and private and everyone loved to hear his stories. A daily communicant, he had a deep sense of spirituality, of justice, and the courage of his convictions. He had a special devotion to the sacred heart and to the holy rosary. He told his family he did everything in life he ever wanted to do.

Jerry is survived by his wife of 53 years, Theresa Herda Gucker of Meyer's Chuck; and his brother, Jack Gucker (Jeanne) of Juneau; and nephew, John. He also is survived by his children: son, Eric Gucker of Ketchikan and grandchildren, Gabriel and Sarah; daughter, Rena Brinker (Hank) of Anchorage and grandchildren, Quaid, Tucker, and Maxwell; son, Kurt Gucker of Ketchikan: daughter, Anna LaRoche (Dennis) of Kenai and grandson, Christopher and great-grandson, Clark; daughter, Gina Gucker of Fairbanks; and son, Nicholas Gucker (Denise)of Seattle; as well as a numerous aunts, uncles, nieces, and nephews from Theresa's birthplace in Minnesota. He is preceded in death by his parents, Jack Gucker and Lorena Bergevin; grandchildren, Caleb Gucker and Isabella LaRoche.

A funeral mass was held Mar. 21. at St. Benedict's Catholic Church at 8110 Jewel Lake Road in Anchorage, with a rosary recited prior to mass. A celebration of life will be held in Ketchikan, Alaska this summer; date to be announced. George's wife, Theresa Gucker, will take his cremated remains to Healy Lake, Alaska.

In lieu of flowers, donations can be made to the Salvation Army, 1712 A Street, Anchorage, AK 99501 or Clare House, 4110 Spenard Road, Anchorage, AK 99517.

An adventure with Jerry Gucker

It was June 1963 when two newly minted lawyers were on the Alaska Railroad on their way from Anchorage to Talkeetna –Jerry Gucker and Leroy Barker. Both had been admitted to the Alaska Bar in February of that year. I was the prosecutor and Jerry was the defense attorney. Richard ("Rip") Collins was the judge.

We were on our way to try a case of a local Talkeetna resident who was charged with taking a moose out of season. His defense was necessity, as he claimed to need the moose for food. All of us were on the train together, because the highway to Talkeetna had yet to be built. When we arrived we learned that the trial was to be conducted in the schoolhouse (now the Talkeetna Museum). The chairs provided were the type for grade school children with the attached desk. When Jerry or I stood up to object the chair rose with us.

Many of the locals were very unhappy that their fellow resident had been charged with killing the moose since his defense was he was starving. To make matters worse, at the time of the arrest the Fish and Game officer had poured gasoline on the carcass and set it on fire.

Many of the prospective jurors claimed to be deaf so they could be excused from serving on the jury. We tried the case all day and then Jerry and I returned to Anchorage that evening. The judge remained behind while the jury was deliberating. We could not afford to spend the night in Talkeetna. The District Attorney's Office had virtually no travel budget and Jerry's client was impecunious. Jerry was ultimately paid his fee in a ratty old wolf pelt.

After we left Judge Collins received a request from the jury to assist in defining some terms used in the jury instructions. He joined the deliberations dictionary in hand. The defendant was found guilty.

—Leroy Barker

David W. Oesting

David W. Oesting passed away at his home in Anchorage on May 11, 2014.

Described as a "bet the company litigator" by Best Lawyers of America, Dave was best known for his key role in the 1989 Exxon Valdez oil spill litigation. Dave was the court-appointed lead counsel for 30,000 plaintiffs represented by 60 law firms in the consolidated proceedings of more than 250 lawsuits--both class actions and direct actions--filed on behalf of fishermen, processors, Alaska Natives, landowners, businesses, and others injured as a result of the spill of 11.8 million gallons of North Slope crude oil into the coastal waters of Alaska by the Exxon Valdez.

Dave joined the Seattle office of Davis Wright Tremaine LLP as an associate on June 1, 1970. After becoming a partner, Dave's love for the outdoors led him and fellow partner, Parry Grover, to move to Anchorage and open an office for the firm in 1980. Dave was a member of the prestigious American College of Trial Lawyers.

Highly respected by his clients, colleagues and peers, Dave was

known for his larger-than-life personality, his remarkable intellect and intensity, as well as for his trademark loud, booming voice.

Dave thoroughly enjoyed traveling and saw much of the world. His love of travel, hunting and fishing was only exceeded by his love of flying, especially to remote places in Alaska.

Dave was a loving husband, father, grandfather, friend and more. He is survived by his wife, Susan Seymour Oesting; three children, Aaron Oesting, Sarah Oesting and Erica Marley; six grandchildren; and three siblings, Sarah, Jon and Jim.

Two memorial gatherings were scheduled in June in Dave's honor. The first in Anchorage June 6 at the Alaska Native Heritage Center. Dave was one of the founders of this organization and continued to be actively involved for many years. A second was to be held in Seattle on June 13 at Davis Wright Tremaine offices.

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Megyn A. Greider
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Dale House
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David S. Houston
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Mike Lindeman
245-5580

Suzanne Lombardi
770-6600 (wk)

Brant G. McGee
830-5518

Jennifer Owens
243-5377

Michael Sean McLaughlin
269-6250

Michael Stephan McLaughlin
793-2200

Greggory M. Olson
269-6037

John E. Reese
345-0625

Jean S. Sagan
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Moira Smith
334-7662

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Valerie Therrien
452-6195

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Amy L. Stus
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Jeffrey A. Gould
520-808-4435

The *Objet d'Art* Defense: Memories of Stanley J. McCutcheon

By Ken Atkinson

Objet d'art is not a term used often, or ever, in the circles I travel. I have seen it in print and have heard art experts use it, and being a French term, it imports a Gallic gloss to a conversation about art that some experts believe is impressive. There is a joke illustrating how a French word, "bidet," can be mistakenly associated with art. A woman tells a woman friend that she has a bidet in her bathroom. The woman, hearing this, tells other friends: "Who would put art in a bathroom?" thinking "Bidet" was a French artist. In the matter about which I write, "objet d'art" was used to telling effect with a jury in a criminal case forty or more years ago in Anchorage.

A local man, long prominent statewide in the arts, mainly dramatic, in which he was a successful director, was charged with indecent exposure occurring in the parking lot of a small shopping mall on Gambell Street and Eighth Avenue (the mall no longer exists.) The alleged perp hired Anchorage attorney Stanley J. McCutcheon to defend him. Stanley was born in Anchorage in 1917. He "read law" under several local attorneys and was admitted to the Alaska Bar in 1939. One of the attorneys that McCutcheon studied law under was George Grigsby, famous throughout Alaska for his skills as a trial lawyer and once the Territory of Alaska's delegate to the United States Congress. McCutcheon was one of the most skillful courtroom lawyers I have ever met, despite–or perhaps because of – his lack of a formal law school education that may constrain or channel legal ingenuity by prescribed rules as given by academics with no street smarts.

In his opening statement, McCutcheon said that his client was an avid collector of carved ivory items made by Native Alaskans. What his client had with him in his car the date in question, and what witness perceived as a part of his anatomy, was a an ivory carving, somewhat tubular in shape. The client often had the carving in his car because he liked to have it with him to look at and show to friends who were riding with him. McCutcheon said the carving was a unique objet d'art and it would be offered as an exhibit at trial; he used the phrase "objet d'art" a lot during the trial. When other attorneys around town heard of his use of the phrase, in the context of the trial, there were many snickers about the double entendre that might be implied.

McCutcheon's client was acquitted of the charge, and presumably continued to collect objets d'art, but with more discretion as to venues where he exhibited them. Within a year after his trial, he and his wife left Alaska for good, abandoning what had been a flourishing career here.

I first met McCutcheon the summer of 1948 at Nancy Lake, near Willow, then accessible only by rail or float plane. A friend of mine was homesteading on a peninsula on the lake and McCutcheon and Buell Nesbett, Anchorage law partners, had a one-room cabin on the land within my friend's homestead claim boundary, where they often flew on weekends. We visited them on weekends and had parties there, sharing the steaks and whiskey they brought from town.

Initially, that summer at Nancy Lake, my homesteading friend, I, and another friend of his lived in a tent house on a small island in the naive assumption that we would be safe from bears on an island. McCutcheon offered to let the three of us stay in his cabin if we would sink a well point there to get potable water to hand pump for his cabin. We moved into his cabin and tried to sink the well point, but we encountered large rocks below the surface that frustrated penetration to the level where water could be encountered.

When McCutcheon flew to the lake on weekends, he would "buzz" the cabin, coming scarily close. If any of us happened to be in a boat on the lake, he would "buzz" the boat in the same scary fashion. One weekend, he flew in without "buzzing." His plane descended in a humping motion, like the running gait of a wolverine. McCutcheon's plane was a two-seater tandem, pilot in the only front seat and then a passenger seat behind him, and a freight space behind that. The cables for the tail elevator ran inside the fuselage on both sides, separated from the fuselage by a few inches.

After I entered private practice in Anchorage in 1955, I had several matters in which McCutcheon was involved.

After McCutcheon landed that day, he climbed out and assisted a passenger out and then a large male Labrador retriever. The passenger was a man in his mid-50s, wearing a cumbersome hearing aid suspended over his chest by straps around his neck. The hearing aid had a lot of wires attached to it and many knobs and dials on its face. I asked McCutcheon why his plane acted in the humping fashion it had. He told me that his passenger, "Deefy" Swanson, turned off his hearing aid during the flight. The dog got one of its hind legs over one elevator cable into the gap between the cable and the fuselage. The dog was in pain and let it be known by loud yelps, which "Deefy" couldn't hear. When McCutcheon realized what was happening with the dog, he turned to "Deefy" and tried to tell him. McCutcheon told me that "Deefy" just smiled at him and did nothing. The dog's predicament and its frantic efforts to escape, and McCutcheon's piloting reaction caused the bizarre flight I had witnessed.

McCutcheon had flown "Deefy" to the lake to "dry out," or keep him from being questioned by the prosecutor, or both, in a criminal matter that McCutcheon was defending. "Deefy" was an alcoholic. He had been a commercial salmon fisherman in Bristol Bay on a sailboat in the days before motorized boats were legal. I had many conversations with "Deefy" about his early days in Alaska and his early years in Anchorage. "Deefy" did manage to drink all the after-shave lotion and other liquids containing alcohol that he could find in the cabin, but I never saw him drunk.

After I entered private practice in Anchorage in 1955, I had several matters in which McCutcheon was involved. The first was a second degree murder case in 1956 in a street brawl in which three young men killed a fourth. There were no weapons used except fists. The victim died from an aneurysm in his brain from repeated blows to his head. McCutcheon worked for a mortician when he was in high school in Anchorage. He learned a lot of human anatomy in that job, which he put to good use in this case.

We, McCutcheon, Wendell Kay and I, attempted to get the prosecutor to accept pleas of manslaughter for the three defendants. A novice prosecutor, eager to prove her toughness, offered a plea to second degree murder and a sentence of ten years – an offer which was unacceptable.

McCutcheon discovered that the victim in our case had been convicted of killing a man in Kodiak years earlier by kicking him with the heavy work boots our victim was wearing. As I remember, knowledge of the propensity for violence of a party to a fight would be relevant evidence to our three defendants if that propensity was known to them at the time of the brawl among the four men. All three of our clients said they had heard street talk about the victim's prior conviction.

McCutcheon's client did not testify at trial because he had told me the details of his participation in the brawl, which, if elicited from him at trial, would have jeopardized the success of his defense. The other two defendants testified. Kay got his client off on a directed-verdict motion. McCutcheon's and my clients were convicted of manslaughter and each received a five-year jail sentence and each served two years before being paroled. Considering the three-to-one disparity between the brawl participants, I believed that the court imposed a condign punishment.

In 1961, I defended a civil case in which McCutcheon represented the plaintiff, who had done some grading with his bulldozer at the Alyeska Ski Resort, then in its infancy under the ownership of Francois de Gunzberg, a French millionaire whose mother was a Rothschild. The case was a dispute over the amount owed the plaintiff and was tried by a jury. De Gunzberg had business interests in Denver and retained a lawyer there. Demonstrating his faith in my skills, De Gunzberg sent his lawyer to assist me at trial. That enabled McCutcheon, in his closing argument, to refer to the battery of attorneys representing the defendant, an argument that meshed well with the working-man image of the plaintiff opposing a corporate defendant. The jury gave McCutcheon's client all the money he claimed.

In 1968 or 1969, McCutcheon represented Dr. Smith, an Anchorage dentist, who had had two patients die in his dentist's chair while under an anesthetic. Smith was indicted for manslaughter. The deaths shocked the public and received intense coverage by both Anchorage newspapers and other media. The then-Attorney General of Alaska announced, with great fanfare, that he would personally prosecute Dr. Smith. The AG hired a Seattle attorney who specialized in medical malpractice claims to assist him in the prosecution at $500 per day, a large fee in those days. After spending $50,000 of the State's money in his efforts, the AG and McCutcheon entered into a plea agreement for an assault and battery charge and a $500 fine for Dr. Smith, which the judge, presumably holding his nose, had little choice but to accept. The Seattle lawyer the AG hired was later disbarred in Alaska for fraud in his pursuit of malpractice claims in this State.

I was told that when a criminal defendant asked him what his cash fee would be for defense of a felony, McCutcheon would reply: "Do you have a wheelbarrow?" He was worth it. I remember him with fondness and respect.

