

The Alaska BAR RAG

Dignitas, semper dignitas

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Justice Fabe led the effort to humanize Alaska law

By Dan Branch

Almost 20 years after her appointment as Alaska's first woman Supreme Court justice, Dana Fabe is retiring in June from the court for which she authored many landmark opinions. Her *John v. Baker* decision helped clarify the sovereign rights retained by Alaska Tribes after statehood and the passage of the Alaska Native Claims Settlement Act. In that opinion, and others in which she addressed controversial issues, Fabe shared, in measured terms, the logic used by the court to reach its decision. Male justices authoring other opinions have not exceeded her demonstrated professional detachment or intellectual quality. So why mention that she was the first woman to serve on the state's highest court?



Supreme Court Justice
Dana Fabe

I found the answer in the transcript of a lecture that Fabe gave at Golden Gate University School of Law as part of the annual Chief Justice Ronald M. George Distinguished Lecture Series. The lecture addressed the impact of women judges on the justice system and the legal profession.

Justice Fabe reminded those present of the difficulty experienced by some of the most gifted women attorneys. She noted that even though Justice Ruth Bader Ginsburg attended Harvard Law and received her degree at the top of her class at Columbia Law School, not a single law firm in the city of New York would hire her because she was a mother with a small child. Justice Sandra Day O'Connor's career after graduating

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Supreme Court Justice Scalia visits Alaska, takes the 'big fish'

By Ralph R. Beistline

In May 2003 the lawyers and judges of Alaska were honored when Justice Antonin Scalia visited Alaska to take part in the Alaska Bar As-

sociation convention which was held in Fairbanks that year. Justice Scalia was the keynote speaker at an awards banquet May 8, 2003, and on May 9 he presented an Appellate Update to the bar which turned out to be a two-hour question-and-answer session. And he was remarkable! He was remarkably candid, remarkably honest, and remarkably humorous.

He then traveled to Anchorage and dined with several lawyers at the Captain Cook Hotel including Bar President Lori Bodwell and her husband Gene Gustafson. I recall that at the time the United States was in a dust up with France and, as a result, Supreme Court Justice Antonin Scalia, who was a wine connoisseur, refused to drink French wine.

From Anchorage Justice Scalia travelled to Homer to go halibut fishing with a number of Alaska lawyers and judges. That too was remarkable.

We awoke early May 11 and grabbed breakfast at the local McDonalds. It may have been the first time Justice Scalia had dined at such an establishment but he loved it and was anxious to get out on the water and display his fishing skills.

Our concern was twofold. We didn't want to get sea sick in front

of a Supreme Court justice and we wanted to make sure he caught the first and biggest fish. To avoid becoming sea sick we all surreptitiously took excess amounts of Dramamine and other relaxants – but not Justice Scalia – he was fine and

the first with line in the water. Most of us, however, were overcome with fatigue and could barely hold our heads up while Justice Scalia smiled with glee and renewed energy with every halibut he caught. We, of course, declared shock at the size of his fish and all loudly told him so. "Never before," we said, "had such large fish been caught in Alaska."

I took a lot of pictures during this event but noted afterwards that I was in none of them, so I have no hard proof that I was even there. But I have pictures of Justice Aniel E. Winfree, Judge Andrew Kleinfeld, Judge Richard Savell, Justice Warren Mathews, Lori Bodwell and Dick Madsen. And, of course Justice Scalia. And there were others there too.

By noon we had caught our limit and docked at the small fishing community of Seldovia. Justice Scalia, without any security, walked the streets of this small town, singing opera, and reveling in his fishing

prowess. He was a happy man. And nobody knew who he was – except us – and we were his fishing buddies.

Ralph R. Beistline is a Senior United States federal judge of the United States District Court for the District of Alaska.

SEE PGS. 20-21
FOR MORE SCALIA
FISH STORIES



Justice Scalia admires his catch.



After hours on the water, the hearty fishermen gather in a water hole. From left are Justice Scalia, Gene Gustafson, Judge Ralph Beistline and Dick Madsen. Just a sliver of Judge Andy Kleinfeld's head shows between Beistline and Madsen.

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Alaska pro bono work moves onto the world wide web

By Susan Cox

Most people who know me would agree I'm not usually the first to embrace change. But a hallmark of our profession is the need to continually adapt to change – nothing about the practice of law remains static. The Legislature enacts new laws and revises old ones to meet society's evolving needs and reflect modern values. Citizen initiatives implement measures the legislature won't or hasn't got the political will to do on its own. For recent examples, just look at marijuana regulation, criminal justice reform, same sex marriage, Medicaid expansion and revision of state adoption laws. Lawyers must be nimble to keep current in their areas of practice and learn new processes and rules.

And advances and innovations in technology constantly challenge us to become 21st Century practitioners. The state court system moves closer to implementing electronic filing – it's taken an initial step by distributing orders electronically and requiring Bar members to add an email address

to their profiles. Numerous web services rate lawyers and assist potential clients in selecting counsel.

Countless online services offer legal resources. Technology issues are so pervasive the civil rules committee has spent two years drafting proposed rule changes to address them. (More on that in this issue of the Bar Rag.)

Meanwhile, our state is facing fiscal challenges that impact lawyers and clients alike. The downturn in state revenues from oil and gas affects business development and opportunities, which in turn affect legal services. State budget cuts are decreasing the ranks of public sector attorneys who provide legal representation in criminal cases and child protection matters. Some smaller state prosecutor of-

fices are being eliminated or decreased significantly. And the judiciary is cutting back on court hours due to lack of funds, while trying to avoid court closures in bush locations. Alaska's economy and the legislature's future management of our state's resources will impact all of us. Unfortunately, the number of people with unmet legal needs who can't afford to hire a lawyer, in landlord-tenant, divorce and family law, small claims, and a myriad of other civil areas, is likely to grow.

As lawyers we are called upon to confront these challenges and respond to change while upholding our core values and our role in the administration of justice. We need to be innovative and creative problem-solvers, adapting technology to serve the public and improve the efficiency of the Bar.

In that vein, I am excited that the Alaska Bar is launching a groundbreaking new online pro bono project this fall. In partnership with the American Bar Association, Alaska will join the ranks of 37 other states to implement a virtual legal clinic online for qualifying low-income clients.

The way the clinic will work is this: Clients go through an initial online screening process to ensure eligibility (income level less than two times the federal poverty rate), identify their type of civil legal issue and ask a legal question. Volunteer lawyers who have signed up to provide limited scope advice in one or more subject areas will have the opportunity to review the questions in those areas and decide which one(s) they want to answer. The lawyers can do research as needed and



"We need to be innovative and creative problem-solvers, adapting technology to serve the public and improve the efficiency of the Bar."

then respond via email through the virtual clinic. They can answer as many client questions as they like, at whatever time of day or night they choose, be covered by malpractice insurance and maintain their anonymity.

The American Bar Association is providing the technological infrastructure to the participating states at no cost. Each state will have its own site and its own site administrator; in Alaska, it will be our Pro Bono director. The effort will be supported by a subcommittee of our bar's Pro Bono Services

Committee, which has formed a plan to build the site's template language, volunteer recruitment, and community outreach plans. Alaska's site – www.alaskafreelegalanswers.org – is anticipated to launch in early September 2016 with 25 volunteer lawyers at the ready.

This innovative project is modeled on one started in the state of Tennessee that has had great success. After considerable data from a 2013 Pew Research Center study indicated that 85% of adult Americans were internet users, Tennessee launched the nation's first virtual law clinic as a way to increase access to justice for low-income people. As of October 2015, Tennessee volunteer lawyers had responded to more than 10,000 legal questions via their site www.onlinenjustice.org and catalyzed the rest of the nation to join the effort. We are very fortunate to benefit from the groundwork done by Tennessee and the ABA.

To me, this initiative presents a great opportunity for Alaska lawyers while offering a much-needed service to Alaska citizens. It is another tool – one that incorporates modern technology in a way that's user-friendly for both clients and lawyers – to complement the won-

derful public service work already being done by so many Alaska attorneys. Lawyers who don't feel comfortable providing in-person pro bono services in areas of law they don't routinely practice in – like small claims, family law, landlord/tenant – can branch out. The time commitment for the lawyers may be minimal but the impact on the clients served will be significant.

I'm really excited to venture into the world of virtual pro bono legal service. I hope you share my enthusiasm and, regardless of how you feel about change or technology, will consider signing up when our bar issues the call for more volunteers.

Susan Cox was recently elected president of the Alaska Bar Association.

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The Alaska BAR RAG

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 Alaska Bar Association
 840 K St., Suite 100,
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 May 10-12, 2017 (Wed. - Fri.: Annual Convention in Juneau)

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EDITOR'S COLUMN

Memories of a US justice and goodbye to an Alaskan

By Meghan Kelly

Summer has arrived here in Kodiak in a flood of green. It is most welcome after a long, gray, wet winter.

This edition contains a series of anecdotes about late Justice Scalia's visit to the Alaska Bar Convention in 2003. The feature was dreamed up and executive produced by Jonathan Katcher who was one of the lucky individuals fortunate enough to enjoy some one-on-one time with the justice during his time in our great state. Reading these memories and looking at the photos I can't help but believe that the Bar Conventions might have been more exciting, or at least more colorful, in the distant past than our present-day academic annual gatherings. Imagine a convention in Nome or Sitka, even Kodiak-what fun!

In this issue we attempt to pay tribute and to express our apprecia-

tion to Justice Dana Fabe as she retires from more than 20 years of service on the high court. Justice Fabe is truly an icon of judicial excellence. Like many of you, I recall making an appointment to visit with Justice Fabe for "career counseling" during the waning months of my clerkship. Sitting in her meticulously organized office, surrounded by beautiful Alaska art, I furiously took notes as she paged through the Alaska Directory of Attorneys, pausing every page or two to recommend a name that I should contact about potential job opportunities.

I must have written 30 names. It was clear that each of these many individuals had developed relationships with the justice during her career and that her favorable ref-



"Like many of you, I recall making an appointment to visit with Justice Fabe for 'career counseling' during the waning months of my clerkship."

erence was invaluable. I had the sense that Justice Fabe knew me nearly more than I knew myself as we talked, and her advice and intuition are gifts that I have carried with me over the last six years. Thank you, Justice Fabe – you will be missed.

I was very glad to see the governor appoint Fairbanks attorney Susan Carney to fill the vacancy created by Justice Fabe's retirement. Her laudable career in public service as an advocate for the disenfranchised across Alaska is inspiring and I look forward to watching her development as a jurist. Welcome, Justice Carney – we have a robust recreational basketball league here in Kodiak and I would be honored to join you in game.

Study finds high rates of depression, substance abuse among attorneys

By Matthew Magliaro

A survey of 12,825 attorneys across the United States reveals concerning rates of alcohol dependency, depression and anxiety within the legal profession.

The study reports the results of a national research project conducted by The American Bar Association Commission on Lawyer Assistance Programs in collaboration with the Hazelden Betty Ford Foundation. The intent of the collaboration was to measure current rates of substance use, depression and anxiety among licensed American attorneys in order to provide the first nationwide study on this topic. The bar association or regulatory authority of nineteen states from across each region of the United States agreed to participate. Alaska was not one of the states. Participation involved the bar associations of those states sending a series of three emails over the period of a month to their membership with a link to the survey and consent form. The survey was voluntary and anonymous.

The survey itself was designed by the study's authors with assistance from the Butler Center for Research. It included within it three screening instruments: (1) the Alcohol Use Disorders Identification Test (AUDIT), a 10-item instrument designed to measure and score rates of hazardous or harmful alcohol intake and alcohol dependency; (2) the Drug Abuse Screening Test-10 (DAST), a 10-item self-report designed to measure and categorize consequences of drug use; and (3) The Depression Anxiety Stress Scales-21 (DASS-21)

designed to measure through self-reporting depression, anxiety and stress. Questions were also crafted to measure the willingness of attorneys to seek counseling, perceived prohibitions on seeking counseling, and the efficacy of counseling. Survey responses would affect whether a survey taker completed the full screening instrument. The data was sent on to the Butler Center for Research, where it was stripped of identifying metadata and analyzed.

The survey findings reveal that 20.6% of the participants who answered all 10 of the alcohol screening instrument questions (N=11,278) scored at a level consistent with problematic drinking. This compares to positive screens for problem drinking using the same instrument at a rate of 11.8% for educated workers in the general population. Data from male attorneys (N=6,012) showed a higher proportion of positive screens for problem drinking than female attorneys (N=5,217), at 25.1% and 15.5% respectively. The survey subcategorized the total sample by work environment. Attorneys working for the bar association (50) and in private firms (4,712) had the highest percentage of positive screens for problematic drinking, at 24.0% and 23.4% respectively. In contrast, those working in a scholastic setting (163) on in judicial chambers (653) had the lowest percentages, at 17.2% and 16.1% respectively. Nineteen percent (19%) of solo practitioners (2,262) in the sample scored at a level consistent with problem drinking.

The portion of the survey on drug abuse screening that measured use

of different classes of legal and illegal controlled substances within the past 12 months revealed smaller sample sizes than that for alcohol. Some 3.0% of the cohort who completed all questions on the drug screening (N=3,419) scored at a rate of substantial concern, with .1% at severe concern regarding their drug usage. The attorneys who self-disclosed stimulant use had the highest rate of weekly usage, followed in order by those using, on a weekly basis, sedatives, tobacco, marijuana and opioids.

Regarding mental health, 28% of the sample reported experiencing mild or higher levels of depression, 19% for anxiety, and 23% for stress. Survey participants disclosed that 46% had concerns with depression and 61% with anxiety at some point during their careers. The study's authors noted in their discussion that those in the sample who responded to the alcohol test scoring at a level consistent with problem drinking had higher levels of depression, anxiety and stress, suggesting co-occurrence of mental health problems and substance abuse among those licensed attorneys.

Attorneys in their first decade of practice had higher proportions of positive screens for problem drinking, depression and anxiety. The study authors report that attorneys in the first decade of practice self-disclosed the highest rates of problematic alcohol use (28.9%) compared to decreased rates for attorneys in later years of practice. When broken down by years of work in the legal field, the higher subscale scores for depression, anxiety and stress were all within the portion of the sample with zero to 10 years' experience; the scores decreased as years in the field increased. This is a reversal of findings from an earlier research study of 1,200 Washington State attorneys conducted in 1990, which found that the prevalence of problem drinking increased with years of practice.

The study's authors in their discussion touch on the topic of efficacy of counseling tailored to the legal profession. Only 807 attorneys self-disclosed participation in prior substance abuse treatment.

The 174 who participated in some form of treatment geared towards lawyers had lower mean scores on the alcohol use portion of the survey. This finding suggests a place for vocation-specific counseling. The two most common barriers to seeking treatment were the desire to not want others of the bar to find out that the attorney was in need of help, and concerns regarding confidentiality. This was true for survey participants reporting prior treatment and those who disclosed no treatment history at all.

