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Pot law history: A graphic view of Alaska and marijuana

By Jason Brandeis

Last November, journalist Josh Kramer left me a voicemail. Kramer said he was working on a piece for The Atlantic about marijuana in Alaska. He had read my 2012 Alaska Law Review article, “The Continuing Vitality of *Ravin v. State*,” and wanted to ask a few follow-up questions.

This sort of inquiry was not unusual. During the marijuana legalization ballot initiative campaign I often spoke with local media. But calls from national publications were rare.

Kramer said he was planning to use the interview and my article as sources for his piece. We spoke for about an hour, discussing the complicated history of Alaska’s marijuana laws and about the new issues raised by the passage of Ballot Measure 2. I was admittedly thrilled at the idea of The Atlantic publishing a story on an issue I had been working on for years.

But that’s not what Kramer had in mind; what he proposed was something I would never have anticipated. After the interview, Kramer said, “So, at this point I need to tell you something important about the piece...”

Oh, great, I thought. He probably doesn’t really write for The Atlantic at all. I’m sure this isn’t even a commissioned article. He’s about to tell me that he’s just planning to pitch the Atlantic on the story and he doesn’t know if they will run it.

Whatever the case, I assumed I had just spent an hour talking to a reporter about a story that would never be printed.

But it turned out my snap-skepticism was not warranted. Instead, Kramer explained that he was in fact working for the “real” Atlantic and that in addition to being a writer, he was also ... a cartoonist! The surprising reveal was that he was going to produce an illustrated story of the history of marijuana in Alaska. “Kind of like a graphic novel,” as he put it.

“Are you okay with that?” he asked. “Of course,” I said. And, that’s awesome, I thought.

Then Kramer asked me to send him a picture so he knew how to draw me. I felt like Rose from “Titanic.”

The end result is what you see reprinted here. It was originally published on The Atlantic’s website Dec. 10, 2014 and then in the Alaska Dispatch News Feb. 8, 2015. Kramer did a great job of bringing the odd history of Alaska’s marijuana laws to life and

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Remembering Dan H. Cuddy – Alaska Pioneer

By RuthAnne B. Bergt

Daniel Hon Cuddy passed away in Anchorage on May 12, 2015, at the age of 94. Born in Valdez Feb. 8, 1921, Cuddy moved to Anchorage with his family at the age of 12. Cuddy’s father, Warren, opened a law practice and eventually purchased controlling interest in the First National Bank of Anchorage. His mother, Lucy, was very active in community affairs and started Anchorage’s first United Way campaign.

Cuddy was a lifelong wildlife enthusiast. In his youth, he ran trap lines along Ship Creek, hunted sheep and moose in the Chugach Mountains, and hunted ducks on the Cook Inlet mud flats. A graduate of Anchorage High School, Cuddy played on the school’s bas-



Dan H. Cuddy

ketball team and went on to attend Stanford University.

Cuddy’s university studies were interrupted by the commencement of World War II. He was assigned to the 1255th Engineer Combat Battalion where he rose from private to captain in only 18 months. Cuddy fought in the Battle of the Bulge and assisted in closing the Buchenwald, Germany concentration camp. Cuddy’s remarkable service earned him three Bronze Stars and a World War II Victory Medal. Cuddy’s only brother was killed in Italy during the

War.

After the war, Cuddy returned to Stanford University. There he earned a bachelor’s degree in economics. Cuddy then earned his juris doctorate at University of Washington Law School. While in law school,

Let’s go fishing

Dan was a charming person who was mostly concerned with the law as it pertained to banking which was his first concern and he made certain that the rules were followed always. His wife Betti used to tell the story that when they were first married he had come marching into Sunday services at the old Presbyterian church closer to Fifth Avenue, fishing boots and gear on, to tap her on the shoulder to whisper loudly “hurry, the fish are in, let’s go.” Betty was, of course, mortified but realized that she better get out and “go fishing” with him, right then. He was indeed a true Alaskan.

– Lucy Groh

Cuddy met his future wife, Betti, after agreeing to a blind date arranged by a mutual acquaintance. The couple married and spent their

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Technology, advent of ‘legal techs’ present future challenges for lawyers

By Nelson Page

There have been many changes in the practice of law since I first became a lawyer. It has been a long time since I spent an afternoon at a desk lined with hard-bound case reporters, burrowing my way from volume to volume in order to fully digest a legal argument. The last time I needed to find the answer to a legal question I did not even bother to go to my subscription legal research service: I googled the issue and got what I needed in about 30 seconds. When I first began to practice, my clients came from referrals from partners and other colleagues. The very concept of advertising and marketing was foreign, and mostly unethical. Now you can find me on Facebook, LinkedIn, AVVO and who knows where else. Google yourself. Then google some of your colleagues. It is a humbling experience.

But I have a sense that the delivery of legal services is about to change in ways that are more fundamental than we have ever encountered before. These changes have nothing to do with the evolution from Pacific Digest to Westlaw or from carbon paper to computers. Lawyers may need to entertain the idea that our role as the source of legal advice and representation is no longer unique and perhaps no longer necessary. A growing wave of changes to the way we practice law may well make what we do obsolete, or at least open to serious competition.

In Washington State, for example, the Supreme Court has adopted rules allowing for a new type of le-

gal professional known as the Limited Licensed Legal Technician. An LLLT is a professional paralegal licensed and authorized by the state to engage in what any lawyer would call the practice of law. LLLTs can provide information and advice on legal matters within a defined area of expertise. This includes explaining the relevancy of the laws as they apply to a client's facts, informing and assisting the client in meeting the requirements of a legal proceeding and, under the supervision of a lawyer, drafting documents and performing legal research on behalf of the client.

It has always been true that a paralegal can perform many tasks so long as they have been delegated by a lawyer who is responsible for the ultimate product. But the LLLT concept carries this a step beyond. LLLTs are allowed to engage clients on their own and to have direct and ultimate professional responsibility to a client. If the Washington State experiment succeeds, we may find ourselves facing a whole new type of competition.

Other changes are coming. The Alaska Bar Association already has an “unbundled practice of law” section that explores many ways that lawyers are now providing services that are non-traditional. For example, in 2011 the Bar adopted ethics opinion 2011-3 allowing for “collaborative” representation of parties in



"The Alaska Bar Association already has an “unbundled practice of law” section that explores many ways that lawyers are now providing services that are non-traditional."

a divorce proceeding. In a “collaborative” divorce, the clients on both sides agree with their respective lawyers that they will attempt to resolve their differences by negotiation without litigation. If the parties are unable to do so, and litigation follows, the lawyers must withdraw, and the clients have to find new lawyers to represent them in the ensuing lawsuit. Alaska has now definitively said that such arrangements are ethical, even though they give the other side a veto over an attorney's ability to continue representing a client: all the other side has to do is refuse to settle, and the client has no choice but to fire his or her lawyer.

Technology has also fundamentally changed the relationship traditional lawyers have with their clients. The District of Columbia Bar Association recently adopted an opinion that allows lawyers to participate in internet chat room communications with back-and-forth conversations that take place in real time. Such conversations raise a number of issues. Does the lawyer who is responding to a legal question have a lawyer/client relationship with the person asking the questions? Is the lawyer engaging in inappropriate direct solicitation of clients? Are lawyers violating laws regarding unauthorized practice by communicating legal advice to someone living outside their li-

censed jurisdictions?

Moving a little further out on the limb, there are now computer apps available to any non-lawyer that can be used to obtain legal advice. One app allows the user to seek preliminary legal advice from attorneys free of charge. The user can then decide whether to hire the lawyer who responds. Another allows immigrants to determine their eligibility for citizenship, and to learn what documents they need to apply and how to fill them out. There is an app that allows users to take a picture of a ticket or other document, upload it onto the web and make it accessible to any number of lawyers who can then look at it, provide advice, and, if they choose to do so, enter a fee bid to represent the client. There are apps that automatically record what happens during a traffic stop or other routine contact with law

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EDITORS' COLUMN

Editor returns to her first landfall in Alaska

By Meghan Kelly

I am writing this column from Kodiak, the island that was my first Alaska home. During the fall semester of my third year of law school I sat on the floor in my sweltering Denver house stuffing envelopes with resumes and cover letters, nervous excitement colored with fear of starting down a path into the great unknown of legal career in a far-away place made the task feel surreal. I posted the applications to places with strange names I had only seen on a map, and only when I made a point to look for them. Kotzebue, Kenai, Nome, Barrow, Kodiak.

My daydream of living on the last frontier was interrupted when people began to call me – I don't think I believed it would really happen. I found myself talking with judges in remote bush communities and in the big cities, and I realized, probably for the first time, that the adventure of life and practice in a place of which I had heard my parents tell almost unbelievable stories from their travels in the 1970s, could be a reality. These judges were lawyers who had come from farm communities in the Midwest, bustling eastern cities and sunny Californian beach-

es, from across the country to Alaska, and had made meaningful lives and successful careers for themselves in that wild place.

I recall the day that Judge (now Justice) Bolger called to talk with me about Kodiak. He told me how he had come to Alaska as a new attorney and worked with people who could not afford to hire a lawyer. We talked about bison and bears, surfing and missiles, and a place where you could drive “to the end of the road” — a concept that someone born and raised in the middle of the country could not quite fathom. The judge's intellect, integrity and sense of adventure transmitted loudly across the thousands of miles separating us. By the end of our brief phone call I knew that this was someone I wanted to teach me about being a lawyer.

I have come back to my Alaska beginning. I will miss many things from my life in Anchorage – my friends, colleagues, the amenities of the city and the road system. But Kodiak has been special to me since the day I arrived on the ferry those



"I am excited to begin this new chapter of my life and career in this unique place."

seven years ago. The pace is a little slower here. I find myself pulling over to look out at the ocean almost every day on my trip home from the office. Today I am distracted by the activity around the harbor that I can see from my window – salmon season has begun and the boats are springing back into action. I am excited to begin this new chapter of my life and career in this unique

place.

In this issue we offer some memories and a fond farewell to one of forefathers, territorial lawyer Dan Cuddy. You will “meet” our new president of the Alaska Bar Association, Nelson Page, and see photos from the successful Bar Convention that took place last month in Fairbanks. We have also included updates from several of our local bar associations, and I hope that we can continue to offer similar bits of news to keep you informed about your colleagues' practices and lives from all corners of this great state.

Wishing you a summer of sun,
Meghan

The Alaska BAR RAG

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Technology, 'legal techs'

Continued from page 2

enforcement. Others provide templates for contracts and other legal documents, help non-lawyers draft valid and binding wills and trusts and advise about choosing an appropriate business entity. Eventually it may become true that lawyers can be replaced by computers, at least for some services.

All of these changes are being driven by two things: the first is the revolution in technology. Information and resources are now available to anyone with a smart phone. It was inevitable that technology would create new ways to provide information about the law and legal processes. It was inevitable that these new resources would be used to compete with our historic monopoly on access to the legal world.

The second driver of change is the failure of the legal profession to stay ahead of the demand for legal services. Much valuable effort is spent by our profession on providing legal representation to those who can't afford to pay for a lawyer. Our commitment to pro bono representation is real and substantial, and has made a huge difference in the lives of many. But we should face facts: Most ordinary people still can't afford our services. There are thousands of Alaskans who need help on everything from divorce and child custody issues to partnership and business advice. Many of them could not dream of paying what it would cost to have a lawyer advise them. Alaska Legal Services and other similar legal aid programs are overwhelmed with clients and lack the resources to represent all those who need their help. Faced with the pressure of unmet need, and coupled with a growing list of options and possibilities, it should not be a surprise that the next few years will see major changes in how law is practiced and how legal services are delivered, and by whom.

Nor can we lawyers continue to rely on monopolistic protections of our profession. In the near future it may no longer be enough to argue that only a licensed professional who has completed three years of graduate school can provide advice on the law. Even the United States Supreme Court may be starting to waiver. In North Carolina State Board of Dental Examiners v. Federal Trade Commission, No 13-543, slip. op at 14 (2015) the court held that the licensing board for dentists in North Carolina could not claim state agency immunity when it sought to limit teeth-whitening services to licensed dentists. The court found that the board's attempts to enforce its rules regarding teeth whitening was not protected by the "state action" exception to antitrust laws. One could argue that the court's reasoning is applicable to state bar associations that seek to enforce limitations on those who can practice law:

"When a State empowers a group of active market participants to decide who can participate in its

market, and on what terms, the need for supervision is manifest. [citation omitted] The Court holds today that a state board on which a controlling number of decision makers are active market participants in the occupation the board regulates must satisfy Midcal's active supervision requirement in order to invoke state-action immunity." *Op. No 13-534, Slip op. at 14. (Feb. 25, 2015)*

It was inevitable that technology would create new ways to provide information about the law and legal processes. It was inevitable that these new resources would be used to compete with our historic monopoly on access to the legal world.

At a minimum this language suggests that any attempts by the legal profession to enforce restrictions on unauthorized practice of law must be based on clear facts and compelling reasons.

What does this mean for lawyers? In the words of Abraham Lincoln, "we must disenthral ourselves" about our profession. If we can't prevent major changes – and it as at least possible that we cannot – we should use our (currently)

unique position to make sure that the changes happen in a way that preserves the important things. There will always be a need for fair and impartial redress in a justice system that is accepted as the final arbiter of disputes. There will always need to be a way to ensure that legal advice and legal services are competent and meet minimum standards. And, until that ultimate computer is invented, there will always be a need for highly trained and skilled professionals who can provide the full range of legal advice and services any client may require. Who is to supervise and enforce the rules regarding how law is to be practiced, and whether standards – whatever they may be – have been met? If it is the bar, where will the resources be found to do the work? If the regulatory functions apply to non-lawyers, will non-lawyers also be part of the regulatory body that does the enforcement? What ethical rules will apply and to whom? How will the public be protected? What areas should not be open to non-lawyers to practice in? These are all issues I think we need to ponder as the future arrives whether we want it to or not.

Nelson Page is the newly elected president of the Alaska Bar Association.

Your new president

Name: Nelson Page
Position: President
Board member since: 2012
City: Anchorage
Alaska resident since: 1978
Firm or Agency: Burr Pease & Kurtz
Law School: Georgetown University Law Center

- I live with a trilingual dog. She understands commands in English, German and Russian. She has not yet succeeded in teaching me any Russian.
- My current secretary, Wilma French, was my first secretary when I came to work at Burr, Pease and Kurtz in 1979.
- My first job when I came to Alaska was for Warren Matthews.
- I once completed the Mayor's Marathon. No records of any kind were set and, as the scientists would say, the result is not reproducible.
- My significant other is a mental health therapist who works with juveniles. She says that the training comes in handy.

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Alaska Bar Association welcomed 16 new members at the Anchorage swearing-in ceremony in the Alaska Supreme Court on Thursday, May 21, 2015. Listed alphabetically are James Bauman, Matt Chicklo, Marisa D. Chud, Shelley D. Cordova, Jessica Diaz, Hans Nicholas Huggler, Jason A. Iverson, Ki Jung Lee, Christopher Mortorff, James S. Nolan, Michael David Rhodes, Megan Rowe, Ryan Thomas, Chantal Trinkka, Douglas L. Waters, Jr., Trevor Zarnstorff. Front row, L-R: Judge Frank Pfiffner, US District Court Judge Sharon Gleason, Justice Joel Bolger, Judge David Mannheimer and Judge Jennifer Henderson. Photo by Deborah O'Regan.

ALASKA BAR ASSOCIATION
ETHICS OPINION 2015-1

May a Lawyer Post Bail for a Client?
Question Presented:

Under what circumstances, if any, may a lawyer post bail for a client?

Conclusion:

Under rare circumstances a lawyer may post bail for a client, though the practice is discouraged.

Discussion:

An attorney asks whether it is ethically permissible to post bail for a client¹ who is in custody.

Posting bail for a client raises several issues under the Alaska Rules of Professional Conduct, which help ensure that a lawyer can zealously represent a client without conflicting interests that could affect the quality of the representation. The Rules provide, for example, that a lawyer may not provide financial assistance to a client in connection with litigation² or acquire a proprietary interest in the subject matter of litigation.³ Neither may a lawyer represent a client if the representation is adverse to a personal interest of the lawyer.⁴

Each of these prohibitions, however, has exceptions. So, while a lawyer is generally prohibited from providing financial assistance to a client in connection with pending or contemplated litigation, a lawyer may advance court costs and expenses.⁵ And if a lawyer believes that he or she will be able to provide competent and diligent representation to a client despite

their adverse interests, the lawyer may proceed with that representation after obtaining informed consent from the client.⁶

Posting bail for a client imposes on the lawyer both contractual and financial constraints which could give rise to a situation in which the lawyer's interests are materially adverse to the client's, particularly if the client fails to comply with his or her conditions of release. Despite these ethical implications, posting bail does not fit squarely within the "costs of litigation" exception contemplated by Rule 1.8(e) nor the concurrent conflict of interest analysis contemplated by Rule 1.7(a)(2). Some jurisdictions interpret bail as akin to a cost of litigation,⁷ while the American Bar Association applies a concurrent conflict of interest analysis.⁸ While the Rules do not expressly address bail, they do provide analytical guidance.

Rule 1.7(b) contemplates limited exceptions to a concurrent conflict of interest where a lawyer's ability to zealously represent the client's interest is not compromised and the client consents. Rule 1.8(e) anticipates that a lawyer may pay for certain, limited expenses on a client's behalf within the scope of the representation. Drawing from these exceptions, a lawyer may post bail for a client where the amount of bail is insignificant enough to not create a material limitation on the lawyer's ability to represent the client. To ensure that a client understands the unique relationship that is created when the lawyer posts bail, a lawyer must obtain written informed consent from the client, specifying the surety provided and the scope of the liability the bail agreement imposes on the lawyer.⁹

These considerations allow lawyers to facilitate the occasional client's return to the community, which may assist with the representation. By limiting the acceptable circumstances to rare events, lawyers will avoid facing any significant risk that their ability to provide legal representation will be materially limited by the financial obligations posting bail requires. Similarly, by limiting the amount of bail to sums unlikely to materially limit a lawyer's ability to represent a client, a lawyer diminishes the risk that the client's noncompliance with the conditions of release would affect his or her ability to provide competent and diligent ongoing representation.

Approved by the Alaska Bar Association Ethics Committee on May 7, 2015.