About the Author: Ken Atkinson was born February 10, 1926, in Racine, Wisconsin. He finished high school in 1943 and entered the Navy in March 1944. Mr. Atkinson went to law school at the University of Iowa in 1948 and graduated in June 1951. He spent the summers of 1948 and 1949 in Alaska and ultimately moved to Anchorage after he received his law degree. Mr. Atkinson was in private practice for several years before starting the firm of Atkinson, Wade & Conway (now Atkinson, Conway & Gagnon) in 1965.

Convention 2014

Rick Friedman, presents The Failure of Moral Courage Among Lawyers and Judges - How We Have Fallen from Grace.

Roger Dodd presents Advanced Constructive Cross Examination.

Bar Convention Highlights — Anchorage

BAR'S ANNUAL AWARDS PRESENTED BY BAR PRESIDENT MIKE MOBERLY

David Voluck receives Judge Guinn Award

Historians Committee Chair Marilyn May with award winner David Voluck.

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

Eleanor Andrews receives Layperson Service Award

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

Dan Rodgers receives Robert Hickerson Public Service Award

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.

Bob Evans accepts the Distinguished Service Award

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

Convention photos by Karen Schmidlkofer.

Michelle Boutin accepts 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.

Bryan P. Timbers Pro Bono Awards

Gwen Neal—Sole Practitioner from Homer, Alaska.

Government: Becky Kruse—Assistant Attorney General from Anchorage, Alaska.

Firm: Patton Boggs LLP—shown from left to right: Nicole Corr, Teresa Sexton Ridle, Emily Maass, and Walter Featherly.

Passing the gavel: Incoming Bar President Jeff Wildridge and outgoing Bar President Mike Moberly.

After nine years as the volunteer chair of the Law Related Education Committee, Barbara Jones (right) received a well-deserved "Thanks!" from the bench and bar at the annual convention in May. Alaska Supreme Court Justice Dana Fabe presented the montage of photos and comments to Jones at the Law Day luncheon.

Chief Justice Dana Fabe presented the Alaska Court System Community Outreach Award to Judge Pamela Washington.

Russ Winner receives the Ben Walters Distinguished Service Award from Anchorage Bar President Lynn Allingham.

The Human Rights Award from the International Law Section was presented to Margaret Stock. (story p. 26)

Janet McCabe wins Rabinowitz Award

Carmen Gutierrez (L) and Judge Bill Morse present the award to Janet McCabe.

The Alaska Bar Foundation gives the Rabinowitz Public Service Award to an individual whose life work has demonstrated a commitment to public service in the state of Alaska.

L-R: Bar President Mike Moberly with outgoing Board members Don McClintock, Leslie Need (New Lawyer Liaison) and Hanna Sebold.

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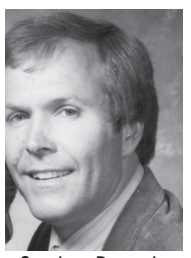
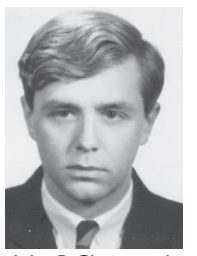
Lance Burger


Stephen Burseth


Vicki Bussard


Blake Call


Shelley Chaffin


John B Chenoweth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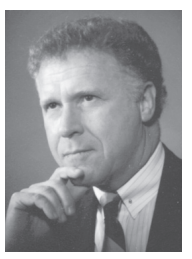
Eric Johnson


Linda Johnson


Eric Jorgensen


Matt Keller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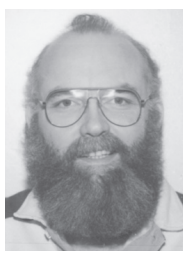
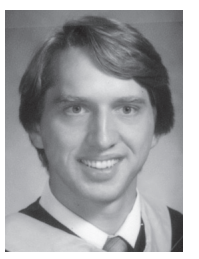

Leroy Latta


David Leonard


Stephen McKee


Ward Merdes


Melinda Miles

Michael Mills

Jeffrey Moeller

David Mulholland

Michael Nave

Greggory Olson

Judith Rabinowitz

Stephen Rose

Phillip Santerre

Convention 2014

Judge panel: Judge Morgan Christen, Chief Justice Dana Fabe, Chief Judge Ralph Beistline at convention's lunch program.

Dean Erwin Chemerinsky (back) Leslie Need, Randall Simpson, Laurie Levenson at banquet.

ALASKA BAR ASSOCIATION 1988 - 2014

25 Years of Bar Membership


Keith Saxe


Michael Smith


Bradley Smith


Clyde Sniffen


Beverly St. Sauver


Leonard Steinberg


Robert Stewart


Robynne Parkinson Thaxton


Tracey Tillion


Breck Tostevin


Lanning Trueb


Wm. Randolph Turnbow


Joan Unger


Peter Van Tuyn


Frank Vondersaar


Stephen Wallace


John Wendlandt


Michael Wenig


Janel Wright

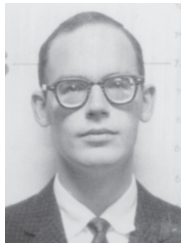
NOT PICTURED
David Burglin
Richard Pomeroy
Ken Robertson
Les Syren

25 year pin recipients

Members receive their 25 year pins at the convention. (L-R) Bruce Brown, Blake Call, Robert John, Linda Johnson and Breck Tostevin.

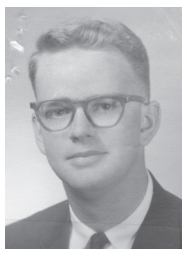
50 Years of Bar Membership

NOT PICTURED: Allan Engstrom


Alex Brindle

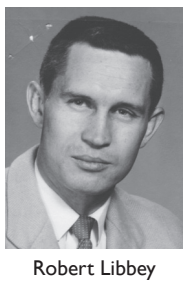

Leland Chancy Croft

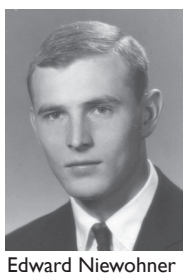

Stephen DeLisio


Robert Flint


Joseph Henri


Richard Kerns


Robert Libbey


Edward Niewohner


John Strachan

50 year pin recipients

(L-R): Joseph Henri, Eric Croft (accepted on behalf of father Chancy Croft), Robert Flint receive their 50 year pins.

Paydirt in the wilderness

By Paul Peterson

The day after the bar exam, I embarked on what I didn't know would be a journey through time. I had a perfect window available before my clerkship started in Barrow to fulfill a childhood dream: visiting Flat, Alaska. Little did I know that fulfilling a childhood dream can make you revert to a child.

I have never felt manlier than when I was bumping along in a little bush plane en route to the ghost town remnants of one of the most important places in Alaska's history. It really gets the testosterone pumping. All I carried was a deck of cards, a hardwood pipe with fire-cured tobacco, and a flannel shirt – and a computer, smart phone, iPod, and Kindle, but I was not planning use them.

And my beard, oh, my beard was glorious. No more than stubble when I began studying for the bar, it had matured into an indispensable multi-tool. It slapped bugs away, deadened the sun's harsh rays, and always let me know which way the wind was blowing. My beard had been a handy receptacle for pens and highlighters, but now it was ready for manly things like nails, welding rods, chisels and what-ever. The old me would be gone before the starch left my collar.

Why Flat? When I was a child our family received a short but amazing letter in the mail. A young woman who had been adopted at birth was looking for her birth parents. She knew her mother had been a University of Alaska student in Fairbanks so she had scoured the UAF records office, following each ra-zor-thin lead to its end. Nothing came out and she gave up. Then she happened across the obituary of a man who shared her mother's maiden name and was survived by a sister in Juneau. She decided to send out one last letter – this time it got a reply.

As one of six boys, I had always wanted a sister. The "surprise" gender of my two younger sib-lings was a crushing disappointment; to this day I hate surprises and have yet to forgive them. By the time the letter arrived, I still wanted a sister very much, but the harshness of the world (I was already in the latter years of Elementary school) had refined my desire considerably.

I had a perfect window available before my clerkship started in Barrow to fulfill a childhood dream: visiting Flat, Alaska.

I wanted one on my terms: none of those trifling girl toys and none of that knives-in-your-eyes pink in every corner. I watched little girl tea parties on TV with horror: sniveling little brats forcing self-respecting adults into cross-gender dress-up, mind-numbingly empty conversation, and extra-curricular politeness. Cady, the sister I got, was not like that.

In the months before a visit could be arranged, she sent us packages of unbridled awesomeness: claws from bears she killed to protect her home, prehistoric seeds from extinct plants she mined out of the permafrost, raw gold, an Alaska Geographic article about Flat and the small-scale placer mining industry that built much of Alaska. I have never fallen in love so deeply and so completely as when I first met Cady.

So Flat has always been like Avalon to me. A foggy place you can't really comprehend if you're not standing in it, but where a home will always be waiting. It is also a fascinating place in its own right. The site of the fourth biggest gold rush in Alaska, it was bigger than Anchorage in the early 1900's - complete with schools, electricity, modern street cars, and a tram to the small settlement of Iditarod that was created to serve Flat (the dog race should really be called the "Flat Trail," but I suppose that wouldn't sell as many t-shirts). The larger Alaska gold rushes were in Fairbanks, Nome, and Juneau, but where those settlements now have fast-food, experimental theater, and city-slicking suburbians like myself, Flat has Cady, her adopted daughter Misty May, her cousin Max, and Uncle Larry. Our great-grandfather first came to Alaska in the 1890's looking for just such a place.

When I arrived in Flat there was a sharp wind to the West and I puffed out my chest, scanning the horizon like a conqueror. I half expected John Ford to rise from his grave to direct a Western about me: Stagecoach II: Paydirt in the Wilderness. The first few days spent in Flat were too full for me to become aware of how much stronger the bratty little pre-teen in me was than the John Ford character. I was too busy absorbing Flat. Touring the gorgeous old buildings -- still warm and practical after decades of dis-use. Except for the banker's old mansion, which looks plucked straight from an antebellum plantation. The massive old mining equipment scattered around as if just set down by giants. The ancient tailing piles speckled with discarded trinkets and smoothed-down glass. The dance halls, steam baths, and 100 year-old cars still itching to be used.

Flat is, counter-intuitively, located in the midst of gently rolling mountains as high as many of the Appalachians; but only the tallest of the many peaks has a known name. By contrast, every building, rock pile, and berry bush has both a name and a rich tapestry of stories. And I was lucky enough to be shown around by one of the handful of people left on the planet who can put those stories into words. Ghost towns are haunted by lost tales, not lost souls, and by this standard, Flat's four inhabitants keep it as bustling as ever.

After a few days walking around in awe, and a few more spent sipping tea while the brain cells liquefied by law school oozed out of my ears, I was ready to work.

After a few days walking around in awe, and a few more spent sipping tea while the brain cells liquefied by law school oozed out of my ears, I was ready to work. "What would you like me to do, Cady? Sharpen bear traps? Test dynamite? Smelt ore? Smash stuff?" I hadn't done anything like that be-fore, but heck, I'd never even heard of a tort before law school, and I passed that class by an enviable margin.

No, all of that was taken care of. When Cousin Max re-opened the mine after Cady's father passed away, he invented an ingenious series of contraptions that made the mine a one-man operation. Sure, stuff broke down all the time, but the fix-it jobs rarely required two people. Not that placer mining is terribly complicated: you strip down to the layer of dirt just above bedrock and feed the "paydirt" into a box that shakes out the rocks and sluices the gold out. Cady spent her early adulthood at the hose nozzle, washing dirt through the box. Epic battles with bloodthirsty bears were not a daily occurrence.

So me and my flannel shirt drank more tea, did some dishes, and tried to persuade Cady that ac-cepting my offer to help cook would be a good idea (it wasn't). We also went on long berry-picking trips in the colorful, meditative hills where it was too hot to wear a shirt and too mosquitoey to take it off, though by this time my flannel shirt was at least as itchy as the mosquito bites would have been. But what kind of John Ford character gives up on something just because it is uncomfortable? A real man finds his duty and stands by it, come hell or high water. Indeed, John Wayne wears pretty much the same outfit in all 24 movies he made with Ford. I didn't realize it, of course, but my character was in the last throes of death. He had already clutched his chest, pointed to heaven vowing revenge, and was stumbling toward the flimsy bannister.

Its bannister moment came one afternoon when I didn't turn my phone off after taking a picture. Instead, I let it glisten in the corner of my eye as I sipped my tea. Soon I had picked up the phone and was engaged in that bane of my final semester in law school: a game called "Jetpack Joyride." Sure, it had dampened my grades and caused my wife to smack me in church, but stealing that jetpack and running for my life through an endless maze of tunnels felt like visiting an old friend. And a score of nearly 2,400 is nothing to scoff at.

Sitting next to me my niece pulled out her device and opened the same game. I smiled at her proudly with a look that told her if she tries hard and believes in herself, she can do anything. I hadn't felt this close to her since she was three and I spent one of the most enjoyable weeks of my life with her. Then I looked down at her screen. She had a score of 4,700!

I turned off my phone, pulled out my deck of cards, and offered to teach her Canasta. She beat me three times in a row. Stomped me. She could pay her way through college hustling old-folks-homes. So I went outside to puff on my pipe, but the outrageously stupid mosquitoes somehow mixed themselves into my tobacco. John Ford rolled over in his grave as I sat on a rock puffing shortly and contemplating which was worse for me; the fire-cured tobacco or the tobacco-cured parasite juices. A slight twinge of cabin fever was all it took to kill my John Ford character.

After dinner, Misty May recommended that I read the Twilight series.

"No," pre-teen me snapped back, "I'd rather have a tea party with Satan."

"How about *The Lord of the Rings*?" She replied sweetly.