Alaska has a Lawyer's Assistance Committee (LAC) that was created under the Alaska Bar Association Bylaws to provide services to members of the legal profession. Though comprised of volunteer attorneys and not mental health professionals, the LAC can serve – on a confidential basis – as a resource for those attorneys suffering from substance abuse or mental illness. The LAC has spent the last several months updating its resource list for mental health and substance abuse counselors in Alaska appropriate for referrals for attorneys facing these challenges in their practice and life. For more information, a list of the members of the LAC is printed in every edition of *The Alaska Bar Rag*, and is also available online through the Alaska Bar Association's web page.

Anchorage attorney Matthew Magliaro is member of the Lawyers' Assistance Committee in private practice.



Public Board of Governors member Bill Gordon and past Bar President Don McClintock.



Eighteen new lawyers were sworn in to the Alaska Bar Association in a ceremony May 24 in Anchorage. Officiating were (from left): Judge William Morse, Judge Morgan Christen, Justice Peter Maassen, Judge David Mannheimer (blocked), and Judge Jo-Ann Chung.

Attorneys sworn in were: Mary Bergerhuff, Lyubov Bartnitskaia, Lauren Bateman, Hazel Blum, Peter Caltagirone, Jennifer Douglas, Molly Haas, Paul Hannon, John Hollis, Dena Ivey, Colleen Knix, Michael Moscrip, Aaron O'Quinn, Sarah Park, Kimberly Schowen, Jessica Spuhler, Michael Stanker, and Ember Tilton. Photo by Penelope Borland

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

Anchorage: Mike Walsh
mike@wheeleslaw.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.

19th Century politics art shows not much has changed

By Jean Bundy

This past winter while some bar members were snow-birding in Arizona or slathering on sunscreen at Hawaiian beaches, Dave and I were driving across sub-zero, wind-swept Missouri, grateful we weren't wagon-training and thankful for roadside bathrooms and frequent McDonalds. There was a method to our madness, an exhibition of Winston Churchill's paintings at Washington University's Mildred Lane Kemper Museum was needed for my PhD project.

Our week in Missouri began at the Nelson-Atkins Museum, Kansas City. The beaux arts building opened in 1933, with the Henry W. Bloch boxy glass addition coming in 2005, all on the grounds of former *Kansas City Star* publisher William Rockhill Nelson. Several Claus Oldenberg (b.1929) giant "Shuttlecocks" adorn the expansive lawn. In the movie *Blow Up* (1966), actors play tennis without a ball; here visitors can imagine rousing games without a net. Nelson-Atkins serves a decent soup and sandwich lunch in the Rozzelle 15th- century Italian courtyard.

Across the street is the Kemper Museum of Contemporary Art, a venue for temporary exhibitions with their extraordinary Café Sebastienne, one of the best museum eateries we've experienced. Artist Frederick James Brown's (1945-2012) *History of Art*, his version of masterpieces that become café wallpaper as Cezanne, Picasso, deKooning and 108 others, tessellate the walls. We tried their Sunday brunch, noshing on brioche French toast topped with boozy pears, Burger's bacon, almonds and Vermont maple syrup surrounded by the Technicolor, before driving across Missouri. We detoured to the *Church of St. Mary the Virgin*, Westminster College, Fulton. Destroyed by German bombing, the reconstructed Christopher Wren houses The National Churchill Museum, near the site of Churchill's *Iron Curtain Speech*, 1946.

Arriving in St Louis, we found the iconic Gateway Arch under reconstruction, so we opted for the former Union Station, now a hotel and shopping mall. Built in 1894, it was considered the largest railroad complex in North America. By the 1940s, 100,000 passengers daily passed through this Romanesque revival made with Indiana limestone and topped off with red tile. We dined on Midwestern beef at the Station Grille under stained-glass and barrel vaulting, once a Fred Harvey restaurant made famous by the movie, *Harvey Girls* starring Judy Garland (1946).

With snow falling sideways, we headed to the Saint Louis Art Museum (SLAM) on the site of the 1904 World's Fair grounds, as *Clang, Clang Clang...* sent Judy Garland's trolley, buzzing through our heads, from *Meet Me in St Louis* (1944). For lunch, we chose a SLAM Club sandwich: sliced turkey, smoked bacon, smoked gouda with lettuce, and avocado aioli on multigrain, overlooking Andy Goldsworthy's (b.1956) site-specific *Stone Sea - It's a sea made of what was once a sea*, 2012, a metaphor for when the pre-historic Midwest was under water. Goldsworthy assembled 25 arches, 10 feet tall, 300 tons in total, made

from local limestone using a Roman dry-stone arch method.

After lunch we stumbled onto George Caleb Bingham's (1811-1879) three paintings, *The County Election*, *Stump Speaking* and *The Verdict of the People*, apropos, as our hotel televisions had begun to report the early 2016 primaries. Painting with tones and brown glazes, Bingham's works could not be mistaken for modern and yet his message remains contemporary. While 150 years have progressed, we as a nation are still dealing with regional differences and our political and economic relationship to the world has gone far too global to return to nationalism, internally or abroad.

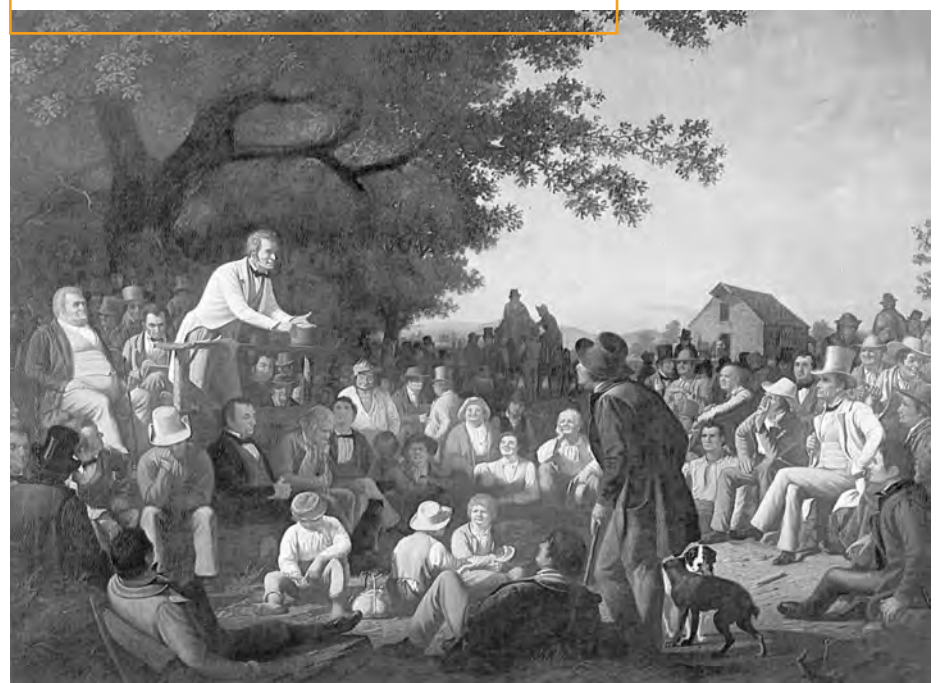
Bingham was born into a slave-owning Virginia family who moved to Missouri after losing their farm. At age 12, Bingham worked as a janitor, moving on as apprentice to a cabinetmaker before taking up portrait painting. By 1838, he was an established St. Louis portraitist. In 1848, Bingham was elected to the Missouri House of Representatives. In 1856, he moved to Paris and Düsseldorf to study classical painting. After 1859 he returned to the Whig Party of Missouri, becoming State Treasurer of Missouri and supporting the Union during the Civil War. In 1874, Bingham was appointed president of the Kansas City Board of Police Commissioners and first chief of police. By 1875, he became adjutant-general of Missouri and art professor at the University of Missouri, Columbia.

The County Election: 1852, shows white men: potential candidates and voters at a local election. Some citizens swear to voting only once while others are being bribed with alcohol. Bingham keeps the viewers focused on the judge at right center, by surrounding him with the purity of white shirts. In the foreground young boys play a game, a metaphor for the outcome of the election. The courthouse on the right and the tall tree on the left prevent spectators from leaving the canvas. Unlike Picturesque landscapes, the focus is on the people in the foreground as the tavern, houses and steeple in the background are less significant than the crowd of would-be voters, signifying the importance of the populace in spite of alleged corruption and debauchery. A dapper gentleman at the lower right reads his paper as if all is routine. Someone will be elected and life will continue as suggested by the blue sky and stalwart tavern sign. Professor Angela Miller suggests, "What was at stake in this negotiation was the relation of the West as a developing region to the economy and culture of the nation as a whole" (Miller 113).

Stump Speaking or The County Canvass: 1853-1854, reveals the candidate is really standing on a tree stump, long before Sarah Palin took possession of the concept. The tree with its tangled branches above the speaker's head echoes the wishy-washy platitudes coming from the candidate. Folks listening appear bored except the man with a pencil behind the podium, perhaps a reporter. Again, Bingham keeps the viewer focused on the citizen groupings, specifically the crippled man questioning the speaker. This scenario takes place on a road where



The County Election, 1852



Stump Speaking or The County Canvass, 1853



The verdict of the people, 1854

wagon traffic is backed up by the half-listening crowd. A woman with a baby in the center isn't paying any attention; she can't vote anyway. Once again, the blue sky in the background suggests life will go on in spite of this temporary disturbance. According to Midwestern painter Thomas Hart Benton (1889-1975), "Ever since this *Regionalism* label was stuck on me...I have been concerned about it; trouble is, it's too simplistic" (Christ-Janer 15).

The Verdict of the People: 1854-1855, shows a man gleefully reading his acceptance speech. Bingham again surrounds the victor with white shirted-gentleman while in the foreground, dimming the loser with brown glazing. Again crowds block the local thru traffic. At right, women watch from a balcony as if attending a theatrical production; hey, they can't vote! A black man in

the left foreground pushes a wheelbarrow oblivious to election hoopla — he can't vote either. Men, at center, strategize for the next election as an American flag jauntily waves. Bingham blends his two interests, politics and painting, to illustrate what painter Albert Christ-Janer (1910-1973) insists, "these paintings are shown again and again because they reveal not only the native political scene but also the nature of the citizen ... 'a new head is continually popping up and demanding a place in the crowd'" (Christ-Janer 51).

Happy sleuthing for art.

Jean Bundy, AICA-USA, is a writer/painter in Anchorage
Photography by David Bundy

Citations:
Christ-Janer, Albert. *George Caleb Bingham*. Abrams, New York, 1975.
Miller, David C., Ed. *American Iconology*. Yale University Press, New Haven, 1993

Lesson learned through oblique references in an old law book

By *Lawrence Savell*

The boxes arrived in Nick's office on a Friday morning. Inside the one designated "1" on the outside was a short letter from the executor.

"Dear Mr. Adams: With this letter please find four boxes which Mr. Robert Maxwell instructed in his will be sent to you. Best regards."

Nick sighed. Bob Maxwell was a friend of his father's, from when they were undergrad roommates at Ohio State. Bob had stayed on to attend the Law School there, while Nick's father moved back to New York after graduation to start working in the Adams family business.

Nick had met Bob with Nick's dad a few times over the years when Bob's law practice required trips to New York. It was Bob, a soft-spoken and polite Midwesterner who had never married and who took a liking to Nick, who had first encouraged the inquisitive Nick to consider a legal career. And when Nick had said he was thinking of putting law school off for a couple of years after he got his B.A., it was Bob who persuaded him not to delay but to seize the moment, as things had a habit of slipping away. Three years later, Nick became the first lawyer in the family.

Nick had not seen Bob since Nick's father passed five years before, and he was surprised and touched that Bob had remembered him in his will.

Under the letter, the box, like its three travelling companions, was full of books. There were several treatises, nearly all a bit long in the tooth. Nick presumed that Bob had remembered Nick was a history major in college, and might appreciate them more than other lawyers.

But they also contained two other things — a large folder of copies of filed briefs, and various volumes of the Ohio State Reports, First Series. Sending the volumes of old (the Series ended in 1964) Ohio decisions was strange, Nick thought, as they would be of little use to a New York lawyer.

Nick took out all the Reports volumes and arranged them sequentially. There were 32 in all — a small fraction of the full First Series. There were thus many gaps in the number sequence. Nick was intrigued.

He poured himself a tall black coffee from the office kitchen. He returned to his chair, put his feet on his desk, and opened the lowest-numbered volume. It had been a while since Nick had opened a book of case decisions, since he was part of the generation which conducted nearly all of its case research via online databases like Lexis and Westlaw. Indeed, Nick's firm, like many others, had in recent years donated or tossed all its case report volumes, as anachronistic relics of the pre-digital world taking up valuable office space that could be put to more profitable use.

He turned through the pages, and saw the spectrum of subject matters that one would expect addressed in the reported cases: contracts, torts, matrimonial, wills, etc. There was nothing out of the ordinary.

He was about to put the book down when he saw something. About a third of the way into the volume, at the right margin of a page, was

a pair of handwritten pencil marks. The first, at the beginning of a long paragraph, consisted of a horizontal line about a quarter of an inch long, joined at a right angle by another line of about the same length going down. At the end of the paragraph again at the right margin was another mark, this time with the vertical line meeting the horizontal at the bottom, like a backwards "L".

The marks surprised Nick. He would never — even in pencil — think of defacing a book owned by his firm. The case — which dealt with authorship of a courthouse cafeteria cook's memoir, predictably titled "Justice Is Served" — was not one he recalled hearing about in law school. The marked paragraph contained merely a statement of the law in Ohio on a particular obscure point. It was the only notation in the case. Why had someone broken the unwritten rules of law office decorum to single out that paragraph in that case?

Nick continued paging through the volume, and toward the end, in a contract case, he saw another set of the handwritten brackets. This set was different in two ways: the first mark occurred midway through the paragraph, and next to it was written, "Rider 1."

Nick sat back in his chair. Riders to him were passages he wanted to quote in briefs or other documents. When, as was usually the case, he drafted directly into Word, he would just cut and paste from the online text to his document. For materials that were not available online, he would photocopy the respective printed page and circle his selection for his assistant to input. But this rider was likely created before photocopyers were available in the office — the marking lawyer probably gave his or her secretary the volume with some kind of bookmark in the page, and the secretary would type the marked passage into whatever document was being prepared.

Nick smiled — Bob had indeed sent him a history lesson — on ancient law office procedure.

Nick flipped through the rest of the volume, but saw no more notations.

Nick next turned to the volume with the next highest number on its spine. It too had a few marginal notations. A quick flip through the rest of the volumes indicated they all did.

Why, Nick asked himself, had Bob sent him so many volumes, when just one would have illustrated the practice? Maybe it was to show how prevalent the practice was; indeed, Nick had noticed slight variations in the marking styles, and in the handwriting of notations.