Adopted by the Board of Governors on May 12, 2015.

Footnotes

¹This opinion does not address the ethical obligations of an attorney who is asked to post bail in a personal capacity unrelated to any existing or prospective client-lawyer relationship.

²Rule 1.8(e) ("A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation...")

³Rule 1.5(a) ("A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client...")

⁴Rule 1.7(a)(2).

⁵Rule 1.5(e)(1)-(2).

⁶Rule 1.7(b).

⁷See Oregon State Bar Op. 1991-4, 1991 WL 279145 (July 1991).

⁸ABA Formal Opinion 04-432, citing Model Rule of Professional Conduct 1.7(a)(2)).

⁹Rule 1.7(b)(4).



Constitutional Convention Delegate Vic Fischer and retired Justice Walter Carpeneti presented the keynote address titled "Choosing Alaska's 'Tallest Timber' For the Judiciary: Theory and Practice," at the 2015 Law Day luncheon. The theme for the day, the first of the association convention, was "Magna Carta: Symbol and Freedom Under Law."

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ALASKA BAR ASSOCIATION
ETHICS OPINION 2015-2

Does a Lawyer Have an Obligation to Hold Client Documents or Property Delivered to the Lawyer Unsolicited?

Question Presented:

Does a lawyer have an obligation to hold documents or property that a client has delivered to a lawyer unsolicited?

Conclusion:

Generally a lawyer does not have a responsibility to hold documents or property that a client has delivered unsolicited and that are not in connection with the representation, however the Ethics Committee recommends treating such items as abandoned property and following the guidelines set forth in Alaska Ethics Opinion 90-3.

Discussion:

The safekeeping of client and third party property is governed by Alaska Rule of Professional Conduct 1.15. Although this rule is usually relied upon when discussing client funds and trust accounts, it also covers situations in which a client has left "other property" with the attorney. A lawyer has no obligation to accept or agree to accept any client property, but once he or she does, the Rule 1.15 obligations are triggered. Thus one way to avoid the application of the duties described below is to refuse to hold the items of property in question. Sometimes, however, a client or a third party such as a family member may simply leave items at the front door or front desk of the lawyer's office. This opinion is intended to address that scenario.

There are two threshold issues to consider. First, Rule 1.15(a) states that "[a] lawyer shall hold property of clients or third persons that is in a lawyer's possession *in connection with a representation* separate from the lawyer's own property." (Emphasis added.) The key here is whether the items were in connection with a representation. If they are simply personal effects such as clothes with no relationship to the representation, then there is no basis for a duty to arise with respect to that property.

The second issue is consent. Should the lawyer willingly accept that property, regardless of the relationship to the representation, then he or she has consented and takes on the duties of a fiduciary with respect to that property and the duties under Alaska Statute 34.45.220 may apply. The comments to Rule 1.15 state very clearly that the lawyer is responsible for safekeeping property, whether money or personal property, including documents. *Fla. Bar v. Grosso*, 760 So. 2d 940 (Fla.2000) (holding client's firearms); *In re Rathburn*, 124 Pjd 1 (Kan. 2005) (forwarding client's mail). In these cases, the lawyer consented to hold items even though the representation did not technically concern the items held. Even if consent is given, it can be revoked by providing ample written notice to the property owner and following the standard procedures of returning client files and client monies when representation ends. If the lawyer never consented to hold, then no duty arises. The lawyer is cautioned that consent may be inferred from the circumstances, so the lawyer should endeavor to make it as clear as possible that she or he had not consented to hold the property.

Even though the items may not be connected with the representation, and the lawyer may not have consented to hold anything - in which case no true professional obligation arises - the Ethics Committee recommends that, out of an abundance of caution and concern for the due process rights of the property owner, lawyers may follow the guidance set forth in Alaska Bar Association Ethics Opinion 90-3 (former rule DR 9-102(8)). This Opinion concerns the proper procedure when a lawyer cannot locate a former client for whom the lawyer is holding money in a trust account. The Ethics Committee concluded that the lawyer must exhaust reasonable efforts to locate the client, hold the funds for the requisite period of time, and then dispose of them as abandoned property pursuant to Alaska Statute 34.45.110-34.45.430. These statutes require periods of one to three years depending upon the type of property and the holder and this can impose a significant burden upon a lawyer who has not consented to hold the property and did not acquire the property for purposes of the representation, therefore the Committee recommends this only as precaution, but it is not required by any rule of professional responsibility.

Approved by the Alaska Bar Association Ethics Committee on May 7, 2015.
Adopted by the Board of Governors on May 12, 2015.

YouTube contest for Alaska Youth Law Guide announced

The Law Related Education Committee and Juvenile Justice Section hosted the first ever YouTube contest for the Alaska Youth Law Guide. It invited Alaska high school students to work individually or in teams up to five students to produce brief videos on content available in the Alaska Youth Law Guide. The top three winners were announced in May; the top two winners were from West Valley High School in Fairbanks. Generous cash prizes were provided by Landye Bennett Blumstein LLP.

First place winner Jazmine Jones wowed the judges with her impressive video on Selective Service; second place winners Aaron Butteri, Mathew Huff, and Zedric Placeros produced a fun and informative video on vandalism; Andrew Hanks of Dimond High School produced a highly educational video on employment options for young people.

All of their videos will be included in the online Alaska Youth Law Guide and the Alaska Bar Association's YouTube channel at goo.gl/A08k0K.



First place winner Jazmine Jones with West Valley High School teacher Joy Grubis.



Second place winners—in alphabetical order—Aaron Butteri, Mathew Huff, and Zedric Placeros with West Valley High School teacher Joy Grubis.

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11th Race Judica termed a success on a beautiful day

By Bonnie Calhoun

The 11th Annual Race Judicata benefited from another year of gorgeous weather May 3 and from the cheerful enthusiasm of nearly 150 runners, walkers and dogs. Race Judicata is a 5K run/walk fundraiser organized by the Young Lawyers' Section of the Anchorage Bar Association to benefit Anchorage Youth Court, an organized and effective juvenile justice system. Last year, Race Judicata raised a record \$5,000 for Anchorage Youth Court. Final tallying is still under way, but we expect this year's proceeds to equal—and perhaps even break—that record.

This year's race took place on a new course, thanks to the bridge collapse on the normal out-and-back course from Westchester Lagoon to Second Avenue. The new westward race course, much like the path to justice, took some twists and turns before reaching its goal; the fleetest of foot ran an extra kilometer or two beyond the intended turnaround point. Thankfully, our trail marker was located and guided back to his post, and throughout, the participants maintained their patience and good cheer.

Colin Strickland and Ben Muse finished with a good-natured high-five as they crossed the finish line neck-and-neck at 23 minutes. Colin was ultimately declared the men's winner, but both men demonstrated

their winning personalities. Youth Court's own Trevor Bailly was a speedy third place in the men's division at 24 minutes, 8 seconds. Lia Slemons took first place in the women's division with 23 minutes, 46 seconds, followed closely by last year's female winner, Laura Fox, at 23 minutes, 49 seconds. Rebecca Windt Pearson was close behind and took third place in the women's division at 25 minutes, 17 seconds. Sam Pearson, last year's Fleetest Fetus, was propelled to victory in the stroller category by former Race Judicata organizer Bill Pearson. Leading the pack in the canine division was Aksel, who was declared this year's Top Dog. First place winners were awarded a gavel and the top finishers in both the men's and women's divisions received gift cards generously donated by Moose's Tooth Pub & Pizzeria. Aksel looked hungrily at his prize dog bone and his owner Ryan Sorsdahl received a trophy to commemorate Aksel's triumph.

First place winners were awarded a gavel and the top finishers in both the men's and women's divisions received gift cards generously donated by Moose's Tooth Pub & Pizzeria. Aksel looked hungrily at his prize dog bone and his owner Ryan Sorsdahl received a trophy to commemorate Aksel's triumph.

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The Anchorage Bar Association is the event's main sponsor, but the race would

not be possible without the support of local businesses and law firms. Nearly 20 firms participated in the event by sponsoring teams and making donations. Clapp Peterson stole the firm participation award back from Stoel Rives with an impressive 31 registered runners.

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.

This year's race was organized by Bonnie Calhoun, law clerk, Eva Gardner of Ashburn & Mason, Rebecca Patterson of Sonosky, Chambers, Sachse, Miller & Munson, and Adam Walters, law clerk, with the help and support of the Anchorage Bar Association Young Lawyers' Section and several volunteers.



Participants from left are: Robert Miller, Rebecca Koford, Natalie Fraser, Rebecca Patterson, Esteban Marin, Joe Tung and Rane Chatudompo.

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Top male finishers Ben Muse, left, and Colin Strickland (right) recreate their finish line high-five while accepting their awards.



Runner Barbara Dunham looks cool and collected as she nears the end.



Volunteer John Haley and timekeeper Rich Weinrich prepare to record a runner's time as she nears the finish line.



Runner Christian Martin finishes triumphantly.

OPINION

Time for a look at who we are, what we do and where we're going

By John Havelock

THE WAY THINGS WERE, THE BAR

When this writer first came to Anchorage in 1959, the Alaska Bar boasted two firms in Juneau that had four or maybe five attorneys, reflecting the closer and longer association of Juneau to Seattle and the outside world. Memory has it that only Hughes, Thorsness and maybe one other in Anchorage, had four, notwithstanding the greater size of the community. The rest of Alaska's organized bar consisted of single practitioners or two-person partnerships with a rare threesome. It was a fun bar to join.

Almost all lawyers in Anchorage and the other major towns met in a bar for lunch and maybe after work. The bar was an appropriate place for meeting because everybody seemed to drink and, on many occasions drank to excess. Deals went down easily with the beverages. Later, public education on alcohol made drunkenness not so funny but in that era, the alcoholic, as now defined, described a probable majority of the bar in Anchorage and certainly in Fairbanks. But then, so what, drinking made all lawyers pals with rare fights and then a few poor souls dying from over-consumption.

The annual bar convention was a great party. Every firm in the state and the courts closed down and subsidies for newly minted associates guaranteed that whether it was Ketchikan or Fairbanks, close to every member was there. One glorious year, the convention was in Hawaii but cost and reputation issues made that a solitary event. The convention hospitality room was open all night and was crowded from the moment the regular agenda finished to well after midnight. Everyone, as a consequence, knew just about everyone else in the bar association by name, even as the membership of the bar began, in the early '60s, to swell into the low hundreds.

This kind of association left no room for formalities. On a plane coming from Juneau to Anchorage, Juneau attorney Doug Greg was assigned a seat next to newly minted Justice Dimond. Dimond asked that Doug move to avoid the appearance of impropriety but the story that went round the bar was that Justice Dimond had become an absurdly stuffed shirt. The background increase in formalities, adopted also by Justice Nesbett, didn't fit Territorial lawyer views of personal relationships and helped later to fuel the bar-court fight that cost Justice Arend (a near innocent bystander) his seat.

THE WAY THINGS WERE, THE LAWYERS

In those days, every lawyer assumed omni-competence. There were a few referrals around the bar, usually to avoid only outrageous conflicts but mostly lawyers learned what they needed to know from briefly checking the books (if they owned any) and proceeding to trial. Trials were proportionately far more common then. They were short and prompt. (John Manders, famous for his exception, was jokingly referred

to as the author of the treatise, "Manders on Delay.") Discovery was close to non-existent, lots of jokes about lawyers winning cases without preparation, sometimes said to be half-drunk. These incidents were not so much deplorable as the stuff of legend. It was true that a few Seattle guys came up to skim the top of big corporate cases, and memorably, eminent domain. They were not popular. There were no interstate firms here. Admission to the bar was closely guarded, but that's another story. Lots of complaints came from out-of-state clients about mail not being answered, etc..

In those times, what came to court seemed simpler. Contract disputes, torts and criminal complaints were the common fodder. Fees were low but so was the work devoted to an individual case. Running the bar association was a part-time job for one person, Peter Kalamarides, later a judge, with his faithful female assistant Carol.

THE WAY THINGS ARE

My, how things have changed. But one thing that seems to have changed little is how the bar is organized. We are a guild with a common admission and without limitation as to the tasks performed, still pretending omni-competence in an increasingly complex world. Licensed lawyers are still protected by a definition of "the practice of law" that is so all-encompassing as to be ignored in many general business activities, with the application clear only to court appearances.

Yet there have been big changes in the organization of the bar if not in the bar organization. The interstate firm is becoming dominant. Out-of-state lawyers bill time as consultants without Alaska admission. The paralegal and specialty paralegals have replaced the knowledgeable secretary. Trials are rare but much longer; costly buildups are common. Thanks to the U.S. Supreme Court's expanded vision of unlimited free speech, lawyer advertising has exploded (with marketing costs hidden in rates charged).

Virtually every year the number of lawyers as a proportion of total Alaska population has increased. Just recently the curve has been flattening out. And, woe to the most senior attorneys, ever more specialized technology is replacing basic skills. Is the last lawyer to dictate to a secretary gone? Disciplinary lapses seem more common though the prosecution of carelessness in the old Bar faced a higher bar.

IS CHANGE REQUIRED?

There is a question here. Is all well or is the public justifiably dissatisfied? Attitudes hostile to the profession are at new highs. Is that surge a matter of price or an aspect of general discontent encompassing political figures, car salesmen, etc.? Applying a public policy analysis, is there reason to be dissatisfied? Has the provision of legal services become more necessary — more expensive? If reform is required, will the bar itself sometime seek reform or will reform eventually be imposed by a dissatisfied public?

Notwithstanding increased

complexity, the bar and court have shied away from requiring substantial CLE involvement, never mind testing of claims of expertise even when displayed in advertising. An examination of the many sections of bar activity and the phone book classified section is a starting point for how legal advice has both specialized and become more technical and diversified into many fields.

The division of the English Bar into barristers and solicitors may be a starting point for conversation. Lots of lawyers practice without any need to go to court yet even they may sometimes go to court short on the skill required. At the other end of experience, a trial lawyer may spend too much time or make errors in drafting or procedure in, to take one example, a real estate transaction. In another case, the lawyer may be overbilling because she has to catch up on Alaska Native law, lacking experience in that specialty. Depending on the court and the occasion, the demand for well-honed courtroom skills can be very high or low. Maybe barristers and solicitors should be licensed separately.

Then there is the question of the required level of education. Real estate is an example. Does a person who assists in the legalities of real estate transfers really need a three-year degree with its variety of course experiences? How about legal education for the many who process transactions without a legal consultation? Various aspects of what we now call office practice could be done by persons with specialized training short of the demanding curriculum of the standard law school. Lawyers and the courts might look at the diversification of employment in the provision of medical services for an opening discussion model. The implications here for the organization of law school education, both variable duration and specialization are substantial.

Corporate services are another specialty that requires much less of standard law school training and more of specialized training, including recognition of when a specialist in legal negotiation, mediation or trial experience is required. There are already many people in corporations in various aspects of the economy who fall well within the legal definition of "the practice of law", a term fashioned by lawyers concerned with protecting the prerogative of the guild but who are omitted from any enforcement effort.

The courts also bear responsibility for flaws in our system of lawyer-aided services, the allocation of cost being one example. Large corporations, for whom use of the courts is a regular part of business, pay no more on costs than the 95% who periodically get caught in the mesh of legal proceedings. For the 5% the legal system is a tool to be used without hesitation. For the 95%, legal proceedings are the doorstep to fear and financial ruin.

The appearance of the lawyer is required for routine proceedings — the setting of a trial date for example — that could just as well be handled by a well-prepared paralegal. Lawyers are chalking up high hourly fees for just sitting around in line

waiting for the judge on procedural matters that could be handled by a clerk or a conference call. Few judges are adequately trained to conduct mediation notwithstanding the overwhelming majority of cases that are settled short of trial. Many of us can remember the skill and insistence of Judge Justin Ripley who took special pride in the number of cases that he led or pushed to settlement, saving time and costs to litigants and the court.

THE CALL FOR CHANGE

Some lawyers have been conscious of the need for reform. Though it has received little local attention, last year the American Bar Association Task Force on The Future of Legal Education issued its report. In an excerpt from its summary, the report reads:

"To expand access to justice, state supreme courts, state bar associations, admitting authorities, and other regulators should devise and consider for adoption new or improved frameworks for licensing or otherwise authorizing providers of legal and related services. This should include authorizing bar admission for people whose preparation may be other than the traditional four-years of college plus three years of classroom-based law school education, and licensing persons other than holders of a J.D. to deliver limited legal services. The current misdistribution of legal services and common lack of access to legal advice of any kind requires innovative and aggressive remediation."

Though Alaska remains the only state with no law school, many of the recommendations of the report deserve consideration and implementation. Alaska's special circumstances, geographic and cultural, call for special study in the same spirit with desirable changes to follow.

John Havelock has served as a member of the Board of Governors and a delegate to the American Bar Association. For a few years in the sixties, he was paid, under a part-time contract, to serve as the executive director managing the Alaska Bar Association, including admissions and discipline. Times change.



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When it comes to courtroom pants a sit confirms the fit

By Dan Branch

At the turn of the century, Superior Court was sport coat country. I could transform from business casual to court appropriate by slipping on a Harris Tweed blazer. But I had to improve my sartorial game after I inherited a batch of Alaska Supreme Court appeals from a retiring assistant attorney general. Oral argument before that high court required me to suit up.

The Franklin Street men's shop in downtown Juneau had been replaced by a Mongolian barbecue joint by then, but the town still had a J.C. Penny out near the airport. A few days before my first scheduled oral argument, I entered the department store. Checking price tags and suit styling in the men's section discouraged me. Then I thought of the gently used clothing on sale at the Salvation Army thrift store. I drove downtown and parked the old Honda in front of Taku Lanes. Next door in the thrift store, I looked for a high quality black suit in my size by an expensive designer, a suit that had only been worn to funerals by a man who lacked much in the way of family or friends and as a result went to few funerals and had put on a few pounds in his middle age.

Someone had placed a black, Oscar de La Renta suit in my size on the \$5 rack. I couldn't try on the pants because the store lacked a dressing room but the suit coat fit like it had been tailored for my

frame. After paying \$5 to the store and Caesar's tax to the City and Borough of Juneau, I carried the suit home. In the privacy of our bathroom, I slipped on the pants, zipped up, and easily secured the fancy button/hook waistband gismo that kept them from sliding off my hips.

