The Alaska BAR RAG

Dignitas, semper dignitas

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Alaska loses three former state attorneys

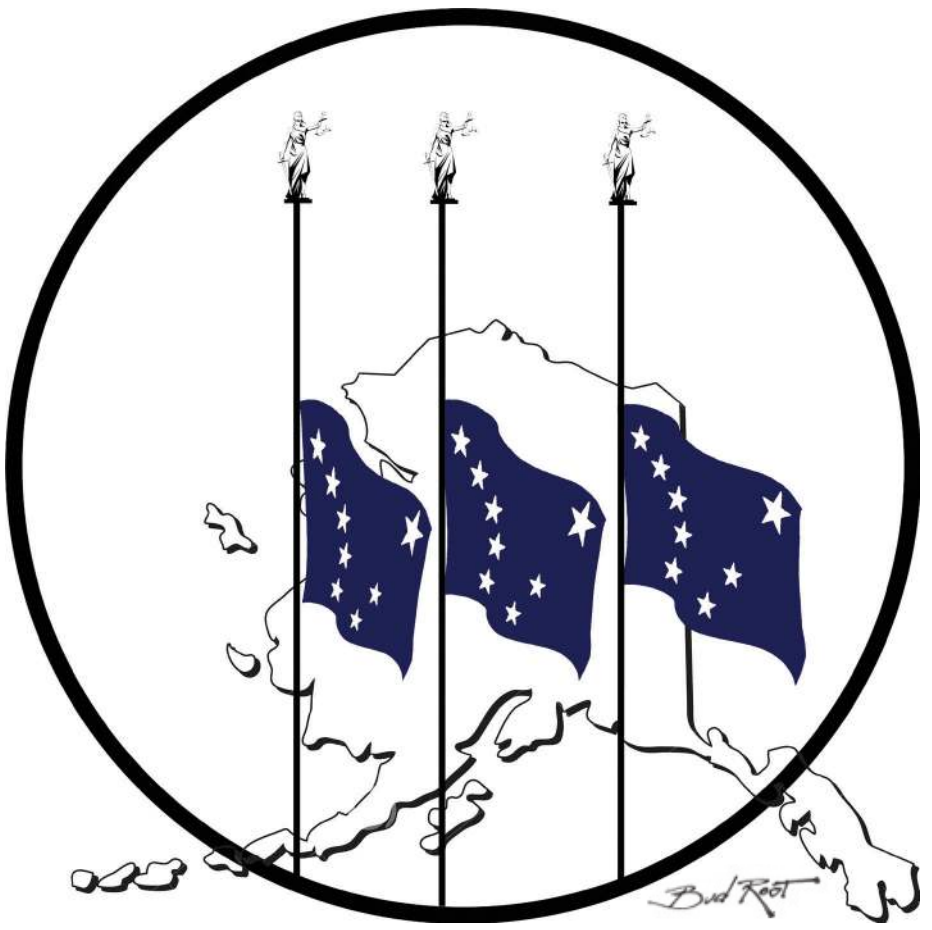
Three attorneys prominent in Alaska's legal community and in government died in the past few months.

Avrum Gross, 82, who served as state attorney general from 1974 into 1980 during the years Jay Hammond was governor, died at his family's remote cabin in Southeastern Alaska May 7. He was instrumental in the government as the trans Alaska oil pipeline came on line, through the development of the Alaska Permanent Fund and in implementing education mandates for schools in Alaska's remote villages.

George Hayes was attorney general for two years during Gov. Bill Egan's terms from 1962 through 1964 and went to Washington after the 1964 earthquake working to facilitate the Earthquake Recovery Bill in Congress. After months of his work with the Congressional delegation and various agencies involved, that bill provided more than $500 million in aid for Alaska. He is also credited with assisting young attorneys as the Alaska court system was developing during the early years of statehood. Hayes died April 9 at the age of 89.

Former Alaska Assistant Attorney General Gary Amendola died of cancer Dec. 11, 2017, in Coeur d'Alene. ID. He was 67. In 1982, he became an assistant attorney general. He was involved in various areas of law, including labor cases, child abuse and neglect cases, environmental law and litigation relating to Alaska Native sovereignty and charitable gaming.

Please turn to pages 4-6 for full obituaries and some recollections by contemporaries.



An Alaska defense attorney learns to tread lightly in Kabul

By Brant McGee

Ehud finished his breakfast of yogurt and bread and dashed out the door to pick up his friend Ahudullah on the way to school. They soon encountered Ahudullah's acquaintance, Ouqim, a known criminal. Ehud continued to the school while the two others walked toward a school administration building.

Ahudullah was found shot to death a short time later. His parents accused Ehud, our client, because to their knowledge he had been the last person with their son. Fortunately, we have one witness who saw the victim walking with Ouqim that morning without our client. The problem is that the witness has little credibility because he is reputed to be of "bad character."

Samira, one of six women lawyers in the Kabul office, persuaded the court to release Ehud, 16, to a juvenile "rehabilitation center" where he can continue his schooling. He remains charged with murder and the only evidence against him is the parents' statement. Ouqim is in the wind.

My work in Afghanistan for the International Legal Foundation, a non-government organization in New York City, was another is a series of volunteer assignments in public defender offices they have established and funded in Tunisia, Palestine (West Bank), Afghanistan, Nepal and Burma.

Here in Alaska our clients have often done something related to the charged offense, but in Afghanistan many clients are completely innocent. For example, it is common for the police to arrest everyone near a crime scene and hope for a payoff. We know our clients are indigent because they would have bribed the police, prosecutor, or judge if they had the means.

Another juvenile client, Najiba, 17, is charged with abduction and had been in detention for four months. She had shared her telephone with her close girlfriend for the past year. She knew her girlfriend had a romantic relationship with an adult man. The two of them disappeared and have not been found. The only evidence against her was that her telephone contained the phone number of the boyfriend. Fortunately, she told the police she had no knowledge of her friend's plan to run away with her boyfriend. This is, of course, unlikely, but the prosecutor will have trouble proving such knowledge. It would also seem difficult to prove that her friend was actually abducted when other evidence reflects a well-considered plan to run away.

These are the most serious of felonies and though our clients are clearly innocent there is no guarantee they won't be convicted even on the ridiculously thin and marginal evidence against them. In fact, young Afghan women frequently run away, often because of abuse in the home, and the "boyfriends," who could well be predators, are seen as a rescuers.

While some of my time was spent mentoring the Kabul lawyers in discussions of individual cases, I also prepared an outline for the use of supervisors to guide case discussions with their staff. I worked with national supervisors to prepare materials for a week-long training session with all 14 office heads from around Afghanistan. Much of our focus was on pretrial motions for "suppression" and "dismissals." Their Criminal Procedure Code contains valuable avenues for litigating unconstitutional and code violations prior to trial.

Even our incomplete data indicated that about 60 per cent of pretrial motions were successful, but that only a minority of our lawyers were filing them. This stemmed from leadership failures, inexperience and a general unwillingness to try anything new that might anger prosecutors and judges.

But the lawyers were intrigued by novel (to them) interpretations of the Code and were ultimately persuaded that there were real strategic advantages to continuously file motions that might not be initially successful. Our training sessions involved lively discussions of cases and new approaches to common problems. Pashtuns are not known for their reticence and they challenged both me and their colleagues constantly. There was much teasing and humor. I've never had more fun in a class — even though I had to rely on a translator.

My life was dominated completely by the theme of "security." I lived in a fancy hotel protected by three separate blast gates and many armed guards. I went to and from work in a fortified building in an armored Land Cruiser. That's it. I was not allowed to go anywhere else and I never walked on a street.