"No, I don't like it; the movies are boring." A hush fell over the table. You could have heard a pin drop in Iditarod. One does not simply "dislike" *The Lord of the Rings* in Cady's family. The novel was Cady's companion during those long hours on the nozzle, it was her Avalon. I wasn't invited to help do the dishes that night.

After a few days walking around in awe, and a few more spent sipping tea while the brain cells liquefied by law school oozed out of my ears, I was ready to work.

The next day Uncle Larry, who ran his own mine, ran into trouble. His only helper quit so Cady sent Misty May and I to help him. We pulled the engine out of a bulldozer and refurbished the radiator, took countless pans to figure out where to mine next, and converted a 50 year-old truck into a mobile toolshed. So much rust-colored mud got caked into my shirt that it still looks like a half-rotten old tea bag even after dozens of washes. Next time I go to Flat, I'm going to bring a change of clothes.

Paul Peterson is the Barrow Deputy Magistrate and Law Clerk to Judge Michael Jeffery. His current Jet-pack Joyride high score is 5,065.

Madison's redans, ravelins and bastions: A Maginot Line for Ship Creek

By Peter Aschenbrenner

The Governor and I locate a sunny spot.

Construction cranes tower overhead.

Jimmy and Dolley are 'shooting the lines.'

"It doesn't have to be perfect," I suggest.

"Every city – and especially every coastal city – should be protected by elaborate fortifications," Madison explains.

"Jimmy's learned from experience," Dolley looks up from her transit. "Last week we built coastal defenses in San Dog."

"That's localese for 'San Diego'," Jimmy adds, noting the distance.

"They like to blend," Mr. Whitecheese pushes his piano down the ramp from his pickup truck.

"Hence turning the Port of Anchorage into the Maginot Line," Jimmy explains. "Take it away, Maestro," he calls for the downbeat.

"Hold the phone," I still the chorus of voices.

" 'We will fight them on the beaches'," Winston Churchill growls. "At least I know my lines."

"You're recreating Bladensburg here? In the mudflats of Ship Creek?"

"There's plenty of work to be done," the Governor opines. "You couldn't raise enough regular troops; then, you couldn't pay them; then, you wrote an 800 word memo to the Secretary of the Treasury regarding proper procedures for paying the militiamen who did not turn out to defend the City."

"Recreate that!" I guffaw.

"Jimmy wasted the month of July, 1814," Dolley informs us. "He should have been instructing the Secretary of War to do his job."

"It's rather tedious to recall all the things I didn't do," Madison sighs. "In recompense for not being impeached, I travel America digging trenches."

"Henri Jomini advised defending forces to dig 'redans, redoubts or bastions, one of these with an epaulement behind it ... .' But what the hell is a redans?"

"Baron Jomini's *Art of War* was plagiarized by the Secretary of War," Clementine consults her smartphone.

"I took him for a fellow bookworm," Jimmy goes on, "so I gave him a job."

"It's lucky you didn't lose yours," the Governor adds.

"Congress couldn't impeach my husband," Dolley explains, "because they had no one to replace him."

"Same deal with me," Churchill lights a fresh Monte Christo. "I mean, who the hell is Clement Atlee?"

"Wasn't your Vice-President Elbridge Gerry?" I ask Madison. "I mean, before he died in November, 1814."

"Did you use a hyphen?" the Governor peeks at my 'talking points.'

"I follow the Twelfth Amendment religiously," I assure her.

"And what's with the hyphen?" James Madison asks. "No one asked me about orthographic reform and I was Secretary of State at the time."

Dolley signals for the picnic luncheon to be spread. Mr. Whitecheese strikes up the band.

"Jimmy's constitution – the Constitution of the year Eleven as we call it, in our intimate circles – doesn't have such gew-gaws as hyphens in 'two thirds' or 'Vice President'," she declares.

"It's original spelling," Madison takes a handful of deviled eggs. "Pretty soon, they'll be calling it 'hyphenation.' So much for my constitutional theories."

"You've brainstormed so many of them," Clementine Churchill consoles our fourth President. "Try the asparagus tips in beurre blanc. I made them especially for you."

"Jimmy loves hors d'oeuvres. He should have ridden up the Avenue to met Co'burn's challenge."

"The Trans-Atlantic Culinary Cook-off?" the Governor asks. "I've heard about this."

"Ross and Co'burn threw down the gage at the corner of Pennsylvania and Louisiana Avenues. Actually, they brandished their grillin' tongs," I relate information not in evidence.

"It was supposed to be an old fashioned Potomac barbeque," Winnie asides to Clemmie. "Everything went swimmingly until the drapes caught fire."

"In both the Capitol and the White House?" I gasp.

"It was Jimmy's idea," Dolley concedes. "If we won, they would leave peacefully, taking our first constitution as their trophy."

"But that's the Articles of Confederation," Winston exclaims. "You flim-flimmed British officers!"

"That's when things got ugly," Dolley explains.

"If only I'd known what a 'redans' was. And how to build it," Jimmy sobs. "We should have settled our differences on the banks of the Potomac River. The Eastern Branch, that is. A riparian entertainment. Rowing contests between manly men. Badminton for everyone else and, sigh, whist!"

"We dug a trench," Dolley narrates, "across the route of Alternate U.S. 1, as you call it now, but according to James Monroe, it was not up to Napoleonic standards."

"Monroe was wounded at Princeton," Jimmy adds. "He thought he could do everything better. So I had to give him the job of Secretary of War."

"To salve his conscience," Winnie concludes, "Jimmy has fortified every burg, ville, towne and dorf in America. Alaska's last on the list."

"Fairbanks wants a city wall," Jimmy declares. "Nome wants concrete poured all over the beach."

"This proves that forts are cheaper than ports," the nearly but not quite Duke of London intervenes. "Hey! I said that 'jaw jaw is better than war war'."

"Maryland's Senator Smith built a rampart at Baltimore and General Jackson did likewise at New Orleans," the Governor consults her screen. "History's judgment has been pretty severe on Jimmy, since, after all, intrenchments seem to have worked. And then there are the works Washington and Rochambeau built at Yorktown. They're still there."

"With proper deployment," Dolley appeals to us, "earthworks could have stimulated the martial spirit in the troops who turned out."

"You know what they say about citizen-soldiers," Madison appeals to us. " 'Have Gun, Won't Travel'."

"That's the Second Amendment you've desecrated, Mr. President," the Governor ripostes.

"And Henry Adams' judgment of 'incompetence'?" I ask. "He wrote an entire history devoted to your two administrations."

"He said *my cabinet* exhibited 'incompetence'," Madison ripostes. "In any event the good people of Washington hired their own carts and wagons to save their possessions from the British.

"In my opinion Jimmy's certainly turned the tables on everyone," Dolley laughs. "Instead of serving as a punching bag for the Bar Rag faithful!"

"Madison brought your political philosophy into disrepute," Winnie jabs at the Governor.

"It's true! For two years," the Governor replies, "the federal government did nothing to protect the good citizens of Chesapeake Bay."

"We could have sold insurance cover and made a fortune," Dolley declares. "If catastrophe were to visit your neck of the woods, Jimmy and I could protect you from the danger that the government did nothing to stop."

"I can't tell if Madison is making fun of himself. Or me. Or both of us," the Governor consults with me.

"All the answers may not be in your dusty books," Dolley consoles her husband.

"How does it feel to be on the wrong end of a gag?" Mr. Whitecheese guffaws in our general direction.

"There must be some revenge here," the Governor insists.

"Some way to get even?" I respond. "That's going to take another two hundred years less fifteen percent," I add.

"What's the discount for?" the Governor wants to know.

"Time off for good behaviour," I reply.

Past presidents Mike Moberly and Hanna Sebold.

FEDERAL PROBE

Two worlds collide in the opening statements of the Ted Stevens trial

By Cliff Groh

The opening statements in the Ted Stevens trial pitted the street-smart counselor versus the trusted but mocking uncle.

To lead prosecutor Brenda Morris, the case was simple: Ted Stevens took hundreds of thousands of dollars in freebies and then concealed their receipt when the law required their disclosure so that he could "keep the flow of bennies coming." Most of those benefits came from Bill Allen, CEO of VECO—a large oil-services corporation primarily working for major oil producers—when VECO served as general contractor during extensive renovations of Stevens' home in Girdwood, Alaska.

Ted Stevens' chief lawyer Brendan Sullivan saw it differently in an ornate Washington, D.C. courthouse on that late September day in 2008. All the stuff Stevens got and did not report was mostly the fault of an overeager Bill Allen, who kept giving Stevens stuff he didn't want. Another problem, said the defense attorney, was that Stevens' own wife Catherine—responsible under family rules for paying the household's bills—seemingly slipped up on the job.

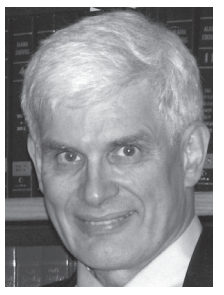
Brenda Morris and the Prosecution's Tale

Morris is a black woman, like the majority of the jury in this majority-black city. She is also polished and professional, and she gave her opening statement a definitely urban feel.

She laid out an array of gifts and goodies for the jury—more than $250,000 in work on "the chalet," plus a generator worth $6,000, furniture, a massage chair worth almost $2,700, a permanently attached professional gas grille, a multi-drawer tool cabinet complete with tools, and a sled dog. The U.S. Department of Justice charged Stevens in July of 2008 in a seven-count indictment for failing to disclose these benefits as legally required on disclosure forms U.S. Senators have to submit annually.

Prosecutors have listed in court filings and hearings a variety of other things of value allegedly received by Stevens and not reported, including a $29,000 bronze statue of a fish and a $3,200 stained-glass window.

Morris, the principal deputy chief in the Justice Department's Public Integrity Section, pointed out that before beginning his home renovation project in 2000, Stevens had written a letter in 1997 complaining that he didn't have the money to do the job.



Then entered Bill Allen, said Morris, and Stevens used VECO as "his own personal handyman service" while never paying Allen's company a penny.

Detailing all the things Stevens asked for and got regarding his home over an eight-year period, Morris said that "We reach for the Yellow Pages. He reached for VECO."

The veteran federal prosecutor painted Stevens as both savvy and shady. Morris called him a "career politician" who had been in the U.S. Senate for 40 years. "You do not survive politics in this town for that long without being very, very smart, very, very deliberate, very forceful and, at the same time, knowing how to fly under the radar," Morris said. She also emphasized that Stevens had been in a partnership with Allen on a racehorse.

Morris tried to draw the sting by disclosing two of the warts on Allen—his crimes and his brain damage—before the defense had a chance to announce them. Allen is not a perfect person, she acknowledged, but instead a felon convicted of bribing Alaska state legislators regarding legislation VECO wanted.

Morris also talked briefly about a motorcycle accident in 2001 that left Allen with a brain injury. The prosecutor noted, however, that other evidence—such as e-mail messages from Stevens—corroborated Allen's testimony.

Brendan Sullivan and the BBIBOBH Defense

The man in charge of defending Ted Stevens was masterful in his own opening statement, and both Brendan Sullivan's story and his manner were much different from those of the prosecution. The 66-year-old white-collar defense star made the points that Ted Stevens could not be guilty because the Senator was Busy, Betrayed, Isolated, Beneficent, Old, Beloved, and Honest.

Busy—Ted Stevens is known as "the workhorse of the Senate," and Sullivan said that "You don't get a title like that unless you're on the job every second." Being so busy—and being a traditional kind of guy—Stevens operated under the saying that "When it comes to things in and around the teepee, the wife controls." So Stevens had his wife Catherine handle the finances on the renovation project, and if blame is to be allocated, she should get it, suggested Sullivan. Where Morris had a "Law and Order" vibe going, Sullivan wanted the jury to think of "Ozzie and Harriet." (Oddly enough, Stevens apparently communicated with his wife about the project a lot through his Senate staff, so it was sort of like "Ozzie and Harriet" if the dad was completely consumed with his job as a big-time CEO.)

Pointing the finger at the wife is important in this case, because Catherine Stevens is not a Member of Congress and so cannot be prosecuted for the crimes of failing to disclose gifts or loans on the Congressional disclosure forms.

To rebut prosecution suggestions that a man who oversaw the whole federal budget for years as chairman of the Senate Appropriations Committee should have been able to keep better track of the renovation of his official residence, Sullivan signaled that he would be pointing to those pressing Congressional duties as the reason his client couldn't take care of those personal responsibilities.

Betrayed—Although an inattentive Catherine Stevens had done her husband wrong, in Sullivan's telling the Senator had been far more betrayed by his former friend Bill Allen. Sullivan suggested that Stevens went in good faith to his old friend Allen to find some good workers for the construction job and to get him to review the bills so that the Stevenses would "get a reasonable product for their money." Stevens had every reason to trust Bill Allen then—Allen "was a pillar of the community, and a worthy friend as far as Ted Stevens knew."

Unfortunately, suggested Sullivan, Allen had too much affection for Stevens that Allen showed in inappropriate ways. Allen gave Stevens furniture the Senator didn't want—one piece even had a cigarette hole in it. Allen went hog-wild with $20,000 worth of rope lighting—apparently going outside the state to find it and even using a crane to install it—when all Stevens requested was that Allen arrange to put up the Senator's own regular Christmas lights. Sullivan said Stevens "didn't want these things, he didn't need these things, and he didn't ask for these things."

Allen directed a subcontractor to "eat" one bill for the subcontractor's work on the house, Sullivan said, and the subcontractor was sufficiently afraid of Allen that he never told the Senator. Stevens did not know about much of the work VECO did on the house, and Allen apparently never sent bills for the work VECO did that Stevens did know about despite the Senator's attempts to get Allen to do so. As a result, Stevens lacked the necessary intent to violate the law by not disclosing what Allen gave him, Sullivan said.