The night before oral argument, I hung up my new purchase in the closet of room 304 of the Voyager Hotel. While it acclimated to the dry Anchorage air, I went over my lines (here fabricated to capture the feel but not the facts of the oral argument prep):

"If it pleases the court, my name is...."

"As this court made plain in *Horseradish v. Department of Revenue*...."

"My opponent would have you believe...."

"Clearly, a person who spent all of the qualifying year orbiting the Earth on a Chinese space station has abandoned his right to receive...."

I fell asleep after convincing myself that the fourth slice of Moose's Tooth meat-lover's pizza would not cause a bulk-up that would prevent me from pulling on my suit pants the next morning.

At 6 a.m., I woke up to the sound



"Pleasure changed to fear and then despair when I sat down, which caused the seat fabric to strain like a child's T shirt would when pulled over Conan the Barbarian's torso."

of "Morning Edition" blaring out of a cheap clock radio. I listened carefully to the local weather forecast but ignored the static ridden reports on Middle Eastern conflicts and congressional deadlock. "If it pleases the court," I muttered while sliding the skinny end of my good luck Jerry Garcia tie through the collar of a new button down shirt. I pulled on my socks next to delay having to discover whether I was now too fat to wear the pants.

I had good reason to obsess over court pants.

In the 1970s, when I lived in Bethel, I woke up to a pant problem in a basement room of the Inlet Inn on the morning of an oral argument in front of Federal District Court Judge James von der Heydt. My presence in that shady hotel was not the result of a bad boy's night out or a mugging. The budget-strapped Alaska Legal Services Corporation, for whom I worked, encouraged Bush attorneys to stay at the Inlet Inn, where a room cost \$17 a night. It was comfortable and I always felt safe except for the time an intoxicated individual fell from the H Street sidewalk into the airshaft onto which my window opened. It's an interesting story but I don't want to divert attention away from my pant problems so I'll move on.

Because the Sears store where I bought them had promised they would yield years of wash and wear freedom, I used a pair of tan, double

knit slacks as my courtroom pants. When I tried them on that morning in the Inlet Inn, they fit well enough in the waist but the hem of each leg ended several inches above shoe top. I had no time to curse the manufacturer or myself for not reading the "hang dry only" instructions sewn into pants' waistband. I just avoided humiliation by arriving early in Judge von der Heydt's church-like courtroom. No one sat in the gallery so only the clerk saw my high-water pants.

With the double knit memory darkening the experience, I pulled the de la Renta pants on and was pleasantly surprised to find that they still fit. Pleasure changed to fear and then despair when I sat down, which caused the seat fabric to strain like a child's T shirt would when pulled over Conan the Barbarian's torso.

There was nothing for it, so I walked over to the courthouse and rode the elevator to the fifth floor, worried more about Oscar's stitching than *Horseradish v. Department of Revenue*. I was standing when the justices entered and relieved that nothing ripped when I took my seat at the appellee's table. I relaxed when the appellant's attorney finished and I stood to explain the state's argument. I thanked the stars for de la Renta's fine craftsmanship when the pant seams held while I sat out the appellant's reply. Reader, this confession might convince some of you to purchase designer suits. You don't need to go that far. Just remember to sit down in a pair of pants before you buy them.

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Judge Torrisi and his wife Linda Rabideaux.



Alaska Supreme Court Chief Justice Dana Fabe and Justice Dan Winfree present Tanana Chiefs Conference President and Chairman Victor Joseph with a Certificate of Commemoration in recognition of the 100th anniversary of the meeting between the Tanana Chiefs Conference and Judge James Wickersham.

TALES FROM THE INTERIOR

Firewood thief schools lawyer in the experience of a crime victim

By William Satterberg

I may be a lawyer. But I also have a special set of skills. A set of skills which I rarely use. A set of skills nobody wants me to use. In 2014, these skills were called upon.

I grew up spending a major portion of my life on a homestead outside of Anchorage. I used to brag and still do that I grew up in Houston. When people question me, I reluctantly point out that I am referring to Houston, Alaska. Not the Texas version.

As a homestead boy, I learned various things that most lawyers do not know. I learned how to plaster and wallboard. How to run and repair tractors and bulldozers. And how to operate a chainsaw. Not a small, electric one. A big one with a gas engine. When I was 14 years old, my father would send me out to the field on my own to work the chainsaw. In retrospect, I now am beginning to realize that this may have been wishful thinking on my parents' part. Like when they would order me to go out and play on the Parks Highway, or to ride my bicycle through thick traffic in Anchorage to buy milk.

Chainsawing has done me well over the years. Although some Alaskans, like the now late Sen. Don "Chainsaw" Bennett did not fare so well, slicing his nose almost in half when a chainsaw kicked back, I am proficient in operating the devices. Only twice have I come close to amputating my leg. As attestation, when Brenda and I were dating, my first birthday gift prior to our marriage from her was a Homelite 360 chainsaw which I still use regularly, even though better equipment is now available.

The year 2014 in Fairbanks was unique for weather. Not only was it the rainiest season on record, but Fairbanks also had one of its largest windstorms ever. During the gale, a large fir tree situated on our 20 acres of property crashed almost to the ground. No one heard it, so it probably didn't make any noise. Although I was sad to lose the magnificent tree, I was happy for more firewood, even if it would not be an easy task to salvage the conifer. To the contrary, not only had the tree become hung up in surrounding trees, but the butt end of the giant was suspended in a precarious position. Clearly, harvesting of the tree would have to be done with special care. It was a job for a true professional. Fortunately, I was equal to the task.

For the remainder of the summer, I laboriously prepared the tree, first cutting off the limbs and stacking them in a brush pile, while all along strategizing on how I would safely and efficiently cut the tree into logs small enough for transport. It was a well-organized project.

But logs are not just for fireplaces. Rather, there is a campfire technique known as "Swedish Fire." Swedish Fire is well known in Europe, but has only recently made its debut in the United States. To make Swedish Fire, the woodsman takes a fat log approximately thirty-six inches in length and then makes three cuts in the log from the top down in a vertical fashion almost to the bottom. The three intersecting vertical cuts essentially combine

to form a six piece pie. The center hole which results provides a location where a small amount of lighter fluid is sprayed into the hole and then lit. The log usually burns for several hours, providing entertainment for even the most simple minded. Personally, I find Swedish Fire to be absolutely fascinating, although my five and a half year old grandson becomes bored by it quickly. Because the tree which had fallen

on my property was over thirty-six inches in width at the base, the prospects for Swedish Fire were endless. During boring meetings, I would fantasize on how I would make my logs burn.

By late September, it was time to quit fantasizing and finish my task. Winter was fast approaching. The days were growing short and the air was chilly. So, as the day dawned on Sept. 23, I mounted my trusty four-wheeler with chainsaw and supplies in hand. I drove once again down the now well used path on my property to my tree which was patiently awaiting dissection. But things were not to be the same.

When I arrived, I immediately saw that someone else had entered my property and had taken over a third of my precious tree. It would have been bad enough if the wood had simply been taken. But the fact that the tree was on my property and that I had spent several days readying it for its final harvest absolutely infuriated me. Chainsaw in hand, I wanted to massacre the thief — movie style. The lawyer in me quickly came out. I set off in search of the culprit.

Practically speaking, I had a pretty good idea of who the perpetrator was who had purloined my firewood. After all, there was a trail that led almost to the prime suspect's house. It did not take a lot of sleuthing for me to realize that the likelihood was that my tree was in his woodpile. I raced down the road on my four-wheeler and pulled into the target's driveway.

In short order, the brigand appeared on his porch. Feigning surprise, he cordially greeted me and asked what the purpose of my visit happened to be. I angrily told him that some scumbag was stealing firewood off of my property. The thief had stolen a tree that I had worked so hard to prepare for the fall harvest. My neighbor sympathized and said that he had no need for my firewood. He already had a tree of his own that he was harvesting. He then pointed across his yard to portions of a fir tree which looked remarkably similar to my own tree. These portions were cut in four foot lengths and were stacked next to an electric wood splitter. I explained to the neighbor that whoever had stolen my tree had also insulted me by leaving several Coors beer cans and Rockstar energy drinks at the scene of the crime.

It was bad enough that someone had trespassed upon my property and stolen firewood. It was even worse that they had disrespected me by leaving trash and evidence over the place. Once again, my neighbor commiserated. This time though, he



"As a homestead boy, I learned various things that most lawyers do not know."

provided a suggestion. He said I should drive down another road located on the other side of my property. Having recently heard a chainsaw, he was certain that the tree thief lived on that road. I assured him that I would immediately do so, and raced off into the distance.

For the next half hour, I scoured the neighborhood in search of my quarry. I even knocked on two doors.

Both owners told me that they did not even burn wood for heat. These folks, as well, understood my position and agreed that a wood thief should be hanged by the neck until dead if there were still trees available for the noose. After all, wood rustling is a heinous crime.

Realizing that I had struck out with respect to finding the thief on the adjacent road, I decided to return to the scene of the crime. Fortunately, I had calmed down by then. My next task was to figure out how I would save the remainder of the tree before the thief returned.

But the skulldrugery was not over. Rather, when I returned, I saw that there was one four foot length of tree lying in the area. I found this rather unique, recalling that my neighbor who had so fervently denied complicity also had several four foot lengths of tree stacked in his own yard. I next began to search the area for the Coors beer cans and Rockstar energy drinks which had been scattered about. Virtually all of the trash was gone. I was only able to find one beer can hidden under some brush. But the other cans and energy drinks which had been so prevalent had miraculously disappeared in the brief time that I was gone. I realized then that my instincts had been correct. The tree poacher was most likely my next door neighbor.

Dejected over my findings, I accepted that there was no sense in going back to confront the man. My sense of trust was shattered. Suspects apparently can lie about

their conduct. Until then, I had believed that all of my clients told the truth. I surmised that, most likely, my neighbor had correctly assumed that I was going to hire an expensive private investigator and a top rated East Coast lab to conduct an extensive in-depth chemical DNA analysis of his saliva and greasy fingerprints. But my plans were frustrated once again. He was a most clever thief, indeed.

No, I recognized that I had been beaten. For the rest of the day, I traveled back and forth to the site salvaging the remainder of the tree and carrying it up to my house with my little Bobcat loader. One thing was certain, I was not about to let this woodrat get the best of me again, even if I did recklessly flip my tractor onto its back during one load, almost injuring myself and coming close to squashing the family golden retriever, who was following me constantly complete with its obligatory tennis ball.

In the end, I had learned a valuable lesson. For years, I have maintained that every practicing lawyer should be sued at least once to understand what it is like to be sued. I have also argued that every criminal defense attorney should be arrested

at least once to understand what it is like to have the fear and experience of an arrest, complete with the obligatory handcuff crunch on the wrist tendons and the now well-known "don't slam your head on the door frame again" speech. Many years

ago, I was the victim of a lawsuit. Luckily, the case was resolved favorably. Similarly, in 2002, I was arrested in Judge Funk's courtroom for allegedly carrying a suspected weapon into court which I was intending to argue was not a weapon. And, in 2014, the qualifying trilogy was complete. I had also become the victim of a crime. I now appreciate how the victim feels when not only being the subject of a crime, but being met with a blatant denial of liability. All lawyers should have similar experiences, (and not just from deadbeat clients, which don't count). Such exposure invariably expands our special set of skills.

I explained to the neighbor that whoever had stolen my tree had also insulted me by leaving several Coors beer cans and Rockstar energy drinks at the scene of the crime.

General aviation accidents to major airline disasters



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Alaska Bar Board adopts revisions to standing CLE policies

*Submitted by
Darrel J. Gardner, chair,
Special Committee on CLE*

Every year the Alaska Bar Association Board of Governors has a two-day meeting right before the annual Bar convention. It's the "big" meeting of the year, when the board elects officers for the following year. Various business of the Bar is also addressed. The changes to the Board's Standing Policies for Section CLE presentations are fairly significant, including the creation of a new categories of CLEs, including the "Bare Bones" option for the Section CLE required once every two years and the addition of "free" CLE events with the Bar providing E-News advertising and a teleconference number. Also, the policy regarding the Bar's support for law-school-sponsored CLE events is new, and will be well received by law schools with an established presence in Alaska such as the University of Washington and Seattle University. The following was adopted by the board at the May meeting in Fairbanks.

Standing Policies of the Board of Governors

Section XI. E. 4. CLE Programs.

A. Mandatory Statewide CLE Program.

(1). "Standard" Statewide CLE. Each Section is required to sponsor a "statewide" CLE program every 2 years in that

Section's field of law. The purpose of a statewide CLE is to ensure that the CLE is available to all Bar members through the use of video recording, webcast capabilities, and archiving of the program in the Bar's CLE library. This statewide CLE must be coordinated through the CLE Director, who coordinates scheduling and has sole budget authority and responsibility to ensure that the CLE activity follows Bar policy for making the CLE available to all Bar members. The CLE's direct program costs should be covered by the revenue generated from registration fees for the program.

The Section's responsibilities are to provide the content of the program, develop materials, and obtain approval from the CLE Director to invite speakers.

A Section may co-sponsor the statewide CLE program with another professional group if approved by the Board of Governors in advance of the program or any advertising for the program.

The CLE Director has sole budget authority of the statewide CLE, which includes:

- Setting the price of the CLE
- Advertising
- Course materials
- Venue selection and negotiations
- Food and beverage

- Audio-visual (microphones, speakers, webcasting, and recording)
- Speaker expenses and fees (on occasion)

(2). "Bare Bones" Statewide CLE Option. Upon application to, and approval by, the CLE Director, a Section may opt to present its mandatory statewide CLE as a "bare bones" event. This option is intended to apply to CLE events for which the target audience is typically comprised of a small group, or attorneys who may not have significant resources for CLE expenditures, such as new attorneys, pro bono attorneys, or government attorneys. The Section's responsibilities are to provide the content of the program, develop materials, and obtain approval from the CLE Director to invite speakers. The Section is also required under this option to find and reserve a venue for the CLE, which is anticipated to be at no cost, such as a courtroom or public training center. Upon request, the Bar will provide its Anchorage office conference room for such CLEs during regular business hours if the space is not otherwise reserved for other Bar business. The proposed venue must be approved by the CLE Director as suitable to allow for recording and live web broadcasting. The Bar will not provide funding for food or beverage, or printed materials. The cost of the "bare bones" CLE will be set by the CLE Director and is intended only to cover the direct costs of the event for recording and web broadcasting. The Bar will provide electronic advertising and registration services.

B. Additional CLE events. The Bar supports quality continuing legal education and training. Therefore, in addition to the statewide CLE required in Paragraph 4(A), a Section may present additional CLE events. All Bar-related CLEs must be coordinated through the Bar's CLE Director. The Bar will not provide funding, audio/visual equipment recording, or on-site staff to assist in the planning and presentation of

additional CLEs. However, the Bar will provide notice of the CLEs in its weekly Bar E-News upon request by a Section, as well as online registration for the event. Upon request, the Bar will provide its Anchorage office conference room for such CLEs during regular business hours if the space is not otherwise reserved for Bar business. Also, upon request to the Bar at least 30 days prior to the event, the Bar will provide a teleconferencing call number for members not able to attend in person. Members are encouraged to meet at a pre-arranged office to reduce the number of lines calling in to the teleconference. Sections may not charge a registration fee. Section leaders must obtain prior approval from the Bar for any CLE credit sought to be awarded for attendance at the CLE, and must obtain such approval prior to any advertising that states that the CLE will have Bar credit.

C. "Other Organization" CLE Events. The Bar encourages Sections to work with other organizations to help present high-quality, relevant continuing education in Alaska. However, if any Section seeks to attach its name to a CLE event sponsored by another organization, the Section must first receive approval from the Bar prior to any advertising of the event using the Bar Association's name, including Section names.

D. Law School Sponsored "Free" CLE Events. The Bar welcomes the arrival of law school programs in Alaska and seeks to foster a mutually beneficial relationship with the law schools providing legal education in Alaska. Upon sufficient timely submission and pre-approval of Bar CLE credit applications, the Bar will include in its weekly E-News notice of free CLE events held in Alaska and sponsored by ABA-accredited law schools with a presence in Alaska. The Bar reserves the right to edit any such notices for brevity and clarity.

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At last a hot spring for aging prospectors: 1913 Legislature reviewed

By Peter J. Aschenbrenner

An ancient of days, pine-gum whiskers and fake limp giving away the game, enters our midst. A young woman of pleasant demeanor guides the way.

The Governor and I break out laughing.

"It's not supposed to be funny," Thomas Jefferson growls.

"Is that the name of your burro?" Palin ripostes.

"Actually," the young woman replies, "it is."

The Madisons arrive.

"So you're here for the waters?" Dolley asks the Jeffersons.

"Free waters," Madison underlines. "That's TJ all over."

While Mr. Whitecheese tinkles the ivories, we enjoy a view of the mudflats of Turnagain Arm, where rotting fish display their slimy scales to docklands still unfinished.

The year is 1913.

"I refer," Sally continues, "to the 'United States Marine barracks at Sitka as a home for indigent prospectors and others who have spent their years in Alaska and become dependent.'"

"Chapter 80, Session Laws of Alaska, 1913," Gov. Egan ahems the citation. "If I may, however, that's not what Gov. Jefferson, late of the Tidewater Commonwealth, is seeking."

The Governors approach, shake hands, smile for the cameras and hoist a julep or two.

"What do you have in mind, sir?" Jefferson inquires.

"You want the Home for *Indigent* Prospectors in Fairbanks. There's hot springs in them thar hills."

"Does everyone know that the 1913 Legislature's first law extended the franchise to women? Just asking," Dolley and Sarah put their heads together. "Okay here it is. 'Create a board of commissioners to provide a home for aged prospectors, blah blah blah.' The board 'shall investigate as to the climatic and other conditions of the several hot springs in Interior Alaska and the adaptability of same for the use of a home for aged prospectors'."

"Isn't this, like, really funny?" Dwight Eisenhower guffaws. "Alaska gets itself organized into a territory, and the first thing they do, they're retiring old gold miners into socialized housing."

"Tell me about it," Woodrow Wilson joins in. "I had to buy the wreckage they made of their TransAlaska railroad and build the dang thing myself. While I was fighting Germany."