Every day we had lunch outdoors in the bright, warm sun sitting cross-legged on a large carpet. Our cook made wonderful dishes — nearly all vegetarian — that were complemented by bread, rice, yogurt and often cabbage salads and oranges. Most Afghans eat with pieces of bread to scoop up everything on their plates. I was glad to have a spoon. Everyone told jokes which were cheerfully translated for me.

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PRESIDENT'S COLUMN

Volunteering for Pro Bono: 'How do I get involved?'

By Brent Bennett

One of the purposes of the Alaska Bar Association is to increase the Bar's service to the public. Every Alaska attorney knows that Professional Rule 6.1 prescribes that all lawyers "should aspire to render at least (50) hours of pro bono public legal services per year." This goal recognizes that we as lawyers have a special skill set that can be very valuable—especially to a whole population of people who cannot afford to access those skills. The aim of the rule is to encourage all attorneys to provide legal assistance to people of "limited means." This can be done by working directly on a case without a fee or expectation of fee, or by providing legal services to a person of limited means at a substantially reduced fee. It can also be accomplished by performing work for charitable or community groups that aim to meet the needs of people of limited means, or through volunteering for activities that improve the law, legal system, or the legal profession.

Many lawyers describe their pro bono commitments as some of the most rewarding work they perform as lawyers. So why are so many Alaskan attorneys left asking, "How do I get involved?" In this column I hope to provide you with a good number of ideas to help answer that question.

The first place to start is right on the Bar's website: www.alaskabar.org. Along the right-hand side of the home page you will find a link: "Do Pro Bono!" You can also access pro bono information by clicking on the drop-down menu "For Lawyers." One of the options is "Pro Bono." On the Bar's website you can find a list of pro bono service providers, with links to their websites. You can also find a listing of cases that need pro bono attorneys right now, sorted by location and law type. These lists include Current Pro Bono cases, Alaska Network on Domestic Violence and Sexual Assault — Legal Advocacy Program (ANDVSA) cases, Federal Pro Bono Project cases, and Alaska Institute for Justice — Pro Bono Asylum Project cases. New to pro bono? Remember, the Bar can pair you with a mentor pro bono attorney.

Maybe you aren't ready to commit to seeing a case through from start to finish. Surely, you've heard of two amazing community projects available once a year. Martin Luther King Day clinics are offered in Anchorage, Fairbanks, Juneau and Wasilla/Palmer (this location for the first time last year!). In fact, the upcoming 2019 clinic will mark the 10th Anniversary of MLK Day legal clinics in Alaska. At an MLK Day clinic all clients are walk-in, but they first meet volunteers at an intake so that their issues can be prioritized and they can be matched with an attorney with the appropriate expertise. Most questions at an MLK Day clinic relate to family law, housing issues, consumer issues — including medical debt, and other common poverty law issues. You could volunteer and be a part of a massive statewide movement to serve the public. So far, MLK Day in Alaska has resulted in $560,550 of donated legal services, from 11,700 combined volunteer hours, serving 3,560 clients, by 1,362 volunteers. #MLKDAY

"Many lawyers describe their pro bono commitments as some of the most rewarding work they perform as lawyers."

Similarly, the Elizabeth Peratrovich Legal Clinic is moving into its seventh year in 2018. This clinic addresses issues similar to those presented at an MLK Day clinic, but it is hosted during the Alaska Federation of Natives Annual Convention. AFN is the largest gathering of indigenous people in the United States. The EPLC is a pop-up style clinic — meaning no appointments necessary. They are designed to serve clients who may be traveling to AFN from remote villages who don't have regular access to lawyers. This year's event will occur in Anchorage on Oct. 18-20. #EPLC

The Bar's pro bono page also lists information on other volunteer opportunities that would require only an afternoon or evening of your time. These include: The Landlord/Tenant Hotline — during a two-hour shift, on any phone of your choice, answer calls about housing issues; The Housing Court Justice Project — one morning per month, provide assistance to low-income landlords and low-income tenants in eviction court at the Anchorage District Court; Veteran's Legal Clinic during a seven-hour shift provide civil legal advice to income-qualifying veterans at 45-minute consultation appointments; and The Early Resolution Project — available in Anchorage, Palmer, Kenai, and Juneau — in an afternoon offer free legal advice to pro-se family law litigants in order to reach an amicable resolution.

Later this summer the Bar's Pro Bono Director, Krista Scully, and I will be traveling to communities to reach out on a local level to talk more about pro bono opportunities. We look forward to meeting you.

Maybe you only have 20 minutes. In October 2016, the Bar launched the website alaska.freelegalanswers.org. Low-income Alaskans post questions anonymously regarding civil legal issues. Attorneys choose the questions that they would like to answer. Attorneys answer anonymously and decide when they want to answer, and they are covered by the Bar for malpractice insurance. Common questions surround family law, housing and consumer debt issues. So far, 135 questions have been asked via the website — 49 in 2018, and on average, they take only about 20 minutes to answer.

Later this summer the Bar's Pro Bono Director, Krista Scully, and I will be traveling to communities to reach out on a local level to talk more about pro bono opportunities. We look forward to meeting you.

I hope you now have some ideas to get you started on giving back to your community, no matter how much or little time you have to offer. If you have any questions regarding pro bono opportunities don't hesitate to contact Krista Scully at scullyk@alaskabar.org or (907) 272-7469.

Brent Bennett is president of the Alaska Bar Association. He lives in Fairbanks where he works for the Office of Public Advocacy.

EDITOR'S COLUMN

Maybe somebody should write 'The wit and wisdom of the Bar Rag'

By Ralph R. Beistline

Our right to *self-identify* is becoming more common these days in a variety of ways. We should be judged, I understand, not as the world sees us, but as we see ourselves. Today I see myself more as the accompanying photo suggests than as reflected in the mirror. Coincidently, this photograph is remarkably similar to the photo that accompanied my Editorial Column in February 1992.

As I reviewed some of the old issues of this paper and took another walk down memory lane, I again was struck by how long some of our writers have been writing for the paper. As reflected in today's paper, there are stalwarts who have been writing excellent columns for us for decades. All are appreciated! In many respects, the old issues of the Bar Rag are time capsules that contain valuable history and some great and entertaining work. I am talking about some really interesting stuff. And some stories I would like to re-publish if we ever have the space. Like the true story of young attorney Henry (Hank) Taylor killing a bear with a bow and arrow, becoming lost, and freezing in a storm, and then saving himself (bearly) by living inside the bear hide for the next two days until rescued; or the story of Bob Groseclose's trip up Denali; or the story of succession efforts on the part of the Tanana Valley Bar Association in 1989 under President Fleur Roberts when talk of mandatory CLE was first raised. The Bar really has an interesting history. Maybe someone should write a book: THE WIT AND WISDOM OF THE BAR RAG. There's a lot of material.

"Maybe someone should write a book: THE WIT AND WISDOM OF THE BAR RAG. There's a lot of material."

And I am glad to see that someone, and as many as two people, actually read my Editor's Column. In the last publication, I noted the lack of poetry in the paper compared to earlier years and, sure enough, we had two great submissions that are printed here. Keep it coming. No guarantee of publication—but our standards aren't that high.

Anyway, it looks like a busy summer, so be safe and enjoy. We'll talk again in the fall.

Ralph R. Beistline is editor of the Bar Rag and a senior U.S. District Court judge.

The Alaska BAR RAG

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Finding peace of mind: Clearing out all your stuff

Excerpt from an article written by attorney, ***George Byron Griffiths****, who owns a law practice in Edina, MN and is the nephew of Peg Haggerty, Seattle U Legacy Society member and Dean Emerita of the College of Education. Published in the 2018 March/April issue of the Hennepin Lawyer, a membership publication of the Hennepin County Bar Association. Used with permission.*

If you're an adult with aging parents, chances are you're probably going to be dealing with a house full of "stuff" in the near future. My dad still lives in the same house that he and my mom bought in 1978. There are scrapbooks and old photo albums hidden away in boxes in the attic; there are bookshelves in the basement full of obsolete VHS tapes containing family movies that haven't been viewed in years; and, there are antique cabinets in the dining room full of Waterford crystal and Belleek china that exist merely as display items. But, I must bear some of the guilt for the volume contained in those spaces. The Lego set I received for Christmas when I was 10 still sits on the top shelf of the closet in my old bedroom, which is now my dad's home office.