Each volume had inside the back cover the firm library sign-out card in a white pocket, with columns for name and date borrowed. Nick knew from his own experience that most lawyers would not bother to sign out a case report volume he or she borrowed. Nevertheless, each volume's card had a number of conscientious entries, over the course of several decades.

Nick wondered whether any of the notations were Bob's. He looked at the card in the volume he had open, and saw that it had been signed out by "R. Maxwell" on "1/21/63". He pulled the card from another volume, and saw another "R. Maxwell" entry. Every one of the cards in the volumes Bob had sent

him had an "R. Maxwell" sign-out entry. Some had more than one.

"OK," Nick thought, "so what?" Bob was now beyond the jurisdiction of any court seeking to prosecute him for serial publication defacement. And Nick had no idea whether any, or if any which, of the notations had been Bob's.

Nick started putting the books back in the boxes when he saw again the large folder of briefs. He removed the contents, and flipped through them. They had carefully been arranged in ascending date order, spanning several years in the 1960s, which Nick realized was probably at the beginning of Bob's legal career. Each brief had been signed by Bob.

The first brief dealt with an automobile case. It contained two block quotations. Nick looked at the first citation, which was to a Texas case. But the second was to the Ohio State Reports. The volume number was one of the volumes Bob had sent him. Nick went through each brief, and located in each at least one block quote citing to the Reports.

By then night had fallen, and Nick was the only one left in the office.

With the pile of briefs to his left, and the Reports volumes standing at the ready in a large arc farther away on his hastily cleared desk, Nick started turning to the pinpoint-cited pages identified in Bob's briefs.

The bracketed passage in the first one bore after the first marking the handwritten notation, "Sunny day." Those words appeared to have no relation to the case or the quoted material.

The next brief, dated a couple of weeks later, had a Reports citation pointing to another bracketed passage, this time accompanied by the notation, "Windy." Again, no connection was apparent.

"So Bob was not just a lawyer, but also an amateur meteorologist," Nick mused to himself. "Who knew?"

Similar notations were made, until one that said after the opening bracket, "Chilly." But this one was different, in that to the right of the closing bracket was the word, "Indeed," in a different handwriting.

The next several instances contained similar paired notations, basically limited to single word weather observations and single word affirmative responses.

Finally, the forecast changed.

This particular opening notation read, "Park 12.5."

Nick determined that "Park" was not the name of the case, nor of any of the parties, nor the judge, nor counsel. On a hunch, he pulled up on Google Maps the location of Bob's firm as indicated at the end of the brief. Two blocks away was a park.

But "12.5" made no sense. Unless it was a time. Twelve-thirty?

Photographs of the park showed that, at least when they were taken, the park had many benches, and information indicated it was a popular place for nearby workers to eat their lunch.

The ending bracket in the case reporter passage bore the notation, "Okay."

Such "Park" references reoccurred frequently, virtually every time accompanied by an affirmative response. This went on for nearly two years.

But then, although the opening bracket references thereafter

continued, the closing bracket responses did not. Not long after that, alongside the final cited passage, there was no notation accompanying the opening bracket.

"Why had they stopped?" Nick wondered to himself.

Nick reviewed all the materials again, but they provided no guidance. On a hunch, he confirmed online that the park remained a park through the present, and had not been paved over to put up a parking lot or for any other form of "progress."

Nick ran all kinds of searches on the web, trying to find some clue. Eventually, in response to a search including the name of Bob's firm and the word "secretary," among the results was one that caught his eye.

It was an engagement announcement in a local newspaper. Dated shortly after the last brief, it proudly reported that one Abigail Mills had become engaged to one Benjamin Nelson, accountant. Ms. Mills was identified as a secretary at Bob's firm.

Bob had let his chance slip away.

Nick leaned back in his chair and exhaled audibly. He now understood that when Bob had advised him to seize the moment, he had been speaking from personal, and painful, experience.

Bob had apparently never fully recovered from that disappointment, Nick realized. But he had wanted to make sure that Nick did not make the same mistake.

Nick cleared space on his shelves for the books and the folder of briefs, so that they would always be in his view and so he would not forget their lesson. He thought about the many ways he could implement the guidance he received, in his career, in his personal life, and in his plan someday to do the writing he kept putting off for that time all lawyers envision, when life would somehow become less hectic.

Before leaving, he sent a quick email to the executor, acknowledging his receipt of the boxes, thanking him for his efforts, and requesting a copy of Bob's will.

And a few days later, Nick would read in that will that, except for four boxes of legal material, Bob had left everything to one Abigail Mills Nelson.

Lawrence Savell is counsel at Herbert Smith Freehills, New York LLP



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There are some exceptions to step-up in tax basis at death

By Steven T. O'Hara

When a property owner dies, the person then entitled to the property generally may sell the property free of any income tax. But this general rule is full of exceptions.

Recall that the concept of "basis" is used in determining gain or loss from the sale or other disposition of property (*IRC Sec. 1001 and 1011*). If a client purchases stock for \$100,000, her basis in that stock is \$100,000 (*IRC Sec. 1012*). If she then sells the stock for \$500,000, her taxable gain is \$400,000, which is the consideration received in excess of her basis.

As a general rule, when a property owner dies the person entitled to the property obtains a basis in the property that is "stepped-up" to the fair market value of the property (*IRC Sec. 1014(a)(1)*). Here the assumption is the property has appreciated in value, as in our example. If the property in fact has lost value, the person entitled to the property could obtain a basis in the property that is "stepped-down" to the fair market value of the property (*Id.*).

Using our above example, if the client dies when the fair market value of her stock is \$500,000, her estate or beneficiary will obtain a fully stepped-up basis of \$500,000 in the stock. Her estate or beneficiary could then sell the stock for as much as \$500,000 at absolutely no federal income-tax cost.

Significantly, the general rule of an adjustment to basis at death does not apply, and thus basis does not change, to certain property at the owner's death. Here logic may help identify such property. That is, if an individual property owner realizes income but that income is not recognized on any income tax return, then chances are on her death the property to which that income relates does not get a step-up in basis.

Consider a client with a tax basis of \$100,000 in her stock. Suppose she sells the stock not for cash but for a promissory note in the principal amount of \$500,000 payable over several years. Here the client would be able to defer recognition of her gain by spreading the gain over the tax years in which payments on the promissory note are received (*IRC Sec. 453*). But if the client dies after the stock sale and before payment of the promissory note, no step-up in tax basis would be available with respect to the promissory note (*IRC Sec. 1014(c) and 691(a)(4)*). So after the client's death, gain will continue to be recognized each year in which payments on the promissory note are received.

Another example of property that receives no step-up in tax basis is a tax-deferred annuity acquired



"Certain annuities acquired prior to Oct. 21, 1979 may be eligible for a step-up in tax basis."

after October 20, 1979. Certain annuities acquired prior to Oct. 21, 1979 may be eligible for a step-up in tax basis (*Rev. Rul. 2005-30*).

Consider a client who contributes \$100,000 to a tax-deferred annuity issued by an insurance company. Suppose this contribution is made after October 20, 1979. Suppose the client never takes any cash out of the annuity and, over the years, all earnings in the annuity accumulate.

Then suppose the client dies when the value of the annuity is \$200,000. Here no step-up in tax basis would be available with respect to the annuity (*IRC Sec. 1014(b)(9)(A)*). So as the client's beneficiary makes withdrawals from the annuity, the earnings in the annuity will be subject to income tax (*IRC Sec 72(e) and (s)*).

Clients may be surprised when they learn that the accumulated earnings in their tax-deferred annuities will not receive a step-up in tax basis or otherwise become tax-free. They may believe that because an insurance company issued the annuity, the accumulated earnings of the annuity at death, like the proceeds of life insurance, will be income-tax free. But the accumulated earnings of a tax-deferred annuity are just that -- tax-deferred, not tax-free.

There are numerous other examples of property that receives no step-up in tax basis. These include traditional Individual Retirement

Accounts, profit sharing plans, pension plans, deferred compensation plans, executory contracts (such as a sale pending at death), accrued but unpaid interest on certificates of deposit, bonds or other loans, and certain payments (relating to income) under partnership agreements (*Treas. Reg. Sec. 1.691(a)-1(b) and 1.753-1*).

The general rule of adjustment to basis at death, and the exceptions to the rule, may suggest planning options. In order to preserve an opportunity for a step-up in basis, clients may want to avoid transferring low-basis assets before death. If the assets are ineligible for a step-up in tax basis, and if the clients have charitable interests, the clients may want to give those assets at death to a tax-exempt organization. Then all taxes (including death taxes, as well as income taxes) could be avoided with respect to those assets, resulting in an efficient way for the clients to accomplish their charitable objectives.

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.

In private practice in Anchorage, Steven T. O'Hara has written a column for every issue of The Alaska Bar Rag since August 1989.

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Big-picture truths regarding Alaska's current fiscal challenges

By Cliff Groh

Let's look past the legislative impasse as of this writing (May 10) to review some enduring truths about Alaska's circumstances. At the end of this piece, there's an invitation to a free event to help you learn even more.

The long-term decline in Alaska oil production and the deep slump in world oil prices over the past two years have combined to create major and continuing challenges for both Alaska's government and Alaska's economy.

The State of Alaska's oil revenues have fallen more than 90 percent in the last four years (Fiscal Year 2012 to Fiscal Year 2016, which ends June 30, 2016). That large reduction in oil revenues is a big problem given that oil revenues provided an average of 90 percent of Unrestricted General Fund revenues for the period of Fiscal Year 2005 through Fiscal Year 2014.

This sharp drop in revenues has contributed to **big structural deficits both this year and in the future**. The deficit is approximately \$4 billion this year (FY2016), and that number is equal to about three fourths of the budget (as conventionally defined as Unrestricted General Fund spending).

The State of Alaska's ability to finance deficits using the Constitutional Budget Reserve Fund — the savings account traditionally used to fill the gap—is going away fast. **The Constitutional Budget Reserve Fund (CBR) will fall to zero in less than two years at the current burn rate.**

Although still probably the highest per capita among the states, **Alaska's state budget has fallen and continues to fall**. Adjusted for inflation and population, the operating budget is the lowest it has been in 10 years.

The State of Alaska's top three General Fund expenditures are

for K-12 education, health and social services, and refundable oil tax credits. Refundable oil tax credits—which represent only a subset of all oil tax credits offered by the State of Alaska — cost \$500 million this fiscal year (FY2016). As of this writing, refundable oil tax credits are projected under current law to cost \$775 million in Fiscal Year 2017 (July 1, 2016-June 30, 2017), which works out to more than \$1,000 per Alaskan.

Alaskans are the lowest-taxed people in the U.S. Alaska is the only state with no form of state income tax and no form of statewide general sales tax.

The restructuring of the Permanent Fund earnings system under the most frequently discussed proposals will still likely leave Alaska with a substantial deficit.

The existence of the Permanent Fund — and even more the Permanent Fund Dividend—make fiscal politics in Alaska more difficult and complex than in other states.

The Permanent Fund and the Permanent Fund Dividend raise unusual questions of equity, both among classes and among generations.

Critical questions relevant to the fiscal challenge include "What is the Permanent Fund for?" and "How long do you intend to live in Alaska?"

Alaska perhaps faces a future of battles in court over levels of government funding.

Resolving Alaska's fiscal challenge is a question of values as well as a question of numbers.

Alaska's challenge is psychological and cultural as well as fiscal and political. Alaska needs to move from imagining easy prosperity to find fiscal sustainability in an era likely to feature increasing scarcity.

Alaska's legislators face a par-



Cliff Groh

ticular challenge. The Big Oil era in Alaska has made it relatively easy for lawmakers in Alaska to accommodate a lot of requests and desires for spending. Now the sharp decline in oil revenues is forcing legislators to transition to a new reality of picking winners and losers (or at least relative

winners and losers). The transition is not going well so far. One or more of the following impulses seem to be driving a number of legislators: hope; expedience; desire to inflict pain; and blame-shifting.

The hope is for higher oil prices. Oil prices have increased in the last few months, but — as always — it is critical to focus on scale. World oil prices would have to more than double and — given the forecasted continued declines in oil production — keep going up in real terms to solve Alaska's fiscal problem through price increases alone.

The expedience comes in with the wish of a number of lawmakers to put off big decisions until after the general election in November. Although there is a benefit to delay if that passage of time allows Alaskans to better understand the actual facts and options, the major cost is that the longer Alaskans wait to address the fiscal challenge, the lousier their options become.

The desire to inflict pain comes from the expressed belief of some legislators that big and difficult

decisions need to come after their constituents feel the hurt of more cutbacks.

The blame-shifting part arises because a number of legislators feel a need to blame any unpopular decisions on somebody else or on some external event. One risk for Alaskans is that this external event might be a recession exacerbated by the Legislature's actions and omissions this year.

You can join other Alaskans—including probably some legislators—in learning more about the continuing fiscal and economic challenges at an event **Saturday, Oct. 1, at the Wendy Williamson Auditorium on the University of Alaska Anchorage campus.** This event is free, open to all, and sponsored by Alaska Common Ground. Attending it will allow you to get more information about the facts and options as Alaska confronts the reality of paying for public services and maintaining a good economy in a new environment.

Cliff Groh is a lifelong Alaskan, a lawyer, and a writer. He is also Chair of Alaska Common Ground, a non-partisan and non-profit public policy organization focused on helping Alaskans seek consensus on the major issues facing the state. He worked on oil tax legislation while serving as Special Assistant to the Alaska Commissioner of Revenue in 1987-1990 and was the principal legislative assistant on the legislation creating the Permanent Fund Dividend in 1982.

My Five .

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 installment we highlight the top-fives of: Brennan Cain, vice president and general counsel at the Eyak Corporation; Jessica Graham, executive vice president and general counsel at Koniag, Inc.; and Moira Smith vice president and general counsel for ENSTAR Natural Gas Co.

Brennan Cain

- "Get Up, Stand Up" – Bob Marley
- "Play a Train Song" – Todd Snider
- "One Thing Real" – Dan Berns
- "Non Regrette Rien" – Edith Piaf
- "Nothing Compares 2 U" – Sinead O'Connor (lyrics by the former artist formerly known as Prince)

Jessica Graham

- "Every Breath You Take" – The Police
- "Reunion" – Collective Soul
- "Alabama Clay" – Garth Brooks
- "Yeah" – Usher
- "In a Daydream" – Freddy Jones Band

Moira Smith

- "Over My Head I Hear Music in the Air" by Kathleen Battle
- "Uptown Funk" by Mark Ronson
- The Glenn Gould recording of J.S. Bach's Goldberg Variations, BMV 988
- "Roar" by Katy Perry
- "(You Make Me Feel Like) A Natural Woman" – Aretha Franklin



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Retiring Justice Fabe led the effort to humanize Alaska law

Continued from page 1

third in her class from Stanford Law School began with an unpaid job at a county attorney's office.