"When he wasn't invading Russia," Dolley asides to her husband.

"And they made me drive their Golden Spike," Warren Harding's wavy hair joins in. "The year was 1923."

"But I get a free ride, don't I?" Jefferson pleads his case. "I'm a prospector. Here's my burro. I've got a hat. What more do you want?"

"They want you to spend 'your years in Alaska' and become dependent," Dolley replies.

"TJ's got plenty of that," Jimmy declares. "He's depended on me for a hundred thousand dollars."

"We could have called in the bill collectors," Dolley explains. "But Virginia abolished imprisonment for former governors. Back in the day."

"Quite sensible," Gov. Egan rocks

on his heels.

"What makes you a prospector?" I ask Jefferson.

"Sally?" TJ cues his companion. "Take it away."

"Take a look at Chapter 157 of the Session Laws of 1959," she reads. "It's titled 'Powers, organization, operation, procedures of the legislative branch'."

Woodrow and Dwight study the hallowed script. "Very impressive. And this is from Alaska's first *state* legislature."

"How I recall signing this very bill," Egan drifts into reverie. "Section 12 provides that 'At the beginning of the first regular session of each legislature, both houses shall adopt uniform rules of procedure for enacting bills into law and adopting resolutions'."

"Where do you think that these rules came from?" Sally challenges the assembly. "Isn't it obvious?"

"Procedural rules for deliberative assemblies," I explain, "may be traced back to a single source: TJ's *Manual of Parliamentary Practice*. First edition, 1801."

"I remember the day," Jefferson recalls. "I picked up a wheelbarrow of freshly minted volumes from my printer on February 27, 1801 – did I mention my election in the House of Representatives on February 17? Perhaps not – and I delivered my farewell address to the Senate on Saturday. I was sworn into the Presidency on Wednesday."

"John Adams skipped your inaugural festivity," Egan alerts the assembly. "Mike Stepovich went to

mine."

"But what about mineral prospecting?" Egan asks. "Gotta pick up a rock or two and give it the old 'eye ball inspection'. Right?"

"I most certainly did," TJ replies. "And Aschenbrenner can prove it. How many times did I cite John Hatsell's *Precedents of Proceedings*?" he asks me.

"Ninety-eight times in the first edition," I reply.

"And other learned authors?"

"A boatload," I add. "Going back to 1586."

"You cited to Sir Robert Brooke's *La Graunde Abridgement*?" Woodrow Wilson falls back in awe. "Princeton should give you an honorary degree for your scholarship!"

"But this also means that Alaska's legislative rules go back to the day when William Shakespeare was writing the *Comedy of Errors*!"

The assembly glares Mr. Whitecheese into silence.

"Jefferson is a prospector," I have to concede, "even if his methods are 'high-grading ore'."

"We all steal from each other," Wilson shrugs, hefting his tome, *Congressional Government*. "Footnotes are open to top-filing, especially in the dead of night."

A newcomer joins us, carrying a volume of *Presidential Problems*, which circulates freely.

"Didn't you get married in the White House?" Sally asks The Governor.

"Sure did, little lady," he replies. "That's why they call me, 'Twice But Not in a Row'," he adds.

"See, you could have done it," Sally turns to Jefferson. "At least when your second term was winding down."

"I was working on my second edition," TJ replies. "The First Alaska Legislature can thank me for my diligence."

"By the way," Governor Egan draws Jefferson to one side. "How come authorship of the *Manual of Parliamentary Practice* isn't on your tombstone?"

"I said that the procedure in Great Britain was a prototype for 'parliamentary bodies within these States. This is the model which we have studied ... '."

"And after all the nasty things you said about the House of Commons in the Declaration of Independence," The Palin points out.

"Top-filer, high-grader," Egan ticks off TJ's chances at an Alaska tombstone. "And a flip-flopper, to boot. Welcome to Alaska."

"So you will bury me out there? Somewhere on your vast and lonesome tundra?"

"It's the very least we can do for our guests," Mr. Whitecheese replies.

Peter J. Aschenbrenner has practiced law in Alaska since 1972, with offices in Fairbanks (until 2011) and Anchorage. From 1974-1991 he served as federal magistrate judge in Fairbanks. He also served eight years as a member of the Alaska Judicial Conduct Commission. He has self-published 16 books on Alaska law. Since 2000 the Bar Rag has published 44 of his articles.

Association donates in memory of attorneys who've passed

The Anchorage Bar Association in March presented its annual check for \$1,000 to Bean's Cafe in memory of Anchorage attorneys who died in the previous year.

This year's donation was in memory of: Kenneth Atkinson, Frederic E. Brown, Keith Christenson, Christopher Cyphers, Miriam Dillard, Richard Eckert, Hugh Fleischer, Richard Gantz, Steve Jones, David Oesting, Kathleen Scanlon, Spencer Sneed, Mike Stepovich, John Treptow, Peter Walton, Joseph Young, and Michael Zelensky.

(Photo at right) Ryan Fortson, president of the Anchorage Bar Association, presents a check to Lisa Sauder, Bean's Cafe executive director.



tru vim

\troo\ adjective

1. accurate or exact
2. in accordance with fact or reality

(syn.) honest
dependable
authentic

\vim\ noun

1. robust energy and enthusiasm
2. liveliness or vitality

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vigor
strength (syn.)

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What’s needed in order to take leave from your solo practice?

By *Monica Elkinton*

There are lots of reasons why you might want to take some leave time from your solo practice. You might be burned out. You or a close family member may have a health problem. You might want to take a sabbatical or extended vacation. You might want to take some maternity or parental leave when a new baby is arriving in your family. What does this mean for your solo practice?

At the time of the *Bar Rag*’s deadline, I’m 35 weeks pregnant with a baby girl. When I first started my practice in 2011, I knew I wanted to have kids. I knew that life as a solo practitioner would probably involve planning for what parental leave might look like for me.

Long before I became pregnant, I talked to a few other lawyer parents about what their parental leave looked like. I talked to a woman who had a firm with her husband. She told me that having a brand new baby and trying to take parental leave was very difficult for them. She said that normally they’d cover for each other in the office, but if both of them were sleep-deprived, or both wanted to be home with the baby, then there was no one left in the practice to cover for them.

Another woman told me she never really wanted to go back to her solo practice after her baby was born. After her baby was born, she shut down her practice and took a part-time position at a small firm. I know of a solo practitioner father who chose to take parental leave when a new baby came, but continued to check his email and write appeals from home. Recently I met a

mother of four who ran a solo practice out of her home. Her youngest baby was born in early 2015. She knew she wanted to take some time off, so she changed her Bar status to “inactive” for all of 2015 and is taking maternity leave for an entire year.

I also talked to lawyer parents who weren’t solo practitioners to see what they suggested. I briefly considered trying to shut down the practice and return to a job in the public sector so I could have some paid leave. But when I spoke to lawyer parents in the public sector, they just told me how jealous they were that my job had so much flexibility. That’s true – being a solo is infinitely flexible. But if I’m not working, there is no income. Most solo practitioners I know work more hours than our public sector counterparts, mostly because we have so much more to do in our practices than just practicing law. Solo practitioners aren’t just lawyers. We are also bookkeepers, marketers, file clerks, website administrators, human resources, procurement officers, couriers, payroll accountants and all the other roles that non-solo attorneys take for granted.

A great thing about being a solo practitioner is that we can each do what works for us. There’s no one-size-fits-all that works for everyone. You could work from home if you want, or you could work part time, or you could bring your baby into your office. (I already bring my dog

in. She is happy to stay in a kennel in the file room that I refer to as “her office.” My assistant walks her at lunch.)

So what did I decide to do? Since I started my practice knowing I wanted to take maternity leave at some point, I’ve been setting aside a little money every month. I knew I would have to continue to pay some overhead even during times I wasn’t generating income. For instance, I use some cloud software like QuickBooks Online and Clio that I want to continue during my leave. I want to keep my office, so I need to continue to pay the rent. I also planned to be able to pay myself while on leave. My mortgage doesn’t go away if I’m not working, and neither do my student loans. So I set aside money to pay my overhead and myself during

the time I’ll be on leave. By saving a little at a time, I’ve effectively saved enough to give myself paid maternity leave. My goal is to take off two and a half

months. For our family’s benefit, my husband also plans to take his time off after mine to care for the baby after I go back to work.

What does leave mean for my cases? For most of 2015, I’ve only been taking cases that I thought could resolve a few weeks before the baby’s due date. Basically this has meant a “ramping down”

of the practice, because I have been turning away most new cases. I’ve still taken Domestic Violence Protective Orders, Unbundled consultations and issues, mediations, misdemeanors that can be easily resolved, and other cases that I don’t think will take more time than I have available.

Throughout the spring I’ve discussed with my continuing clients about what might be best for them and their cases. Some of them are finding new attorneys to take over for me. Some are deciding they want to wait in their case until I’m back in the office in September. I have a few Office of Public Advocacy cases, and those are being reassigned to new OPA lawyers. For clients who have a steady flow of new matters, I have relationships with other lawyers who will be taking those cases when I’m not available. In the last few weeks, I’ve been settling tons of cases, filing Motions to Withdraw, signing stipulations for new counsel, and closing out files.

As a criminal defense practitioner, I also have several cases where

the clients are either currently on the run, or waiting to testify at trial against a co-defendant. They could be picked up on their warrants while I’m out, or the co-defendant could decide to go to trial and they’d have to testify. I have other attorneys lined up to represent the client in my place if that happens.

I am laying off my part-time assistant for the time I’m on leave, except to check the mail, fax, and the voice mail once a week or so. Any emergencies can be forwarded to the other attorneys who are covering for me. I’ll put a message on my voice mail saying I’m on leave. I’ll put an auto-respond message on my email saying the same thing. My main office computer is a laptop, so I’ll bring that home with me in case I need anything.

I’m worried about a few things. Will new clients start calling again when I reopen the office in the fall? Will other attorneys still refer cases to me, or will they have forgotten about me? Will any of my former clients choose to stay with their new lawyers instead of coming back? Will I even want to be in my office instead of being at home with my baby? If I start back slowly from home, will I want to do any work? How fast will my practice be able to ramp back up?

I think this is kind of a leap of faith. It sounds like that’s kind of what having a baby is too. All I can do is prepare the best I can before I go, and then check in

with myself in a few months to see how I feel when I’m ready to come back. I hope I’ll be ready to return energized and excited about serving clients again. But as they say, you never know how having a baby will change your life.

Keep your eyes peeled for the fall issue of the *Alaska Bar Rag* to see how it all worked out.

Monica Elkinton started her solo practice in 2011. She practices statewide criminal defense, family law, and civil litigation in district court such as small claims and landlord-tenant. Her website is www.elkintonlaw.com, and you can follow her on twitter at @elkintonlaw. She is co-chair of the Alaska Bar Unbundled Law Section and serves on the Alaska Bar Pro Bono Services Committee.

Possible Future Topics in this series: *Returning from Leave. What kind of insurance do I need (health, malpractice, vehicle)? When should I hire staff? What equipment will I need? If you have a suggestion for an article topic, email monica@elkintonlaw.com.*

A great thing about being a solo practitioner is that we can each do what works for us. There’s no one-size-fits-all that works for everyone.

I’m worried about a few things. Will new clients start calling again when I reopen the office in the fall?



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Only 60 parcels of private land holdings are within the 324,240 acre Denali State Park. Lots start at \$25,500 and go up to \$44,500 with the terms \$1,000 down and payments are 1% of the purchase price with 8% interest and the closing cost of \$150.

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FEDERAL BAR ASSOCIATION

Federal Bar Association events filled a busy spring

By Darrel J. Gardner

The Alaska Chapter of the Federal Bar Association has had a busy spring with lunchtime meetings in February, March and April. First, in February, local immigration guru Margaret Stock presented an update on the current state of immigration law reform. In 2013 Margaret was selected to receive a prestigious MacArthur Foundation Fellowship grant: "Margaret Stock is an attorney bringing her singular knowledge of immigration law and national security law to bear on reform efforts through direct representation and policy-based advocacy. With a broad view of national security that goes beyond protecting the country from terrorist threats to include the protection of economic and political interests that ensure our prosperity, Stock articulates the crucial role of a healthy and efficient immigration system in responding to changes in the global economy and maintaining the foundational values of our democracy." (www.macfound.org)

In March, FBA-Alaska presented senior District Judge H. Russel Holland, who discussed the origins and history of the Katie John case, or, more accurately, the series of cases that called into question whether the assumption of fish and game management in Alaska by the federal government was an example of federal overreach. Judge Holland discussed the tangle of legal issues that the litigation considered and that, for decades, occupied our lawmakers in Congress and the Alaska State Legislature, as well as state and federal courts in Alaska and the Ninth Circuit.

The April meeting focused on the unique nature of Federal Tort Claims Act litigation, and was presented by a team of assistant U.S. attorneys in Alaska who collectively possess vast experience with these types of claims: Susan Lindquist, Bryan Wilson and Richard Pomeroy.

FBA-Alaska congratulates Bruce Johnson, who works as an investigator at the Alaska District's Federal Public Defender office. Bruce was recently selected to receive the national Federal Defender Office's "Investigator of the Year" award in San Diego.

Special thanks to the firm of Lane Powell and FBA-Alaska President Brewster Jamieson for providing pizza at our monthly meetings in 2015. The Second Annual Alaska Federal Bar Conference will take

place on Aug. 21 and the Dena'ina Center in Anchorage. This year's conference will feature Erwin Chemerinsky, dean of the UC Irvine School of Law. Dean Chemerinsky will present an update on recent U.S. Supreme Court and Ninth Circuit Court of Appeals decisions. There will be a 90-minute ethics presentation featuring Matt Moreland, this year's national president of the FBA. After lunch (included), there will be concurrent criminal and civil sessions. The criminal session will feature Alan Dorhoffer from the United States Sentencing Commission, presenting an update on federal sentencing issues. The civil track will feature a presentation on managing electronic discovery in federal court cases. Registration is available through the Alaska Bar Association (www.alaskabar.org).

For more information (especially on upcoming meetings), or to join the Federal Bar Association (which includes a free subscription to *The Federal Lawyer* magazine), please contact Brewster Jamieson directly at jamiesonb@lanepowell.com. You can also visit the Alaska Chapter website at www.fedbar.org, friend us on Facebook at "FBA Alaska Chapter," and follow "Fed Bar Alaska" on Twitter "@bar_fed."

Special section: What is a lawyer representative?

Lawyer representatives play an important role in the administration of justice in the Ninth Circuit. Lawyer representatives work to foster open communication between judges and attorneys, and provide support and advice in the functioning of the courts by serving as liaisons between the federal bench and practicing bar. Lawyer representatives are chosen to serve three-year terms representing attorneys practicing in each of the Ninth Circuit's 15 districts in nine western states and two Pacific Island jurisdictions. Currently, there are 168 lawyer representatives. Through the years, attorney support and contributions to the administration of justice in the Ninth Circuit have been invaluable and have resulted in positive changes that have improved the functioning of the courts.

On a local level, many lawyer



"...attorney support and contributions to the administration of justice in the Ninth Circuit have been invaluable"

representatives work closely with the District, Bankruptcy and Magistrate judges in their home districts. Lawyer representatives sit on various court committees; help plan and present the local District Conference in association with the Federal Bar Association; meet quarterly with District and Circuit judges, the federal public defender, the U.S. attorney, and the chief U.S. probation officer; and attend the

Ninth Circuit Judicial Conference, held annually at various locations throughout the Circuit. The 2015 Ninth Circuit Conference is being held in July in San Diego, California. Partial funding for reimbursement of travel and conference registration fees is available from the District Court Fund.

On a national level, the "Lawyer Representatives Coordinating Committee" (LRCC) is composed of the chairperson or co-chairs of each delegation of lawyer representatives from each of the 15 districts. The LRCC acts as a liaison for the lawyer representatives to the Ninth Circuit Judicial Council's Conference Executive Committee.

senior-most lawyer representative. The LRCC chair is also responsible for writing the annual District Report for Alaska, which is published on the Ninth Circuit's website.

The number of District lawyer representatives is based on the number of District judges in each Ninth Circuit District. In the District of Alaska, there are four lawyer representatives. The terms are staggered, and every third year, two lawyers are selected to be new lawyer representatives. The current Alaska lawyer representatives are:

Greg Razo (LRCC co-chair for 2015 – term ends Sept. 30, 2015) Contact: 263-5149, grazo@ciri.com

Lane Tucker (LRCC co-chair for 2015 – term ends Sept. 30, 2015) Contact: 263-8411, sltucker@stoel.com

Darrel Gardner (term ends Sept. 30, 2016) Contact: 646-3406, darrel_gardner@fd.org

Kevin Feldis (term ends Sept. 30, 2017) Contact: 271-3392, kevin.feldis@usdoj.gov

Richard Monkman from Juneau has been selected for a term that will commence Oct. 1, 2015.

The court will be seeking another lawyer representative who will also begin a term starting in October. The Alaska Bar Association handles the nomination process and a special committee makes recommendations to the Chief Judge of the U.S.



Margaret Stock discusses the status of pending immigration law reform.



Bruce Johnson from the Alaska Federal Defenders receives national Investigator of the Year award.



Chief Judge Beistline and Ninth Circuit Chief Judge Thomas at the Chief Judges' Conference in Las Vegas.

As its name implies, the LRCC also coordinates the activities of the lawyer representatives across the circuit. The LRCC presents educational programs during the Conference of Chief Bankruptcy Judges and the Conference of Chief District Judges. This year's Conference of Chief District Judges was held in Las Vegas in February. The LRCC also undertakes special projects throughout the year. For instance, in the recent past, the LRCC has conducted a survey regarding the use of Magistrate judges to conduct trials, has worked with the Ninth Circuit to address the backlog of immigration appeals, and has sponsored resolutions at the annual Ninth Circuit Conference. Alaska's LRCC chair is the

District Court, currently the Honorable Ralph R. Beistline. The chief judge makes the final selection.

For more information on becoming a lawyer representative, or if you have any questions, comments, or concerns regarding federal courts or federal practice, please contact any of the Alaska lawyer representatives listed above. Information is also available on the Ninth Circuit website at www.ce9.uscourts.gov/lawyer_reps.

Darrel Gardner is a federal public defender; former president of the FBA-Alaska Chapter; and a current member of the Board of Governors of the Alaska Bar Association.