"Every bill submitted was paid.... You cannot report what you don't know," Sullivan said. "You can't fill out a form and say what's been kept from you by the deviousness of someone like Bill Allen."

Isolated—It was particularly hard to keep track of the renovation project, Sullivan said, when Ted and Catherine spend so little time in their official residence in Girdwood, 3,300 miles from their actual home in Georgetown. Sullivan estimated that Ted Stevens was "at home" in Alaska only six days in 2000 and 19 days in 2001, when VECO did most of the work on the house.

Beneficent—Stevens wanted to do things for people. The whole point of the house project was to create room for visits from his 11 grandchildren, Sullivan said. Obviously concerned about what prosecutors would show about legislative favors that Stevens had done for VECO, Sullivan asserted that Stevens helped VECO and its "4,000 employees" like the Senator helped all his Alaska constituents.

Old—Stevens doesn't like it when his attorney says it, Sullivan observed, but the Senator is 84 years old. The attorney suggested that Stevens should not be held to the standard of a younger man.

Beloved and Honest—Many people love Ted Stevens, and Sullivan offered a lot of good reasons for that. The Ted Stevens he knows is no crafty politician—no, he's a former pilot for the Army Air Force who risked his life for his country in World War II and then came back to the USA to serve the public. Ted Stevens helped get statehood for Alaska and then become one of Alaska's U.S. Senators. Stevens loves Alaska and loves the Senate, Sullivan said. (Sullivan did not mention that Stevens had been a lawyer for about 20 years before entering the U.S. Senate or that his legal career had included service as a federal prosecutor when he was U.S. Attorney in Fairbanks. Although these resume bullets have often been cited in Alaska as reasons that Stevens is too knowledgeable to commit these crimes, Sullivan presumably omitted them out of a concern that jurors would wonder why such an informed person would allow himself to fall into the incriminating position the evidence will set out.)

Stevens never intended to get his home renovation done for free, Sullivan said. The Senator lined up the money to pay for the project by dissolving a trust to get $50,000 and by getting a $100,000 mortgage on the house.

The white-haired Sullivan was at his most mocking as he told how Stevens got two puppies at a charity event in Alaska, took them back to Washington, and then paid legendary Alaska musher Susan Butcher to take them when they got too big for him to handle. "It's apparently a federal crime not to report a dog."

Next: The Prosecution Starts Presenting Evidence and Falls into Trouble

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

L - R: Sarah Derry, David Wilkinson, Andy Erickson and Christopher Eaton.

FEDERAL BAR ASSOCIATION

Federal Bar Association's Alaska Chapter continues to evolve

By Darrel J. Gardner

The Alaska Chapter of the Federal Bar Association continues to evolve and grow. First, congratulations to new president-elect, Brewster H. Jamieson! Brewster is in private practice and a shareholder at Lane Powell, where he represents a range of clients in both state and federal court.

Chambers USA's Guide to America's Leading Lawyers for Business has listed Brewster as a "Leading Lawyer," saying "The sterling Brewster Jamieson litigates across a diverse range of fields and is particularly known for his expertise in maritime litigation." Brewster has assisted with planning some of the Alaska Chapter meetings in 2013, and he will be finishing up his term this year as an Alaska District Lawyer Representative to the Ninth Circuit Judicial Conference. He has many great ideas and will certainly make significant contributions to the Alaska Chapter of the FBA when he assumes his presidency in October of this year.

On March 3, 2014, the Alaska Chapter participated at the dedication ceremony for the newly-named "Robert Boochever United States Courthouse" in Juneau. Alaska FBA Chapter President Darrel Gardner was among the numerous speakers who recounted Judge Boochever's inestimable contributions to Alaska's early judiciary. Gardner presented the Court with an engraved plaque from the Alaska FBA Chapter memorializing the date of the dedication ceremony. The Alaska Chapter also donated financially to the event and reception that followed. Other speakers included two of the judge's daughters, Barbara Boochever Lindh and Ann Boochever; U.S. Senator Mark Begich (who was instrumental in obtaining the Congressional Act need to name the courthouse); U.S. District Judge Timothy M. Burgess (presiding); retired Alaska Supreme Court Chief Justice Walter Carpeneti; Bart Rozell on behalf of the Alaska Bar Association; and, Renee Wardlaw on behalf of the Juneau Bar Association. Senator Begich ended the program by performing a ribbon-cutting for the numerous spectators and Boochever family members present.

Similarly, on April 14, the Alaska Chapter was involved in the naming ceremony of the "James M. Fitzgerald United States Courthouse and Federal Building" in Anchorage. President Gardner again made comments and presented the Court with an engraved FBA plaque honoring the dedication event. Senator Begich was also present and spoke in honor of Judge Fitzgerald's enduring legacy. Other speakers included Senior Judge H. Russel Holland (presiding); master of ceremonies Lloyd Miller; and, Alaska Supreme Court Chief Justice Dana Fabe. Judge Fitzgerald's daughter, Debra, who along with her brother Kevin went on to become lawyers themselves, spoke in recognition of Senator Begich's dedicated efforts to achieve passage of the federal law necessary to name the Anchorage courthouse and federal building in Judge Fitzgerald's honor.

"By far our biggest story of the year will be the "First Annual Alaska Federal Bar Conference" to be held on August 22, 2014."

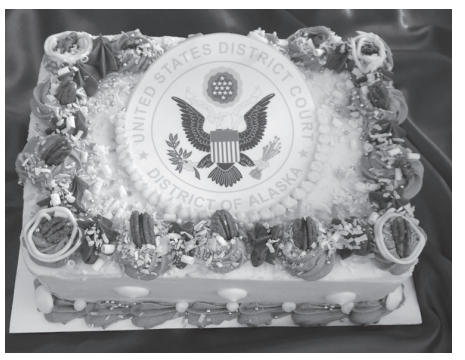
Immediately following the courthouse dedication ceremony, Senator Begich attended a special lunch meeting co-hosted by the Alaska Chapter and the Young Lawyer's Division of the Anchorage Bar Association, held in the Federal Building's Executive Dining Room. Senator Begich spoke extensively regarding current hot topics of federal law including patent litigation, immigration law, and criminal sentencing reform based on the extensive over incarceration of non-violent drug offenders. The meeting concluded with questions from the audience and photo-ops with the Senator.

On Thursday, April 24, thirty-five national chapter and circuit leaders of the FBA fanned across Capitol Hill to educate Senate and House offices on the urgent and continuing need for Congress to provide adequate funding for the courts, to take prompt action in filling judicial vacancies and to establish additional judgeships in high-caseload judicial districts. Alaska Chapter President Gardner participated in the event by meeting with staff members of both Senator Murkowski and Senator Begich in Washington. Essentially, both of Alaska's Senators strongly favor adequate and continuing funding for the federal courts and federal public defenders, and they both want to see an end to the partisan induced delay in the judicial nomination and confirmation process.

By far our biggest story of the year will be the "First Annual Alaska Federal Bar Conference" to be held on August 22, 2014. This full-day event will feature an unprecedented visit by the current National President of the Federal Bar Association, U.S. District Judge Gustavo Gelpi. Judge Gelpi, who resides in Puerto Rico, will participate in several events during a full-day CLE event on August 22 at the Dena'ina Center in Anchorage.

Judge Gelpi will present a historical overview on the development of constitutional law affecting U.S. Territories such as Alaska, Hawaii, and Puerto Rico. There will also be a panel presentation marking the 50th anniversary of the Criminal Justice Act featuring Chief Judge Ralph Beistline, Federal Public Defender Rich Curtner, and U.S. Attorney Karen Loeffler. There will be another panel presentation discussing the Civil Rights Act and featuring Joshua Decker, the Executive Director of the A.C.L.U. of Alaska. The event pricing will include lunch with a special guest keynote speaker. In the afternoon there will be a half-day CLE on federal sentencing that will be presented by Alan Dorhoffer, Deputy Director of the Office of Education and Sentencing Practice of the United States Sentencing Commission, and include a moderated judges' panel discussion. The event will conclude with a gala reception. No active FBA National President has ever visited Alaska, so this promises to be a highly acclaimed event! Mark your calendar now if you are interested in attending. This event is being co-hosted by the Alaska Bar Association, which will handle conference registration and payment. Cost for Alaska Bar and FBA members is $159 before July 22, and $199 thereafter (and at the door). The event is open to non-members for an additional fee. Contact the Alaska Bar Association for more details.

For more information, or to join the Federal Bar Association, please contact Darrel Gardner or visit the Chapter website at www.fedbar.org, like us on Facebook at "Federal Bar Association – Alaska Chapter," and follow "Fed Bar Alaska" on Twitter "@bar_fed."



Reception cake at the Boochever Courthouse dedication in Juneau.

U.S. District Judge Timothy Burgess and Senator Mark Begich at the Boochever Courthouse dedication ceremony in Juneau.

Judge Boochever's four daughters at the Boochever Courthouse dedication ceremony.

Alaska Supreme Court — the first 50 years

The original composition of the Alaska Supreme Court appointed in 1959 construed of three members: Chief Justice Buell Nesbett of Anchorage, Associate Justice Walter Hodge of Cordova and Associate Justice John Dimond of Juneau.

In 1960 Justice Hodge resigned to become the United States District Court Judge for the District of Alaska. Superior Court, Judge Harry Arend, of Fairbanks, was appointed to replace him. When Justice Arend was defeated in his retention election, Superior Court Judge Jay Rabinowitz, who was also of Fairbanks, was appointed to the Supreme Court to replace him.

The number of Supreme Court Justices could be increased by law upon request of the Supreme Court under Article IV, Section 2(a) of the Alaska Constitution. Such a request was made in 1968 and the legislature added two Justices to the Supreme Court making a total of five (5). Attorney George Boney, of Anchorage, and Attorney Roger Conner from Juneau, were appointed to the new positions.

Originally the position of Chief Justice was an appointment for the full term of office. Chief Justice Buell Nesbett served in that office until he was forced to resign in 1969 because of injuries suffered in an airplane accident. However, in 1969 a Constitutional Amendment became effective changing the permanent position of Chief Justices for a three (3) year period but prohibited consecutive terms in that office. Justice Boney became the first Chief Justice elected by the members of the court and Attorney Robert Erwin of Anchorage, was appointed to the vacancy caused by Justice Buell Nesbett's retirement. Thus in the first 10 years after statehood the entire structure of the Supreme Court changed.

Structure of the Alaska Supreme Court

The structure of the Alaska Supreme Court has not changed since 1970 but the Alaska Legislature added the Alaska Court of Appeals in 1980 to handle Criminal matters. The court of Appeals consisted of three (3) judges and Judge Alexander Bryner, attorney Robert Coats and Judge James Singleton were appointed to the new Court of Appeals, and that form consists in the same form today.

The appointments to the Alaska Supreme Court during the first 50 years of statehood were as follows:

Buell Nesbett
August 1959 – March 1970
/
Robert C. Erwin
August 1970 – April 1977
\
Warren W. Matthews, Jr.
May 1977 – April 2009
/
Morgan Christen
March 2009 – January 2012
\
Joel H. Bolger
January 2013 –
/
George F. Boney
December 1968 – August 1972
/
James M. Fitzgerald
December 1972 – March 1975
\
Edmond W. Burke
March 1975 – December 1993
/
Robert Eastaugh
April 1994 – October 2009
\
Craig Stowers
November 2009 -

John Dimond
August 1959 – December 1971
/
Robert Boochever
March 1972 – October 1980
\
Allen T. Compton
December 1980 – October 1998
/
Walter Carpeneti
November 1998 – January 2013
\
Peter Maassen
August 2012 –
/
Roger Conner
December 1968 – May 1983
/
Daniel A. Moore, Jr.
July 1983 – December 1995
\
Dana Fabe
January 1996 -

Walter J. Hodge
August 1959 – February 1960
/
Harry O. Arend
May 1960 – January 1965
\
Jay Rabinowitz
February 1965 – February 1997
/
Alexander O. Bryner
April 1997 – October 2007
\
Daniel Winfree
November 2007 –

Submitted by
Robert Erwin

LEGAL SERVICES CORPORATION

Notice of Availability of Competitive Grant Funds for Calendar Year 2015

The Legal Services Corporation (LSC) announces the availability of competitive grant funds to provide civil legal services to eligible clients during calendar year 2015. A Request for Proposals (RFP) and other information pertaining to the LSC grants competition will be available from www.grants.lsc.gov during the week of April 7, 2014. In accordance with LSC's multiyear funding policy, grants are available for only specified service areas. To review the service areas for which competitive grants are available, by state, go to www.grants.lsc.gov/about-grants/where-we-fund and click on the name of the state. A full list of all service areas in competition will also be posted on that page. Applicants must file a Notice of Intent to Compete (NIC) through the online application system in order to participate in the competitive grants process. Information about LSC Grants funding, the application process, eligibility to apply for a grant, and how to file a NIC is available at www.grants.lsc.gov/about-grants. Complete instructions will be available in the Request for Proposals Narrative Instruction. Please refer to www.grants.lsc.gov for filing dates and submission requirements. Please email inquiries pertaining to the LSC competitive grants process to Competition@lsc.gov.

Convention 2014

Dean Erwin Chemerinsky – banquet keynote speaker and presentation on US Supreme Court opinions.

Professor Hank Greely, Stanford Law School – Legal and Social Developments from Genetics.

Justice Peter Maassen introduces speaker at the convention.