What will we do with this stuff

The task of cleaning out a home full of decades-worth of accumulation can be a monumental task. Just the thought of starting can be paralyzing. There are real costs associated with the task —taking time off from work, airline and meal costs, not to mention the pure emotional costs of handling all of mom and dad's stuff after they have both passed away. The entire process can be overwhelming and time-consuming.

All of this assumes, of course, that the siblings get along. In practice, what I see more often are disputes between children, disputes not so much about how bank accounts or annuities will be split. That monetary division is easy. No, it's which kid is "entitled" to get grandma's quilt. Seriously.

As a summer associate for a small trust and probate litigation firm, during the summer after my second year of law school, I sat alongside my supervising attorney during a two-day trial for a contested conservatorship case. Two of us on one side, three attorneys on the other, and we racked up billable hours litigating about "grandma's quilt" during that trial. The resentment between siblings that can be created during such a process is tragic for many reasons, mostly because mom and dad would never have wanted to see their kids fight like this.

Swedish death cleaning

So, how can we avoid some of these potential family conflicts? Do what the Swedes do. Swedish culture has long embraced a concept known as *dostadning*-translated as "death cleaning," the concept of decluttering before you die. A recent article in *The Washington Post* noted that while the concept of Swedish Death Cleaning may sound rather blunt and unsentimental, on the contrary, it's a concept filled with care and concern over the notion that you should "take responsibility for your items and don't leave them behind as a burden for family and friends" because "it's not fair."

Swedish author Margareta Magnusson wrote a book, *The Gentle Art of Swedish Death Cleaning: How to Free Yourself and Your Family from a Lifetime of Clutter*, published by Simon & Schuster, where she asserts the process of clearing out unnecessary belongings can be invigorating. She suggests *dostadning* can be undertaken at any age and during any stage in one's life; but she warns that the process should be done sooner rather than later before others are saddled with the burden of doing it for you.

Five tips for decluttering

While Swedish Death Cleaning might not be for everyone, I have five tips for those clients-and their families-who think it might work for them.

1) Start early: As Magnusson advises, start the process early in life, and continue to work on it. Not everyone is a pack rat, but we all accumulate stuff. By starting to embrace the concept early in life, and being willing to repeat it periodically throughout life, your cleaning will lessen the burden for others later on.

2) Begin with small tasks: Choose one closet, or one bureau of drawers, or one bookcase to begin with. Consign, sell, or donate clothes that no longer fit. Give away or donate books you have already read and don't intend to read again. Just choose one area that you will work on from start to finish.

3) Be methodical and persistent: Be willing to dedicate one Saturday a month for Death Cleaning. Carve out a few hours in that day to work on decluttering and stick to it. Turn off your phone, turn on some great music, and just do it.

4) Give items away during life: Family heirlooms and other items of sentimental value all have stories behind them. So, why not share those stories with your children at the time you give them these gifts? That way, family stories will not be lost when both parents are gone, but rather will attach during life to the items that your kids will inherit anyway after your death. And, giving away gifts during life can reduce the possibility for sibling disputes after you're gone.

5) It's OK to Let Go. Getting rid of one's stuff isn't always easy. Understandably, emotions like grief, loneliness, and fear can bubble to the surface, especially when dealing with items of sentimental value and when considering the notion of one's own death. But, the old adage is true, "You can't take it with you." Controlling the disposition of one's belongings during one's life can be a cathartic feeling.

Driving Miss Peggy

While I don't normally bring up the concept of Swedish Death Cleaning by calling it by that name, I do tell my clients about the cross country road trip that I took last summer with my 86-year-old Aunt Peg who embraced *dostadning* even before articles and books were written about it.

Even though she had already downsized quite a bit, when she turned 85, Peg decided that it was time to declutter even more. She explained to me that she didn't want "strangers picking through my stuff at an estate sale" when she died. Nor did she want her good friend, named in her will as her personal representative, to be burdened with deciding who got what.

Instead, she spent months carefully packing up 22 banker's boxes with books, family heirlooms, and other items of sentimental value. She flew me out to Seattle. We rented a minivan, which we packed to the gills. And for six days, we drove from Seattle back to Minnesota, stopping along the way for her to deliver these boxes personally to her beloved nieces and nephews. I chronicled our 1900-mile journey via blog at *drivingmisspeggyusa.blogspot.com*.

Conclusion

Knowing what to do with our stuff, both during life and after death can be a daunting concept to think about. But consider the process the Swedes have embraced and how it might prove valuable both to you and to those you leave behind. Now, back to my dad and that house full of 40 years' worth of stuff: before my mom died in 2011, she began to declutter their home in earnest, but my dad struggles to keep up the process. Now, my two adult siblings and I have taken it upon ourselves to offer dad assistance with *dostadning*, which he has readily accepted.

So, it's time for me to go collect my Lego set. My only problem? What am I going to do with it?

Peter Sandberg, president of Anchorage Bar Association, presents the plaque to Maryann Foley.

Family law attorney receives distinguished service award

The Anchorage Bar Association honored Maryann Foley recently with the Benjamin Walters Distinguished Service award for her numerous volunteer services.

Maryann founded her Anchorage law firm in 1985 with a goal of offering family law services to residents of Alaska.

She serves on the American Bar Association Board of Governors; had served in the ABA House of Delegates for many years, including as state delegate for Alaska. Maryann has served as chair of the ABA Family Law Section and chair of the Alaska Bar Association Family Law Section.

She has also served on the Alaska Legal Services Corporation Board and as a volunteer advisor in family law matters for attorneys participating in the Alaska Bar Pro Bono Program. She is also a member of Anchorage Chapter of Soroptimists International.

Two attorneys contributed to state of Alaska in formative years

By John Havelock

Originally printed in the Anchorage Daily News

It's been a hard couple of weeks to lose two friends, not only my friends but friends and champions of the State of Alaska. First it was George Hayes and now Avrum (Av) Gross. George was my boss in the early sixties, though I met him first as the deputy attorney general for Criminal Justice. We had just become a state and George's responsibilities included setting up District Attorneys offices in the major towns of the state. John Rader was the AG. The constitutional fathers were damn smart on this one. Locally elected DAs are a curse on the justice system. Elected, they bend to the will of the local social and economic elites. Ours in Alaska have always been above politics. George went on to take over the responsibilities of the Anchorage DA as the deputy AGs responsibilities, one criminal, one civil, were consolidated into a job I held.

George later came back as attorney general and was my boss. What a great boss and what a skilled manager of state policy in the building oil era. Among other responsibilities, George had to deal with the state responses in addressing the Great Alaska Earthquake of 1964. Later George went on to serve as a partner in Delaney, Wiles, Moore and Hayes, where his skills in civil litigation were legendary. As George reached retirement he developed a chronic disease and took himself to Seattle for treatment, there living a relatively lonely life.

Dear Avrum came to work for the state when I was holding the job of attorney general myself and worked first on the legal aspects of fisheries policy. While engaging in this work he became a close friend of Jay Hammond, Clem Tillion and other legislators working on fisheries issues. Av and I also developed a warm relationship which I won't elaborate on here because what first come to mind are humorous incidents of our relationship, such as his then spouse Shari and kids arriving on my doorstep in the middle of the night, their home, in his absence, having been hit by an avalanche. Going to their home the next day, it was a unique experience to see their grand piano, like everything else, coated with a thick and tough layer of ice.