Save the Date

Alaska Bar Association 2016 Annual Convention

May 11-13, 2016

Dena'ina Civic and Convention Center

BAR CONVENTION HIGHLIGHTS — FAIRBANKS

BAR'S ANNUAL AWARDS PRESENTED BY BAR PRESIDENT GEOFFRY WILDRIDGE



Lisa Jaegar of Tanana Chiefs Conference, receives Judge Guinn Award

The Judge Nora Guinn Award is presented to someone who has made an "extraordinary or sustained effort to assist Alaska's rural residents, especially its Native population, overcome barriers to obtaining justice through the legal system."



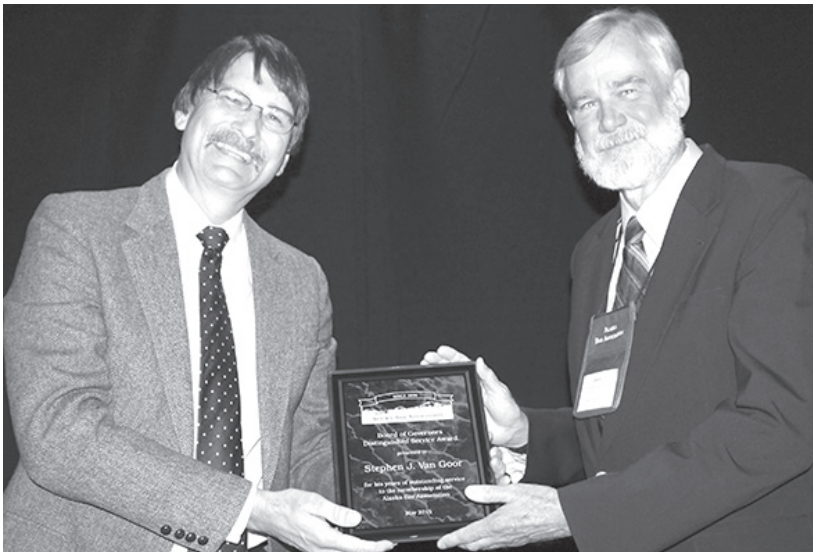
Janice Lorenzen, former project coordinator for the Fairbanks Therapeutic Court programs - the Wellness Court for felony DUI offenders and the Juvenile Treatment Court, receives Layperson Service Award

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



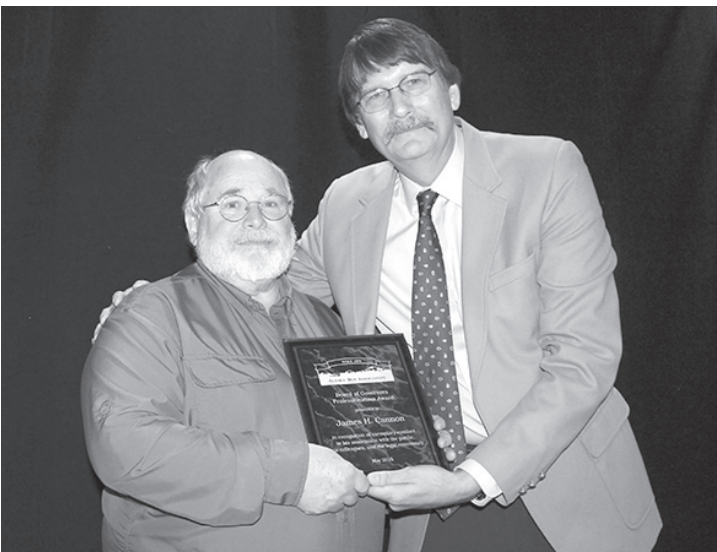
GREG RAZO receives Robert Hickerson Public Service Award

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.



STEVE VAN GOOR accepts the Distinguished Service Award

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



JIM CANNON 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.

Convention photos by Karen Schmidtkofer.

Bryan P. Timbers Pro Bono Awards

Gail Ballou — Sole Practitioner.

John Franich — Firm.

UA General Counsel's Office Mike Hostina — Public Sector.



Passing the gavel: Incoming Bar President Nelson Page and outgoing Bar President Geoffry Wildridge who is holding his President's gift, a check to ALSC.



L-R: Outgoing Board members Mike Moberly and Geoffry Wildridge,

Chief Justice Dana Fabe (R) presented the Alaska Court System Community Outreach Award to Magistrate Tracy Blais.

Allen Bailey receives the Anchorage Bar Association Ben Walters Distinguished Service Award from George Cruickshank.

The Human Rights Award from the International Law Section was presented by Rich Curtner to Heather Kendall Miller.



Senior Judge Michael Jeffery wins Rabinowitz Award

Pictured are Alaska Supreme Court Chief Justice Dana Fabe and award recipient Senior Judge Michael Jeffery.

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.



Susan Carney, Ardith Lynch, Tom Nave, Susan Cox and Lael Harrison enjoy the welcome reception.

Ethics in the cloud: When is it OK to use cloud computing?

By Kevin Cuddy & John Cashion

When you want to pull up information from a recent case file, you're probably more likely to look on your computer's hard drive or on a network server than to dig through a filing cabinet. Digital recordkeeping is everywhere and it has helped make the practice of law more efficient and more cost-effective. While it has many benefits, digital recordkeeping also carries some risks for the unwary lawyer. A single catastrophic computer failure could wipe out an entire case file or even many case files. For that reason, prudent lawyers recognize that backing up their digital records early and often is essential. One increasingly popular route for backing up files is the "cloud" – a network of remote servers accessed through the Internet that can store data (for a fee). But is it ethically appropriate to share confidential client data with an outside third-party vendor like this and, if so, under what circumstances?

In 2008, Ethics Opinion No. 2008-1 recognized the proliferation of digital recordkeeping and concluded that it was appropriate for lawyers to maintain electronic copies of certain documents. The Opinion went on to note: "if a lawyer chooses to keep electronic, rather than paper records, the lawyer is encouraged to make adequate backups to assure the preservation and integrity of the lawyer's records." [1] Backups must be "adequate" in at least two respects: (1) preserving the data itself so that the integrity of the lawyer's records and the client's files are maintained; and (2)

handling the data in a manner consistent with the lawyer's ethical obligations to her or his client.

The Ethics Committee recently addressed this latter issue in Ethics Opinion 2014-3 (the Opinion). At first blush, there is something slightly disconcerting about handing copies of your vital files – including your client's confidential records – to some third-party custodian you've never met to be stored in an unknown location you will never see (or, more likely, several such locations). How can you be sure that these records are being treated properly?

As the Opinion explains, the touchstone is "reasonableness." The lawyer needs to take reasonable steps to ensure that the cloud computing service provider is reputable, qualified, and capable of providing the requisite services. Read through the relevant service agreement and gain a basic understanding of the technology. Does the service offer encryption? Does it use a firewall? (If you don't know what those terms – or others in the service agreement – mean, you will want to find out.) [2] Do you need a password in order to access the files? How, if at all, will you be notified if there is a breach of the service's security systems? Does the service offer data backup and restoration services in case a hard drive crashes? The lawyer should approach these questions in much the same way she or he would for the protection of regular physical files. You wouldn't leave your client's confidential files just sitting out for the world to see, so you need to take the same types of reasonable steps to

ensure that those same files are protected when in electronic form.

Some lawyers may choose to delegate all of these computing issues to the firm's information technology professional. That approach often makes sense, since these professionals typically have more expertise in the area and can help the lawyers receive better services than the lawyers would obtain if left to their own devices. As the Opinion recognizes, cloud computing itself is a form of outsourcing and falls within the ambit of Alaska Rule of Professional Conduct 5.3. [3] Likewise, a lawyer's decision to delegate to an IT professional the tasks relating to cloud computing is another form of outsourcing governed by the same rule. Accordingly, the lawyer must make reasonable efforts to ensure that the IT professional's conduct in overseeing these cloud computing issues is compatible with the lawyer's professional obligations.

Not surprisingly, exceedingly sensitive information – e.g., trade secrets or documents protected by a protective order – may require more protections than other records. If so, the lawyer should ensure that reasonable steps are taken to protect this information in a way that corresponds with the sensitivity of the data. If the cloud computing service has extensive and robust security protections afforded to all data, then it is conceivable that no additional precautions are necessary. If the provider offers different levels of security for different categories of data, the lawyer may wish to consider whether this "reasonableness" inquiry requires an elevated level of protection for unusually sensitive information. The lawyer may wish to consult with her or his client to ensure that expectations are being met.

Alaska Rule of Professional Conduct 1.1 requires lawyers to keep abreast of changes in the law and its practice in order to provide competent representation. At the national level, the commentary to that rule for the Model Rules of Professional Conduct was recently amended to specify that lawyers should keep abreast of the benefits and risks associated with relevant technology. [4] This has caused some confusion and concern among practitioners in other jurisdictions who worry that they will be expected to become experts in cyber security and every new technological breakthrough.

The emerging reality is somewhere in the middle: Lawyers will need to continue to learn about and gain familiarity with those aspects of technology that impact their practice in order to provide competent representation. This does not mean that lawyers must become experts in cloud computing services or other technological advances, but it does entail some additional responsibilities as these technologies interact with the legal services we provide to our clients.

Here are some questions you may want to ask your cloud computing vendor and/or IT professional about the cloud computing services you will be using:

- How do you safeguard the confidentiality of stored data?
- How do you back up my data?
- Who has access to my data?
- What guarantees are included in your terms of service?
- How long have you been in business? How many customers (especially lawyers) do you have?
- What happens to my data if the cloud computing service company goes under?
- Have you ever had a data breach? How did you respond? How would I be notified in the event of a data breach?

Kevin and John are members of the Bar Association's Ethics Committee. While describing Ethics Opinion 2014-3, the views contained in this article are their own and not those of the committee. Lawyers seeking formal guidance on ethical issues should feel free to request an ethics opinion from the committee. Kevin is a lawyer at Stoel Rives LLP, and John is partner at Cashion Gilmore LLC.

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How does the LRS work? Calls coming into the LRS represent every type of legal issue imaginable. The caller is asked about the nature of the problem or issue. If an attorney is needed, they are provided with the name and contact information of up to three attorneys based on location and area of practice. It is then up to the caller to schedule an initial consultation.

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NOTICE TO THE PUBLIC

By order of the Alaska Supreme Court,
entered June 4, 2015

AMY L. STUS

Member No. 1211123
currently of Baldwin City, Kansas

is transferred to disability inactive status
effective June 4, 2015.

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

Book review – a learned genius in an Alaska red light district

By Roger Brunner

There are many well-known books by and about James Wickersham. He was appointed in 1900 as a federal judge for the Third Judicial District with headquarters at Eagle City. He soon had to clear up the backlog in Nome when the crooked Judge Noyes was arrested and taken to San Francisco for contempt of the Ninth Circuit Court of Appeals. Judge Noyes had participated in a claim-jumping scam with the politician who got him appointed. (See *The Spoilers*, starring John Wayne). Wickersham moved court headquarters to Fairbanks in 1904 with the gold rush there. He later served seven terms as Alaska's lone (nonvoting) delegate to Congress. Wickersham introduced federal legislation to establish the Alaska Railroad, to fund the school that became the University of Alaska, and to set aside Mount McKinley National Park.

I recently read a good book about a linguistic genius who served as Judge Wickersham's stenographer/clerk. *Shamrocks on the Tanana* by David Richardson (2009, Cheechako Books) is a biography of Richard Geoghegan. Born in 1866 near Liverpool, England, he considered himself Irish. When he was a baby, Richard's nanny fell down a stairway while carrying him. His broken leg never healed properly and he walked with two crutches from childhood on. He had an amazing gift for languages and learned Greek and Latin in school. He studied at a school run by missionaries where he devoured books about languages from all over the world. He then attended Oxford and studied Chinese, Sanskrit, Siamese and other languages.

After trying to make a living in London giving lessons in the classics as well as Chinese, Hindustani and Esperanto, Geoghegan immigrated to Friday Harbor on Orcas Island in Washington State. He learned shorthand and typing and eventually got a job as a secretary and English teacher for the Japanese consul in Tacoma. James Wickersham was then the city attorney for Tacoma and met Geoghegan, who responded to Wickersham's ad looking for a translation of the writing on some Chinese coins. Later, when Wickersham was a judge in Alaska, he hired Geoghegan to come up and serve as a court stenographer. The judge left Geoghegan in Valdez as an appointed referee to run the courtroom and take all of the testimony in a huge case. The case involved nationally prominent lawyers for the Guggenheim family claiming ownership of the rich Kennecott copper mining claims. The book has a funny excerpt of testimony where a party in interest is trying to act as a translator for a witness who did not speak English.

The judge and his clerk traveled thousands of miles by dogsled, boat and on foot.

Eventually Geoghegan's body strengthened to the point he didn't need his crutches anymore. In those early days, funds to operate the courts came largely from selling business and liquor licenses. When gold was discovered in Fairbanks, Wickersham went there, and eventually moved his court headquarters to that new city.

In 1914, Geoghegan traveled with a niece to Japan. His former employer, the Japanese consul to Tacoma, hosted him in grand fashion. While he

was there, Japan declared war on Germany as part of World War I, so the ship ride home was in danger of being sunk by German warships in the Pacific. Geoghegan returned to Seattle safely and then came back to Fairbanks. He made do with various jobs, lived on the notorious Two Street, befriended and supported a few ladies of the evening and eventually married one. There is a chapter on Geoghegan's red-light romances in *Good Time Girls of the Alaska-Yukon Gold Rush*, by Lael Morgan (Epicenter Press 1998). His book on the Aleut language was published in 1944 soon after his death. He and his wife, Ella, were buried in Fairbanks' Clay Street Cemetery.

My favorite part of the book is when Geoghegan looked over a scholarly work, *A Panorama of the World's Legal Systems*, and wrote the au-

thor to point out mistakes. He noted that a Manchu decree of Kublai Khan's was printed upside down, some Arabic documents were reproduced backwards, Hebrew manuscripts had errors and some other ancient texts were incorrectly quoted. The author, John Wigmore (yes, *that* Wigmore), confirmed that Geoghegan was right about each of these errors, sent him a free copy of the book, and asked the publisher to find out, "Who is this guy in Alaska and how does he know so many languages." Richard Geoghegan worked diligently at languages, loved them, and had a photographic memory that was amazing. He could read over 100 languages. I enjoyed the book as a look at a brilliant eccentric, and at Alaska and the world in the early 1900s.



Pamyua performs at preconvention concert.



Red Hackle Bagpipers open the convention.

DO YOU KNOW SOMEONE WHO NEEDS HELP?



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

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

Fairbanks: Aimee Oravec, aimee@akwater.com

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.

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Back row (L-R): Judge Charles Huguelet, Judge Sharon Illsley, Mauri Long and Gina Tabachki. Front row (L-R): Judge James Hornaday, Charlie Cole and Senior Justice Warren Matthews.

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Acoustic Legal Jam Night.

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Warren Taylor



What Role for Tribal Sovereignty? Walter Featherly, Alaska Attorney General Craig Richards, Andy Harrington, Heather Kendall Miller and William Hensley.

2015 Convention Fairbanks



Acoustic Legal Jam Night. Geoffry Wildridge with Pat Fitzgerald and Robin Dale Ford Band.



Welcome Reception at the Morris Thompson building. Guitarist Pete Peter and Athabascan fiddler Bill Stevens.

Insurance today a little more than just ‘term’ or ‘whole life’

By Steven T. O'Hara

Trustee Duties & Life Insurance

Alaska has unique laws, especially in the area of asset and liability protection. One is the statute reducing Trustee liability in connection with Life Insurance Trusts.

A Life Insurance Trust is generally a trust that owns insurance on the life of the individual who created the trust. Typically irrevocable, these trusts are often called “ILITs,” short for irrevocable life insurance trusts.

Entitled “Trustee Duties Relating to Insurance,” the statute is *Alaska Statute 13.36.273*. It deals with at least two scenarios. Common to each is the prerequisite that a trust owns insurance on the life of a qualified person. For these purposes “qualified person” means the individual whose life is insured (or the insured’s spouse) who funds the acquisition of or premiums on the policy. The funding may be with cash or assets that generate cash (*Id. at subsection (i)*).

Other prerequisites, in general, are that the policy was purchased from someone other than an affiliate of the Trustee and neither the Trustee nor an affiliate received a commission on the purchase (*Id. at (g)*).

Under one scenario, the trust refers to the statute and expressly makes it applicable (*Id. at (c)(1)*).

Under another scenario, the trust contains no language prohibiting the statute from applying and the Trustee elects into the statute without objection. Here the Trustee notifies the applicable beneficiaries in writing that the Trustee is electing to have the statute “apply to a contract for life insurance held by the trust” (*Id. at (c)(2)*). The notice “must include a copy or restatement” of subsection (b) of the statute (*Id. at (d)*). Trust beneficiaries have 30 days to deliver to the Trustee “a written objection to the application” of subsection (b) of the statute (*Id. at (e)*).

Where the statute applies, trust beneficiaries need to be even more vigilant because the Trustee will have no duty to determine whether the life insurance is a proper investment (*Id. at (b)(1)*).

The Trustee will have no duty to investigate the financial strength of the insurance company (*Id. at (b)(2)*). The Trustee will have no duty to determine whether to exercise any option available under the policy (*Id. at (b)(3)*). The Trustee will have no duty to “diversify the contract [of life insurance] or the assets of the trust with respect to the contract” (*Id. at (b)(4)*). And the Trustee will have no duty to “inquire about or investigate the health or financial condition of an insured” (*Id. at (b)(5)*).

Where the statute applies, it would certainly appear difficult to tag a Trustee if an insurance company or its product fails to perform as advertised. The statute makes this point thusly: “the trustee is not

liable to the beneficiaries of the trust or to another person for a loss sustained with respect to a life insurance contract to which (a) and (b) of this section apply” (*Id. at (f)*).

Consider that life insurance is no longer simply a matter of term insurance versus whole life. More than ever, today’s life insurance policies are complex matrices of debits and credits based on esoteric data.

Remember the common law Rule Against Perpetuities? Scholars have called it a “monument to modern man’s capacity to complicate his existence” (Thomas F. Bergin and Paul G. Haskell, *Preface to Estates in Land and Future Interests*, 184 (The Foundation Press 1966)).