Bar People

Cuddy joins Stoel Rives


Corey

Jermain, Dunnagan & Owens, P.C., proudly announces that **Michael D. Corey**, has become a shareholder with the firm. Mr. Corey practices civil litigation. He has provided legal representation to individuals, corporations and public entities throughout the state of Alaska. Mr. Corey has been with JDO since 2013


Staser

Walker Richards, LLC announces the addition of **Jake W. Staser** as an associate attorney to their legal team. Mr. Staser earned his JD degree from Willamette University College of Law and his A.B. degree in Politics from Princeton University. Immediately after completing law school he served as a law clerk for the Anchorage District Court. Mr. Staser's practice focuses primarily on oil and gas, tax, and municipal law. He has significant responsibility in motion practice and trial preparation. Previously Jake practiced law for the State of Alaska Office of Public Advocacy providing representation for indigent clients and served as an intern for the Natural Resources Section of the Alaska Department of Law. Jake is a lifelong Alaskan and graduated from Service High School in Anchorage.

Theresa Hillhouse transferred from the Municipality of Anchorage Municipal Attorney's Office to the Employee Relations Department in late December 2013 as the Labor Relations Director. Before returning to the Anchorage Municipal Attorney's Office in late March 2013, she was Municipal Attorney for Sitka for approximately 7 1/2 years.


Cuddy

Stoel Rives LLP, a U.S. business law firm, is pleased to announce that Kevin M. Cuddy has joined its Anchorage office as Of Counsel in the Litigation Group.

Kevin brings experience before state and federal courts in a wide array of general commercial litigation matters, ranging from breach of contract and tort claims to environmental and oil and gas matters to complex insurance disputes. He has also handled mediations and arbitrations in Alaska.

Before joining Stoel Rives, Kevin was with Feldman Orlansky & Sanders in Anchorage and Ropes & Gray LLP in Boston. He is a graduate of Duke University School of Law (J.D. magna cum laude) and Bowdoin College (A.B. summa cum laude).

Stoel Rives is a business law firm providing corporate and litigation services to a wide range of clients throughout the United States. The firm has nearly 400 attorneys operating out of 12 offices in seven states and the District of Columbia. Stoel Rives is a leader in corporate, energy, environmental, intellectual property, labor and employment, land use and construction, litigation, natural resources, project development and real estate law.

—Press Release

American Law Institute elects Fabe

The American Law Institute (ALI) announced its 61 newly elected members in April, among them Justice Dana Fabe of the Alaska Supreme Court.

"These outstanding judges, lawyers, and law professors hail from 26 states, the District of Columbia, and the U.S. Virgin Islands, along with two new international members from Australia and Singapore," said the ALI.

"The election of a new class of members is always a key moment for the ALI. The work we do depends on finding the most accomplished and respected lawyers, judges, and scholars who are willing to give generously of their time because of the importance of our projects," said ALI President Roberta Cooper Ramo.

"This impressive new group continues our strong tradition of finding the best and most accomplished from all points of view and from every region of the country. We look forward to the impact of their experience and intellects on forwarding our work."

The American Law Institute is an independent organization in the United States producing scholarly work to clarify, modernize, and improve the law. The ALI drafts, discusses, revises, and publishes Restatements of the Law, model statutes, and principles of law that are enormously influential in the courts and legislatures, as well as in legal scholarship and education.

By participating in the Institute's work, its distinguished members have the opportunity to influence the development of the law in both existing and emerging areas, to work with other eminent lawyers, judges, and academics, to give back to a profession to which they are deeply dedicated, and to contribute to the public good.

The Institute's elected membership of lawyers, judges, and law professors is limited to 3,000. The total membership of more than 4,400 includes ex officio members, honorary members, and life members (those elected members who have attained more than 25 years). Election of these new members raises ALI's total number of elected members to 2,733.

— ALI press release

Convention 2014

Susan Reeves, Jim Reeves, Rob Johnson and Sue Johnson visit at the convention banquet reception.

Convention 2014

L - R: Erin Lillie, Hanna Sebold, Leslie Need and Krista Scully -- "gambling" at the May Convention.

MEET A MEMBER

Interview with Margaret Stock: From Alaska's Largest City

By Mamie Brown

The best part about living and working in Anchorage: the warmth and friendliness of the people.

Margaret is a nationally renowned expert in immigration law and national security issues.

One surprising fact about the Pentagon: It has no immigration attorney to provide legal advice and policy recommendations regarding immigration and national security issues.

Margaret's favorite non-legal activities include hiking, backpacking, and skiing. She recommends that everyone should take a trip abroad with their family in order to build character.

Technology is "a way to reach people whom you cannot already reach."

How does Margaret pick topics for future publications? People often approach her and request or pitch a topic they would like to learn more about.

Margaret's observations on the national immigration reform debate: Immigration reform is a question of when and how much pain we as a nation are willing to tolerate. Immigration reform is inevitable.

Why is immigration reform important? Without immigration reform, we end up with a rapidly aging population that cannot support itself. People are power and our nation cannot be powerful without human capital. Immigration aided the U.S. to become an economic superpower; a healthy immigration system is vital to the health and well-being of our society and necessary to support our rapidly aging population's entitlement system. We are currently not replacing the younger population that is necessary to support older generations and to sustain our social system, and we therefore need immigration to meet that need. Policy-makers often forget the big picture that a healthy immigration system is vital to the economic and social opportunities for future generations of Americans.

What inspires Margaret to develop new programs? There are systemic problems that can only be resolved with impact litigation and big policy changes.

What was the genesis behind the Military Assistance Program (MAP)? The overwhelming demand by US military personnel (and their families) for immigration assistance.

One opening line that makes Margaret chuckle: "Can you answer one quick immigration question?"

One song everyone should hear: Steve Earle's "Dixieland." This song talks about Irish immigrants and invokes the history of immigrants in the military that people forget (1800s).

The tragedy of a broken immigration system. When we exclude or deport people who are able and willing to work to support their families in the U.S., often the American citizen members of that family who remain in the U.S. are forced to draw on public assistance programs. The immigration system is irrational as it stands. In essence, it forces the taxpayers to subsidize government efforts to break up families.

Her first pro bono case: a 1993 case involving an accusation of human smuggling.

How she relaxes. Margaret enjoys studying foreign languages including Spanish, Japanese, French, German, Russian, and Tagalog.

Margaret Stock

Interviewee: Margaret Stock is immigration lawyer at the Anchorage office of Cascadia Cross-Border Law. She was awarded a prestigious MacArthur grant in 2013 for immigration law and national security law reform efforts. As a reformer and trailblazer, she has developed essential programs including the Military Accessions Vital to the National Interest ("MAVNI") Program, a military recruiting program which allows certain legal, non-citizens to enlist in the US Armed Forces, and the American Immigration Lawyers Association (AILA) MAP program, which provides pro bono legal services for U.S. military personnel and their family members. As a former professor and nationally renowned expert on immigration and national security laws, she regularly testifies before Congressional committees on immigration, homeland security, and military matters as well as regularly publishes articles on immigration issues. From 2008 through 2012, Margaret served as a member of the American Bar Association Commission on Immigration. The American Immigration Lawyers Association published her book, Immigration Law & the Military, in 2012. She can be reached at (907) 242-5800 or mstock@americanlaw.com.

Interviewer: Mamie S. Brown is an associate at Clapp, Peterson, Tiemessen, Thorsness & Johnson LLC. Her practice consists of primarily of professional malpractice defense. She has been on a brief hiatus from this column to help her husband, who was seriously injured in a motor vehicle accident in January 2014. She is thankful for the overwhelming support from members of the Tanana Valley Bar Association and members of the Alaska Bar Association. She looks forward to resuming volunteering and interviewing in the months ahead. She can be reached at (907) 479-7776 or msb@cplawak.com.

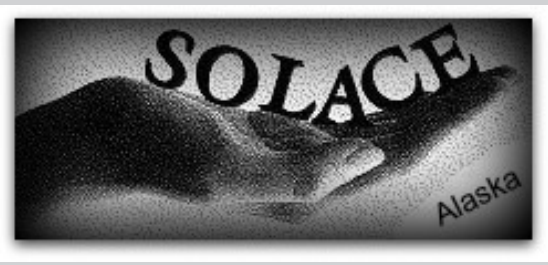
ALSC launches alumni society

The Alaska Legal Services Corp. (ALSC) recently started a new group for ALSC alumni to reconnect, network, and to look for ways to support ALSC and its mission. There will be opportunities for involvement including pro bono work, mentoring and training of new ALSC attorneys, and events. The new ALSC Alumni Society is also working on creating a history of ALSC with documents and photos that will be available online.

Although the society is still in its early stages, a leadership committee has formed which includes: Barb Hood, Carol Daniel, Chancy Croft, Chris Cooke, David Wolf, Andy Harrington, Ilona Bessenyey, John Reese, Maryann Foley, and Vance Sanders. Thank you for getting the Alumni Society off to a great start!

The committee is already hard at work spreading the word about this great opportunity to engage with ALSC in a new way. One of their first tasks was sponsoring the Jammin' for Justice Event, which was held on Friday, May 16 at the Tap Root. The event raised more than $30k.

If you are an alumni who is interested in joining the Alumni Society and would like more information, please contact Laura Goss at lgoss@alsc-law.org or (907) 272-4521.



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.

McCUTCHEON v. FEC

Supreme Court strikes down aggregate campaign contribution limits

By Kevin Clarkson

During the last decade the United States Supreme Court has slowly and consistently whittled away at campaign finance laws, holding that various aspects of these laws violate the First Amendment. The Court struck down Vermont's unnecessarily low limits on direct individual campaign contributions in *Randall v. Sorrell,* (2006). The Court struck down the "Millionaires Amendment," a law allowing candidates to accept larger campaign contributions if their opponent spent substantially from personal wealth, in *Davis v. FEC,* (2008). The Court struck down limits on independent campaign expenditures, including those of corporations and labor unions, in *Citizens United v. FEC,* 558 U.S. 310 (2010). The Court struck down Arizona's campaign "equalization" law—a law that provided publicly funded candidates with additional grants when their opponents or third parties spent more than a threshold "trigger" amount against them, in *Arizona Free Enterprise Club v. Bennett*, (2011). The rationale for this retreat from campaign finance restriction is based upon the majority of the Court's Justices firm commitment to protect "an individual's right to participate in the public debate through political expression and political association."

Giving a campaign contribution to a candidate for public office implicates both of these freedoms: "The contribution 'serves as a general expression of support for the candidate and his views' and 'serves to affiliate a person with a candidate.'" This is not a new proposition. The Court firmly adopted this interpretation of the First Amendment in *Buckley v. Valeo,* (1976). In that case, seven of the Court's eight participating Justices adopted this view. But, deciding where the line should be drawn between the dual freedoms of speech and association and the government's legitimate interests—*e.g.*, to combat electoral corruption—has been more divisive. *Buckley* itself, a plurality decision, evidences this division—only three Justices (Brennan, Stewart, and Powell) joined the majority opinion, four Justices wrote separate concurring opinions (White, Marshall, Blackmun, and Rhenquist), and Chief Justice Burger dissented—Justice Stevens did not participate. Since Buckley was decided the Court has been closely divided in its decisions regarding where First Amendment protections stop or diminish and where government interests against electoral corruption start or become a greater concern. The divisions among the Justices, particularly as of late, have been more or less on straight ideological lines.

McCutcheon v. FEC, decided April 14, 2014, represents yet another step in the Court's charted course to expand First Amendment freedoms in the arena of elections and campaign contributions, and to curtail campaign finance restrictions. In *McCutcheon* the Court struck down the aggregate limit for campaign contributions that were set forth in the Federal Election Campaign Act of 1971, as amended by the Bipartisan Campaign Reform Act of 2002. Although the decision technically addresses only federal campaign finance law, the effect of the ruling is to strike down any aggregate campaign limitation whether state or federal. Currently nine states, not including Alaska, have aggregate limits on individual campaign contributions—there are ten if Minnesota is included which has an aggregate cap on what any single candidate can receive from "large contributors." After *McCutcheon* all of these aggregate limitations are unenforceable.

Clarkson

Although *McCutcheon* like *Buckley* is a plurality opinion, that fact does not mean nearly as much as it did in the former case back in 1976—Justice Thomas did not join the opinion of the Court in McCutcheon for the mere reason that he believes Buckley should be overruled outright. Justice Thomas would treat political giving and political spending exactly alike, giving each full First Amendment protection as political speech—speech that can only be restricted to advance a compelling government interest by the least restrictive means available. Only a few of the current federal and state campaign contribution limitations would survive such strict scrutiny if Buckley were overruled.

The Court's reasoning in McCutcheon is fairly straight forward. The only legitimate purpose for which government can limit campaign contributions is to prohibit *quid pro quo* corruption or its appearance.

The Court's reasoning in McCutcheon is fairly straight forward. The only legitimate purpose for which government can limit campaign contributions is to prohibit *quid pro quo* corruption or its appearance. In other words, the only form of corruption that campaign contribution limitations may seek to curtail or eliminate is "a direct exchange of an official act for money"—something that we in Alaska, unfortunately, know something about. It is not, however, permissible for government to regulate contributions "simply to reduce the amount of money in politics," or "to restrict the political participation of some in order to enhance the relative influence of others"—there is no socialism in free speech and there is no guaranteed right to equal impact from political participation.

Government regulation also "may not target the general gratitude a candidate may feel toward those who support him or his allies, or the political access such support may afford. Ingratiation and access . . . are not corruption." "[C]onstituents support candidates who share their beliefs and interests, and candidates who are elected can be expected to be responsive to those concerns." According to the Court's opinion, the hallmark of the corruption that government may seek to eliminate "is the financial *quid pro quo*: dollars for political favors." Campaign finance restrictions that pursue other objectives, "impermissibly inject the government into the debate over who should govern."