Av was gifted with a remarkable level of intellect and was a talented guitar player. He stayed on in Juneau after I left and became attorney general to Jay Hammond. He took the early version of the PFD, which had accelerated benefits for residential longevity, to the Alaska Supreme Court, where he won and on to the Supreme Court of the United States, where he lost. Longevity benefits were out.

Later he represented the state in defending the election of Jay Hammond in a close contest with Wally Hickel. The issues were close and Wally was represented in the Supreme Court of Alaska by Edgar Paul Boyko. I had just persuaded Art Snowden, the chief administrator of courts, to let me bring cameras into the courts and the first use was coverage of their argument with commentary. Av was his super-skilled self, a craftsman of legal argument. Boyko was the cunning street fighter, a skill he was well known for. It was a classic scene. Av won. In many other cases, Av represented the state well in appellate courts.

Like George, Av was burdened by a chronic condition. He was subject to migraine torture on a regular basis. He used marijuana at home in those early days when he got hit. It works, to a point. I was visiting with him once and his pain was so intense that there was no blaming him.

George had no family, which was hard on him. Av raised a family of accomplished children and had two outstanding wives who survive him.

Both these men were of great service to the state and should be honored by their colleagues of the bar and the general public.

John Havelock is an Anchorage attorney and university scholar. In a long legal career, he has served on the Board of Governors, as delegate to the American Bar Association, Bar Association administrator (once it took only part of one person's time), professor and founder of University Justice programs and attorney general in Gov. Bill Egan's administration.

Avrum Gross 1936 - 2018

Avrum Gross

From the governor's office

Alaska Gov. Bill Walker ordered state flags lowered to half-staff to honor former Attorney General Avrum M. Gross, who died May 9 at a remote family property between Juneau and Sitka. He was 82.

Gross was attorney general from 1974-1980 under then-Gov. Jay Hammond, and helped steer the state through transformative times.

He was the head of the Department of Law during "some of state's most significant watershed moments. During his tenure, the Trans-Alaska pipeline was completed, and carried its first barrels of oil south from Prudhoe Bay," the governor's office wrote in a statement put out May 11. "With it came Alaska's Permanent Fund and a brand new vision about what Alaska's future could be like."

Gross was instrumental in negotiating an agreement that led to the state taking responsibility for "providing schools in villages, no matter how remote" and contributed to a significant revision of state criminal code in 1980, according to the governor's office.

Walker ordered flags be flown at half-staff until sundown on May 12.

George Hayes — friend, mentor and superlative lawyer

By Robert Erwin

George Hayes died in Seattle in April. Those who knew him felt a depth of loss of a friend. One of the unsung heroes of Alaska's climb into statehood and a lawyer of superlative talents with an old fashioned ethical sense.

George came to Alaska in territorial days as an assistant U.S. attorney in Anchorage and immediately made a name for himself as an excellent trial lawyer in a number of criminal cases. As time progressed George was acknowledged as one of the top trial lawyers in Alaska along with his friend in a similar position in Fairbanks, Jay Rabinowitz.

When the first attorney general in the new State of Alaska, John Rader, established the attorney general's office in Juneau in 1959 he selected George Hayes to be head of the criminal division and Jay Rabinowitz to be head of the civil division. George Hayes and Jay Rabinowitz were 31 years of age and John Rader was 32.

In March 1960 I was selected to be district attorney for the second judicial district in Nome. Once I was appointed, I moved from Juneau to Nome to start the first criminal jury trials. This was done under the guidance of George (by telephone) and to assist him with the first murder trial in the new court system in the new state of Alaska. He came to Nome in May1960 to help me get started.

We were friends but I watched with an open mouth as he solved one critical trial problem after another in a case left pending from the United States marshal's office. This case had serious problems since the United States marshal's office had not brought the body of the deceased from the small village at the mouth of the Yukon River in early 1959. They did not have an autopsy performed, or taken statements from most of the witnesses because of language problems.

It is difficult to imagine how such problems could be solved without today's transportation and communication ability. How do you find and get a body and witnesses from a remote site to Nome for a criminal trial on short notice?

With perfect calm George arranged for the deceased's remains to be brought to Nome and an autopsy performed. He then also arranged for witnesses to be found and interpreters brought to court. All of this occurred without harsh words or findings of fault and under a sense of responsibility he felt was required from every prosecutor.

When I moved to become district attorney for the fourth judicial district in Fairbanks and then on to the third judicial district in Anchorage.

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Former attorney general dies in Seattle

Former Alaska Attorney General George N. Hayes, died in Seattle, Washington, April 9, 2018. He was born in Alliance, Ohio, Sept. 30, 1928, and grew up in Alliance and Akron, graduating from Akron University in 1950. He earned a Masters in French Literature from Case Western Reserve University in Cleveland in 1953. He received his JD from Case Western in 1955. George first practiced law in Ravenna, Ohio, as an Assistant County Prosecutor for two years before moving to Fairbanks, Alaska, where he became an assistant U.S. attorney. He subsequently moved to Anchorage and was appointed deputy attorney general and chief of the Criminal Division for the State of Alaska.

George was appointed attorney general for Alaska in 1962 — at age 35 — by Gov. William A. Egan, in which capacity he served until 1964. He was very involved in the state's response in the aftermath of the March 27, 1964, earthquake, flying from Juneau to Elmendorf Air Force Base with Gov. Egan to obtain a first-hand assessment of the earthquake's damages. George then spent the entire spring and summer of 1964 working in Washington, D.C. as special counsel to Gov. Egan. George worked tirelessly with the Alaska congressional delegation and other federal agencies to gather information that Congress required to determine the amount of assistance Alaska required. George's efforts played a key role in facilitating the Earthquake Recovery Bill which Congress ultimately adopted in August 1964. The bill provided for a total of more than $500 million in aid to Alaska.

George N. Hayes

From 1964 until his retirement in 1994, George was a partner in the Anchorage law firm of Delaney, Wiles, Hayes, Reitman & Brubaker where he earned a reputation as Alaska's ablest and most principled trial attorney. During retirement he divided his time between Anchorage and Seattle. George was a brilliant human being who never ceased to provide stimulating conversation to all whom he encountered. He will be dearly missed by his many friends. A Celebration of Life will be scheduled for later this summer.

Former state assistant attorney general dies in Idaho


Gary Amendola

Former Alaska Assistant Attorney General Gary Amendola died of cancer Dec. 11, 2017, in Coeur d'Alene. ID. He was 67 years old. Gary was born on Long Island, NY, and raised in Deposit, NY. He was the second of five sons to Frank and Audrey Amendola. Gary was a varsity letterman in football, wrestling and track; honor roll student; active in chorus; drama; student council president; and Eagle scout. He started a Teen Center with best friend Terry. The center was dedicated to his brother Willet (Ran) who was killed in Viet Nam in 1967. With that resume he attended the Air Force Academy, graduated from the University of Colorado and studied abroad for his last semester in Siena, Italy.

Post undergraduate work took him in Park City, UT, where he was a skier, carpenter and member of the Mucker Rugby Team. Two years of that lifestyle convinced him to find gainful employment which led him to Gonzaga Law School. Rugby was part of that curriculum as well. Upon graduation and still full of wanderlust and adventure, Gary and classmate Ron drove to Alaska. They worked in fisheries while studying for the bar. Gary's first job as an attorney was at Babcock and Amendola in Sitka.

In 1982 Gary moved to Juneau to become assistant attorney general for the State of Alaska. One case took him all the way to the U.S. Supreme Court. (They won.) In 1984 Gary seized the opportunity to spend a year studying International Law at the Australian National University in Canberra. Once again he balanced his studies with rugby, golf and travel. Gary returned to his previous post at the Alaska Attorney General's office married, and became a devoted father to children Joshua and Jessica.