The same might be said of life insurance today. There is no way consumers are able to compare and understand all the various types of policies.

In Alaska, the law has been simplified for those considering the Rule Against Perpetuities, such as lawyers drafting ILITs (AS 34.27.075).

And so Alaska has also provided a possible simplification for Trustees of ILITs.

This column includes a sample notice that may be a starting point in considering Alaska’s elective statute that may reduce Trustee liability. This writer assumes no responsibility in connection with any use of any such instrument.

Before turning to the sample notice, there is another item in the statute that may protect trustees of ILITs regardless of any election. Here the statute relieves Trustees from any duty to determine whether life insurance was procured or effected in accordance with Alaska’s insurable interest statute, AS 21.42.020, subject to the following requirements as applicable:

Requirement 1: The trust does not contain a provision imposing upon the Trustee the duty to determine whether the insurance was procured or effected in accordance with Alaska’s insurable interest statute (AS 13.36.273(a)).

Requirement 2: If the life insurance was payable, as of the issue date of the policy, to a person who is not a lawful payee under Alaska law, the Trustee had no knowledge of this fact (*Id. at (a)(1)*). Here the Trustee may not be compensated for fiduciary or advisory services relating to the policy (*Id. at (h)*).

Requirement 3: If the life insurance was purchased with the financial assistance of a person without an insurable interest in the insured and with the understanding that the policy would be transferred in violation of Alaska law, the Trustee had no knowledge of these facts (*Id.*



"Non-lawyers must seek the counsel of a licensed attorney in all legal matters."

Finally, before turning to the sample notice, remember that nothing in this article is legal or tax advice. Non-lawyers must seek the counsel of a licensed attorney in all legal matters, including tax matters. Lawyers must research the law touched upon in this article.

at (a)(2)). Here again the Trustee may not be compensated for fiduciary or advisory services relating to the policy (*Id. at (h)*).

Finally, before turning to the sample notice, remember that nothing in this article is legal or tax advice. Non-lawyers must seek the counsel of a licensed attorney in all legal matters, including tax matters. Lawyers must research the law touched upon in this article.

SAMPLE NOTICE NOTICE TO APPLY ALASKA STATUTE 13.36.273 TO THE JOSEPH A. CLIENT IRREVOCABLE TRUST

Each beneficiary of the Joseph A. Client Irrevocable Trust dated November 22, 1984, and in particular each descendant of Joseph A.

Client, is hereby provided this Notice that Jane A. Client in her capacity as Trustee of the trust has elected to have Alaska Statute 13.36.273 apply to all contracts for life insurance held by the trust, including without limit the following policy on the life of Joseph A. Client: Hypothetical Life Insurance Company policy no. 1234567.

Please note that *Alaska Statute 13.36.273(b)* provides as follows: With respect to a contract for life insurance acquired or retained for a trust on the life of a qualified person, if this subsection applies under (c) of this section, a trustee does not have a duty to

(1) determine whether a contract of life insurance is a proper investment;

(2) investigate the financial strength of the person issuing the life insurance policy;

(3) determine whether to exercise a policy option available under the contract;

(4) diversify the contract or the assets of the trust with respect to the contract; or

(5) inquire about or investigate the health or financial condition of an insured.

The purpose of this Notice is to have Alaska Statute 13.36.273(b) apply under Alaska Statute 13.36.273(c).

Please also note that Joseph A. Client is a qualified person because he is the insured under the aforementioned policy of life insurance, and he has provided the actual funds used to acquire or pay the premiums for the policy or the assets the income or principal of which is used to acquire or pay the premiums for the policy. (*Alaska Statute 13.36.273(i)*.)

DATED this 8th day of May, 2015.

Joseph A. Client Irrevocable Trust
By: Jane A. Client
Its: Trustee
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There is no way consumers are able to compare and understand all the various types of policies.

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**Lawyers Assistance Committee
Alaska Bar Association**

In a federal court, definitely try summary judgment

By Kevin Clarkson

Third in a series

In the last two issues of the *Bar Rag* we explored the Alaska state summary judgment standard that is applied under Alaska Civil Rule 56. This analysis was sparked by the Alaska Supreme Court’s decision in *Christensen v. Alaska Sales and Service, Inc.*, 335 P.3d 514, 520-521 n.50 (Alaska 2014). In *Christensen* the Court ruled with respect to Alaska Civil Rule 56 that “the evidentiary threshold necessary to preclude an entry of summary judgment is low” in order to serve “the important function of preserving the right to have factual questions resolved by the trier of fact *only after following the procedures of a trial.*” *Id.*

In order to put Alaska’s summary judgment standard and *Christensen* into proper context, I want to use this issue to explore in detail the summary judgment standard under Federal Civil Rule 56, with an emphasis on the Ninth Circuit. There are significant differences between the Alaska and federal standards of which every litigation practitioner should be aware. These differences should be taken into account each time a litigator has an option to select between a federal or state forum in Alaska.

Federal Rule of Civil Procedure 56(a) provides that “[a] party may move for summary judgment, identifying each claim or defense — or the part of each claim or defense—on which summary judgment is sought.” Fed. R. Civ. P. 56(a). The rule directs that “[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” *Id.* “The moving party

initially bears the burden of proving the absence of a genuine issue of material fact. *In re Oracle Corp. Securities Lit.*, 627 F.3d 376, 387 (9th Cir. 2010) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)); *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007). So far this all sounds pretty familiar and pretty similar to Alaska’s Rule.

But, this is the point where the Alaska and federal Rules diverge. Under Federal Rule 56 a district court is to take into account the burden of proof that will be borne at trial and consider how a “reasonable trier of fact” would evaluate the evidence presented. “Where the moving party will have the burden of proof on an issue at trial, the movant must affirmatively demonstrate that no reasonable trier of fact could find other than for the moving party.” *Soremekun*, 509 F.3d at 984. “Where the non-moving party bears the burden of proof at trial, the moving party need only prove that there is an absence of evidence to support the non-moving party’s case.”

Oracle, 627 F.3d at 387 (citing *Celotex*, 477 U.S. at 325); *Soremekun*, 509 F.3d at 984.

When the moving party has carried its burden, the burden then shifts to the non-moving party to designate specific facts demonstrating the existence of genuine issues for trial. *Oracle*, 627 F.3d at 387 (citing *Celotex*, 477 U.S. at 324). In response to a motion for summary judgment, the non-moving party must “show more than the mere existence of a scintilla of evidence”; (*id.* (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986)) and “do more than simply show that there is some metaphysical doubt as to the material facts.”



Clarkson

Matsushita Elec. Indus., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986)). See also *Oracle*, 627 F.3d at 387. “[T]he non-moving party must come forth with evidence from which a jury could reasonably render a verdict in the non-moving party’s favor.” *Oracle*, 627 F.3d at 387 (citing *Liberty Lobby*, 477 U.S. at 252). As the United States Supreme

Court has stated, the “purpose of the federal summary judgment rule is to “pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial.” *Matsushita*, 475 U.S. at 587 (quoting *Advisory Committee Note to 1963 Amendment of Fed. Rule Civ. Proc. 56(e)*, 28 U.S.C.App., p. 626). The substantive law governing a claim determines whether a fact is material.

Liberty Lobby, 477 U.S. at 248; *T.W. Elec. Serv. v. Pacific Elec. Contractors*, 809 F.2d 626, 630 (9th Cir. 1987).

Some similarities between the Alaska and federal standards remain. Under Federal Rule 56 the court is not to make credibility determinations or weigh conflicting evidence. *Soremekun*, 509 F.3d at 984. And, in determining whether a jury could reasonably render a verdict in the non-moving party’s favor, the district court is to view the evidence in the light most favorable to the non-moving party and all justifiable inferences are to be drawn in the non-moving party’s favor. *Oracle*, 627 F.3d at 387; *Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954, 960 (9th Cir. 2011). A Federal District Court is to resolve reasonable doubts as to the existence of genuine factual issues against the moving party. *Bryan v. MacPherson*, 608 F.3d 614, 619 (9th Cir. 2010); *T.W. Elec.*, 809 F.2d at 631.

In terms of how to present evidence to a federal district court under Federal Civil Rule 56, there

appear to be some additional differences between the state and federal standards. The similarities are as follows. Under both the Alaska and federal rules the evidence presented by the parties on a motion for summary judgment must be admissible. Fed. R. Civ. P. 56(c)(2); *Soremekun*, 509 F.3d at 984; Alaska R. Civ. P. 56(e); *Okpik v. City of Barrow*, 230 P.3d 672, 677 (Alaska 2010). Further, under both the Alaska and federal standard conclusory, speculative testimony in affidavits and moving papers is insufficient to raise a genuine issue of fact and defeat summary judgment. See *Soremekun*, 509 F.3d at 984 (citing *Nelson v. Pima Community College*, 83 F.3d 1075, 1081-82 (9th Cir. 1996) and *Thornhill Pub. Co., Inc. v. GTE Corp.*, 594 F.2d 730, 738 (9th Cir. 1979), accord *Christensen*, 335 P.3d at 519-20).

But, under the federal rule the Ninth Circuit (and other circuits) have held that basic prerequisites for the admission of evidence must be strictly followed in a summary judgment context. In this respect, the Ninth Circuit has established some very exacting requirements about the authentication and presentation of evidence in a summary judgment context. For example, any documents that are submitted to the court in support of or in opposition to a motion for summary judgment must be properly authenticated by a witness with personal knowledge (or the documents must be self-authenticating under Fed. R. Evid. 902). See *Beyene v. Coleman Sec. Services, Inc.*, 854 F.2d 1179, 1182-1183 (9th Cir. 1988) (citing *United States v. Dibble*, 429 F.2d 598, 602 (9th Cir. 1970)). Authentication can be accomplished via either a sworn affidavit or deposition testimony. And, when submitting deposition excerpts to a federal court in the Ninth Circuit a litigant must authenticate the excerpted portions of the transcript by submitting the cover page with the deponent’s name and the court reporter’s certification. *Orr v. Bank of America, NT & SA*, 285 F.3d 764, 775 (9th Cir. 2002). A litigant must also cite page and line of any deposition transcripts that they rely upon in their memoranda. “When a party relies on deposition testimony in a summary judgment motion without citing to page and line numbers the trial court may in its discretion exclude the evidence.” *Id.* at 774-775 (citing *Huey v. UPS, Inc.*, 165 F.3d 1084, 1085 (7th Cir. 1999)). Take heed—because “Judges need not paw over the files without assistance from the parties.” *Huey*, 165 F.3d at 1085 (quoted in *Orr*, 285 F.3d at 775).

In closing, the differences between the Alaska and federal summary judgment standards are well worth noting and should be taken into account any time that a litigant has the option of choosing an Alaska state or federal forum.

Kevin G. Clarkson is a civil litigator with the law firm of Brena, Bell & Clarkson, P.C. in Anchorage. In his over 28 years of practice, Mr. Clarkson has acted as lead counsel in cases in both state and federal trial and appellate courts throughout Alaska as well as other jurisdictions.

Some similarities between the Alaska and federal standards remain.

There are significant differences between the Alaska and federal standards of which every litigation practitioner should be aware. These differences should be taken into account each time a litigator has an option to select between a federal or state forum in Alaska.

By The Numbers Your Chances on Appeal, FY14

Alaska Supreme Court: Disposition of Civil Appeals						
Disposition on the Merits (n= 189)						
Published Opinions (n= 148)	Affirmed	88	59.46%		124	0.656084656084656
	Reversed or Vacated	36	24.32%		39	
	Affirmed in Part / Reversed in Part	14	9.46%		14	
	Other (remanded, dismissed, etc)	10	6.76%		12	
				checksum	100.00%	
Memorandum Opinions (n = 41)	Affirmed	36	87.80%			
	Reversed or Vacated	3	7.32%			
	Affirmed in Part / Reversed in Part	0	0.00%			
	Other (remanded, dismissed, etc)	2	4.88%			
Alaska Court of Appeals: Disposition of Merits Appeals						
Published Opinions (n= 18)	Affirmed	11	61.11%			
	Reversed or Vacated	3	16.67%			
	Affirmed in Part / Reversed in Part	1	5.56%			
	Other (remanded, dismissed, etc)	3	16.67%	checksum	100.00%	
Memorandum Opinions (n=94)	Affirmed	75	79.79%			
	Reversed or Vacated	12	12.77%			
	Affirmed in Part / Reversed in Part	2	2.13%			
	Other (remanded, dismissed, etc)	5	5.32%	checksum	100.00%	

After 36 years involved in Alaska law, Steve Van Goor to retire

By Mamie S. Brown

Steve Van Goor is Bar counsel for the Alaska Bar Association, a position he has held since 1983. He will be retiring on June 26, 2015 and moving to Scottsdale, Arizona. He first arrived in Alaska New Year's Eve in 1975 and he and his wife Linda have lived in Alaska for 38 years. Prior to his work for the Bar, he served as a military lawyer in the U.S. Army and was in private practice in Anchorage. In addition to the Alaska Rules of Professional Conduct Committee, Van Goor is a member of the Ethics Committee and frequently provides informal ethics guidance to members of the Bar. He is a graduate of the University of Kansas Law School and is admitted to practice law in Alaska, Kansas, and Colorado. Until he leaves his office, he can be reached at 272-7469.

Steve is grateful for the members of bar who have trusted him to find solutions to their ethical problems. He would like to thank everyone who has ever called him asking for assistance. By asking tough ethical questions, bar members have helped him educate himself on the Alaska Rules of Professional Conduct. That has been the most rewarding part of serving as Bar Counsel.

Steve's first planned post-retirement adventure: Steve and his wife, Linda, are taking their first road trip from Alaska to Arizona this summer. They are excited at the prospect of being able to travel in any direction rather than just North and South.

Steve's hobbies include mountaineering in the Chugach State Park, traveling abroad to geologically interesting places, and collecting and repairing model trains. He has been a member of two local Anchorage model train hobbyist groups.

What is the toughest ethical problem for lawyers? Since 1983, the toughest ethical problem for lawyers across all areas of practice remains conflict of interest issues involving former clients. Many times the answer to conflict of interest problems cannot be found in a book. Rather, solutions lie in working through the problem. The American Bar Association, in refining its *Model Rules of Professional Conduct*, recently made the analysis of conflict of interest problems easier.

Traveling from Buenos Aires to Antarctica: Steve's favorite and most potentially dangerous

cruise to date was across Drake Passage, the treacherous stretch of ocean between the southern tip of South America and Antarctica and then into Bransfield Strait along the Antarctic Peninsula. During his voyage to Antarctica, he was fortunate to see penguins, orcas, dolphins, and absolutely fantastic icebergs.

Recommended reading: Oscar Wilde's, *The Picture of Dorian Gray* (1890). Steve appreciates Oscar Wilde's incredible knowledge of the Victorian era and the way he described

it.

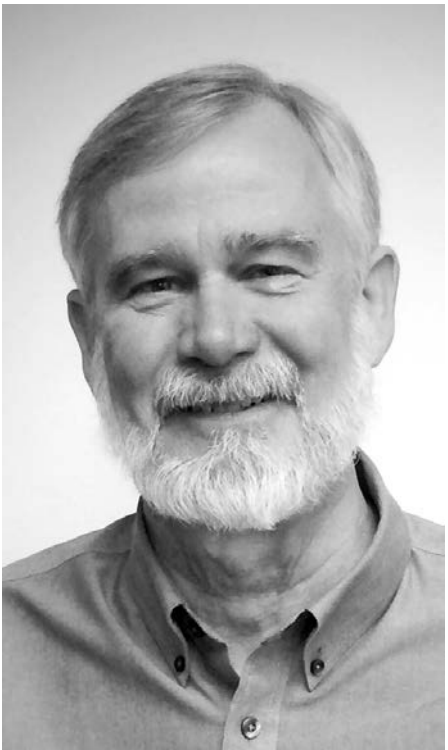
Everyone should read the *ABA/BNA Lawyers' Manual on Professional Conduct*TM, a trusted authoritative resource for attorney conduct and legal ethics information, and the American Bar Association's *Annotated Model Rules of Professional Conduct*, an excellent resource which sets out text, commentary, and annotations.

Steve has the good fortune of knowing a lot of lawyers. Early in his career, Steve benefited from the advice of senior members of the bar and benefited from watching experienced attorneys conduct themselves with courtesy and professionalism. He encourages all lawyers to emulate courtesy and professionalism and to avoid succumbing to their clients' expectation that they will be tough and uncompromising. According to Steve, "Rambo tactics backfire."

He encourages all lawyers to emulate courtesy and professionalism and to avoid succumbing to their clients' expectation that they will be tough and uncompromising. According to Steve, "Rambo tactics backfire."

What will Steve do next?

Steve definitely plans on using his \$10 Lifetime Senior Pass to U.S. National Parks. Once he settles into his new home in Arizona, he plans on joining a local model train hobbyist group. After a brief sabbatical, Steve may apply for admission to the Arizona Bar. He is interested in possibly teaching at a local law school, lecturing to local bar members, or working in the disciplinary office of the Arizona State Bar.



Steve Van Goor

Mamie S. Brown is an associate at Clapp, Peterson, Tiemessen, Thorsness & Johnson LLC in Fairbanks. Her practice consists of primarily of professional malpractice defense. At the 2015 Annual Alaska Bar Association Convention, Brown was a panelist at the "Work-Life Balance for Lawyers: It Can be Done" CLE. When she is not writing bar review articles, she enjoys gardening with her family and hanging out with her local Rotary Club. She can be reached at (907) 479-7776 or msb@cplawak.com.

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Bill Allen takes the witness stand in Stevens corruption trial

By *Cliff Groh*

One of a series of columns on the Ted Stevens case

Bill Allen was a key figure in the Ted Stevens trial, and his appearance as a government witness was odd on a number of levels.

For the defendant, the courtroom confrontation in Washington, D.C. in the fall of 2008 was obviously bitter. A seven-count federal indictment charged the U.S. senator with failing to disclose more than \$250,000 on his Senate disclosure forms. The prosecution alleged that most of the gifts came from VECO and Allen, the oilfield services company's long-time CEO. Through his lawyers, Stevens had denied the charges and blamed Allen for showering him with gifts he didn't want, didn't know he got, and/or never got billed for.