When women judges, including Justice Ginsberg, honored O'Connor in a gala event to celebrate her retirement, the Washington Post reported the event not as news, but in the Style section. Post readers learned that Justice O'Connor wore a dark blue suit to the event and Justice Ginsberg sported "a natty plaid suit with velvet collar, a Paloma Picasso silver pin and a silver scrunchie around her pony tail."

Justice Fabe then reminded the audience of the importance of a diverse judiciary: "Diversity encourages hope in litigants that the judge in their case will have the life experience to understand their situation."

Making a point that shouldn't surprise anyone who ever argued a case before a woman jurist in Alaska, Fabe cited a federal study that established the absence of gender-based differences in case outcomes. Women judges had similar appeal and reversal rates as their male counterparts. The study supported O'Connor's assertion that "a wise female judge will come to the same conclusion as a wise male judge."

For Fabe, a woman judge's life experience can help her better understand the actions of some litigants than a male counterpart. To make this point, she cited Ginsberg's reported experience with a U.S. Supreme Court appeal by Savana Redding, a 13-year-old girl who had been strip-searched at school by the authorities on suspicion of hiding prescription-strength ibuprofen pills. (*Safford Unified School District No. 1 v. Redding*, 129 S.Ct. 2633 (2009)). According to Justice Ginsberg, her male colleagues on the court, having never been a 13-year-old girl, didn't understand how traumatic the child would find such a search. Ginsberg must have convinced the men be-

cause the court found Savana's expectation of privacy reasonable and the search unconstitutional.

Justice Fabe then discussed the positive administrative impact of woman Chief Justices. Eighteen women served as chiefs of the highest courts and United States territories while Fabe served her second three-year term as Chief Justice. At least two, Chief Judge Judith Kaye of New York and Chief Justice Kathleen Blatz of Minnesota worked to change the handling of child abuse and neglect cases so that fewer children would spend their childhoods in foster care and lose the chance for adoption and a permanent home. They convened summits of chief justices, trial court judges, state court administrators, child protection workers and policy makers from every state. Fabe reported that these "two women chiefs urged all of the state chief justices to foster collaboration among courts, agencies, attorneys and child advocates to improve the justice system for their states' most vulnerable children so that all might enjoy the promise of success."

Fabe also said women chief justices are "making a difference in recognizing the importance of work-life balance." She said, "attention and devotion to family are not only important in making us more well-rounded people and thus better professionals, they also are essential to reinforcing the fabric of our society and communities—raising children who have good values and can give back to their communities." Yet, she reported, a gender-bias study by the Ninth Circuit Court of Appeals showed that court employees who invest time in parenting and family activities find that it impairs career advancement.

Fabe reported that Alaska's court system has worked hard to create a workplace that honors the



"Fabe urged women judges, justices, and chief justices to be proud of helping to humanize the law."

principle of work-life balance. During her second term as Chief Justice, the court instituted flexible scheduling for many clerical employees and even administrative attorneys so they can work longer days for nine days and have the tenth day off.

When she served as the chief public defender for Alaska, Fabe experimented with a number of then-novel flexible scheduling ideas to allow parents to spend more time with their children. She also created job shares with two attorneys sharing one job, and job rotations with three attor-

neys sharing two jobs. The agency had flexible and generous leave for new fathers and mothers before the existence of the Family and Medical Leave Act.

At the end of her lecture, Fabe shared some wisdom from barrister and former President of Ireland, Mary Robinson — women jurists don't feminize the law, they humanize it. Fabe urged women judges, justices, and chief justices to be proud of helping to humanize the law. Alaskans should be thankful for Dana Fabe's efforts to humanize the law in our state.

Dan Branch, a member of the Alaska Bar Association since 1977, lives in Juneau. He has written a column for the Bar Rag since 1987.



Members of the Men's & Women's Choir of the Alaska Appellate Courts serenade Justice Dana Fabe at her retirement banquet. From left are: Judge John Suddock; Susan Carney; Justice Joel H. Bolger; Judge Marjorie Allard; Chief Judge David Mannheimer; Chief Justice Craig Stowers (hiding in the back); Justice Warren W. Matthews (ret.); Judge Robert Coats (ret.); Justice Alex Bryner (Ret.); Justice Peter J. Maassen; Justice Daniel E. Winfree; Justice Walter L. Carpeneti (ret.); and Justice Robert Eastaugh (ret.).

A choral tribute to Justice Dana A. Fabe

*presented by the Men's & Women's Choir of the
Alaska Appellate Courts*

(To the tune of "O Christmas Tree")

We're here today to sing the praise
Of one who brightens all our days;
In thirty years of state employ,
Who's never been one of the boys.
— Whose empathy, we now allege,
— Has humanized the Law's hard edge;
With smiles and cheerful sticky notes,
who's kept us from each other's throats.

Unburdened by testosterone,
She's blazed a tra-il all alone;
With outlooks that were new to us,
Became the driver of the bus.
— This token of esteem we give
— To one who's changed the place we live;
We lift our voices, strong and brave,
For thrice chief justice, Dana Fabe.



Justice Fabe's sisters Lissy Fabe, left, and Ellie Fabe joined her at her retirement event May 15. Photo by Margaret Newman

Anchorage attorney recognized among Champions of Change

The White House recognized Gregory T. Razo of Anchorage along with nine other individuals from across the country as White House Champions of Change for Expanding Fair Chance Opportunities April 27.

The 10 were selected for their leadership and tireless work to remove barriers to a second chance for those with a criminal record.

Razo is a shareholder of Cook Inlet Region Inc., an Alaska Native Corporation which supports his efforts to improve Alaska's civil and criminal justice systems. He serves as chairman of the Alaska Criminal Justice Commission charged with evaluating and making recommendations to improve criminal laws and practices, keeping in mind the goals of enhancing public safety, rehabilitation, victim restitution and reducing costs.

Alaska is in the midst of omnibus criminal justice reform legislation that is based on the commission's policy recommendations to the Alaska Legislature. Razo also serves as vice chair of the Alaska Native Justice Center tribal non-profit to address Alaska Natives' unmet needs regarding the Alaska civil and criminal justice system in response to the increasing disproportionate rates of victimization, incarceration and other justice-related issues impacting Alaska Natives throughout the state.

Each year, more than 600,000 people are released from state and federal prisons, and approximately

70 million people, about one third of working age adults, have an arrest or conviction. Too often, these individuals leave prison with few resources, practical skills, or the support they need to successfully reintegrate into society, and they end up returning to prison. In November, President Obama traveled to Newark, New Jersey to announce new actions to help formerly-incarcerated Americans – who have paid their debt to society – successfully obtain a job, find a home, take care of family responsibilities, and enjoy a second chance. These actions are underlined by a simple belief: When Americans who have earned a second chance are able to put their lives back on track, our communities are safer and stronger for it.

The program featured remarks by Senior Advisor to the President Valerie Jarrett, Attorney General Loretta E. Lynch, Deputy Attorney General Sally Yates, and Labor Deputy Secretary Chris Lu. The event also highlighted the growing list of public and private sector organizations that have stepped up to provide a second chance, including local governments that have passed "ban the box" ordinances and companies that have signed the *White House Fair Chance Business Pledge*.

The Champions of Change program was created as an opportunity for the White House to feature individuals doing extraordinary things to empower and inspire members of their communities.



Among the champions named are from left Sue Kastensen, Robert Scott, Samantha Galarneau, Tina Naido, Greg Razo and Sabra Williams.



Greg Razo and Sabra Williams of the Actors' Gang Prison Project.

Fabe retirement fundraiser raises \$14,000 for legal services

After 30 years of service to Alaskans, Justice Dana Fabe left the Alaska Supreme Court bench with just one request: Honor the importance of access to justice. Her request resulted in the creation of a silent auction held at her retirement party May 13.

Many thanks to the shoppers who lightened their wallets for a good cause; with your help we raised just over \$14,000 for three legal services providers.

The proceeds were split evenly among Alaska Legal Services Corporation, Alaska Network on Domestic Violence and Sexual Assault, and Alaska Institute for Justice/Alaska Immigration Justice Project to help support their important justice work in communities throughout Alaska.

Special thanks to our organizing committee: Laura Goss, Sarah Ibrahim, Heidi Pace, Christine Pate and Krista Scully.

And we couldn't have done it without the generosity of the following businesses and individuals:

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Chris Cooke and Georgianna Lincoln
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Dana Fabe and Randy Simpson
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Jen's Restaurant
John Straley
Lesa Robertson
Linda Duck and Lottie Michael
Margaret Newman
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Nan Thompson
Nancy Simel
Oomingmak
Sack's Café
Sandra Wicks
Shane Lamb
Stacy Walker
Suite 100
Teresia Cleborad
The Quilted Raven
The Skin Bar
Trisha Collins
Wende Irick



Bar members, family and friends on the train to Spencer Glacier whistlestop. Photo by Lynn Coffee

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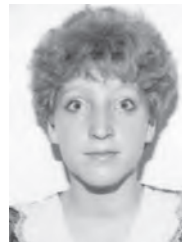
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Bruce Ward



Vincent Watson



Wayne Watson



Daniel Wayne



Ted Wellman



Jennifer Wells



Rhonda Westover



Teresa Williams



Zane Wilson

Not pictured:
Gregory Fisher
Bridget Meyer

50 Years of Bar Membership



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Herbert Ross



John Wittemyer

Not pictured: Kent Edwards



The 25-year Bar members pose for a group shot after receiving their pins.




Michael Carey speaks on "Alaska history as told through the law."



Barbara Jones and Lee Holen enjoy the banquet.

60 Years of Bar Membership



James Fisher



Nelson Page presented Sheila Gallagher with her pin for 50 years of Bar membership.



Judge Keith Levy, Judge Tom Nave and Leon Vance visit at the banquet.

BAR CONVENTION HIGHLIGHTS — ANCHORAGE

BAR'S ANNUAL AWARDS PRESENTED BY BAR PRESIDENT NELSON PAGE

Bryan P. Timbers Pro Bono Awards



Susan Cox accepts the Public Sector pro bono award on behalf of Matt Claman from Chief Justice Stowers.



Lee Holen accepts the pro bono Lifetime Achievement award from Chief Justice Stowers.



Chief Justice Stowers presents the Firm pro bono award to Dorsey Whitney, LLP. Firm members present were Jahna Lindemuth, Mike Grishman, Kate Demarest and Bob Bundy.



Jon Katcher accepts the Pro Bono award on behalf of Rob and Jeannie Sato from Chief Justice Stowers.



David Barney, manager of the Mountain View Boys and Girls club, where the Bar has held MLK Day for eight years receives the Layperson Service award from Nelson Page.

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



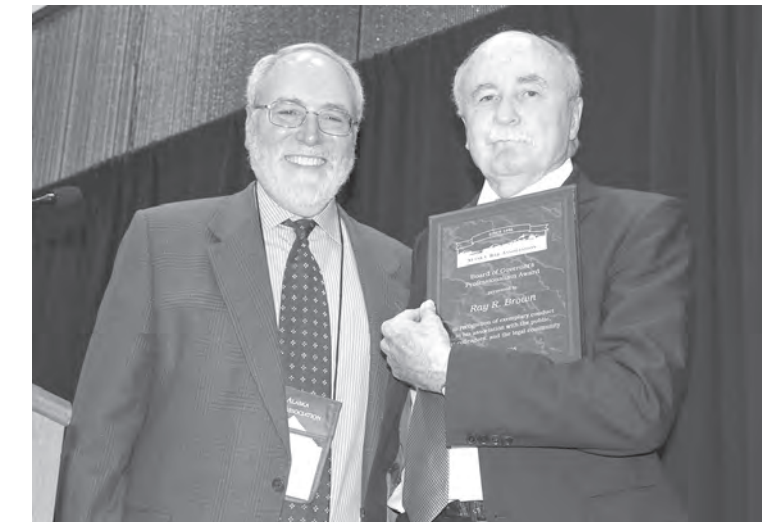
Greg Peters receives the Robert Hickerson Public Service award from Nelson Page.

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.



Deborah Periman receives the Distinguished Service Award for her service to the Bar, including serving as chair of the Law Related Education Youth Law Guide drafting subcommittee from President Nelson Page.

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



Ray Brown receives the Professionalism award from Nelson Page.

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.

Photos by Karen Schmidkofer and Lynn Coffee, Alaska Bar Association



Jim Torgerson receives the Alaska Bar Foundation Jay A. Rabinowitz Public Service Award presented by Bruce Botelho, previous award winner

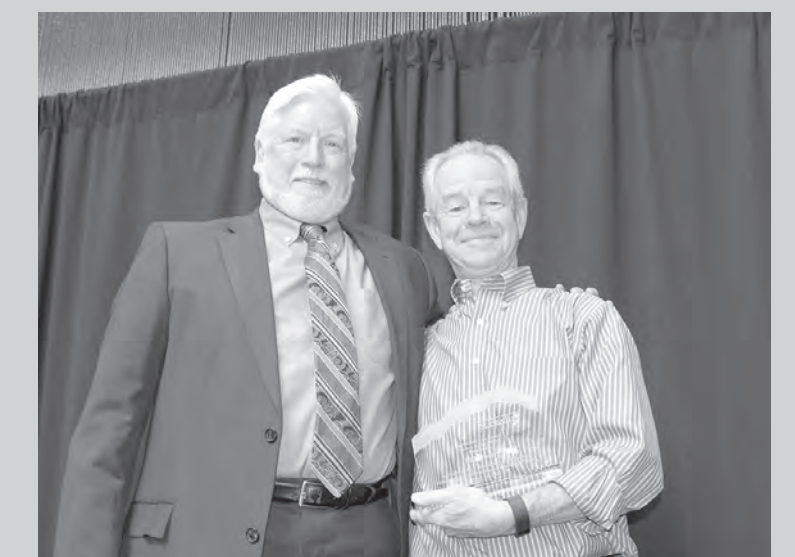
The Alaska Bar Foundation gives the Rabinowitz Public Service Award to an individual whose life work has demonstrated a commitment to public service in the state of Alaska.



Chief Justice Stowers presented the Alaska Court System's Community Outreach Award to Judge Eric Smith.



Judge Elaine Andrews (Ret.) receives the Anchorage Bar Association Benjamin Walters Distinguished Service award from Susan Lindquist.



Bill Oberly receives the International Law Section's Human Rights award for his work with the Fairbanks Four case from Rich Curtner.



Outgoing president Nelson Page and incoming president Susan Cox make the officer transition.



Nelson Page looks pleased after a successful year as president.

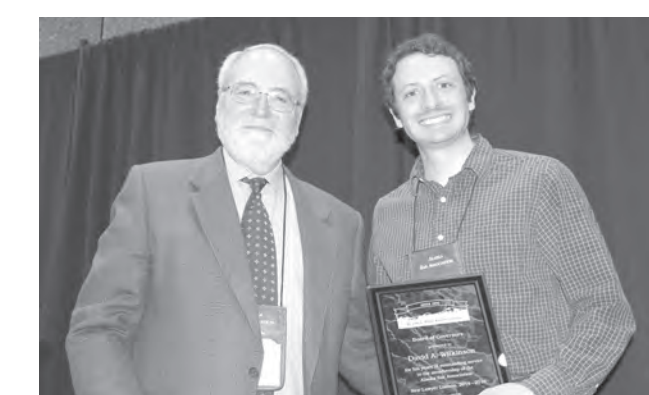


Chris Cooke receives the Judge Nora Guinn award from Historians Committee Chair Mike Schwaiger.