In 1995 Gary was hired, fired and re-hired as a Kootenai County, ID, public defender by John Adams who would become his best friend until their last days together at the Schneidmiller Hospice House. In 2001 Gary joined Walker Rines and Amendola where he rose to managing partner of Amendola Doty and Brumley. Gary was past president of the Idaho Criminal Defense Lawyers Association and one of the few certified trial specialists in the State of Idaho. He was a member of the Eagles, VFW, and was on the board at Avondale Golf Course.

From his outstanding professional record and recognition from colleagues, he was chosen as a member of Super Lawyers.

Gary was a member of the Eagles, VFW, and was on the board at Avondale Golf Course.

Gary is survived by his college sweetheart but wife of only four years Annie Amendola; son Joshua Amendola; daughter Jessica Amendola-Ayles; son-in-law Ryan Ayles; father Frank Amendola; brothers Scott, Jay, and Wayne Amendola; niece Ginny Walker; aunts, uncles, and cousins. He was predeceased by his mother Audrey Amendola and brother Willet Amendola.

In lieu of flowers the family suggested a donation to Hospice House of North Idaho.

George Hayes — friend, mentor and superlative lawyer

Continued from page 4

George was always around to give advice and to stress professional responsibility and practice.

One example of George's advice to me as district attorney in Fairbanks occurred when the newspaper accused me of covering up a murder. The coroner's jury found the death to be self-inflicted. His response to my phone call about the unwarranted attack was "Never debate with someone who gets ink by the barrel."

In another instance when a local radio station joined with the newspaper, questioning the medical treatment of the deceased victim and the claims of a local doctor of total mistreatment which caused the death, George calmly advised me to put the news editors of each on the coroner's jury. The coroner's jury decided the complaint was unfounded and questioned the competency of the doctor. The news organizations subsequently recanted their criticism.

In the few civil cases where I was privileged to be either co-counsel or opposing counsel, George clearly impressed on me that the case was to be treated as the most serious thing going on, and we were there on a serious mission to find justice. He even cautioned witnesses and clients that laughing and smiling were not appropriate. They were to be serious at all times to show the jury this was not some sort of game. George usually won his case or settled it favorably for his client. His advice is good, his word is his bond.

In time of stress George urged calm and solutions. He stressed our accountability to the people of Alaska. The personal side of George was a picture of a man in a blue suit (he had about six or eight of the same) and a smile to go with a sly sense of humor. George was a personable man with the unusual background of a Greek heritage and the educational background of a Master's Degree in French Literature. He could be charming or professional or both at the same time.

It is the memory of several pleasant dinners with George at the Rice Bowl with other members of the District Attorney's Office and other young lawyers that immediately comes to mind. The mix of conversations between work and war stories was a great boost to any young lawyer.

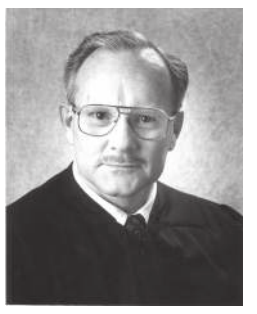
George had also a strong source of etiquette and professional conduct. In the late 1960's George entered into the private practice of law in Anchorage with Jim Delaney, Gene Wiles and Dan Moore. George resided in Anchorage until he retired. He was extremely successful as a private attorney and a feared competitor in trial. One could see him almost every day on his daily walk through downtown Anchorage, walking a dog (a friend's dog). A similar habit took place in his retirement in Seattle. George was walking around downtown Seattle from his apartment on Queen Ann Hill and I met him several times on the street, during his walks (minus the dog). This enabled me to enjoy his company at an unsolicited lunch or dinner.

George was a lawyer's lawyer. He was the leader in establishing the criminal justice system in Alaska. He led by example and he was an unsung hero for today's Alaska.

Thank you George and good-bye.

Bob Erwin was admitted to practice in 1961 and had done over 200 appeals. He served on the Alaska Supreme Court from 1970 - 1977. Bob is the only lawyer in the state who has appeared before every Supreme Court justice appointed since statehood, except the newest member, Justice Carney, and he had an appeal pending, so that was expected to change.

Former District Court judge dies in Washington


John D. Mason

The Honorable Judge John David Mason died May 4 with his family at his side. Mason was born in Oct. 5, 1934, in Detroit, MI., to Harold and Lela Mason.

He graduated from Michigan State University with a Bachelor of Science degree in the Social Sciences. He loved diving, and represented Michigan State in the Big Ten, and Olympic trials. He later shared his expertise by coaching the West High School diving team in Anchorage where his children attended high school.

Mason entered the U.S. Navy upon graduation from college. He completed OCS as a naval ensign, rising to the rank of lieutenant and executive officer aboard the USS Conserver, ARS-39. His specialty was hard hat-diving off this salvage ship. He was stationed at Pearl Harbor and, diving in his spare time, became the Hawaii State Springboard Diving Champion.

Years later, he was twice piped aboard the USS Conserver, in Anchorage and Pearl Harbor. Mason was proud of his service in the U.S. Navy, where he had many friends.

After his naval tour of duty, John entered the University of Michigan Law School, where he earned his LLB. Mason practiced law in Portland, Maine, before moving westward to Nome. He met his wife-to-be at the Nome Airport, as she was the new probation officer. They were married for 53 years.

After Nome, Mason accepted the magistrate position in Kodiak, where the family lived for five years. He was appointed District Court Judge for the State of Alaska in 1970. He sat primarily in Anchorage, but also traveled to other courts throughout the state. Judge Mason remained on the bench for 30 years. He received a 50-year Alaska Bar Association pin.

Mason had other passions, such as canoeing and camping on the Kenai Canoe Trail System, playing hockey, fly-fishing and golf by shooting his age.

He was particularly proud of his children, Michael, David (deceased) and Susie, and their success. He also loved spending time with his grandchildren.

He, along with his wife, Ruth, and the family shared many good times at their Shirley Lake cabin in Alaska and their condo in Hawaii.

A memorial service was held May 24 in Wenatchee, WA.

Long-time Anchorage lawyer Arden Page dies of cancer at 77

Arden Page

Arden Page, 77, of Anchorage, died May 18, 2018, of prostate cancer. Page was born in Hornell, N.Y., the son of Arden Ebenezer Page and Etoile Marion Long.

Page earned his Bachelor of Science, Geology/Geophysics degree in 1964 from the Rensselaer Polytechnic Institute and attended law school at the University of Texas, graduating in 1968. He came to Alaska to practice law the same year.

He married Dawn Moreau in Anchorage.

He was knowledgeable about and continuously intrigued by public policy in Alaska and nationwide. He was rigorous in the study of and application of the law and was trusted as an advisor and mediator. He was frequently asked to participate in both public policy and legal forums.

Page was a member of the Alaska Bar Association, the Federalist Society and The Maritime Law Association of the United States. He served his fourth term as a member of the Alaska Bar Association's Area Discipline Hearing Committee, and was a member of the Alaska Supreme Court's Mediation Rules Committee and the Anchorage Superior Court's Civil Bench/Bar Committee. He was an advocate for responsible resource development and served as counsel to the Alaska Oil & Gas Association for 28 years.

He was a multi-talented sportsman and athlete. He enjoyed hunting, fishing, trap shooting, hiking, cross-country skiing and bicycling. He served as president of the Nordic Skiing Association of Anchorage for two terms, and was a licensed biathlon official. He was an Eagle Scout and a supporter of Scouting.

Page is survived by his wife, Dawn of Anchorage; daughter, Megan Page Misallati and granddaughters, Zakya and Leila of Carnation, Wash.