Under federal law, an individual may contribute up to $5,200 to a federal candidate during the election cycle ($2,600 in each of the primary and general elections). That same individual may contribute up to $32,400 per year to a national party committee; $10,000 per year to a state or local party committee, and $5,000 per year to a Political Action Committee. These are the base contribution limits that restrict how much money a donor may contribute to a particular federal candidate. Prior to *McCutcheon* an individual could contribute no more than $48,600 in the aggregate to federal candidates and no more than $74,600 in the aggregate to other political committees. These were the aggregate limitations that restricted how many candidates or committees a donor could support, to the extent permitted by the base limits.

Unlike expenditure limits, contribution limits have been tolerated under *Buckley* and afterwards, save for the State of Vermont's extremely low base contribution limitations that were struck down in *Randall* ($200). Base contribution limits have been tolerated, at some undefined minimum threshold, because they do not "infringe the contributor's freedom to discuss candidates and issues," and permit "the symbolic expression of support evidenced by a contribution" to the candidate of the donor's choice. Aggregate limits, however, limit a donor's ability to associate with any additional candidates once the aggregate limit has been reached—associational freedom is thus substantially curtailed with little if any nexus to preventing actual *quid pro quo* corruption. Even if a donor's contributions to any single candidate are within the base contribution limit, thus being free of any legislative concern of presumed *quid pro quo* corruption, once the aggregate limit is reached the donor may give no more to any other candidates. The Court viewed this to be extremely restrictive of First Amendment rights, and also unfair--by contrast to an individual, a newspaper could endorse and print support for any number of candidates without limitation.

The argument that an individual donor could "give less money to more people" did not carry weight with the Court. "To require one person to contribute at lower levels than others because he wants to support more candidates or causes is to impose a special burden on broader participation in the democratic process." As the Court reiterated, government "may not penalize an individual for 'robustly exercise[ing]' his First Amendment rights."

The Court concluded by reemphasizing that contribution limitations may only be curtailed so as to eliminate *quid pro quo* corruption. And in doing so, the Court may have added some heft to *Randall's* challenge to the lowest base contribution limits—"Congress may permissibly seek to rein in '**large contributions** that are given to secure political quid pro quo from current and potential office holders.'" (Emphasis added). The Court continued, "[i]n addition to 'actual *quid pro quo* arrangements,' Congress may permissibly limit 'the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of **large individual financial contributions'** to particular candidates." (Emphasis added). Under no circumstances, however, can government seek to limit the "general influence" and "access" to elected officials that may flow from larger campaign contributions.

Where will the Court go from here? Do the lowest base individual contribution limits, like Alaska's at $500 per year—one of the two or three lowest in the nation, depending on how you count—face constitutional invalidation? If eliminating *quid pro quo* corruption or its appearance is the only legitimate government interest that can justify curtailing campaign contributions, then how is that interest implicated at levels below $5,000? Would a $600, $750, $1,000, $2,000, or $3,000 contribution to a candidate for public office in Alaska buy someone the *quid pro quo* of an official act for the money? I will not fancy an opinion on what the answer is to that question. Others can read that tea leaf as well or better than I can.

Notice—Soliciting Volunteers for State Pro Bono Appellate Panel

The Appellate Law Section is in the initial stages of exploring whether and how to establish a pro bono appellate panel to handle certain civil appeals pending before the Alaska Supreme Court. We are working with various service providers and the Clerk's Office to identify needs and potential options for pro bono appellate services. We are soliciting volunteers for a pilot project to have their names listed on a pro bono appellate panel. Attorneys on the pro bono panel would be contacted by a service provider (for example, the Alaska Legal Services Corporation) for placement. Attorneys on the panel would be free to decline representation. Attorneys on the panel would not be obligated to accept a pro bono appeal. You do not need to be a member of the Appellate Law section. Although the hope is that attorneys would undertake representation on pro bono appeals, attorneys on the panel could also provide unbundled services that did not involve undertaking representation on the appeal (for example, helping someone understand the rules or answering questions about the process). If you are interested in having your name included on the pro bono appellate panel list, please contact Gregory Fisher at (907) 257-5335 (gregoryfisher@dwt.com).

Selected issues concerning the Secretary of the Interior's probate of trust and restricted estates of deceased Alaska Natives

By James Vollintine

In 2008 the Secretary of the Interior adopted new regulations, 25 CFR part 15 and 43 CFR part 30, governing the Department of the Interior's probate of trust and restricted real and personal property of deceased Native Americans.[1] Under 25 CFR 15.1(b) and 43 CFR 30.100(c) the regulations apply to Alaska Natives with few exceptions. 43 CFR 30.101 states that restricted property is "real property whose title is held by an Indian but which cannot be alienated or encumbered without the consent of the Secretary, and that "restricted property is treated as if it were trust property" for probate purposes. In Alaska such property mostly consists of Native allotments[2] and townsite lots.[3] The Interior Department, acting through the Bureau of Indian Affairs (BIA), probates only trust and restricted property owned by decedents at the time of death.[4]

Title 25 CFR part 15 deals with BIA's preparation of the decedent's probate file and the inventory of his or her trust or restricted estate to send to the Department's Office of Hearings and Appeals (OHA) for adjudication and determination of heirs by a probate judge under 43 CFR part 30. A judge's decision may be appealed to the Interior Board of Indian Appeals (IBIA) under 43 CFR §§ 4.320-40 and 30.240(d). The Board has been in existence since 1970 and its decisions are available at the Anchorage law library and through OHA's website. The Board's decisions are final for the Department and may be appealed to the United States district courts.

Regulation 25 CFR 15.3 provides that any person 18 years of age and older and of testamentary capacity may make a will, witnessed by two disinterested adult witnesses, disposing of trust or restricted property. Indians are given a broad right to dispose of trust and restricted property by will.[5] A will may be "self-proved" by including the testator's affidavit set out in 25 CFR 15.9. Otherwise, under 43 CFR 30.228-29 the judge might require calling the witnesses to testify on the testator's testamentary capacity. If the decedent dies intestate, under 25 U.S.C. 348 the judge is required to distribute the restricted property according to the State of Alaska's laws of intestate succession.[6]

Any person may begin the probate process by notifying BIA of the decedent's death and providing the death certificate or an affidavit under 25 CFR 15.104. BIA prepares the probate file under § 15.202 which includes the decedent's will, if any, a list of heirs and devisees, creditor's claims, and a certified inventory of the decedent's trust or restricted land and personalty. Under § 15.401 once the file is assembled with the required information BIA sends it to OHA for adjudication under 43 CFR part 30.

Under 43 CFR 30.111 when OHA receives the file it designates the case as a summary or formal probate proceeding. Under § 30.200 a case is considered summary if the estate only involves cash in an IIM account not exceeding $5,000. All other cases are considered formal and require a hearing and written notice to interested parties. See Subpart J—43 CFR 30.210-246. Under these provisions the judge must send notice to interested parties, consider creditor's claims,[7] allow discovery, subpoena witnesses, hold a hearing, and under § 30.235 issue a decision that decides the issues of fact and law in the proceeding. Parties with conflicting claims may enter into a settlement agreement under § 30.150 prior to the judge's decision. The Probate Decision must state whether the heirs or devisees are Indian or non-Indian, whether they are eligible to hold property in trust status, approve or disapprove any renunciations or settlement agreements, and allow or disallow claims against the estate. The decision must also approve or disapprove any will, interpret the will, and describe the property each person is to receive under the will or by intestate succession. Attorney fees may be awarded under § 30.252.

1. Petition for Rehearing and Appeal to IBIA

A party dissatisfied by a Probate Decision should file a petition for rehearing under 43 CFR 30.238 within 30 days. Under § 30.240(d) after entry of a final order aggrieved parties may appeal to the IBIA under § 4.320.

2. Make Sure the Devised Property Remains in Restricted Status

In preparing a will the testator's lawyer should determine whether the testator owns restricted property and wants the heirs to own it in restricted status. Generally, a Native is presumed to inherit land in restricted status unless the will expressly states that the land becomes unrestricted, but I suggest that the will expressly state that the property retains its restricted status. Such status is beneficial because the property remains beyond state jurisdiction under 28 U.S.C. § 1360(b) and 25 CFR § 1.4, and it and its direct income are nontaxable and immune from creditors.[8] Of course Natives may apply to BIA at any time for removal of the restrictions under 25 U.S.C. § 372 and 25 CFR part 152.

Non-Natives inherit trust and restricted land free of restrictions. "The federal trust responsibility over allotted land or any fractional share thereof is extinguished as to that interest immediately upon its acquisition by a non-Indian."[9] Under 25 CFR 152.6 the Secretary may issue fee patents to non-Natives without application.

3. Stay Away From Testamentary Trusts

Until the law is clarified I strongly advise lawyers to counsel against devising Native trust or restricted property to a testamentary or other trust with a trustee managing the asset for beneficiaries. Although devising property to trusts is widely practiced in the United States, the legal consequences of doing so with restricted property are unclear and might threaten its restricted status. I suggest that the testator devise the property directly to the beneficiaries so it clearly remains in restricted status.

The Board of Indian Appeals has never held that devising restricted property to a private trust causes it to lose its restricted status,[10] nor do the probate regulations provide for such a result. Indeed, it would seem that a testamentary trust is a necessity for minors or mentally incapacitated heirs. In light of the Government's trust responsibilities to Natives, and the corollary rule that federal statutes and regulations should be liberally construed in their favor (see part 9 *infra*), there is a strong presumption that inherited trust or restricted property remains in trust or restricted status unless the will expressly states otherwise. See, e.g., Estate of Eleanor Maxine Penningjack, 54 IBIA 330, n.2 (2012). However, an ALJ recently ignored this presumption in a case where the testator left the allotment to his son and made him trustee of certain allotment income for the benefit of the testator's daughters. All children are adult Natives and the income is derived directly from the allotment. Nevertheless, in his original decision the ALJ held that the income lost its trust status:

A devise to a trust results in a devise to an entity that is not eligible to have property held in trust or restricted status [and] results in that property passing from trust or restricted status. Estate of Henry Emil Shade, Probate No. P000077838IP. The case has been reopened and is pending before the ALJ. I believe the ALJ erred considering that the devise was to an individual Native and owner of the allotment, but avoiding a testamentary trust certainly would have avoided the litigation.

4. The Probate Decision Acts as the Conveyance Instrument

Regulation 43 CFR 30.101 defines the term "probate" in part as authorizing the Department to "[o]rder the *transfer* of any trust or restricted land or trust personalty to the heirs, devisees, or other persons or entities entitled by law to receive them." (Emphasis added.) However, the regulation is misleading and obscures the Department's actual practices for it does not "transfer" or issue deeds to inherited land to Natives. Instead, the ALJ's Probate Decision is considered the heirs' title to the property. The decision is recorded in the appropriate state recording district as notice and proof of ownership, but nowhere is this process set out in the regulations. Though convenient for the agency, it results in title instability because of the Department's broad authority to reopen and modify closed probate decisions under 43 CFR §§ 30.125 and 243, discussed in part 8 *infra*.

5. Covered Permanent Improvements; Partitionment

Under 43 CFR § 30.236 the probate decision must decide the disposition of "covered permanent improvements," which are defined in § 30.101 as permanent improvements or interests therein owned by the decedent at the time of death and attached to the decedent's trust or restricted land. Section 30.236 establishes a table for the disposition of such improvements in testate and intestate cases. Regarding non-trust permanent improvements, § 30.236(c) requires the Probate Decision to include a general statement on the disposition of the property under the State's laws of descent and distribution. Of course improvements are not considered "covered permanent improvements" if they are subject to the decedent's *inter vivos* agreement, application, or deed to convey the property to a third party as described in § 30.128(a) and discussed in part 6 *infra*.

After the probate process is completed, under 25 CFR 152.33 BIA is authorized to partition land among heirs who hold undivided interests pursuant to their application on a form approved by the Secretary. Partition is the process where several heirs to a single piece of land divide it so that each person holds title to a specific parcel. The regulation states that "partition may be accomplished by the heirs executing deeds approved by the Secretary, to the other heirs for their respective portions." BIA has written guidelines in the matter. (Of course during the probate process under 43 CFR 30.150 the heirs may enter into a settlement agreement and execute deeds to each other dividing the parcel among them. This is the preferable approach considering the lengthy partition process.)

6. Inventory Disputes (Third-party transactions)

Title 43 CFR 30.128 applies when a third party has an unconsummated transaction with the decedent for the gift or sale of restricted property. In the probate process the matter is considered an inventory dispute. The judge must refer the matter to BIA for adjudication under § 30.128(b).

§ 30.128 What happens if an error in BIA's estate inventory is alleged?

This section applies when, during a probate proceeding, an interested party alleges that the estate inventory prepared by BIA is inaccurate and should be corrected.

(a) Alleged inaccuracies may include, but are not limited to, the following: (1) Trust property should be removed from the inventory because the decedent executed a gift deed or gift deed application during the decedent's lifetime, and BIA had not, as of the time of death, determined whether to approve the gift deed or gift deed application. . .

(b) When an error in the estate inventory is alleged, the OHA deciding official will refer the matter to BIA for resolution under 25 CFR parts 150, 151, or 152 and the appeal procedures at 25 CFR part 2. . . (Emphasis added.)