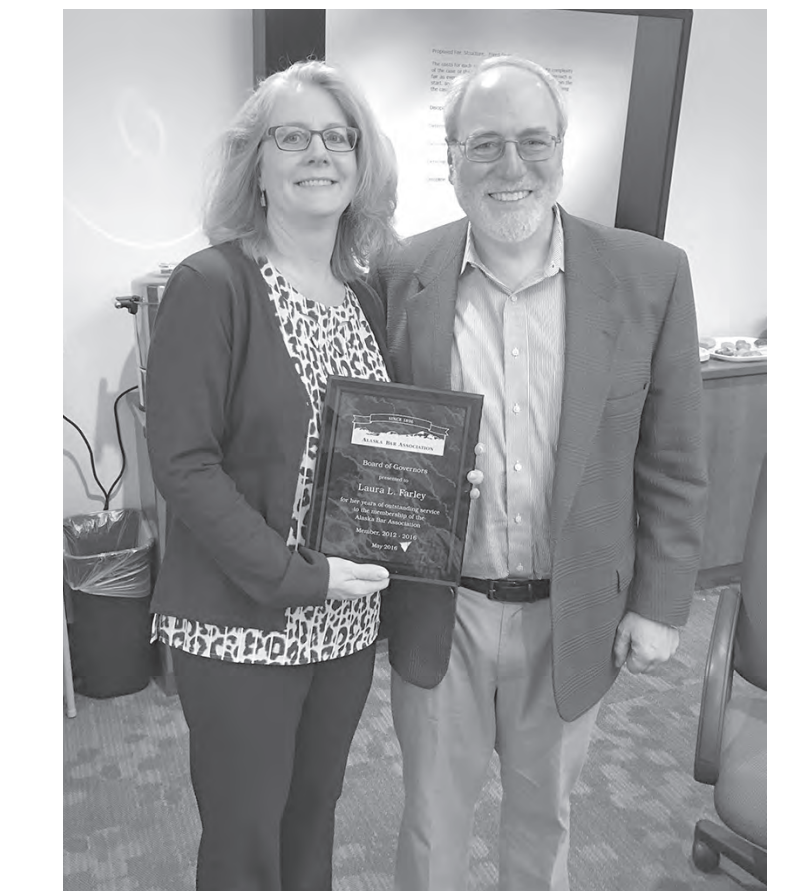
The Judge Nora Guinn Award is presented to someone who has made an "extraordinary or sustained effort to assist Alaska's rural residents, especially its Native population, overcome barriers to obtaining justice through the legal system."



Outgoing board member Alex Bryner received his plaque from Nelson Page.



Outgoing New Lawyer Liaison David Wilkinson receives his plaque from Nelson Page. David has been appointed to the Board of Governors to fill the vacancy created by Susan Carney's appointment to the Supreme Court.



Outgoing board member Laura Farley received her plaque from Nelson Page at the board meeting since she was Outside during the convention.

Board of Governors action items May 9 and 10, 2016

In meetings May 9 and 10 the Alaska Bar Association Board of governors took the following actions:

- Approved the results of the February 2016 bar exam and recommended 40 people for admission; recommended the admission of nine reciprocity applicants and six applicants by UBE score transfer.
- Voted to approve one new request for special testing accommodations for the July bar exam.
- Voted to approve Rule 43 (ALSC) waivers for Glenn Shidner and Justin Morehouse.
- Voted to approve a Rule 43.1 (Staff Judge Advocate Waiver) for Capt. Bradly Carlson.
- Voted to publish an amendment to Bar Rule 44 which would extend the length of legal intern permits to 12 months.
- Voted to publish an amendment to Bar Rule 43.1 deleting the reference to the Alaska pro bono program and adding a reference from the emeritus attorney rule.
- Voted to approve a stipulation for a six month suspension with conditions of restitution of amounts to the Lawyers' Fund for Client Protection, costs of \$2,500 to the Alaska Bar, and six months supervision if reinstated.
- Voted to publish an amendment to Bar Rule 26(b) adding the language "willful failure to file tax returns may be considered a serious crime."
- Voted to appoint Morgan Griffin

to the New Lawyer Liaison position.

- Met in executive session to discuss personnel leave.
- Voted to accept the Lawyers' Fund for Client Protection committee's recommendation for a \$3,000 reimbursement in 2016.
- Voted to approve reimbursement to the Alaska Bar from the Lawyers' Fund for Client Protection for \$184.58 mileage expenses for transporting files to Anchorage.
- Rejected a stipulation for disbarment and said that any stipulation should include a confession of judgment.
- Voted to publish the Alaska Rules of Professional Conduct committee's proposed revisions to the Alaska Rules of Professional Conduct.
- Voted to publish an amendment to Bar Rule 16 to include an assessment for discipline fees.
- Discussed what discipline expenses should be included in a report to the Supreme Court and decided to review a draft at the next meeting.
- Voted not to approve a request for payment to a law firm who was providing service to a now deceased lawyer.
- Voted to recommend the following slate of officers: President – Susan Cox; president-elect – Darrel Gardner; Vice President – Blake Chupka; Secretary – Gene Gustafson; Treasurer – Bill Granger.
- Voted to appoint the following to

the ALSC board: 1st District regular: Carole Waters; alternate: Jan Levy. 3rd District regular: Gregory Razo; alternate: Melanie Osborne. 4th District regular: Nicholas Gasca (formerly alternate); alternate: Natasha Singh (formerly regular). Board representatives regular: Gabrielle

LeDoux; alternate: Carolyn Heyman-Layne.

- At a special emergency meeting May 12 the Board of Governors appointed David Wilkerson to fill the board seat soon to be vacated by Susan Carney, until the next board election.

ATTORNEY DISCIPLINE

SUPREME COURT DISBARS ATTORNEY

The Alaska Supreme Court disbarred former assistant attorney general Erin A. Pohland for committing a criminal act that reflected adversely on her honesty, trustworthiness or fitness as a lawyer, and conflict of interest.

The criminal act involved concealment of merchandise. Pohland and a friend entered a downtown store with reusable shopping bags which they filled with merchandise after removing security tags from items with wire cutters. Pohland's friend pushed the cart out of the store without paying. Pohland accompanied her. She was later identified and charged with a misdemeanor shoplifting offense. Pohland pled guilty to concealment of merchandise on September 9, 2011. In December 2011, the Supreme Court placed Pohland on interim suspension from the practice of law for the criminal conviction.

As an assistant attorney general, Pohland provided legal advice and counsel to the Alaska Department of Labor and Workforce Development. In June 2010, staff of the Alaska Labor Relations Agency met with Pohland to discuss their suspicions about a forgery committed during a campaign to unionize certain employees of the University of Alaska. Pohland was a friend and tenant of the person under suspicion which Pohland did not disclose. While providing legal advice over a period of time, Pohland regularly texted her friend about the union development efforts.

Following a criminal investigation, the State charged Pohland and her friend with criminal misconduct. In February 2013, Pohland's friend was convicted of second degree forgery. On October 21, 2015, following trial, a jury convicted Pohland of official misconduct, a class A misdemeanor. Pohland filed a notice of appeal.

During disciplinary proceedings, Pohland stipulated she was operating under a conflict when she represented the Labor Relations Agency in 2010. She was a personal friend of the union organizer who was suspected of forging union interest cards. Pohland admitted she should have disclosed the conflict to her client. Despite her failure to disclose the conflict, Pohland gave the proper legal advice to the agency about the labor union election.

Pohland and Bar Counsel stipulated that Pohland's misconduct warranted disbarment. The Disciplinary Board recommended the Court approve the stipulation. The court disbarred Pohland. The period of disbarment is effective from May 6, 2013.

SUPREME COURT SUSPENDS ATTORNEY FOR THREE YEARS

The Alaska Supreme Court suspended attorney Loren K. Stanton from the practice of law for three years, effective August 2, 2015, for conflict of interest and an inappropriate sexual relationship with his client.

Mr. Stanton undertook to represent his client on an issue involving child custody of her young daughter. Early in the representation the client and Mr. Stanton began to exchange text messages that included photographs and provocative texts that were classified as sexting. Mr. Stanton gave money to his client and they planned a rendezvous at the client's apartment. Mr. Stanton visited his client for a brief time. Early the following week he moved to withdraw his representation and apologized to her for inappropriate conduct.

Initially his client claimed they had sex, but later she acknowledged she lied about what occurred. Despite the absence of sexual intercourse, Mr. Stanton agreed that he violated Alaska Rule of Professional Conduct 1.8(j) which prohibits a sexual relationship between the lawyer and a client unless a consensual relationship existed before the onset of the attorney-client representation. Mr. Stanton also violated Rule 1.7(a)(2) which prohibits a lawyer from representing a client if there is a significant risk that the client representation will be materially limited by the lawyer's personal interest.

Focusing on the fiduciary nature of the attorney-client relationship and the need to nurture trust and integrity at every level of the relationship, the court imposed a three year suspension for the misconduct. The court agreed that the suspension would be applied retroactively to the date that Mr. Stanton closed his law office and ceased to practice law.

Anchorage bar donates to Bean's Cafe as memorial

The Anchorage Bar Association recently donated \$1,000 to Bean's Cafe in memory of seven attorneys who died in 2015. Susan Lindquist, president of association presented the check to Lisa Sauder, executive director of Bean's Café.

The check was donated in memory of:

Mark Ashburn
Daniel Cuddy
Gregory Grebe
Lynn Plous
David Schlerf
William Grant Stewart
Ellen Toll



Susan Lindquist, president of the Anchorage Bar Association along with Jolene Hotho, administrative director of the Anchorage Bar, presents the check to Lisa Sauder, executive director of Bean's Cafe.

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Susan Carney appointed to Alaska Supreme Court

From the Office of the Governor

Susan M. Carney of Fairbanks has been appointed to the Alaska Supreme Court, Gov. Bill Walker announced May 12. Carney will replace Justice Dana Fabe, who is retiring after serving more than 20 years on the Court. Walker made his announcement at the 2016 Alaska Bar Convention in Anchorage.

"It is with great honor that I appoint Susan Carney to the state's highest court," Walker said. "As a long-time defense attorney with the Office of Public Advocacy, Susan brings a unique perspective to the bench. Her extensive work with clients in rural regions has given her insight on issues important to the Alaska Native community. From reading the many letters of recommendation, it is clear Susan is highly respected, as she has been praised by members of opposing counsel."

Carney's appointment was unanimously supported by the Alaska Judicial Council.

Carney earned her bachelor's degree in History and Literature at Harvard-Radcliffe College and graduated cum laude from Harvard Law School. She also studied at Harvard Divinity School. She began practicing law in Alaska 27 years ago, when she clerked for Supreme Court Justice Jay Rabinowitz.

Throughout her career, Carney has participated in more than 150 civil and criminal trials. She

currently works as a supervising attorney for the Office of Public Advocacy Fairbanks Defense Section, representing adults and juveniles in cases where a public defender is not available. Prior to her work with OPA, she spent 10 years as an attorney with the Alaska Public Defender Agency. Carney has also served as guardian ad litem in dozens of cases.

"Susan has worked on a number of complex, high-profile cases in Alaska, and earned the respect of judges, prosecutors, defense attorneys, and advocacy groups alike," Walker said. "Her professionalism, compassion, rigorous ethics and extensive knowledge are revered by many and will make her an outstanding addition to the Alaska Supreme Court."

Carney is also an active member of the Fairbanks community, coaching youth soccer and volunteering with the Fairbanks area "We the People" competition. She has also served on the board of directors for Big Brothers Big Sisters of Alaska and Boys and Girls Club of the Tanana Valley. She is a member of the Alaska Bar Association Board of Governors, Criminal Pattern Jury Instruction Committee for the Alaska Court System and the Alaska Association of Criminal Defense Attorneys.

Carney is a member of the Immaculate Conception Catholic Church in Fairbanks.



Recently appointed Supreme Court Justice Susan Carney stands with Judge Elaine Andrews, ret. (left); and Senior Justice Dana Fabe whom Carney is replacing. Photo by Lynn Coffee



Susan Carney joins Gov. Bill Walker at the Alaska Bar Association Convention May 12. Photo courtesy of the Governor's office



Susan Carney listens to Gov. Bill Walker as he is about to announce her appointment to the Supreme Court. Photo by Lynn Coffee

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Arguing case to Supremes: Religion comes to the courtroom

By Peter J. Aschenbrenner

"Well, it all seems to be here. I mean, it should be complete."

Johnny Hatsell studies the Supreme Court's most recent learning aid.

"You've heard of the World Wide Web?" I ask.

"I invented it, Professor," Hatsell replies.

"Johnny is the most overpaid Clerk of the House of Commons in British history," the Governor introduces our distinguished guest to the assembly.

"The Alaska Supreme Court has taken its cue from my 1774 Standing Orders in writing its inventory of prescriptions."

"As the first Vice-President to use his time writing a book about his experiences: 'Four Years Wasted in the Federalist-controlled United States Senate,'" Jefferson declares, "let me comment on this web page."

"It explains how to represent yourself in a case involving an appeal of a civil final judgment or order from the Superior Court to the Supreme Court. Keeping paraphrase to a minimum," The Whitesides adds.

"Most of this seems unexceptional," Hatsell agrees. "It's true that any 'process is complicated, long and expensive,' whether you are speaking of a legislative or judicial proceeding. And it goes on in that vein, which is more or less sociology. 'The process can take over two years. You should consult with an attorney if possible to discuss your case.'"

"You didn't allow lawyers to ad-

dress the House of Commons," Jefferson notes.

"Usually they were brought in to answer a few questions in private bill petitions and then rushed to the curb."

"But here," I point out, "lawyers are dispensed with entirely. It's all *pro se* all the time."

"That's what we pioneered, back in the day," Hatsell continues. "You got a professional to write your petition, you filed it, paying the Clerk his well-earned fees," he ahems the subject referenced above, "testified before a committee or two and waited for Parliament to act."

"But Commons wasn't really a court," I blurt.

"Where did you think the name 'Clerk' came from?" Jefferson steps in. "You could petition for anything. Get divorced, get a name change, become a citizen, whatever you wanted. Canal companies got immunity from suit when they dug a giant trench through your backyard. That's the origin of the well-worn phrase 'no ha-ha's in my backyard.'"

"But that's not true of proceedings in the Alaska Supreme Court," I blurt.

"Where does it say that?" the Governor asks. "You are asked to give 'the legal reasons that support why you should win the appeal.' So you can ask for anything you want."