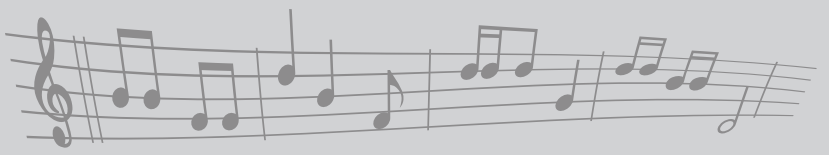
Special thanks go to the teams at the Alaska Cancer Treatment Center, and especially to Dr. Musaberk Goksel; and to Providence Hospice for their compassionate medical care.

A celebration of life was to be held from 6 to 9 p.m. June 6 at O'Malley's on the Green, 3651 O'Malley Road in Anchorage. Interment was to be at St. Barnabas Episcopal Church in Fredericksburg, Texas, at a date to be determined.

In lieu of flowers, donations can be made to Providence Hospice, the Boy Scouts of America or to the charity of choice.

Online guest book for stories and remembrances can be found at legacy.com.

My Five . . . . .



This edition of My Five is brought to you by Sara Taylor, who works in the Anchorage office of U.S. Sen. Dan Sullivan; Kelly Cavanaugh, an assistant U.S. attorney in Anchorage; and Roger Brunner, who is retired and lives in Fairbanks.

Sara Taylor Five Favorite Songs Driving the Taylor Highway
"Paradise " — Coldplay
"Life on Mars" — David Bowie
"(Nothing But) Flowers" —Talking Heads
"America" — Neil Diamond
"Gold Dust Woman" — Fleetwood Mac

Kelly Cavanaugh
"Juicy" — Notorious B.I.G.; album, "Ready to Die."
"When Will They Shoot?" — Ice Cube; album, "The Predator."
"Galway Girl" — Steve Earle; live version with Sharon Shannon.
"The Seed 2.0" — The Roots; album, "Phrenology."
"Paul Revere" — Beastie Boys; album, "Licensed to Ill." (CQ)

Roger Brunner
"Lodi" — Credence Clearwater Revival
"Travelin' Man" — Ricky Nelson
"When a Man Loves a Woman" — Percy Sledge
"Light My Fire" — The Doors
"Help" — The Beatles

Security an expensive indignity for an 'officer of the court'

By John Havelock

Sometimes it's the little things that grab your butt, isn't it? It probably doesn't cost me more than a minute to go through court house security but how does this security search square with me being an "Officer of the Court?" That's what I thought I was, a title I took seriously, back in January of 1961 when I was sworn in.

"Jeez John, can't you take on something more serious?" Well, sure, it's not much for me, particularly now that I have decided I shouldn't have a license and will rarely cross the threshold, though it still comes to mind when I think about dropping in on a trial. What member of the public does that anymore? Only in the movies. Of course the Feds are worse, but that applies to a lot of things.

Apart from the indignity and forms of irrationality that are only surpassed at airports, there are costs and even small costs add up by volume. Externalities count. Let's say the average time of security for a lawyer is half a minute, considering a small fraction of entries taking much longer for outright rejections of the penknife you forgot about. I have not done the count but suppose a lawyer goes through the gate, every 2 minutes times 7 hours per day (420 minutes). That adds up to 3.5 hours a day of check-in time. Multiply that by $200 an hour — something around the average lawyer's charges, this particular externality adds up to a systematic cost of $700 per day x 250 days a year or $175,000 a year to protect the judges from lawyers who are crazier than they are. See, pretty soon you are talking about real money even if this is passed on in lawyer's fees.

I have no idea how to measure the time security employees mess with lawyers and the salary and benefits costs, but maybe it's another $50,000 per annum, this one on the court's budget. Fortunately, court employees, even creeping with paranoia, just get in with a key.

The effect of this is to provide, at work, some protection from being shot at if there is not time to duck behind the concrete bench that became the rule when the court house was built, a protection also supported by an armed guard in the room. All this protection is helpful knowledge for the nutcase with the handgun, who now, to express his (or her) displeasure with the measure of justice must track the judge to his (or her) home, or just blast away at a supermarket.

While further revision may be due, all that is being suggested at the moment is that an identity card be available to lawyers who ask for one, even at a price, after swearing they will not bring a gun to court, that allows them to go to the court or the library or the clerk's office with the dignity appropriate to an officer of the court.

John Havelock is an Anchorage attorney and university scholar. In a long legal career, he has served on the Board of Governors, as delegate to the American Bar Association, Bar Association administrator (once it took only part of one person's time), professor and founder of University Justice programs and attorney general in Gov. Bill Egan's administration.

27 constitutional amendments, an updated explanation

By Libby Bakalar

Libby Bakalar

1st Amendment: This one's yooge. The United States is a secular government and can't force you to listen to Joel Osteen or pray to Allah. The government can't stop you from saying and writing "insert your own string of political insults here" and most other things, with some limits. Those limits do not include "criticizing a president on TV." The government also can't stop you from "peaceably assembling," i.e., marching around while needing to pee in a pink hat or with Tiki torches in khakis and swastikas. The government can't make you sing songs or salute flags at a football game or anywhere else. The government has to let you pray 24/7 if that's your jam, but if you try to use your religion to stomp all over other people's human rights, maybe not so much.

2nd Amendment: The government can't take away your musket because you might need it for a future revolt. Believe it or not, you probably can't have a nuclear warhead in your basement, though. Some weapons in between are okay, but probably not every single one of them, m'kay?

3rd Amendment: The government can't make you AirBnB your condo for free to the National Guard. Realistically this is never going to happen so you probably don't need to worry about this amendment.

4th Amendment: This one gets heavy rotation. The government can't generally mess with you or your suite of grievances without a warrant signed by a judge explaining exactly the who, what, where, when, why, and how of exactly those grievances get messed with. Cops can still stop and frisk you on the street or the road, within limits. The "within limits" is a crucial point to know, especially if you're driving or walking down the street while Black. If the government screws up and takes your response illegally, it can't use it against you later because it got that response in a messed up way. This is called "fruit of the poisonous tree." Courts don't eat that fruit — they make the government compost it. Data-collection and drones are still a bit of a black hole in search-and-seizure land, but the courts are working on it.

5th Amendment: The government can't raze your house to build a highway unless it pays you fair market value for it. If you get charged with a federal felony (e.g. RICO), a grand jury has to indict you. If the government prosecutes you for a crime and loses, it can't prosecute you again. That's called double jeopardy. This is the amendment you hear about on TV when some dude says, "I plead the Fifth!" which means you don't have to narc yourself out. Also the government can't murder you, imprison you, or take away your stuff without jumping through a zillion hoops.

6th Amendment: Criminal trials need to be prompt, orderly and legit. Like if you're on trial for a crime you get to have a jury and face your accuser and ask them questions and get a public defender. So trials need to roll like that. Not like some sort of Kangaroo Court, North Korean, Banana Republic clustergasm of human rights abuses, m'kay?

7th Amendment: If you spill hot coffee on your lap and sue McDonalds for more than $20 in federal court, you get a jury. Believe it or not this is a good thing. Watch "Hot Coffee" on Netflix and you'll see why.

8th Amendment: This is that whole "cruel and unusual punishment" thing. The government can't put you on the rack or hang you in the public square anymore. Also not allowed: thumbscrews, gibbets, the gallows, etc. Killing peeps by electrocution and lethal injection is still okay for now though. Also a judge can't set bail at a zillion dollars or fine you zillions of dollars.

9th Amendment: Just because some rights aren't spelled out in the Constitution doesn't mean you don't have them. We can't think of everything, for crying out loud.

10th Amendment: States' Rights, y'all! The federal government has limited powers, and states and people get to call the feds out on their bulldust when they exceed those powers.

11th Amendment: Sovereign immunity, y'all! You can't sue a state in federal court unless the state says it's cool.