Ted Stevens and Bill Allen had been close for years before that day in August of 2006 when the federal government turned the oil-patch titan into a cooperating witness in its probe into Alaska public corruption. Allen's testimony showed how unusually close that relationship was.

Under the questioning of Anchorage-based Assistant U.S. Attorney Joe Bottini, Allen described how he had joined a group of wealthy businessmen who socialized with Stevens. Over time, the relationship between Allen and Stevens grew far beyond anything you might expect from Allen's role as a big campaign contributor. Allen and Stevens fished together, flew together and dined together.

Most strikingly, there were the "Boot Camps." This was the name Allen said he and Stevens gave to just-us-two-guys get-togethers at which the senator and the tycoon would eschew hard liquor for wine and an occasional cigar in an effort to shed a few pounds. Allen said he and Stevens



Cliff Groh

first started going to Boot Camp in Palm Springs, California, but switched their annual retreats to a small town in Arizona after they found that Stevens drew too much attention in the desert resort. The evidence showed that the last of their Boot Camps was in the spring of 2006, just months before the Justice Department flipped Allen.

Allen told the jury that his affection for Stevens led him to give the senator a VECO-paid-for generator worth at least \$5,000 and motivated him to accept a loss in a car deal in which Stevens' daughter ended up with a brand-new Land Rover and Allen got a 1964 Mustang plus \$5,000 in cash.

The jury had previously heard a parade of witnesses testify about how Allen arranged for Stevens to get a substantial discount on work at his official residence in the Alaska ski town of Girdwood. VECO acted as general contractor on an extensive renovation, which almost doubled the size and added amenities like a wrap-around deck. Prosecutors contend Stevens never paid VECO a penny.

Allen started the story of VECO's involvement with Ted Stevens' Girdwood chalet with an account of a conversation in 1999 during one of their frequent plane rides together. Stevens told Allen in 1999 that the senator wanted to expand his official residence in Girdwood so his daughter could bring her friends there to ski.

Allen told Stevens VECO could help with the project, and so began VECO's big role for years in remodeling, repairing and maintaining that home. Allen described how the scope of work changed over time from a simple expansion of the house after Stevens told him that his wife Catherine had gotten involved.

Allen detailed how VECO provided free plumbing, electrical, and lighting work as well as the moving and rewiring of the VECO-supplied generator at the chalet. The prosecution introduced into evidence a number of email messages from Ted Stevens to show his close attention to the progress of the remodeling project.

Even after the renovations were done in 2002, Allen told the jury he had repeatedly sent out VECO employees to the chalet to do maintenance and repair work on items such as the boiler, the "Insta-Hot" water-heating devices and heat tape system.

The long-time chief of VECO — which Allen sold in 2007 to CH2M Hill — also described various things Stevens had done as a senator for Allen's benefit. Those helpful acts included leveraging the government of Pakistan to allow the payment to VECO regarding an investment the company had made in a pipeline in that country. Stevens also assisted on VECO's rebidding for a National Science Foundation contract. Allen said Stevens had also helped with VECO's efforts to get the Alaska Legislature to adopt petroleum taxes set to the liking of the Big Three oil producers, Allen's main clients in Alaska.

Among the members of the solidly middle-class jury were a schoolteacher, a hospital room scheduler and a receptionist, and it seemed unlikely that any of them had spent a lot of time hanging around with multimillionaire CEOs like Allen.

The Allen the jury saw was a man who looked older than his 71 years. He — like Stevens — wore earphones to help him hear what was said in court, and he talked slowly and frequently asked questions to be repeated. An odd moment came when the prosecutor questioning him put a document in front of him and Allen searched his pockets for his glasses before realizing that he was already wearing them.

Allen is an admitted corruptor of lawmakers. He described how he bribed a number of Alaska state legislators to get them to support the industry-friendly version of petroleum taxes he favored, and he faced significant time in prison for these crimes. (Allen didn't say that one lawmaker he admitted bribing was Ben Stevens — Ted Stevens' son and the former president of the Alaska State Senate—because the judge has accepted the defense's argument that such an identification would tend to inflame this jury against Ted Stevens. Ben Stevens was never charged with any crime.)

On the witness stand, however, Allen seemed neither sinister nor slick, much less the personification of evil you might imagine from the crimes he admitted committing. Given Allen's mild manner, humble background, and disability-affected speech, jurors might well have wondered how this slow-talking old man ever built from scratch an international contracting company with more than 4,000 employees.

Jurors might also have wondered how the CEO of a global industry titan could ever find the time to attend so closely to the personal affairs of a friend's home more than 40 miles from company headquarters. Although the value of all the things VECO gave to Stevens in the home renovation was chump change—less than a rounding error—to a corporation with close to \$1 billion in annual revenues, the CEO clearly devoted many hours to one house.

Next: Masterful cross-examination and more discovery explosions

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@gmail.com.



Asking people 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 fifth installment we highlight the top-fives of: John Kauffman, Chelsea Ray Riekkola, Jim Shine and Jonathon Katcher.

John Kauffman:

1. "Emmylou" – First Aid Kit
2. "The End's Not Near" – Band of Horses (cover)
3. "Drown" – Smashing Pumpkins
4. "Change" – Tracy Chapman
5. "Carini" – Phish

Chelsea Ray Riekkola

1. "Monday Monday" – The Mamas & The Papas
2. "Happy" – Pharrell Williams
3. "Dirt Road Anthem" – Jason Aldean
4. "U Can't Touch This" – MC Hammer
5. "No Particular Place to Go" – Chuck Berry

Jim Shine:

1. "Handle With Care" – Traveling Wilburys
2. "Where the Streets Have No Name" – U2
3. "Still the Same" – Bob Seger
4. "For Those About to Rock" – AC/DC
5. "All These Things That I've Done" – AC/DC

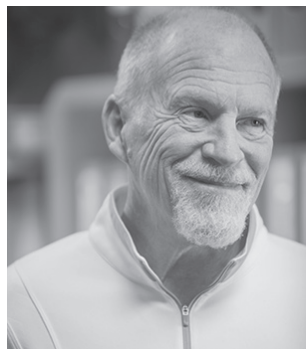
Jonathon Katcher

Please consider these a five-song set with a specific order, like a FM disc jockey would play without interruption. The internet allows you to fully absorb each piece – listen, read the lyrics, and examine the album cover designs, all of which are part of the artists' final products.

1. "Like A Rolling Stone" – Bob Dylan's Miss Lonely, despite her finest schools, is not remotely ready for life on the street.
2. "You Make Me Feel Like A Natural Woman" – Aretha Franklin's version of Carol King's beautiful ballad is the essential female love song, inspiring us all to be worthy of such praise.
3. "Soul Man" – Sam and Dave lay down all the elements of an irresistible dance song, with a gospel-rooted sanctified shuffle, sweet guitar licks, rich horns and lyrics boasting of sexual prowess.
4. "God Bless The Child" – Blood Sweat and Tears beautifully cover Billie Holiday's poignant tale of the ups and downs of life.
5. "You Can't Always Get What You Want" – The Rolling Stones capture the upheaval of 1960's sex, drugs and rock n roll.

In Memoriam

Mark Ashburn



Mark Ashburn

Mark Ashburn passed away on June 3, 2015, at his home in Seattle from pancreatic cancer, with his wife and family by his side. Just a few days before, he had hosted a party at his new house for friends from Alaska.

Mark, recently retired, had practiced law in Alaska since 1973. Immediately after graduation from Harvard Law School, he clerked for Alaska Supreme Court Justice Jay Rabinowitz. Following his clerkship, he joined the Public Defender Agency in Fairbanks where he developed his noted skills as a trial lawyer and began his long career of successful trial advocacy in more than 75 cases. He became the chief of the Anchorage

civil section of the Attorney General's office and served there until 1983. As an assistant AG, Mark won significant anti-trust cases including the *Matanuska Maid* decision as well a notable tax victory in the *Union Oil Co.* case. Both as a public defender and as an assistant AG, Mark was a role model and inspiration to many young attorneys.

In 1983, he joined the firm of Baily & Mason, later renamed Ashburn & Mason, where he practiced until his retirement in 2014. Mark was a true model of how to blend courtesy with effective advocacy. He loved to be in the courtroom where his meticulous preparation and natural ability served his clients extremely well. Mark's career included many notable trials and appellate victories for a diverse client base that included the University of Alaska, the Alaska Railroad, the Alaska Marine Pilots, Delta Western, various municipalities, many individuals and small businesses, and the State of Alaska. Throughout his career Mark provided mentoring, guidance and wisdom to several generations of attorneys at Ashburn & Mason, where his trial skills have become firm legend. No one has matched his habit of writing his briefs a week before they were due. Nor is anyone ever likely to match his fine taste in Italian suits nor his more controversial penchant for Italian footwear.

Mark's public service included terms on the Alaska Judicial Council and as president of the Alaska Bar Examiners Committee. Mark gave presentations on trial practice and taught antitrust law at the Judicial College in Reno, Nevada. His skill and professionalism were recognized by his peers through top rankings by Chambers, Best Lawyers, and other peer review companies. He received the Alaska Bar Association's Professionalism award in 2010.

Mark was born on April 6, 1946, to Harris and Virginia, both professional ballroom dancers. The traditional family name of Aschenbrener was too long for the billboards, prompting his father to change it to Ashburn. Mark was a child actor and appeared in many movies, including the popular Ma and Pa Kettle franchise—he remains, to this day, Ashburn & Mason's only child star. After he graduated from UCLA *summa cum laude* in 1968, the Army sent him to language school and then to Viet Nam. He graduated from Harvard Law School after his honorable discharge from the Army.

Mark is survived by his wife, Stephanie Cole, of Seattle; his son, Christopher Ashburn, also of Seattle; and his sister, Sister JoAnn Ashburn, of the Dominican Sisters order, residing in California. To his family, he was a loving husband and father and a perfect brother. To his colleagues, he was a terrific lawyer, a gracious friend, and the perfect partner. He will be missed, but always remembered.

In lieu of flowers, contributions may be made in Mark's memory to the Young Lawyers Section of the Anchorage Bar Association to further his tradition of mentoring young attorneys and furthering good works.

Bar People

Attorney honored for work against domestic violence

Anchorage attorney **Allen Bailey** is being honored as one of the recipients of the 20/20 Vision Awards as presented by the Commission on Domestic and Sexual Violence. The awards were created in honor of the important work accomplished by the passage of the Violence Against Women Act and the creation of the Commission on Domestic and Sexual Violence 20 years ago. Recipients played an instrumental role in mobilizing the legal profession against domestic and sexual violence by either creating, supporting, advancing, or advocating for the CDSV or VAWA over the past two decades. An awards reception in the recipients' honor will be held during the ABA Annual meeting in Chicago in August.

Firm announces attorney becoming shareholder

Jermain, Dunnagan & Owens, P.C., proudly announces that **Susan G. Sonneborn**, has become a shareholder with the firm. Sonneborn's primary practice focuses on education law and labor and employment law. She also has a background in commercial litigation, with particular emphasis on antitrust law litigation, securities fraud litigation, product liability and personal injury litigation. Sonneborn has been with Jermain Dunnagan & Owens, P.C. since 2012.



Susan G. Sonneborn

Remembering Dan H. Cuddy

Continued from page 1

honeymoon driving up the Alaska Highway to Anchorage were they settled.

Cuddy began his legal career working in his father's Anchorage firm after clerking for Roger Cremo. Initially, Cuddy's legal work focused on adoptions. Cuddy's father passed away suddenly in 1951 from a heart attack and Cuddy took over as president of First National Bank of Anchorage at the age of 30. Under

Cuddy's direction, the bank grew from \$25 million in assets to over \$3 billion.

Cuddy was an integral part of the community and was recognized formally for his contributions: he was awarded the Anchorage Chamber's Gold Pan award for individual achievement in 1965; was selected as Alaskan of the Year in 2002; was awarded the William A. Egan Outstanding Alaskan Award in 2006; saw the Armed Services YMCA of

Alaska dedicated its Welcome Center on Elmendorf Air Force Base in his name in 2007; and in 2009 the Associated General Contractors of Alaska bestowed its coveted Hard Hat award to him.

RuthAnne B. Bergt is an attorney with Bankston Gronning O'Hara, P.C.



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The Kodiak Bar checks in

The Kodiak Bar Association is comprised of 25 members who are committed to serving their small island community.

There are eight attorneys working in the public sector including: Steve W. Cole, Superior Court judge; Dawson Williams, District Court magistrate/master; Matt St. John, DA personnel; Steve Wallace and Richard Moses, assistant district attorneys; Emily Jura and Amanda Harber, assistant public defenders; and Richard Harris, USCG.

Active members in the private sector include: Gerald Markham, Matt Jamin, Melvin Stephens, Steve Gray, Dan Ogg, Jill Wittenbrader, Karen Lambert, Rebecca Skinner, Andrew Ott, Janella Kamai, Joshua Fitzgerald, Elizabeth Fleming, and Sam Booch.

Inactive members include retired Superior Court Judge Roy Madsen, Alan Schmitt and Aileen Haviland.

Assistant Public Defender Allan Thielen has been working in Kotzebue for the past few years and will soon be returning to Kodiak to retire after decades of working in public service.

The bar meets for luncheon meetings on a regular basis.

Tanana Valley Bar Association spring update

By Zane Wilson and Roseann Simko

The Tanana Valley Bar Association is dedicated to providing attorneys in the Tanana Valley and surrounding communities with education, social activities and networking opportunities. The TVBA has weekly luncheon meetings from noon-1p.m. Fridays.

The Young Lawyers' Section of the Tanana Valley Bar Association is dedicated to providing young lawyers with education, social activities, networking opportunities, opportunities to do community service and representation in the Alaska State Bar and American Bar Association.

Bylaws were recently organized, still pending approval.

Ways for young lawyers to become involved in TVBA Young Lawyers:

- Assist through becoming an officer: treasurer, secretary/ communications director.
- Attend all meetings and volunteer opportunities.
- Attend weekly TVBA luncheons, noon-1p.m. Fridays – Gallo's Restaurant.

The YLS has been having monthly meetings – rotating with a guest speaker one month and a community volunteer project the next. Turnout has been low, but that is expected because we do not have the funds yet to provide lunches for the young lawyers and they have very busy schedules. Once we approve our bylaws, we can submit for grants to the American Bar Association and this should drive more attendance. In January we had as a guest speaker, CPA Diane Hutchison who provided various tips and strategies to filing taxes; in February, we engaged YLS in a volunteer activity at the Immaculate Conception Church, providing meals and help with food preparation; this March, we had Alaska Bar President, Geoffrey Wildridge, speak on his year as Bar president and the then upcoming May Bar Convention; and this April, we planned a volunteer activity to clean up the Chena River Banks.

We are actively seeking funding to allow YLS to expand its volunteer efforts and reach out to the community.

Zane Wilson is a shareholder at CSG. He was born in Glennallen and has practiced law in Fairbanks since 1991.

Roseann Simko is the president of the TVBA Young Lawyers Section and secretary of TVBA. She is a former federal law clerk and now local Fairbanks litigation associate attorney at Clapp, Peterson, Tiemessen, Thorsness, and Johnson, LLC. She was born and raised in Fairbanks and has always aspired to practice in Fairbanks and help the community.

Bahr selected as Bar counsel

The Board of Governors is pleased to announce the selection of Maria Bahr as Bar Counsel following the retirement of Steve Van Goor on June 26, 2015.

Maria has an undergraduate degree from Harvard University and a JD from the University of California Los Angeles. After her admission to practice in Alaska in 1991, she clerked for the Alaska Court of Appeals and spent about 10 years with the Alaska Public Defender Agency representing clients in Anchorage, Sitka, Kodiak, and Palmer.

Maria returned to Arizona to be close to her family and worked in the State Bar of Arizona Bar Counsel's Office as a staff attorney starting in 2003. She later served as the Director of

Arizona's Lawyer Assistance Programs for five years. Utilizing her expertise in teaching, Maria was an Adjunct Professor with the Arizona Summit Law School (formerly the Phoenix School of Law) teaching ethics and practice management skills. She also served as Assistant Director of the General Practice Skills Program at the law school from 2009 to 2015. And to round out her legal experience, Maria has been a judge pro tem for the City of Mesa Municipal Court.

Maria will start her new duties with the Alaska Bar Association in August.