"As long as you're dressed for a 'religious service,'" Jefferson points out. "I have nothing against merger of church and state, by the way, as long as the dress code is 'frock formal.'"

"Doesn't that violate the provi-

sions of the federal Constitution?" I ask. "I mean, it's like in one of those high-numbered Articles."

"Oh poo, Aschenbrenner, you're always the last to know. Alaska has just been named as the newest province of the Republic of Canada."

"But 'no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States,'" I gasp. "Doesn't that mean you should be able to get into the Supreme Court without dressing 'neatly and conservatively,' as in 'wearing something that you might wear to a religious service or a job interview?'"

"Now that we're also a province," the Governor points out, "we can pick and choose what provisions of the Canada Act (1982) we have to obey. We always had that power under the U.S. Constitution. Ted wrote it into one of his grab-bag bills."

"Hello, there," Hatsell gives out a start.

"I didn't see that either," TJ adjusts his Franklin-o-focals.

"Is something wrong with the court's website?" The Palin asks. "You two are the world's foremost experts on parliamentary procedure. With day jobs and published before 1801, if qualifications be needed."

"Some of this is a bit dicey. 'Have notes handy or make an outline to orient yourself to the issues you want to discuss.' No one speaks with notes in Commons," Hatsell sniffs.

"These are parties without counsel," Palin objects. "They are probably intimidated by the ornate surroundings of the amphitheatre which surrounds them."

"Practice before the argument in front of someone else," Jefferson reads. "Sound advice that."

"Say everything you think is important during your allotted time," Hatsell vocalizes the speech-a-lease. "There are no time limits in Commons. When the backbenchers hiss you down, then it's time to take your seat."

"Isn't contested business out of order after twelve thirty ayem?" Jefferson asks.

"That's Gladstone's brain child. March 16, 1872," Hatsell replies. "Look here, Governor, here's what the problem is. There is no authority for 'just in time' rule-making."

"So you're saying that our inventory of rules - in the Supreme Court - is defective?"

"The point is that you have nothing in here about the Chief Justice having the power to decide all proce-

dural questions or keeping order in the court. Like cutting you off in the middle of the word 'if.'"

"There's inherent," Palin disagrees, "power in there. Somewhere."

"That's what I thought," Hatsell replies. "But TJ pointed out this vital difference in his *Manual*: 'In the Senate of the United States, every question of order is to be decided by the President, without debate In Parliament, all decisions of the Speaker may be controlled by the House.'"

"This means that Westminster is not the mother of all parliaments," Mr. Whitesides joins in.

"On the other hand," our Governor rejoins, "the United States Supreme Court adopted, for its own procedures, 'the practice of the courts of king's bench, and chancery in England.'"

"The year was 1791. August 8, to be precise," Palin muses.

"Hold the phone," Governor Egan speaks up. "Now I'm confused!"

"It's pretty simply," Hatsell explains. "We're all following our own vision of a very virtual ancestor."

"That's more like sisters, one parliament to another," Egan mops his brow. "Now, for the Sixty-Four Dollar Question. Do we have to change the name of the *Baked Alaska* to *Baked Alberta*? I'd have to reletter my soda fountain's sign-board."

"We get to elect members to the federal House of Commons in Ottowattawa. And, get this," The Palin announces, "we get to call our federal election districts 'ridings.'"

"Alaska can host a provincial legislature in Anchorage," Jefferson muses. "Even the name has that ring about it. When Tartleton's men came after me, I was holed up in Charlottesville. The year was 1781. It was August as well -"

"Now that we're part of Canada," Governor Palin suggests, "we should update the Supreme Court's advice to pro se litigants. If you're out of time, the Chief Justice will cut you off, even if you're in the middle of the word *eh*."

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 47 of his articles.

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Governor appoints judge to Anchorage Superior Court

Gov. Bill Walker announced his appointment of Dani Crosby to the Anchorage Superior Court in November. Judge Crosby will replace Judge Michael Spaan, who retired at the end of November after serving on the Anchorage Superior Court since 2007.

"It is an honor to appoint Dani Crosby as the next Anchorage Superior Court judge," Walker said. "Dani has been described by her colleagues as hardworking, well-reasoned, and able to evaluate a legal problem from many different perspectives."

Raised in Sitka, Crosby has practiced law for nearly 20 years, focusing on employment issues, complex business disputes and family law matters. For the past two years, she has worked as a private practice attorney for Dani Crosby Law Office, Inc. Prior to that, Crosby was an attorney at Ashburn & Mason, P.C. for 14 years, where she was a leader in the firm's litigation practice, and worked on complex matters for the State of Alaska, the University of Alaska, and other private clients.



Judge Dani Crosby, husband Jim Fossler and daughter Lucy.

In addition to her work as an attorney, Crosby is the president of the Alaska Bar Foundation, a member of the Civil Rules Committee, and a regular volunteer with Alaska Legal Services Corporation. She received



From left: Judge Patrick Hanley, Judge William Morse, Judge Dani Crosby, Justice Joel Bolger and Judge John Suddock.

a bachelor degree in English and Comparative Literary Studies from Occidental College, and a juris doctor from Gonzaga University School of Law.

Nominated by the Alaska Judicial Council and appointed by the Governor, Ms. Crosby will now be one of 42 Superior Court judges in Alaska.

Alaskans join nationwide Stepping Up Initiative

Alaska was selected to participate with teams from 50 jurisdictions in 37 states in a national initiative (Stepping Up Initiative) to help advance efforts to "reduce the number of adults with mental illnesses and co-occurring substance use disorders in jails and prisons."

The policy team representing Alaska included: Judge Stephanie Rhoades, Anchorage District Court; Karen Forrest, deputy commissioner of Health and Social Services; Laura Brooks, director of Health and Rehabilitation Services, Department of Corrections; Kathi Trawver, research professor, University of Alaska Anchorage; and Steve Williams chief operating officer, Alaska Mental Health Trust.

The kick-off for the initiative was a summit, in Washington, D.C. sponsored by the Council of State Governments Justice Center; the National Association of Counties and the American Psychiatric Foundation.

The summit was convened to expand the knowledge base of state policy teams regarding programs and practices being implemented in

other states to address this issue. Alaska is well-positioned to use this information to forward and expand current efforts, and implement new strategies in this area as well as other related criminal justice reform issues. The Alaska team as well as all the participating teams will work in their home jurisdictions to:

- 1) identify mechanisms for collecting and reviewing data on the prevalence of people with mental illnesses in jails and assess their treatment needs
- 2) Examine treatment and service capacity and identify policy and resource barriers
- 3) develop a plan with measurable outcomes to appropriately divert persons with mental illness out of the criminal justice system
- 4) Creating a process to track and report on progress

Some members of the Alaska team also had the opportunity to meet with representatives from the Bureau of Justice as well as other non-governmental funders focused on this issue.



Dr. Mark McClung and Larry Cohen present on "Interview skills with mentally ill clients."

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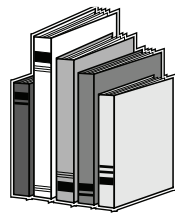
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Law Library News

Bar Association books available at law library

By Susan Falk



Recently I've been using this space to extol the virtues of our online resources – Westlaw. HeinOnline. Lexis eBooks. We are excited to offer you so many titles electronically, and to provide the same service to practitioners in the Bush as to those with easy access to the road system. Nonetheless, when it comes to print materials, you can't beat the collection housed in the Anchorage Law Library.

You are all familiar with the bulk of our collection. In addition to primary law from all American jurisdictions, we subscribe to most major treatises, legal annotations and encyclopedias like ALR and Am Jur, dozens of forms books, and a government documents collection that will be making its way out of storage throughout the summer.

We also have a great number of titles published by the American Bar Association. Some of these books are subject specific, written and edited by members of ABA sections. See, e.g., Real Estate Ventures: Formulating and Interpreting Promote Hurdles and Distribution Splits. (And not for nothing, if you understand that title, perhaps it's the book for you.)

Many of our ABA books, however, address the practice of law itself. Recent ABA titles related to law firm management include:

- Knowledge Management for Lawyers
- The Lawyer's Field Guide to Effective Business Development
- How Did She Do That? Marketing Success
- Locked Down: Practical Marketing Information Security for Lawyers
- Remaking Law Firms: Why and How

These books are just a sampling of our ABA titles and our law firm management books in general. The law library's collection offers a wealth of resources to help you build and maintain your practice, stay current on technological advances, and develop your business skills. Whether you're a new managing partner or seeking to set up your own practice, we have material that can help you.

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In Memoriam



Superior Court Judge Ben Esch works at his desk shortly before his retirement in 2013. Nome Nugget photo by Diane Haecker.

Former Superior Court Judge Ben Esch dies

By Chief Justice Craig Stowers

Retired Superior Court Judge Ben Esch died April 25 in Seattle after a courageous battle with leukemia. He was 71. Judge Esch was born in Washington, Illinois, attended MacMurray College in Jacksonville, Illinois, and earned his law degree from Arizona State University. He moved to Alaska shortly after his graduation and worked with the Public Defender Agency, including a year as Public Defender for Bethel. In 1975 he entered the private practice of law as a sole practitioner.

Judge Esch was appointed to the superior court in Nome in February 1996, and retired Feb. 1, 2013. Upon his retirement he had served as a Superior Court judge in Nome longer than any other judge since the Nome court was established in 1900. He served as the Presiding Judge for the Second Judicial District for several years, and he also served as a member of the Alaska Judicial Conduct Commission, including a term as chair. He brought to the bench a heightened sensitivity to cross-cultural concerns and he also had served on state advisory councils on alcoholism and drug abuse. Among his many civic activities he served as a Cub Scouts and Boy Scouts den and pack leader, a parent hockey coach, the director of Akeela House Inc., Nome Youth Court advisor, and a member and president of the Pioneers of Alaska, Men's Igloo #1.

After his retirement he and his wife, Jana, continued to reside in Nome, and spent much time traveling. They particularly enjoyed traveling to Mexico and attending the New Orleans Jazz Fest every year. Judge Esch also continued to serve the Court System as a pro tem judge. Judge Esch was very involved in the Nome community, and is the subject of many stories. For example, during the Iditarod he would work as an Iditarod finish line checker and wear a polar bear paw hat from the time the first musher left Anchorage until the last musher arrived in Nome.

Judge Esch was a good, kind, and humble man and a beloved and respected member of the Court System family. He will be deeply missed by all. Condolences may be sent to Jana Varati at Box 814, Nome 99762.



Judge Ben Esch, center, joins Judge Richard H. Erlich, left, and Judge Michael Jeffery for a beach photo in Kotzebue. Photo by James Mason

TALES FROM THE INTERIOR

Mid-air auction bid takes flip into family conflict, Disney cruise

By William Satterberg

The flight from Seattle to Narita, Japan, even on a good day, takes 10 hours. Over the years, flight amenities have improved substantially. Initially, the first flights had only very limited audio-visual entertainment offerings, requiring passengers to either read or drink themselves into oblivion in order to tolerate the otherwise boring trip. One could only watch the television show with the little airplane moving across the screen for so long. Fortunately, with the advent of modern audio-visual entertainment systems, classic boredom has become non-existent. Many passengers, including myself, now eagerly look forward to the hour flight in order to catch up on movies, entertainment and to play one of the many captivating video games.

In January 2015, my wife, Brenda, and I were once again bound for Saipan. Geographically, Saipan is located 120 north of Guam. As usual, it was to be a long flight.

As our aircraft backed out of the gate in Seattle, I immediately realized that something was wrong. Elderly flight attendants were scurrying back and forth trying to find long unused life jackets, oxygen masks, and other props necessary to demonstrate safety procedures on our Airbus, while rapidly schooling each other on obviously long-forgotten drills. It was apparent that I was not going to hear the deep southern drawl of the president of Delta Airlines, Richard Anderson, reassuring me that, once again, all was well with Delta Airlines. Nor would I be able to watch the safety video which tries so hard to be humorous in demonstrating emergency procedures. Rather, we would have to watch our panicked flight attendants attempt to recall safety demonstrations from when they first joined the airline well over 40 years ago, which was even funnier. The likelihood of the entertainment system working was clearly questionable.

As the aircraft climbed out of Seattle, we were soon advised by a timid attendant that the system was down. But, they were working on the problem. After approximately another 30 minutes, passengers were gingerly told that the system would not work. The airline apologized for the inconvenience and the flight attendants wisely went into hiding.

As usual, I had left all of my reading material on the bedroom nightstand. Not that I would have read it on the jet, regardless. Glossy foldouts are awkward to study in privacy on a crowded jet. I had also worn out the videos stored on my iPad. I had nothing fun to do. So I decided to check the now popular "Go-Go" in flight internet service. To my surprise, the service was actually functional. Go-Go advertised that, for the mere price of \$29.95, I could have internet access virtually all of the way to Japan, thus curing my trans-Pacific boredom.

When I was a kid, my parents took me to see my first play, "The Music Man." There is a statement in the musical that goes "Idle hands are the devil's plaything." It was that statement which formed the basis for the Music Man's marketing of band instruments to a small town in his traveling salesman's

scam. Little did I realize the prophetic nature of the warning.

With no movies to watch while crossing the Pacific, and feeling awkward about tuning in to many of the entertainment options available on the internet to people over the age of 18, I elected, instead, to go surfing on the net. Soon, I recalled that there was an internet auction based out of Fairbanks. It was a sealed bid sale scheduled to open three hours into my flight. I entered the site, and was immediately hooked.

A Fairbanks company was marketing Arctic transports known as Tucker Sno Cats. Tucker Sno Cats are large, heated, enclosed cab tractors with wide tracks which travel at high speeds over snow fields in search of adventure. When purchased new, a Tucker Sno Cat will cost between \$300,000 and \$400,000. These used models, however, had a published minimum bid of \$20,000 per unit. Moreover, they were represented to be in good condition, as standby Alyeska emergency response units.

Since I had nothing else to do for 10 hours, I studied the Sno Cat bids. Only one bid had been received for the unit in which I was interested. I decided to submit a bid. My first bid was for \$21,415.10. There was no logic to the bid. But it made sense at the time. Perhaps the high altitude coupled with free liquor on the long flight had a collateral effect.

I then began to watch my bid on the net, noticing that the amount of time remaining to bid opening was literally diminishing by the minute. No one else except me and my anonymous adversary were bidding on the unit. It became a machismo thing.

Ten minutes before bid opening, and two glasses of wine later, I decided that my bid was too low. Not that the other person had bid me up. Rather, it was just my Fairbanks paranoia setting in again. Still, I needed to up the ante. I resubmitted my bid for an additional \$2,000.

The time for bid opening came and went. I had no news despite refreshing the website several times. I became concerned. Perhaps the bids had been pulled at the last minute. Perhaps somebody else had won the bid. My male ego was at stake. Then, two hours before our scheduled arrival into Japan, to my frustration, the Go-Go connection went down.