12th Amendment: The Electoral College elects POTUS and Veep. If you were alive in 2016 you can probably tell this isn't the greatest thing ever.

13th Amendment: No more slavery.

14th Amendment: This one's a doozy and goes on forever. Here's what you need to know: if you're born in the U.S. you're automatically a U.S. citizen. Also most of the federal Constitution applies to state governments: They can give you more rights than the federal Constitution but not fewer. Redistricting happens, and you can't serve in Congress or as POTUS or Veep if you've ever committed treason (oops!). The whole "equal protection thing" lives here too. So the government can't hassle people for their race, religion, gender, immigration status, wedlock status at birth, and possibly (though by no means definitely) sexual orientation and/or gender identity.

15th Amendment: Everyone gets to vote, including Black people and ex-slaves. Not women though! That comes later.

16th Amendment: Federal income tax is cool. Bring on the IRS and the 1040/W2!

17th Amendment: Once upon a time, state legislatures got to elect senators but now you get to do that! The Senate consists of two senators from each state, elected by the citizens of that state. Their term is six years and each senator gets one vote in Congress. If a senator dies or leaves office before the term is up, the governor of that state can appoint a replacement to fill the vacancy.

18th Amendment: No booze. Sorry, wastoids!

19th Amendment: Women can vote now.

20th Amendment: This is a boring amendment about when terms for elected federal officials start and end. No one really cares about this amendment so you probably shouldn't either.

21st Amendment: Booze is back, bitchez! Bottoms up!

22nd Amendment: POTUS only gets a max of two four-year terms, thank God.

23rd Amendment: If you live in Washington, D.C., you can vote for POTUS and Veep but you're hosed in Congress.

24th Amendment: No poll taxes.

25th Amendment: This one is obscure but getting brandished a lot lately. It deals with the order of succession for POTUS and Veep and says Congress can impeach the substance out of a lunatic POTUS.

26th Amendment: Anyone over 18 can vote now (used to be 21).

27th Amendment: Serving in Congress isn't supposed to make you rich. Emphasis on "supposed to."

Libby Bakalar is an attorney and blogger in Juneau.

ECLECTIC BLUES

Language barriers hinder understanding on a European barge

By Dan Branch

Janny, Belgium master of the tortoiseshell accordion and accented Elvis impersonator is playing an Italian love song for my spouse. While she and I cringe and long for him to move on to the German table, the rest of the barge passengers wear large smiles. I am experiencing a personalized seventh level of hell paid for with the family credit card. At least we are earning airline miles.

The accordionist doesn't acknowledge the other couples at our table. One of the women, Marie, always wears black. Her husband Charles prefers browns. Janny, who never stops playing long enough to listen to his audience, doesn't realize that they are French. But, after serving up "Lily Marlene" for the Germans, he lays down the first measures of Edith Piaff's *Le Vie en Rose*. "Ah" says Marie, the French woman, and hums along.

The French couple, like all the passengers on the converted barge, have spent the last five days bicycling through the Dutch and Belgium countryside. Since they are the only French speakers on the barge, the captain assigned them to the orphan's table where we sat with another couple we know from Juneau.

During the first dinner on board, as the low-slung barge motored out of Amsterdam toward the fortress town of Wilhelmshaven, our Juneau friends worked hard to engage the French folks. Thanks to their efforts, we learned that Marie and Charles lived in Strasbourg and that they are grandparents several times over. Charles is an anthropologist. He is almost deaf in one ear and neither speaks much English.

Members of our bicycling group cross a bridge into Gent, Belgium.

When I found myself seated next to Charles the next night I braced for the heavy conversational lifting ahead. Across from me sat Marie. During that day's ride, we had bounced our way over several sections of cobblestone roads. In a mix of French and English, Marie told the table that before the 1968 student protests in Paris, that city had cobblestone roads. Students manning barricades in the Latin Quarter had pried them up and threw the stones at armored riot police. With her hands she pantomimed pulling up a cobblestone and hurling it at agents of oppression. "You were there?" I asked. Charles and Marie both answered, "yes." Suddenly, obstacles to dinner conversation transformed into objects of interest.

"Suddenly, obstacles to dinner conversation transformed into objects of interest."

I tried to pull away an onion layer by asking them why they risked their lives by protesting in '68. In the late Sixties, American college students annoyed the establishment with vocal, for the most part peaceful demonstrations against government involvement in the Vietnam War. But when the students in Paris manned their barricades, they were calling for a revolution against the government of President Charles De Gaulle. Millions of union workers joined them. Together, they changed the political fabric of France forever.

Windmills line the canal at the Kinderdijk UNESCO world heritage site in the Netherlands.

Fifty years ago Charles and Marie had helped to change the history of their country. But because we didn't share a common language they could not tell me why they manned the barricades or how those turbulent times in May of 1968 changed their lives. Did they meet during the protests? Were either of them injured or arrested? I'll never know.

Later, while seated next to Marie at breakfast, I asked her if she had a profession or vocation. I chose these words in hopes that they were close enough to the French terms for "occupation" to communicate understanding. After pondering for 30 seconds, she answered that she was a psychologist — a listener. Later I would learn that Charles was also paid to listen. He surveyed immigrants from former French colonies in Africa. Almost shouting into his ear, I asked whether the French were more welcoming to immigrants than Americans. Shrugging he said, "Perhaps." He couldn't flesh out this unsatisfactory answer.

During our ride into the Belgium town of Bruges, I tried to work out a way to ask Marie about the healing power of listening. For several years I've been a volunteer chaplain at the Juneau hospital, which involves a lot of compassionate listening and some praying. Maybe Marie could tell me if I was actually helping the patients I visited. That night I managed, with a mix with high school French, pantomime, and Latinate English, to communicate my question to her. Then, the captain introduced Janny.

Janny's music drove the question from my mind. Since Marie didn't mention it the next morning at breakfast, I had assumed that she forgot it as well. But during our last breakfast on board, she surprised me. I had just told her how much I had enjoyed learning about her life and that of her husband Charles, and how I wished we could have spoken without a language barrier. "Yes, I too," she said, "I very much wish to talk to you about listening."

According to Genesis, for a long period after Noah's flood, all humanity spoke one language. Then their leaders attempted to erect a tower high enough to reach God in His heaven. He destroyed the Tower of Babel and confounded man's speech so they could no longer understand each other. We still suffer from arrogant leadership and language barriers.

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. He can be reached at avesta@ak.net

Flags fly in the market square at Burges, Belgium.

ANDVSA recognizes pro bono volunteers Parsi, Carter, Brown

By Siraj Ahmed Sindhu

If you hope to use your legal skills to assist those most in need, where do you turn? The Legal Program of the Alaska Network on Domestic Violence and Sexual Assault (ANDVSA) is a nexus for attorneys who want to use their knowledge to provide justice and safety to those who have been victimized. ANDVSA connects attorneys from around the state with low-income people in need of pro bono legal assistance in civil law cases involving domestic violence or assault. Often, these applicants need help with cases involving divorce, custody or protection orders against abusive partners. Christine Pate, director of the Legal Program, says, "Providing legal assistance is one of the most effective things we can do to ensure the safety and security of survivors, so the work these volunteers do is crucial."

ANDVSA's volunteers receive many opportunities for engaging with colleagues and building their networks. Volunteers attend ANDVSA's annual CLE Conference for free, and connect with each other as mentors and students. Pate arranges for volunteer attorneys who are experienced in family law to assist those less familiar with the field. "Many of our longtime volunteers not only work passionately for clients, but also provide essential support to newer volunteers. We are grateful that experienced volunteers make sure that younger attorneys who decide to take on a case aren't left to manage on their own."