Maria Bahr

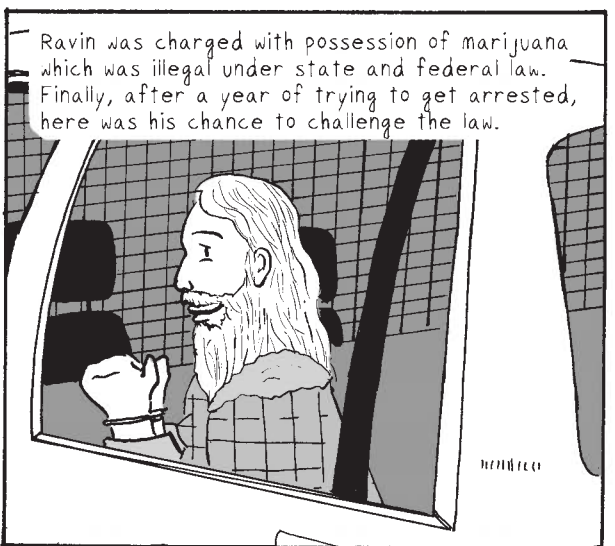
Graphic history of pot law

Continued from page 1

identifying the important roles that Justice Jay Rabinowitz and Irwin Ravin played in shaping Alaska's constitutional development. However, Kramer is at heart a cartoonist, so there are a few spots where the quotations and legal conclusions

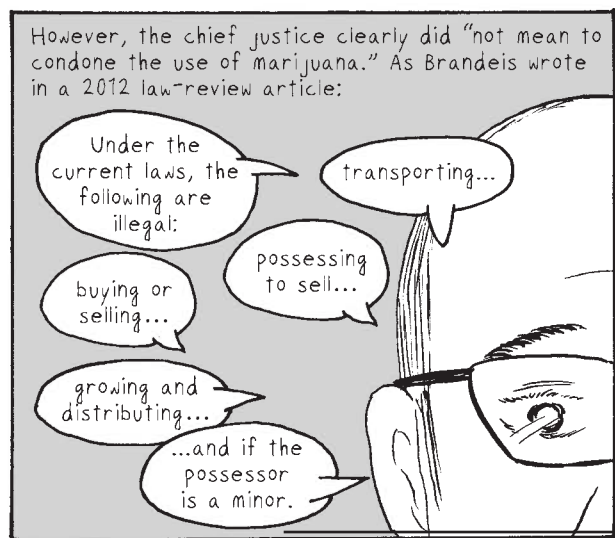
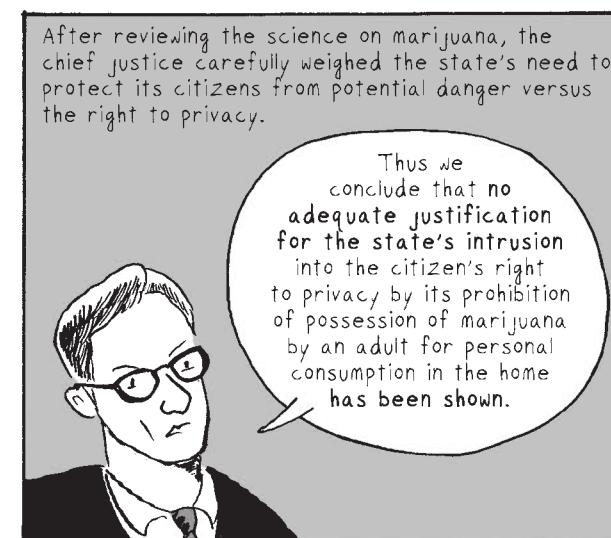
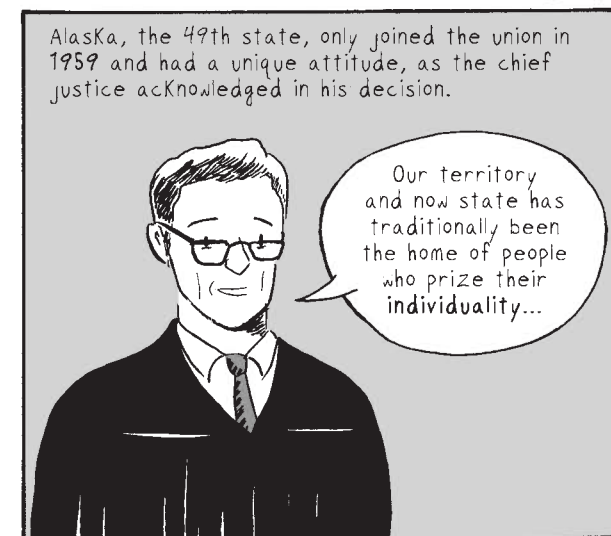
are a little off. Ergo, don't cite this in a brief. I'm not even sure how you would do that. Does the Bluebook cover cartoons?

Jason Brandeis is an associate professor of Justice and Legal Studies at the University of Alaska Anchorage.



By 1975, the case reached the Alaska Supreme Court. The decision, as written by Chief Justice Jay Rabinowitz, had a radical effect on the future of the state and came to be known as *Ravin v. State*.

Alaska's marijuana history is complicated, but here are 4 important points from the decision, and 20 key dates on the timeline.



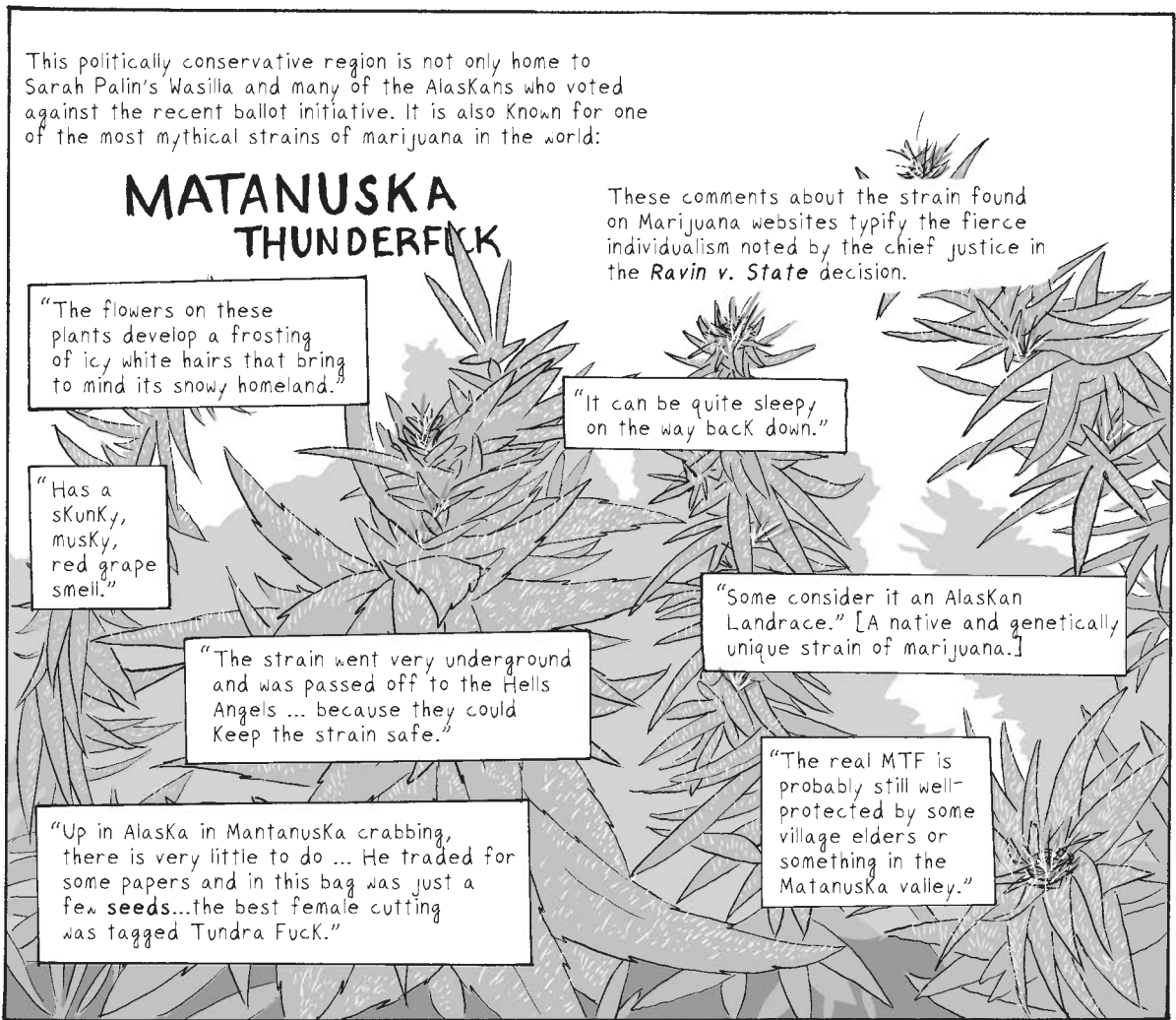
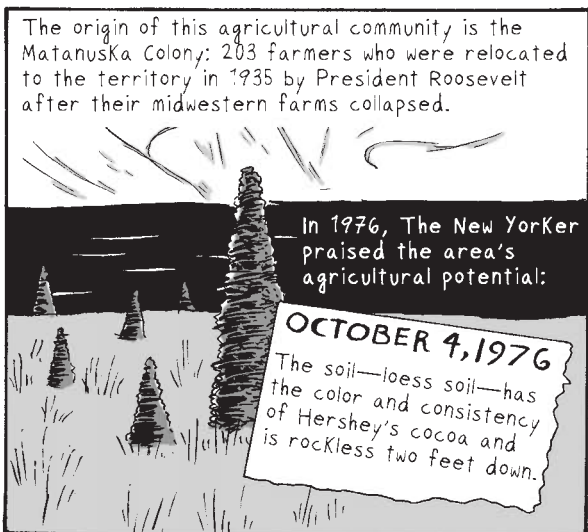
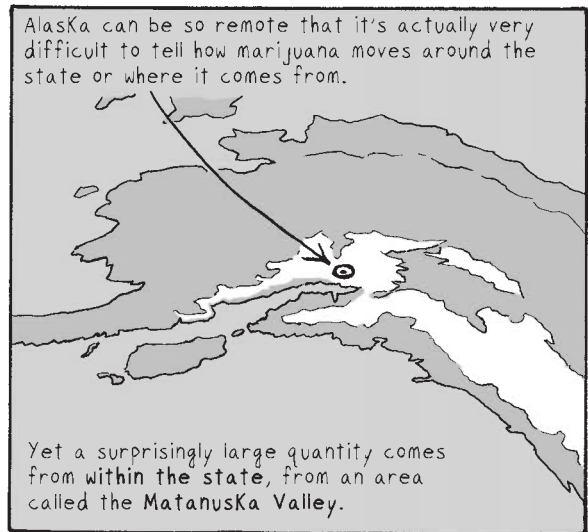
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TUNDRA GREEN

A TIMELINE OF MARIJUANA'S LEGAL HISTORY IN ALASKA

KEY: ■ = move towards legal possession ■ = move towards criminalizing possession
⚖ = court decision ☑ = statewide election ballot initiative § = legislative changes to the state law

1970 Federal law classifies marijuana as a Schedule 1 drug.	1971 President Nixon declares War on Drugs.	1972 § State constitution amended to protect privacy.	1972 Irwin Ravin arrested for marijuana possession.	1973 Federal Drug Enforcement Agency formed.
1975 § Possession of 1 oz. or less decriminalized.	1975 ⚖ A week later, <i>Ravin v. State</i> is decided. Marijuana possession now legal in Alaska.	1982 § Legal possession set at 4 oz. Cocaine now a bigger concern.	1989 State Troopers seize over 5,000 plants in multiple raids.	1990 All possession criminalized.
1998 ☑ Medical marijuana legalized.	2000 ☑ Decriminalization vote fails.	2002 High-school senior in Juneau suspended for "BONG HITS 4 JESUS" sign.	2003 ⚖ Donald Noy acquitted of possession in challenge to 1990 law, Ravin upheld.	2004 ☑ Another decriminalization vote fails.
2006 Attorney general says he won't enforce criminal possession of less than 4 oz.	2006 Governor makes possession of 1-4 oz. a misdemeanor.	2008 ⚖ State Supreme Court refuses to hear ACLU challenge to 2006 law.	2010 Irwin Ravin dies at 70.	2014 ☑ 1 oz. possession and regulated sale legalized.

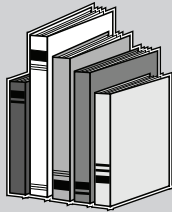


Sources: Leafly, CannaCentral, 420 Magazine forums, Sagarmatha, Uptown Growlab

Law Library News

New at the Law Library: more access to online resources

By Susan Falk



The Alaska State Court Law Library has been adding more and more electronic resources in recent years. Our latest addition is the ABA Law Library Collection Periodicals, now available on HeinOnline. These journals, which the library has received in print for many years, are now accessible on all court staff and public Law Library computers throughout the state. Like all resources on Hein, journal content is presented in image-based PDF, which means the online pages look the same as they do in print. In addition, past issues are available back to the first volume of each publication.

Want more online content? Have you registered for Lexis eBooks yet? As many of your colleagues are discovering, the Lexis Digital Library includes nearly every Lexis title we have in print, available at your convenience from your home or office, or wherever you may be. The digital library allows every Alaska attorney the same access to Lexis eBooks as those in Anchorage. Once you've registered with library staff, simply log onto asccll.libraryreserve.com and begin your research. To sign up, call or visit the library in Anchorage, Fairbanks or Juneau, or send an email to library@akcourts.us. In addition to your name, work address, and phone number, we'll need your email, your Alaska Bar number, and a four-digit PIN of your choosing.

If you are in Anchorage, stop by our newly remodeled Law Library. Construction on the Boney Building is complete, and we're scheduled to move back into our full space in June. The entire treatise collection is back on the shelf, though we'll be unpacking boxes of other material for months to come. We're very excited about our new layout and hope you will be, too. If you're in the area, come in and say hello.

Sorting out what is 'filed under seal' and what is 'confidential'

Marilyn May,
clerk of the Alaska State Appellate Courts

Parties often file documents "under seal," or so they think. Using that designation improperly can cause problems later in the case, or on appeal. "Sealed" is a term of art. As defined in *Alaska Administrative Rule 37.5(c)(5)*, access to a "sealed" document is restricted to the judge and persons authorized by written order of the court. When a document is labeled with a "sealed" sticker, court staff not only cannot provide it to a party – we can't even look at it ourselves, to determine whether it's properly labeled.

Most of the time, the parties actually intend the document to be designated "confidential," as defined in *Administrative Rule 37.5(c)(4)*. Access to a confidential record is limited to the parties to the case, counsel of record, individuals with a written order from the court authorizing access, and court personnel for case processing purposes only.

Please be precise when you want to restrict access to a document – use the proper term under *Administrative Rule 37.5*. You'll save yourself and others a lot of trouble!

If you have questions about how to designate something you wish to file, please call or visit the appropriate clerk's office for assistance.

Email mmay@akcourts.us with questions.

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A potential student examines value of an Alaska law school

By Conrad Mills

While perusing the *Bar Rag* a few days ago, I saw an opinion piece on whether or not Alaska should establish a law school. As a potential customer of just such an institution, I felt the need to at least attempt to add my voice to the cacophony that undoubtedly flies about over this issue. First, allow me to give a little background and some insight to why I care enough to actually write this. I have worked for one law office or another for a while now, and it has always been a goal of mine to be an attorney eventu-

ally. Founding a school in Alaska would be ideal for me. However, there are a few serious problems that go along with law schools in general. So in order to help the ABA understand a probable paying customer, who will not attend law school under the current system for reasons later detailed, I will attempt to make clear the opportunity that is presenting itself to the ABA. I wish also to clarify that I am not an expert in legal education, and that my input is largely observational in nature. The largest issues I have found in my analysis of law schools are really very simple in nature. First, law school is not terribly affordable for two

distinct reasons. The first reason is that law schools require an undergraduate degree before one could even attend. The other is the prevailing higher education bubble which has gripped the country lately. Second, the secondary effects of law school are not very compelling, little heed is paid to critical thinking — which has broad implications elsewhere in life, and was, and continues to be, the real reason people strive to be educated in the first place. Finally, there has been a definite decline in the rigor of law programs.

Affordability is key to attracting students. To reduce the expense of a legal education, I have two suggestions. First, eliminate the need for an undergraduate degree to attend. This unnecessarily undermines the size of the market to which a law school can appeal. While some general knowledge and understanding may have been necessary in the past, this is not true today. Later on I will address this in more detail. Second, reduce the administration of the school to minimal levels. A rise in the size and scope of administrative duties will always increase costs which are passed on to the student.

Law schools are in a unique place, as they are able to reinstate the practice of critical thinking in American universities. The legal trade is, by its very nature, somewhat philosophical. It stresses good grammar, effective communication and independent judgment within a framework. By encouraging logical thinking in the beginning of law school, the purpose of courses like Legal Composition is fulfilled and the purpose of a general degree is also fulfilled. Conveniently, this provides a good segue into ethics as well.

The rigor of the program must also be the highest possible, otherwise no thinking student would bother attending. Previously, one of the chief ways to ensure that the coursework was rigorous enough, law schools would load students with case histories. This is not necessary due to the existence of the internet and legal databases. Literally anyone with internet access could have all of the precedents, cases and statutes available to them. This would allow the theoretical university to provide access to this database, for a fee — of course. Then those students could use the skills garnered in the earlier courses to form their own versions of the cases assigned. The grades would then be determined by the thoroughness, persuasiveness and validity of the arguments presented. As a side note, those students would also gain valuable experience in legal research.

By ensuring that an Alaska law school is cheap, effective and valuable, this university could beat any of its competitors to the resource over which all schools fight. All told, the possibility of an Alaska school of law is an exciting opportunity for not only the state, but also the structure and format of legal education throughout the country.

Conrad Mills is a legal secretary in Anchorage.

TUNDRA GREEN

According to the 2012 National Survey on Drug Use and Health, Alaskans are among the top users of marijuana in the country. Alaskans older than 26 smoke more weed per capita than in any other state.

ALASKA MARIJUANA USE IN THE PAST MONTH BY AGE

12-17	18-25	26+
10.01%	24.77%	11.18%

TOTAL USE 12+

ALASKA	U.S.
12.97%	7.13%

This may explain the recent ballot initiative's victory. In February, Alaskans will be able to possess or transport one ounce and six plants under state law. There will still be charges for minors, intoxicated driving, and possessing more than an ounce. Now the legislature must build a legal framework for the marijuana trade.

However, since 1975, *Ravin v. State* has allowed adults to possess a small amount of marijuana in the privacy of home. So even though this vote might seem to change everything, it actually changed very little:

Every statute criminalizing possession since 1975 has been a "dead letter." *Ravin* is the law of the land. Possession cases were dismissed on appeal, and Alaska has avoided enforcing the possession laws since 2006.

Not only that, but because of *Ravin*, Alaskans may be better protected from federal drug laws than other Americans.

Jason Brandeis writes:

It is well established that state constitutions can provide greater protection for individual rights than the United States Constitution.

The new law allows for possessing one ounce, and *Ravin* has allowed possessing four ounces since 1982. Someone charged with possession in that gray area may be an opportunity for the state Supreme Court to hear a challenge to *Ravin*. And a lot has changed since 1975.

ALASKA POSSESSION LAWS

legal under new ballot initiative	1 oz	Up to 4 oz	Over 4 oz
legal under <i>Ravin v. State</i>			
Illegal under state law and punishable as Class C Felony			

In deciding *Ravin*, Chief Justice Rabinowitz reviewed the latest science on the dangers of marijuana. Measuring the chemical THC was (and is) a typical way of measuring marijuana potency.

Most marijuana available in the United States has a THC content of less than one percent.

However, Matanuska Thunderfuck, or the clones that are for sale in Colorado, typically yield levels of 10 to 20 percent THC, according to "budtenders" I spoke to there.

While more potent may not mean more harmful, there's no way to know how the court might interpret more recent scientific research.

According to Dean *Ravin*, Irwin *Ravin*'s son, "it was never about pot" for his father.

My dad saw a window opening and he passed through it.

... It was time to strike a blow for individual liberty.

END

The Alaska BAR RAG
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