Upon arrival in Narita, I immediately accessed the internet from the Delta Skyclub. I soon learned that I was the successful bidder on one, (each), Tucker Sno Cat. In addition, I had already received an invoice requesting prompt payment. I began to panic. The effects of the flight and the generous beverage service had, by then, worn off. I feared that I had possibly made a colossal mistake. I recalled our local yearly Fairbanks Catholic School Fundraiser auction, HIPOW, where, as the patrons consume greater amounts of wine generously furnished by the sponsors of the event, the bids skyrocket. I, myself, still have pieces of unused



"There was no logic to the bid. But it made sense at the time. Perhaps the high altitude coupled with free liquor on the long flight had a collateral effect."

auction items in storage which were great deals at the time. But, back to Narita and my growing panic. I accepted that there was nothing I could do at the lounge. It was well after 5:00 pm in Fairbanks. All businesses were closed. And a deal was a deal. I could not back out.

Several hours later, I arrived in Saipan, I immediately called a good friend and client of mine, Bernie Karl, who owns similar equipment and, like myself, is an auction fanatic. Rather

than praising me, Bernie immediately chastised me, stating "You made one helluva mistake, Bill." Bernie claimed that I had bid well over \$10,000.00 above what the vehicles would fetch in the open market. But that was not my only problem.

In Narita, I had proudly informed Brenda of my successful bid before my panic attack. Upon learning that I had spent over \$24,000.00 of the previous family fortune, Brenda unequivocally told me that I was now obliged to buy the family a "Disney Cruise."

After all, if I was going to spend that much money on a Tucker Sno Cat, I could also spend that much money on a cruise. Moreover, where a Tucker Sno Cat would depreciate, the cruise would have memories which would "last a lifetime." Brenda was clearly a victim of Disney advertising.

Having been told by Bernie that I had made a colossal mistake and having been told by Brenda that I had now committed myself to buy some Mickey Mouse cruise, I immediately contacted another friend of mine, Craig Compeau, a Fairbanks recreational vehicles dealer. I told Craig that I needed to sell the Tucker as quickly as possible. Craig came to my rescue.

Craig immediately listed the unit, prophetically speaking, on "Craigslist". We became partners in the sale. Craig would get a one-third lawyer's percentage. We asked

for an additional price beyond the auction purchase price. However, if necessary, we would negotiate. To my surprise, numerous calls were immediately received. Within less than a week, my Tucker was sold to a purchaser who also bought the unit sight unseen, like myself. I realized then that I undoubtedly could have fetched a much greater return on my new toy.

After the sale closed, I bragged to Brenda that, not only had I sold the Tucker within a week, but I had also realized a tidy little profit on "flipping" the rig. Rather than being excited, Brenda immediately wanted to know how I had flipped the Sno Cat when I was in Saipan with her. I flippantly explained that "flipping" was a term of art.

Given the sale, I next argued that I no longer was required to pay for a Disney Cruise. After all, "we" now had not lost \$24,000.00. In fact "we" had made more on the deal. If Brenda could assure me that we would make a similar profit on the Disney Cruise, I might be open to a cruise. In response, I was reminded of my oft used statement that "A deal is a deal." I had purchased the Tucker without spousal authorization, apparently a marital rule. True, I may have sold the Tucker for

more, but there had been risks involved. Besides, "How can you possibly place a value on memories that will last a lifetime?" Brenda asked. Once again, her logic escaped me,

although it obviously made sense to her.

As I cursed Walt Disney, I begrudgingly accepted that the folly was, in fact, of my own making. After all, if I had stayed off the internet on the trans-Pacific flight, none of this would have occurred. Then, again, if I had focused on other internet surfing sites during the trip, I likely would have been arrested in Japan for some sort of trans-Pacific morals violation.

Admitted to the Alaska Bar in 1976, William R. Satterberg Jr. has a private, mixed civil/criminal litigation practice in Fairbanks, Alaska. He has been contributing to the Bar Rag for so long he can't remember.

As I cursed Walt Disney, I begrudgingly accepted that the folly was, in fact, of my own making. After all, if I had stayed off the internet on the trans-Pacific flight, none of this would have occurred.

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Alaskans recall a visit by Supreme Court Justice Scalia

By *Jonathon A. Katcher*

Upon learning of the death of Justice Antonin Scalia it occurred to me to ask members of the Alaska Bench and Bar to share their memories of their interactions with Justice Scalia during his 2003 visit to the Bar Convention in Fairbanks. Bob Groseclose recounts a TVBA Tanana River paddle, and Jim Dewitt shares a bird outing. Judge Ralph Beistline recounts a Homer halibut fishing trip.

I vaguely recalled a musical comedy troupe at the Blue Loon doing a hilarious take off of The Supremes' "Stop in the Name of Love" connected to *Lawrence v. Texas*, where the Court, in a decision issued after

the Convention, declared unconstitutional laws that prohibit homosexual conduct between consenting adults. The 2003 Convention Agenda led me to Bob Noone and The Well Hung Jury, and the internet led me to Mr. Noone, a delightful man who was so gracious as to do some research and submit several photos and his essay, including his most eloquent lyrics. I've been told by several people who sat near Scalia during the performance that he laughed the entire time.

My time with Scalia started with my happily accepting President Lori Bodwell's invitation to give Scalia, Bodwell and her husband Gene Gustafson a motor tour of

Anchorage. Scalia and I sat in the back seat of a Ford Explorer driven by Bodwell with Gustafson up front. Two marshals followed behind in another vehicle. Driving through town I pointed out groups of Anchorage residents participating in the annual clean-up of litter revealed by the melting snow. Scalia was impressed by this good citizenship. We then headed down the Seward Highway to Girdwood for a ride up the Alyeska Tram and lunch at the Bake Shop. The weather was poor and the views were obscured but Scalia enjoyed himself.

I remember only two comments by Scalia. He referred to President Bill Clinton as "that piker." And when

I advised Scalia that Alaska has a privacy article written into our constitution, he said "good luck with that."

Like just about everybody, from Ruth Bader Ginsburg to Stephen Colbert, I found Scalia to be a warm and affable gentleman. He carried himself with the sensibilities and modest formalities of my parents' Depression and World War II generation. Looking back, I remain humbled and amused by this opportunity to spend a little time with a man who made such a significant impact upon America.

Jonathon A. Katcher has practiced law in Anchorage for more than 35 years.

Canoe trip with Scalia involves a simple goal

By *Bob Groseclose*

I was honored to be the designated boatman for Justice Antonin Scalia's May 8, 2003, Chena River canoe ride from Graehl Landing to the Princess Hotel Alaska Bar Convention site. I first learned of my assigned role when I was contacted by Scalia's security detail.

After evidently passing the security vetting, I soon found myself launching my 17-foot Tripper canoe with Justice Scalia in the bow. We were joined by two other bar associated boats, making us an inconspicuous armada of three. To the casual observer, the canoe tour was no different than any number of small canoe groups that take to the Chena for water fun after the winter ice turns liquid.

As the landlubber security detail hop-scotched our river route, we enjoyed a pleasant few hours see-

ing Fairbanks from duck level. Scalia seemed to enjoy the experience, as the only complaint I recall was whether his summer overseas teaching plans needed to be revamped in light of the 2003 Iraq War fallout. Seems that even in the remote north, national figures and world events are never too distant.

Even if Justice Scalia was a renowned survivor of rough water, and not beyond making his own waves, my objective was to keep the boat upright. I didn't want to test his limits. Being overturned would have had embarrassing consequences to us both, likely landing me on the receiving end of a barbed

dissent. Best yet, navigating calmer waters preserved Scalia's energy for his spirited bar-bench interaction that demonstrated that he was an admiral among sailors.



With Justice Scalia in the bow, Fairbanks attorney Bob Groseclose steers their canoe on the Chena River while Lori Bodwell watches from a second vessel.



River paddlers share a moment on the Chena River bank. From left are Bob Groseclose, Julie Webb, Ken Covell, Lori Bodwell, Gene Gustafson and Justice Scalia.

Supreme Court justice survives birding trip to Creamer's Field

By *Jim DeWitt*

Yes, it's true. WC and Mrs. WC went birding in Fairbanks with the late U.S. Supreme Court Justice Antonin Scalia a few months after he joined in the Supreme Court decision that stole the presidency from Vice President Al Gore.¹ And we let him live.

It happened like this. The Alaska Bar Convention was in Fairbanks that year. Justice Scalia was the guest of honor and featured speaker. Justice Scalia reportedly expressed an interest in seeing some birds. Alaska Bar Executive Director Deborah O'Regan and CLE Director Barbara Armstrong jointly asked WC to take Justice Scalia on a bird walk. WC has always found it very hard to say "No" to those ladies. And then 9th Circuit Court

of Appeals Judge Robert Boochever asked WC to take him along.

Now WC's bird skills are mediocre at best, but Mrs. WC is a genuine birding genius. Plus, she knows the birds and bird locations around Creamer's Refuge far better than WC. As a registered member of the Green Party in Alaska, she was less than enthusiastic about squiring around an arch-conservative, but the temptation of meeting a bona fide Supreme Court justice was too much and at 7:30 a.m., one gray morning we waited at Creamer's Refuge to take Justice Scalia, Judge Boochever and a couple of U.S. Marshals around the trails.

They arrived in a squadron of big, black Chevy Suburbans. There were two already parked in the parking lot by the farmhouse. After introductions, and after we loaned

Justice Scalia a pair of binoculars, we set out along the trails. The Justice was a lousy birder. And wanted to talk about shooting ducks more than the birds we were seeing. On the boardwalks of the Boreal Forest Trail, Mrs. WC whispered to WC that we ought to push him off into the swampy water under the boardwalk. WC pointed out the woods were full of U.S. Marshals, and that while it might be tempting, it wouldn't be prudent. So we left him dry and Mrs. WC avoided assault charges.

We found Justice Scalia a black-poll warbler and a Lincoln's sparrow, both pretty good birds, in addition to the usual suspects. But he continued to talk about shooting ducks.² We ended the walk at Alaska Bird Observatory's banding station, where Judge Boochever and

Justice Scalia both had a chance to release a banded bird. Judge Boochever did so with evident pleasure, a big smile of delight on his face at the bird left his hand and flew off. Justice Scalia's face didn't show a thing.

WC is and was a harsh critic of Justice Scalia and his hypocritical nonsense of "originalism." And not the only critic, either. Our world has precious little to do with the lives of the much-revered Founding Fathers. It speaks more to the intellectual bankruptcy of conservative thinking that they bought the poppycock Justice Scalia was peddling to justify his closed thinking.

At some point WC will likely visit Antonin Scalia's grave. Just to make sure he's still dead.

Bar Member Jim DeWitt contributes to a blog called Wickersham's Conscience, Commentary, Reviews and Nature Photography, where this article originally appeared: <https://wickershamsconscience.wordpress.com/2016/02/16/birding-with-antonin-scalia/>

1. Yes, technically it was a *per curiam* decision, meaning it had no official author. But was you sort through the concurring opinions, it's pretty clear who joined in what Alan Dershowitz called "the single most corrupt decision in Supreme Court history."

2. Only later would we learn how lucky we were not to have agreed to take him duck hunting.



Justice Scalia encounters Well Hung Jury in Alaska bar

By Bob Noone

I well remember when the Alaska State Bar invited the Bob Noone & The Well Hung Jury (WHJ) to perform for their annual meeting 13 years ago. We perform all over the country, and most folks know that when you hire us, we research the “keynote guests” that will be in your audience and do a special song or two. Example: Chief Justice William Rehnquist, at the Federal 4th Circuit Conference, following his dissent (along with Scalia) in *Santa Fe Independent School Dist. v. Doe* (praying to Jesus at Football games) in which he noted the “disturbing” tone of the court’s opinion was treated to the Jury’s parody “A.C.L.U.” (Parody of YMCA).

When invited to Alaska, we discovered that Justice Antonin Scalia would be an honored guest at our show. Only weeks before the May 2003 performance, Justice Scalia delivered the dissent in *Lawrence v. Texas*, a landmark decision by the United States Supreme Court which struck down the sodomy law in Texas and, by extension, invalidated sodomy laws in 13 other states, making same-sex sexual activity legal in every U.S. state and territory. Of the 30-plus questions asked of petitioner’s counsel during the court’s oral argument, our research revealed that Justice Scalia asked approximately 23 of those questions. In our opinion, we thought the justice harbored a keen interest in sodomy.

Writing frantically in the days before performing at the Blue Loon in Fairbanks for the bar, I wrote a Diana Ross parody, “Stop In The Name of Law” ... recounting the police dispatched to stop the two consenting males from doing what two consenting males in Texas might do. Donning bright red feather boas and sequined shoulder wraps, (which I still own), the four-member WHJ went into chorography and song for a tune that would be dedicated to Justice Scalia. In the opening monologue before the song, I recall saying (as I observed the federal marshals near the staging area), “Justice Scalia, given your dissent in *Lawrence v. Texas* last month, we suspect there is a gaping hole in your collection of sodomy music, and we hope to fill that void right now....” (cue the music)



A pause in mid song.



Well Hung Jury prepares to go on stage, author is second from left.

The past 13 years have fogged my memory of the lyrics, but I think it was something like:

“Every night in anticipation

I can’t wait, for our consummation,

Lights turned down in our little Love Land,

The stereo plays Barbara Streisand,

In your arms, I feel your passion RISE....

Suddenly a flashlight in my eyes.

Background singers: “Think it o-o-ver, says the Cop....

“Think it o-o-ver, Hey you on Top, you better....

STOP – In The Name of Law, before you (I think you’d have to see the choreography here....)



“STOP! ... in the name of law”

He was a great sport and bought a CD afterwards (*Chicken Suit for the Lawyer’s Soul*) and the Alaska State Bar’s check didn’t bounce.

Overall, a great gig I’d do again. PS – I recall a sign at the Blue Loon noted “Cinco De Mayo Celebration- May 3.

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Lawyers' Assistance Committee
Alaska Bar Association

Federal Bar Association is planning an August annual conference

By Darrel J. Gardner

The Alaska Chapter of the Federal Bar Association (FBA-Alaska) is busy planning the Annual Alaska Federal Bar Conference to be held Aug. 12, 2016. For the third year in a row, the national president of the FBA will be attending our conference. This year's president is Mark Vincent, an assistant U.S. attorney from the District of Utah. We are planning a terrific conference with many varied presentations that will have broad appeal for anyone who practices in federal court. Topics will include Artificial Intelligence and the Law; Climate Change and Arctic Policy; and a Criminal Law Supreme Court Update. There will

be additional concurrent civil and criminal tracks. Registration and additional information will be available through the Alaska Bar Association (www.alaskabar.org). Please save the date, and we'll see you at the conference.