In Estate of James Jones, Sr., 51 IBIA 132 (2010) the Board held that § 30.128 rescinded its authority to decide inventory disputes and vested exclusive jurisdiction in BIA, giving BIA much broader standards for reviewing them than before.[11] Id. at 138. See Estate of Harrison H. Yazzie, 51 IBIA 307 (2010) (§ 30.128 divests probate judges of jurisdiction to resolve inventory disputes); Estate of Violet Guardipee Cobell, 51 IBIA 202 (2010); Estate of David Bravo, 51 IBIA 198 (2010) (§ 30.128 requires BIA to process decedents' gift deed applications).

I am currently involved in two cases pending before the IBIA concerning the interpretation of § 30.128. The first is Estate of Harvey Fred Shade, Sr., No. IBIA 13-050, which is an appeal of the judge's denial of our request under § 30.128(b)

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to transfer an inventory dispute to BIA. The allottee orally promised to gift deed land to his son under 25 CFR 152.25(d) to build a home. The son fully performed and built a substantial home, but his father died before gift deeding the land, and his will is silent on the transaction. We contend that in light of the son's detrimental reliance and complete performance, the decedent's oral promise is enforceable and BIA should retroactively approve it under § 30.128(b). The second case is Ethel M. Adcox v. Acting Alaska Regional Director, BIA, No. IBIA 13-060, where Ms. Adcox entered into a written agreement with the allottee to purchase 5 acres and actually paid the purchase price, but BIA dallied in the partition process and the allottee died before deeding the land to her. BIA denied retroactive approval of the transaction under § 30.128(b) because the decedent failed to sign a deed before she died.

BIA's authority to adjudicate inventory disputes under § 30.128(b) essentially codifies and enlarges its authority under Wishkeno v. Deputy Assistant Secretary—Indian Affairs, 11 IBIA 21 (1982) and subsequent IBIA cases to retroactively or posthumously approve a decedent's sale or gift transaction in the absence of fraud or illegality by the prospective grantee.[12] Strict compliance with the regulations is not required in retroactive approval cases.[13] The BIA is clearly authorized to retroactively approve a testator's *inter vivos* gift or sale transaction with a third party in the absence of a deed signed by the testator because § 30.128(a) authorizes it to approve "application[s]," and similar transactions under the "include but are not limited to" language in the regulation. No deed is required. When the Probate Decision is modified under § 30.128(b)(1) or (b)(2) to incorporate BIA's decision it acts like a conveyance instrument, as discussed in part 4 *supra*. Note that under § 30.128(b) BIA's decision on the inventory dispute may be appealed to IBIA "under the appeal procedures at 25 CFR part 2" where the Assistant Secretary—Indian Affairs may assume jurisdiction over the appeal.

Finally, 43 CFR 30.128(a)(2) purports to allow BIA to invalidate the deed through which the decedent acquired title to the property in violation of the Native Allotment Act. The regulation states:

Trust property should be removed from the inventory because a deed through which the decedent acquired the property is invalid.

This provision does not purport to authorize BIA to cancel the patent whereby the United States conveyed the land to the allottee. Case law is clear that the Department loses jurisdiction upon issuance of a patent to public lands and that only a court may cancel such a patent.[14] Rather, the regulation purports to authorize BIA to cancel a deed that a patented allottee has issued to a decedent pursuant to a sale or gift under the Allotment Act and 43 CFR 2561.3(a) and 25 CFR 152.17—152.25. Thus, 43 CFR 30.128(a)(2) violates the Allotment Act which states that an allottee's deed vests in the grantee "complete title to the land":

[A]ny Indian, Aleut, or Eskimo, who receives an allotment under this section, or his heirs, is authorized to convey by deed, with the approval of the Secretary of the Interior, the title to the land so allotted, and such conveyance shall vest in the purchaser a complete title to the land which shall be subject to restrictions against alienation and taxation only if the purchaser is an Indian, Aleut, or Eskimo. . . (Emphasis added.)

70 Stat. 954, 43 U.S.C. 270-1 (1970). Similarly, 43 CFR 2561.3(a) states that allottees convey "the complete title to the allotted land by deed." Since under the Allotment Act a deed conveys the "complete title to the land" to the grantee, the Department clearly loses jurisdiction to invalidate or revoke the deed. Accordingly, 43 CFR 30.128(a)(2) violates the Allotment Act, and is invalid as applied to deeds issued by allottees thereunder.

7. Compelling BIA to Act

BIA is notoriously slow, but the regulations provide a way to compel it to act. 25 CFR 2.8, entitled "Appeal from inaction of official," states that a person whose interests are adversely affected by the failure of a BIA official to act on a request to the official, can make the official's inaction the subject of an appeal to the Interior Board of Indian Appeals or other appropriate authority.[15] Under 25 CFR 2.8(a)(1) the aggrieved party must request in writing that the BIA official take the action originally requested. (The Regional Solicitor's office, which is BIA's attorney, should be copied with the letter.) 25 CFR 2.8(a)(2) requires the party to describe the interest adversely affected by the official's inaction, and the loss, impairment or impediment of such interest caused by the official's inaction. Under 25 CFR 2.8(a)(3) unless the official takes action on the merits within 10 days, or establishes a date by which action will be taken, the official's inaction may be appealed. If an appeal to IBIA is taken, note that under 25 CFR 2.12 and 43 CFR §§ 4.310(b) and 332(a) the Assistant Secretary—Indian Affairs must be served with the notice of appeal and given an opportunity to assume jurisdiction. In hearing an appeal it appears that IBIA usually orders BIA to promptly decide the case on the merits.

8. Reopening Closed Probate Decisions

The new regulations "provide probate judges with greater authority than they previously possessed to reopen closed estates." [16] Even if there is no rehearing request or IBIA appeal, at any time the judge may reopen closed probate decisions to correct certain errors and omissions under 43 CFR § 30.125, and as authorized by 25 U.S.C. § 343. Closed decision may be reopened to determine the correct identity of the original allottee, heir, or devisee; whether different persons received the same allotment; whether trust patents were issued incorrectly or to a nonexistent person; and whether more than one allotment was erroneously issued to the same person.

Additionally, under 43 CFR § 30.243(a) a judge may reopen a closed probate decision to correct factual and legal errors on the judge's or BIA's motion, or on petition of an interested party. Under this regulation for the first three years a probate decision may be reopened within one year of discovery simply to correct errors of fact or law and without a showing of "manifest injustice." After three years one must also show that manifest injustice will result if the error is not corrected. 43 CFR 30.245 states: "On reopening, the judge may affirm, modify, or vacate the former decision." Under § 4.320(b) a judge's decision on reopening may be appealed to the IBIA.

9. The Secretary's Trust Responsibilities

The Department has long recognized the United States' trust responsibilities to Alaska Natives.[17] An important aspect of this trust relationship is the interpretive rule that "statutes passed for the benefit of dependent Indian tribes and communities are to be liberally construed in favor of the Indians."[18] Federal regulations pertaining to Indians should also be liberally interpreted in their favor. "The trust relationship and its application to all federal agencies that may deal with Indians necessarily require the application of a similar canon of construction to the interpretation of federal regulations." [19] Doubt or ambiguity in federal statutes or regulations should be resolved in favor of Indians.[20]

The Secretary's trust responsibilities to Alaska Natives are even stronger under the new probate regulations because they were imposed without statutory authority. Title 25 U.S.C. 373 authorizes Indians to dispose of restricted property by will "in accordance with the Indian Land Consolidation Act," but this Act, and the American Indian Probate Reform Act that amended it, are expressly inapplicable to Alaska under 25 U.S.C. 2219.[21] Thus, the new regulations were adopted to implement statutes that are inapplicable to Alaska Natives, but in 25 CFR 15.1(b) and 43 CFR 30.100(c) the Secretary applied them to Natives pursuant to her inherent trust responsibilities.

Of course in interpreting a will the overriding concern is the testator's intention. But when a will is ambiguous, or when it is shown that the testator misunderstood the legal consequences of a devise, the Department should apply its trust responsibilities to remedy the situation. A good example is where the testator leaves restricted property in trust for a Native beneficiary as discussed in § 3 above. Instead of invalidating the will as the probate judge did in Oskolkoff, supra, or holding that the property was devised out of restricted status as the judge held in Shade, supra, the Department should deem it a bequest directly to the beneficiary to carry out the testator's intent as much as possible.

The IBIA has held that the Department owes trust responsibilities only to the deceased allottee and not to grantees or devisees even if they are also Natives.[22] But the Department owes trust responsibilities to all Natives that come within the purview of the Allotment and Townsite Acts.[23] These Acts (and the regulations implementing them) allow owners to transfer restricted land to other Natives. It follows that Native grantees and devisees come within the purview of the Acts and the Department owes them trust responsibilities in construing the transaction or will.

(Endnotes)

[1] State courts lack jurisdiction over Indian trust and restricted property under 28 U.S.C. 1360(b). See, eg., Heffle v. State, 633 P.2d 264 (Alaska 1981); 25 CFR § 1.4.

[2] Alaska Native Allotment Act of 1906, 34 Stat. 197, as amended, 70 Stat. 954, 43 U.S.C. §§ 270-1—270-[3] (1970), repealed 43 U.S.C. 1617, with a savings clause for applications pending on Dec. 18, 1971. See Pence v. Kleppe, 529 F.2d 135 (9th Cir. 1976). With trust patents legal title remains in the United States, but with restricted patents under the Native Allotment Act legal title is conveyed to the allottees subject to restrictions on alienation, as discussed in note 14 *infra*. In Levindale Lead and Zinc Mining Co. v. Coleman, 241 U.S. 432 (1916) the United States Supreme Court said there was no distinction between trust and restricted patents regarding the Secretary's trust responsibilities to Indians, stating that the restrictions against alienation evinced "the guardianship which the United States had exercised from the beginning." Id. at 435. See also United States v. Bowling, 256 U.S. 484 (1921).

[3] Alaska Native Townsite Act of 1926, 26 Stat. 1099, 43 U.S.C. 732 (repealed 1976 "subject to valid existing rights"). See Carlo v. Gustafson, 512 F. Supp. 833 (D. Alaska 1981). In Aleknagik Natives Ltd. v. United States, 635 F. Supp. 1477, 1502 (D. Alaska 1985) the court said that Congress' purpose in repealing the Alaska townsite laws was "to remove the Secretary and his subordinates as soon as possible from townsite administration…"

[4] Neither ANCSA corporation stock or land is considered trust or restricted property subject to Interior's probate. See, e.g., Calista Corp. v. Mann, 564 P.2d 53 (Alaska 1977). Under AS 13.16.705 the stock passes by the testamentary disposition clause on the stock certificate or by will or intestacy, and "the determination of the persons entitled to the stock shall be made by the corporation that initially issued the stock…"

[5] Tooahnippah v. Hickel, 397 U.S. 598 (1970); Estate of Thomas Hall, Sr., 10 IBIA 17 (1982).

[6] Estate of Ellen Phillips, 7 IBIA 100, 103 (1978); Estate of Walter Sydney Howard, 32 IBIA 51, 54 (1998); Estate of Nels John Johnson, 55 IBIA 171 (2012).

[7] Under 25 CFR 15.301-305 and 43 CFR 30.140-148 the time for filing a claim varies depending on whether the proceeding is summary or formal, whether it is general or secured, and whether the creditor is an heir or devisee. Under § 30.142, with the exception of secured claims, payment from the estate is not authorized if the decedent has non-trust property to pay a creditor's claim. Also, under § 30.143 certain categories of claims are not allowed.

[8] See, e.g., Cobell v. Norton, 283 F.Supp.2d 66, 130-32 (D.D.C. (2003) (income from trust and restricted Indian land is trust property subject to the Secretary's trust responsibilities to Indians). Under the Allotment Act, § 4 of the Alaska Statehood Act, 72 Stat. 339, and Art. XII, § 12 of the Alaska Constitution, allotments and townsite lots are "nontaxable until otherwise provided by Congress" as is the income from them. See Squire v. Capoeman, 351 U.S. 76 (1956); Anderson v. United States, 845 F.3d 206, 207-08 (9th Cir. 1988); People of South Naknek v. Bristol Bay Borough, 466 F. Supp. 870 (D. Alaska 1979); Stevens v. Commissioner of Internal Revenue, 452 F.2d 741, 748 (9th Cir. 1971).

[9] Estate of Dana A. Knight, 9 IBIA 82 (1981).

[10] Estate of Larry Michael Oskolkoff, 37 IBIA 291 (2002); Estate of Thomas Hall, Sr., 10 IBIA 17 (1982); Estate of Dorothy Sheldon, 7 IBIA 11 (1978).

[11] As noted in Jones prior to 2008 probate judges decided estate inventory disputes under the Board's standing order issued in Estate of Douglas Leonard Ducheneaux, 13 IBIA 169 (1985), and it was necessary to show "that BIA committed an error or omission that was responsible for the property being erroneously omitted from or included in the decedent's estate." Estate of Laura Wetsit Wells, 42 IBIA 94, 97 (2006). Under 43 CFR § 30.128, however, probate judges are deprived of jurisdiction to decide inventory disputes, and it is no longer necessary to show an error in BIA's adjudication prior to the decedent's death, only that it "had not, as of the time of death, determined whether to approve" the transaction.

[12] Estate of Laura Wetsit Wells, supra; Estate of Sandra Kay Bouttier Labuff Heavygun, 43 IBIA 143 (2006); Estate of Jesse Jay Kirn, Sr., 41 IBIA 113 (2005); Estate of Mary Dorcas Gooday, 35 IBIA 79 (2000).

[13] Beverly C. Cloud v. Alaska Regional Director, 50 IBIA 262, 268 (2009).