On Dec. 18, 2015, President Obama granted executive clemency to two Alaskans serving lengthy federal prison sentences: Raymond Thomas, sentenced to 216 months in 2005 for possession of a controlled substance with intent to



"We are planning a terrific conference with many varied presentations that will have broad appeal for anyone who practices in federal court."

distribute; and Alex Contreras, sentenced to 480 months in 2002 for drug crimes and possessing a firearm during a drug crime. Both prison sentences were commuted to expire April 16, 2016. Both individuals remain subject to many years of supervision by the United States Probation Office. Shortly after his release, Contreras returned home to Alaska to reunite with his family. The clemency applications were filed by the Alaska Federal Public Defender with the substantial assistance of a summer intern, Kevin Coe, who recently passed the bar exam and was admitted to the practice of law in Alaska. Coe now clerks for Alaska Superior Court Judge Herman Walker Jr.

FBA-Alaska has hosted several events this spring, including a lunchtime meeting with a presentation on the status of legal educational opportunities for Alaska students. The speakers included Vice Dean Patricia Kuszler, Professor Jeff Feldman, and Betsy Baker, representing the University of Washington (UW) School of Law, which offers a "three plus three" program whereby UAA students can finish their final year of college as first-year law students at UW in Seattle. We also heard from Professor Christian Halliburton from Seattle Uni-

versity's (SU) School of Law, which just opened its satellite Anchorage campus last fall. Five students from SU were enrolled in the Alaska program as third-year law students. One SU student, Glen Rice (who has interned at both the state and federal public defender offices in Anchorage), became the first member of the new Alaska Chapter Law Student Division of the FBA. Professor Halliburton (cmhall@seattleu.edu) has graciously volunteered to act as the faculty liaison for the division, which is open to any law student who wants to become a member of the FBA's Alaska Chapter. The cost of membership for first-year students is just \$50 for four years of membership, and third-year students can join for only \$20 (good for two years of membership).

The Ninth Circuit Judicial Conference will be July 11-14, 2016, at Big Sky in Montana, the home district of new Chief Circuit Judge Sidney Thomas. Alaska's Chief Judge Timothy Burgess is the conference program chair this year, and next year he will serve as conference chair. This is a great honor (and a lot of hard work!) for our chief judge; he has earned much respect within the Circuit, particularly from the other members of the Conference Executive Committee, on which he serves.

Darrel Gardner is a past president of the Federal Bar Association's Alaska Chapter, and he currently serves as vice president of the Alaska Bar Association.



(L to R), Federal Defender Rich Curtner, former FPD intern Kevin Coe, joined Alex Contreras (with his family) shortly after his return to Alaska following his pardon and release from federal prison. Contreras holds the grant of executive clemency signed by President Obama.

Bar People

Birch Horton Bittner & Cherot announces changes

Birch Horton Bittner & Cherot is pleased to announce that Jennifer C. Alexander and Adam W. Cook have become shareholders and Mara E. Michaletz has become a member.

Jennifer C. Alexander is a fourth-generation Alaskan, and has been associated with Birch Horton Bittner & Cherot since 2000. Alexander is a member of BHBC's employment and municipal law groups and her practice includes representation of union and non-union employers in all areas of labor and employment law. She represents employers in proceedings before the Alaska Superior Court, Alaska, Alaska Labor Relations Agency,

National Labor Relations Board, Equal Employment Opportunity Commission, Alaska State Commission for Human Rights, Anchorage Equal Rights Commission, the U.S. and Alaska Departments of Labor, and in labor and employment arbitrations. Alexander also provides counselling to employers on day-to-day personnel matters, including compliance with state and federal laws, employee investigations, substance abuse and drug testing, employment policies and handbooks, employment contracts, covenants not to compete, and discharge and disciplinary matters.

Adam W. Cook joined the firm in 2007. Originally from Anchor-

age, Cook worked for the Alaska State Legislature and as a clerk for Alaska Superior Court Judge Patrick McKay before joining the firm. Cook's litigation practice includes construction law, federal contracting, contract disputes, bid protests, municipal law, and general litigation. He has represented numerous owners and contractors in Alaska's construction industry. He has also worked in appellate matters before the Alaska Supreme Court. He has represented clients before the Armed Services Board of Contract Appeals, the U.S. Court of Federal Claims, and the Federal Maritime Commission. Cook looks forward to continuing his work with a dynamic and knowledgeable team of attorneys at Birch Horton.

Mara Michaletz joined Birch Horton Bittner & Cherot in 2013.

Michaletz serves the firm's clients in a wide variety of fields including commercial litigation, construction law, personal injury, and administrative law. In addition, she counsels clients on compliance with state and federal health care law, and her advocacy has enabled clients to achieve successful results in Medicaid audits and certificate of need litigation. Michaletz first came to Alaska to clerk for Superior Court Judge Peter Michalski after graduating from the University of Minnesota Law School, and joined the firm after having practiced as a trial and supervising attorney at the Anchorage District Attorney's Office for six years.

Stoel Rives managing partner receives public service award

James E. Torgerson, firm-wide managing partner of Stoel Rives LLP, has been honored with the Jay Rabinowitz Public Service Award, presented by the Alaska Bar Foundation for his commitment to public service. In January 2016, he was named firm-wide managing partner and made history as the first Alaska-based managing partner of a major law firm in the United States.

Given each year since 2003, the award is bestowed by the board of trustees of the Alaska Bar Foun-

datation to an individual whose life's work has demonstrated a dedication to public service in Alaska. The award is funded through gifts from the public in honor of the late Alaska Supreme Court Chief Justice Jay Rabinowitz.



James E. Torgerson

Manley & Brautigam hires associate

Manley & Brautigam, P.C. is pleased to announce Sandon Fisher has joined the firm as an associate attorney. Sandon's practice focuses on business and estate planning, entity formation, mergers and acquisitions, transactional law, and estate and probate matters. He earned his B.S. degree in Government and his law degree from Liberty University in Virginia. His prior

work was with the Alaska Office of the Governor, the Alaska Department of Law, and the Juneau Economic Development Council. He was admitted to the Alaska Bar in December 2015.



Sandon Fisher

Comments sought for proposed revisions to Alaska Rules of Professional Conduct, pursuant to ABA's recommendations in Ethics 20/20

After much study, the ABA adopted amendments to the ABA Model Rules of Professional Conduct, in a project called Ethics 20/20. The amendments involve a number of the Model Rules, but focus on five main areas: 1) the interface of technology with client confidentiality; 2) the use of technology in client development; 3) detection of conflicts of interest; 4) the multijurisdictional practice of law; and 5) choice of law in discipline matters.

For two years the Alaska Bar Rules of Professional Conduct Committee has studied and evaluated the ABA amendments and has made proposed amendments to the Alaska Rules of Professional Conduct. On May 10, 2016, the Board of Governors voted to publish the revisions suggested by the Alaska Rules Committee.

A summary of the proposed changes is included here; to access the complete PDF documents – both the marked up working version and the clean version reflecting changes made – please go to the State Bar website. Contact Deborah O'Regan at the Alaska Bar Association with any comments to the proposed changes.

Website: Alaskabar.org
 Robert Bundy
 Member, Rules Committee

Summary of changes:

1. Technology and client confidentiality.

The proposed amendments to the ARPC attempt to deal with the increasingly common use of electronic communications, including email, texting, and social media in communicating with clients and others. The amendments require a lawyer's competence to include an understanding of the benefits and risks associated with using electronic communications, including risks to the confidentiality of client communications. The affected Alaska Rules of Professional Conduct are: 1.1, 1.4, 1.6, 4.4 and 9.1.

2. Technology and client development.

The proposed amendments incorporate electronic communications into current rules relating to contact and communications with prospective clients, through direct communication, solicitation, or advertising. The affected Rules are: 1.18, 7.1, 7.2, 7.3 and 5.5.

3. Detection of conflicts of interest.

The proposed amendments allow for lawyers to disclose limited client information to detect and resolve conflicts of interest, such as when a lawyer is discussing future employment, law firms are discussing merger, or a practice is being sold. The affected Rules are: 1.6 and 1.17.

4. Multijurisdictional practice of law.

The proposed amendments

would permit foreign lawyers to provide legal services to their employers as in-house counsel under certain circumstances. The affected Rule is: 5.5.

5. Choice of law in discipline matters.

The Committee did not adopt the ABA's proposed amendment to Comment [5] of Model Rule 8.5 regarding factors to be considered in determining which jurisdiction's rules apply to a lawyer's conduct.

PROPOSED RULE CHANGES:

SERIOUS CRIME

Comments sought for proposed change to Bar Rule 26(b) defining "serious crime"

On May 10, 2016 the Board of Governors voted to amend Bar Rule 26(b) -the definition of serious crime - to add the crime of willful failure to file an income tax return, which would allow the Supreme Court to impose interim suspension on an attorney convicted of such crime. Please contact Deborah O'Regan, Executive Director at the Alaska Bar Association, with any comments.

Rule 26. Criminal Conviction; Interim Suspension.

26(b) Definition of Serious Crime. The term "serious crime" shall include any crime which is or would be a felony in the State of Alaska and shall also include any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime, involves conduct as an attorney, interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, corruption, conspiracy or solicitation of another to commit a "serious crime." *Willful failure to file an income tax return may be considered a "serious crime" for purposes of Section (a) of this Rule.*

ARMED FORCES LEGAL ASSISTANCE

Comments sought for proposed language amending Bar Rule 43.1

Alaska Bar Rule 43.1 allows waivers to practice law under a United States Armed Forces Expanded Legal Assistance Program. The waiver allows a qualified applicant to represent military clients or their dependents, or accept a case under the Alaska Pro Bono Program. The Alaska Pro Bono Program has been closed since December 30, 2011. On May 9, 2016, the Board of Governors voted to amend Bar Rule 43.1 with the language below. Please contact Deborah O'Regan, Executive Director of the Alaska Bar Association, with any comments.

Rule 43.1. Waivers to Practice Law under a United States Armed Forces Expanded Legal

Assistance Program.

Section 5. Conditions. A person granted such permission may practice law only as required in the course of representing military clients or their dependents, or when accepting a case under the auspices of the Alaska Pro Bono Program under this rule, a qualified legal services provider as provided in Bar Rule 43.2(c)(2), and shall be subject to the provisions of Part II of these rules to the same extent as a member of the Alaska Bar Association. Such permission shall cease to be effective upon the failure of the person to pass the Alaska Bar examination.

LEGAL INTERNS

Comments sought for proposed rule for legal interns

Alaska Bar Rule 44 allows a permit to practice law for a qualified legal intern. On May 9, 2016, the Board of Governors voted to amend the language to extend the duration of time one may practice as a student legal intern from eight months to twelve months. This was done to reflect the fact that some law students may now complete their third year of law school in Alaska. Please contact Deborah O'Regan, Executive Director at the Alaska Bar Association, with any comments.

Rule 44. Legal Interns.

Section 6. Termination of Permit. A permit shall cease to be effective as follows:

(a) For a law student who obtains a permit under Section 3(b) of this rule, upon the expiration of a period of ~~eight~~ twelve months in cumulative time that the intern participates in any acts authorized by the permit in any Alaska court; this cumulative time limit may be divided into two or three separate time periods if appropriate for the law student's schedule;

(b) For a law school graduate who obtains a permit under Section 3(c) of this rule, upon the expiration of a period of ten months from the date of issuance, or upon the failure of the intern to pass any bar examination administered by Alaska or any other state of the United States or the District of Columbia.

DISCIPLINARY FEES

Comments sought for proposed rule for disciplinary fees, Bar Rule 16.

The costs associated with attorney discipline actions are a major expense for the Alaska Bar Association, and those costs are reflected in the price of our yearly bar dues. In fact, discipline matters account for over 32% of the Bar's expenses. The Bar currently has no standard policy for recouping part of the associated costs from attorneys who are the subject of discipline findings. The Board of Governors has reviewed

the discipline systems from twenty seven other jurisdictions. Many of those jurisdictions have instituted a fee system for recovering costs from disciplined attorneys. The majority of other bars use a fixed fee scale. Fixed fees are based on the procedural level at which the discipline case resolves. This approach is commonly seen in other jurisdictions and appears to be the simplest and fairest means for the Bar to recover partial costs in discipline cases. The fixed fee schedule is designed to only partially reimburse the Bar Association for costs associated with cases where an attorney is actually sanctioned; it is not intended to generate a profit for the Bar.

Therefore, in an effort to make the discipline process more cost effective for the Alaska Bar, and to help the Bar maintain bar dues at their current rate for as long as possible, the Board has proposed new language to Bar Rule 16. At a regular meeting of the Board of Governors held on May 10, 2016, the Board voted to amend Bar Rule 16 to include the language set forth below. Please contact Deborah O'Regan of the Alaska Bar Association with any comments on the proposed language.

Darrel Gardner,
 President-Elect, Alaska Bar Association, Board of Governors

Bar Rule 16. Types of Discipline and Costs

16(c) Restitution; Reimbursement; Costs. When a finding of misconduct is made, in addition to any discipline listed above, the Court or the Board may impose:

(1) Restitution to aggrieved persons or organizations;

(2) Reimbursement of the Lawyers' Fund for Client Protection; or

(3) Payment of a disciplinary assessment according to the following schedule:

Fixed Fee Schedule

Discipline by Consent Issued by the Court or Disciplinary Board
 \$1,000

(No Fee for Written Private Admonition issued by Bar Counsel)

Determination of Misconduct Following Hearing
 \$2,000

Determination of Misconduct Following Appeal to Disciplinary Board
 \$3,000

Determination of Misconduct Following Appeal to Supreme Court
 \$4,000

Discipline by Reciprocity
 \$500



Did you hear the one about the lawyer who ...?

Mark Twain notes...

"It is interesting to note that criminals have multiplied of late, and lawyers have also; but I repeat myself."

Max Gruenberg's library contained full sets of the *Alaska Report* and the *Alaska Digest*.

If interested owning them please call Kayla Epstein at 337-1688 or 244-4801

Race Judicata raises more than \$7,000 for youth court

By Elle Darcy

While it may have been a little overcast, the weather was perfect for runners to participate in the Young Lawyers Section's annual Race Judicata. Approximately 120 runners and walkers, many of whom were toting along children and dogs, traversed five kilometers along the Tony Knowles Coastal Trail. Participants were cheered on by members of the Anchorage Youth Court, many of whom were dressed in judges' robes. Upon returning to Westchester Lagoon, everyone enjoyed snacks from Denali Sausages while door prizes were being raffled off. Co-director Sarah Park presented ceremonial gavels to the race's top finishers, Trevor Bailly and Laura Fox, as well as a trophy to the top finishing dog, Daisy. Complete results can be found at http://www.anchorageyouthcourt.org/race_judicata.html.

Race Judicata is an annual fundraiser organized by the Young Lawyers Section of the Anchorage Bar for the benefit of Anchorage Youth Court. This year's event raised more than \$7,000.

Great thanks go out to all race participants, volunteers, and dedicated sponsors without whom this event would not have been possible.



Members of the Anchorage Youth Court cheer on the runners.

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