[14] Under the Alaska Native Claims Settlement Act, 43 U.S.C. 1617(a), the Department is required to issue "patent[s]" to Native allotment applicants. Thus, the "Certificate of Allotment" that BLM issues to an allottee is considered a "patent." As the Interior Board of Land Appeals said in State of Alaska, 35 IBLA 140 (1978), in citing Germania Iron Co. v. United States, 165 U.S. 379 (1897): "The effect of the issuance of a patent, even if issued by mistake or inadvertence, is to transfer the legal title from the United States and to remove from the jurisdiction of the Department consideration of all disputed questions concerning rights to the land…The 'Certificate of Allotment' is regarded as the equivalent of a 'Patent'…Issuance of a certificate of allotment vests full title to the parcel concerned in the allottee, notwithstanding the fact that the Department retains the right to approve a subsequent sale of the parcel by the allottee." See also, State of Alaska, 45 IBLA 318 (1980).

[15] Gosuk v. Juneau Area Director, 25 IBIA 62 (1993).

[16] Estate of Phillip Loring, 50 IBIA 178, 185 (2009). See also, Estate of Laberta Stewart, 54 IBIA 198, 205 (2012).

[17] Status of Alaska Natives, 53 Interior Dec. 593 (1932), cited in Aleknagik Natives, Ltd. v. United States, 886 F.2d 237, 240 (9th Cir. 1989).

[18] Pence v. Kleppe, 529 F.2d 135, 140 (9th Cir. 1976). See also, Aguilar v. United States, 474 F. Supp. 840, 846 (D. Alaska 1979); Alaska Pacific Fisheries v. United States, 248 U.S. 78, 89 (1918); Chickaloon-Moose Creek Native Ass'n v. Norton, 360 F.3d 972, 980 (9th Cir. 2004); Alaska Chap., Assoc. Gen. Contr. v. Pierce, 694 F.2d 1162, 1168-69 n.10 (9th Cir. 1982).

[19] HRI, Inc. v. E.P.A., 198 F.3d 1224, 1245 (10th Cir. 2000).

[20] Cobell v. Norton, 240 F.3d 1081, 1103 (D.C. Cir. 2001). "[W]hen administering Indian programs… the Secretary is obligated to act as a fiduciary…his actions must not merely meet the minimum requirements of administrative law, but must also pass scrutiny under the more stringent standards demanded of a fiduciary." Id. at 1099, quoting Jicarilla Apache Tribe v. Supron Energy Corp., 728 F.2d 1555, 1563 (10th Cir. 1984).

[21] See, e.g., Estate of Nels John Johnson, 55 IBIA 171 (2012).

[22] Bitonti v. Alaska Regional Director, 43 IBIA 205, 216 n.13 (2006)

[23] See, e.g., Carlo v. Gustafson, 512 F. Supp. 833, 838 (D. Alaska 1981).

The 17th Annual Gathering for the Territorial Lawyers of Alaska

It was strictly the best of times

By Meghan Kelly

A cheerful and nostalgic crowd gathered from across the state on May 9th following the closing of the 2014 Bar Convention to celebrate the achievements and long-time dedication of a group of Alaska attorneys.

Five distinguished territorial lawyers posed for a portrait by Barb Hood: Russell Arnett, Charles Cole, Dan H. Cuddy, James Fisher, and Juliana Wilson. They were joined for a group photo by their colleagues who have practiced for 40 years or more.

Dan Cuddy's keynote speech brought to life the early days of Anchorage when he was a young man in the 1930's. Cuddy reminded the crowd that he had attended only one year of law school and then clerked for an experienced attorney before taking the bar exam and being admitted to the bar in 1946.

He recalled images from an Anchorage most Alaskans never saw: Cars were placed on blocks with the first snowfall of the season, and horse-drawn plows cleared paths for the sleds that delivered all-important coal and milk. Making his way to California for college, Cuddy took an overnight train to Seward where he boarded a steamer that carried him to Seattle over the next 10 days, stopping at canneries along the way. He noted that trips such as that one were important opportunities to connect with other residents of the territory, and that he made friendships that would last a lifetime. Cuddy closed his remarks by remembering that in those early days, "twenty-five cents would buy a haircut, two packs of cigarettes, a hamburger, or a bottle of beer."

Territorial Lawyers L to R: Russ Arnett, James Fisher, Charlie Cole, Daniel Cuddy, Juliana Wilson

Following Cuddy's speech MC Jim Powell passed the microphone around the room and many shared memories. Wayne Anthony Ross remembered a trial in Dutch Harbor in 1971 where he served as a Court Master: while en-route to the trial Ross realized that the defendant whose case he was about to hear was running the boat service in and out of town. Ross said he knew then in whose favor he would have to rule if he wanted to get home after the trial.

Russ Arnett recalled the first years of his career when he served as a United States Commissioner in Nome. The position was unique, Arnett said, because of the shortage of lawyers in Nome in the 1950's. As a result, he occasionally found it necessary to cross-examine witnesses from the bench – a practice that was sometimes hard for the jury to swallow.

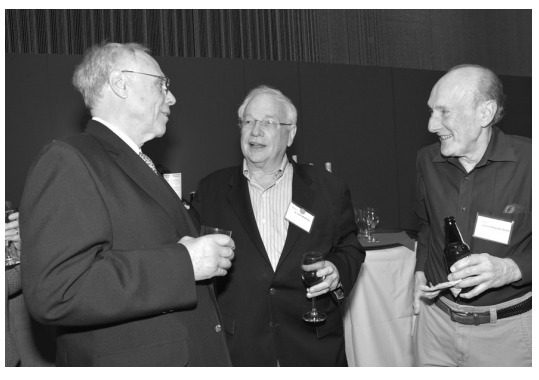
Justice Bob Erwin spoke of the 1969 Bar Convention that was held in Nome. The President of the American Arbitration Association had been invited to speak and Justice Erwin recalled that members of the bar met his plane and, with typical Alaska hospitality, spent several days treating him to all of the luxuries that Nome had to offer. When it came time for the gentleman to speak, he expressed his gratitude for the generous welcome. He said he was not sure why he had been so fortunate, however, because he was in Nome to sell milk. A case of mistaken identity that many in the room remembered with great fondness.

Many other memories were shared and the group paused for a moment of silence in honor of those who had gone before them. As the evening came to a close, plans were made to schedule next year's dinner, with consideration being given to snowbird schedules that dictated many attendees' springtime return to Alaska. The gathering was concluded and the territorial lawyers, their spouses and colleagues left the room slowly, taking time to shake hands and share one last story with old friends and foes. It had been another successful event honoring the fortitude, good humor and adventurous spirit of the territorial lawyers and others who built the strong foundation on which all Alaska attorneys now stand.

A good-looking group.

Judge Ben Esch.

Jim Powell and his wife Judy.



L - R: Bruce Bookman, Collin Middleton, Alex Bryner

L - R: Russ and Betty Arnett and Connie Luce.

Judge Vic Carlson & Wayne Anthony Ross

UAA welcomes first legal studies graduates

By Ryan Fortson

On May 4, 2014, the UAA Justice Center welcomed its first graduates in Legal Studies. These graduates symbolize a growth in the teaching of legal studies at UAA from a paralegal certificate program to a full-fledged degree program. The new degree programs offer UAA students a variety of options for pursuing undergraduate legal education.

Starting in spring semester 2013, UAA began offering five separate degree programs in Legal Studies – a Bachelor of Arts in Legal Studies, a Minor in Legal Studies, a Post-Baccalaureate Certificate in Paralegal Studies, an Associate of Applied Science in Paralegal Studies, and a Legal Nurse Consultant Paralegal Certificate. All five programs are approved by the American Bar Association.

This year marked the first graduates from these new programs. Three Bachelors of Arts in Legal Studies and three Post-Baccalaureate Certificates in Legal Studies were awarded at this year's graduation ceremonies. One student received an Associate of Applied Science in Paralegal Studies degree, while five students received a Paralegal Studies Certificate under the previous program. In addition, there were two graduates in other majors who obtained a Legal Studies minor. As of May, 2014, there are 266 students currently enrolled in one of the five Legal Studies degree programs or the previous Paralegal Studies Certificate. And the program is poised for further growth.

The Legal Studies programs have the goal of providing a broad-based grounding in both procedural and substantive areas of law. Though graduation requirements vary some from program to program, Legal Studies students must complete a common core of seven courses, along with courses in writing and in oral communication. Students in all five programs are required to complete courses on legal ethics, legal research and writing, the Rules of Civil Procedure, the Rules of Evidence, investigation and discovery, and advanced trial practices.

Starting in spring semester 2013, UAA began offering five separate degree programs in Legal Studies – a Bachelor of Arts in Legal Studies, a Minor in Legal Studies, a Post-Baccalaureate Certificate in Paralegal Studies, an Associate of Applied Science in Paralegal Studies, and a Legal Nurse Consultant Paralegal Certificate.

Students in either of the Paralegal Studies degree programs are required to complete a one-semester internship at a local law office, agency, or non-profit organization; students in the other Legal Studies degree programs have the option of completing an internship, and many of them take advantage of this opportunity. The Justice Center is always looking for internship opportunities for its students, and anyone interested in taking on an intern should contact Professor Deb Periman at dkperiman@uaa.alaska.edu.

Students emerge from their respective programs not only with an understanding of legal terminology and procedures, but also with skills in drafting case briefs, researching and writing memos on complicated legal issues, composing discovery requests, and giving public presentations and simulated trials and oral arguments. Through completion of the core courses, Legal Studies graduates are well positioned for a smooth and quick transition into the legal profession.

The four full-time professors in Legal Studies and associated Justice Center professors and adjuncts also offer courses in the history of law, torts and workers' compensation, criminal law and procedure, the courts, family law, civil liberties, health law, and Alaska Native law, among other elective offerings, a certain number of which are required for each degree. For more information on the course offerings or degree requirements for the Legal Studies programs, please visit the Justice Center website at www.uaa.alaska.edu/justice.

In addition to its new Legal Studies degree programs, UAA is also excited to announce a new collaboration with the Willamette University College of Law to offer a "3+3" program whereby UAA undergraduates could apply for early law school admission at Willamette, provided that the student has completed their required disciplinary credits, all of their general education credits, and have junior status. Admitted students could then count their first year of law school a Willamette toward their graduation requirements for their undergraduate degree at UAA. This program will be available for the first time in fall semester 2014 to all UAA students, though it is hoped that the availability of this program will further foster interest in Legal Studies degree programs.

Graduates with Legal Studies degrees can thus go on not just to be paralegals and other law office professionals but also to law school and a variety of positions in law-related fields. It is unknown what career paths the recent graduates will take, but whatever path they choose will be with a solid foundation in undergraduate legal training.

The author is an assistant professor at the University of Alaska Anchorage Justice Center.

Race Judicata: Year ten 5k raises 5k

The 10th Annual Race Judicata benefited from perfect weather and the enthusiasm of its approximately 150 runners and walkers (and a few of their canine companions). Race Judicata is an annual 5K run/walk fundraiser organized by the Young Lawyers' Section of the Anchorage Bar Association. The thousands of dollars raised by Race Judicata each year support Anchorage Youth Court, an organized and effective juvenile justice system.

This year's race took place on May 4th on the traditional out-and-back course from Westchester Lagoon to 2nd Avenue along the Tony Knowles Coastal Trail. Runners received a performance fabric race shirt featuring a custom graphic donated by Hulin Alaskan Design. The race was enjoyed by people of all ages, ranging from the very young to those with memories of Territorial rule, and attracted both competitive runners and those just out for a stroll on a beautiful day.

Jim Shine clocked in at an amazing 17 minutes 18 seconds, sweeping the awards by winning first place finisher and fastest lawyer. Canine contender Barlow Shine crossed the finish line with him, winning the Top Dog trophy. Hot on their heels in the men's division were Paul Summer and Mike Schroeder. Laura Fox took first in the women's division with a time of 19 minutes 33 seconds, followed by Sarah Shine and Rory Santos-Mitchell. Baby boy "Jethro" Pearson won the (unofficial) Fastest Fetus award for his sub-30- minute time, riding out the race from his comfortable perch in Becky Windt-Pearson's belly.

AYC member and president of the AYC Student Bar Association Michael Gallagher expresses his enthusiasm.

The Anchorage Bar Association is the event's main sponsor, but the race would not be possible without the support of our local law firms. Nearly 20 firms participated in the event by sponsoring teams and making donations. Stoel Rives registered the most racers and stole the firm participation award from Clapp Peterson, the prior holder of the coveted trophy.

Local businesses also helped to make the race a success. Great Harvest Bread Company donated cookies and Skinny Raven Sports donated space for early bib pick-up and a tent.

Thanks to all our sponsors:

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Winning team Jim Shine and Barlow Shine triumphantly cross the finish line.

Bonnie Calhoun, Race Judicata Organizer and District Court law clerk, presents a check for $5k to Michael Gallagher, current President of the Anchorage Youth Court.

About the authors: This year's race was organized by Bonnie Calhoun and Eva Gardner, with the help and support of the Anchorage Bar Association Young Lawyers' Section and several volunteers. Bonnie is new to Alaska and is enjoying her first full year here. She was amazed to find that hiking uphill in Alaska means almost no switchbacks, and is excited to go straight up more mountains this summer. Eva may be barred in three states, but she's pleased as punch to be practicing in Alaska. You'll find her skiing every day in winter, dreaming of skiing every day in summer, and indulging her love of the arts year-round. She volunteered with Anchorage Youth Court back in her law clerk days, and was honored to be involved with this year's race.

AYC member Trevor Bailly finishes the race.

Rebecca Eshbaugh and Brian Samuelson cheer on the Race Judicata runners

Anchorage Youth Court member Brandon Thomas and his younger brother Tyler hold signs supporting the racers.

See facebook.com/alaskabarrag.com for a complete list of winners.