For attorneys who do not normally practice in the field of family law, volunteering to take ANDVSA cases may seem difficult. However, many volunteers had never done family law before they took on their first volunteer case. ANDVSA provides many resources to attorneys who are interested in volunteering, including an extensive Family Law Manual, an online database of sample pleadings, and mentorship from more experienced volunteers. And those who cannot handle cases but would still like to volunteer in some way can staff ANDVSA's twice-a-month Information & Referral Hotline, during which victims of domestic violence call in to receive information about their legal options.

Pate estimates that on average, about half of the applicants who meet the criteria for receiving pro bono representation are not served because the volume of applicants outpaces the availability of volunteer attorneys. But some attorneys set an example by regularly volunteering their time and energy to provide legal representation and assistance to those in need. The three attorneys profiled below are outstanding volunteers who have recently been named the ANDVSA Volunteer Attorney of the Month.

John Parsi of Anchorage began volunteering with the program in 2011, and since then, he has taken on about 10 cases. Though he practices in corporate commercial litigation, John focuses much of his time on volunteering. He entered law school after completing coursework toward a Ph.D. in political science, because as he says, "I wanted to help people more directly than by teaching political science. My parents like to say that when I was 15, I told them I wanted to make the world a better place, and that the best way to do that was to be a lawyer. I later found out that that is not true, but I try to prioritize working with nonprofits whenever I can."

John's interest in working with survivors of domestic violence is both legal and academic. In graduate school, he taught courses in Women's Studies, studied sexual abuse against women as a war crime, and worked with the noted feminist legal scholar Catharine MacKinnon. As an attorney, he finds pro bono work for survivors of domestic violence fulfilling because "it is a unique opportunity to empower someone who has been put in a disadvantaged position, and to have a positive impact that deeply shapes who they are as a human being."

John explains the importance of using his position to help others in need. "I had a client who came into my office for an initial meeting. Afterwards, I walked her down the hall to the elevator, and she began crying. I asked if she was okay or needed water, and she told me that she was crying because no man had ever treated her so well. That simple interaction of walking her to the elevator gave her empowerment and self-respect."

Asked what he would say to other attorneys considering pro bono domestic violence work, John said, "There are a lot of reasons why you should do it: not only to use your law degree for a great purpose, but also to connect with others and to gain knowledge. Know that there's a whole network you can connect with through ANDVSA if you need a mentor. And the Volunteer Attorney's handbook (published by ANDVSA) is very helpful if you feel anxious or underprepared. Most places I've worked, there are other attorneys who have done ANDVSA cases, and they've always been there to help me." ANDVSA is proud to contribute to the community of legal professionals making a positive difference in Alaska.

In his free time, he enjoys performing improv comedy with the Urban Yeti troupe and organizing nonpartisan dialogues on social and political issues as a board member of Alaska Common Ground.

Alison (CQ) Carter of Fairbanks is relatively new to the practice of law, but she quickly began volunteering to help survivors of abuse. "I decided in 2012, at the age of 57, to start law school at the University of Arkansas," she says, laughing. "Prior to that, I was a volunteer counselor on the GI Rights hotline, providing nondirective information about service members' rights under military regulations. That work exposed me to attorneys who did pro bono military law. I saw that there were not enough pro bono attorneys, and I also saw how much of an impact attorneys can make on a case."

She began taking volunteer cases with ANDVSA at the end of 2016, in order to develop expertise in family law and to make a difference in the lives of her clients. "People who have experienced trauma often find it very challenging to go through the legal process alone, because there's a lot of bureaucracy, paperwork and processing the court's demands. It's clear to me that my assistance is making a huge impact on their lives. I'm helping them to move past the trauma and get into a healthier place." Alison said, "After my first case was settled, my client grabbed me in the hallway of the courthouse and gave me the best hug I've had in a long time."

To other attorneys thinking about doing pro bono work for survivors of domestic violence, Alison said, "Don't be afraid! There are excellent trainings and resources available through the network to help you learn how to do this specific kind of legal work. If you've never worked in this area of law before, you'll get a lot of help. The network's CLE conferences are very professional and informative, and all the materials are available online after the conferences, too."

In her free time, Alison is an avid canoeing and skiing. She recently skied Mount Bachelor in Oregon one week and paddled the Rio Grande the next.

Heather Brown started volunteering with us in 2014, immediately after she began working as an attorney. She works with Franich Law Office in Fairbanks, where she was born and raised.

As a child, Heather said, "I was always interested in politics and how our system works, so I wanted to be a lawyer." Volunteer work was important at her firm, and as she says, "domestic violence and sexual assault are big issues for all of us here in Alaska. It's ever-growing and ever-prevalent. I feel its effects on friends, family, and beyond; there are not a lot of people who domestic violence or sexual abuse don't affect in some way."

"I find volunteer work with ANDVSA fulfilling because it deepens my connections with other people. I've found that I really connect with the clients whose cases I volunteer to take. I often see tears of relief in the eyes of my volunteer clients when I agree to take their cases. It moves me." She added that there is a practical component to volunteering, too: "It gave me a lot of courtroom experience that I wouldn't have been able to otherwise get right off the bat. Also, the sample pleadings and motions provided by ANDVSA to volunteer attorneys are very helpful."

About volunteering with ANDVSA, Heather said, "Absolutely do it. Not only is it rewarding, but it gives you more exposure — courtroom experience in particular. Also, DV/SA volunteer work helps to make our justice system work. Often, these clients, particularly women, have difficulty regaining their independence. When there's an attorney standing by their side, they are more able to keep their independence and maintain it."

If you are an attorney interested in volunteering with ANDVSA, please see www.andvsa.org/volunteer-now or email Christine Pate, director of the ANDVSA Legal Program, at cpate@andvsa.org for more information.

Siraj Ahmed Sindhu is an ANDVSA Legal Program fellow.

ATTORNEY DISCIPLINE

Lawyer suspended for fabricating settlement document

The Alaska Supreme Court has ordered a six-month suspension for Anchorage lawyer Jeffrey H. Vance for creating a false personal injury settlement document. The suspension went into effect on April 6, 2018.

Mr. Vance's law firm represented a plaintiff who had been injured in a car accident. After the client died (from other causes), his mother became the personal representative of his estate and Mr. Vance was assigned to represent her on the personal injury claim. The mother, who was located in New Jersey, accepted a settlement offer for $16,372 from the defendant's insurer. Mr. Vance forwarded the insurer's release of claim to the mother. The mother signed it and mailed it back in plenty of time before the statute of limitations expired. But the mail was slow, the release had not arrived on the last day before the statute ran, and the insurer would not agree to an extension of time. That morning, Mr. Vance forged the mother's signature on a blank copy of the release, notarized the signature using a colleague's notary stamp, submitted the release to the insurer's claims manager, and received the settlement check. The claims manager noticed discrepancies, stopped payment on the check, and confronted Mr. Vance. He promptly admitted his misconduct to the claims manager, reported it to the senior partner at his law firm, and resigned. That same day, before the court closed, he filed a civil lawsuit preserving the mother's claim. Mr. Vance's law firm and the defendant's insurer settled the case days later on the same terms; the law firm waived its fee. The district attorney filed criminal charges against Mr. Vance. He agreed to a suspended entry of judgment for a Class A misdemeanor, a $1,000 fine, and 80 hours of community work service.

Under American Bar Association sanction standards and Alaska caselaw, discipline for lawyers who have forged client documents has ranged from a low of suspension for 90 days to a high of disbarment. Under recent caselaw, the minimum length of a suspension in Alaska is six months. In Mr. Vance's case, the Bar Association agreed he was entitled to suspension at the bottom of the range because of substantial mitigating factors: he freely admitted his misconduct, he cooperated with the Bar Association's investigation, he had no prior discipline, he previously had a good reputation for competence and integrity, he was sincerely remorseful, criminal penalties had been imposed, he did not benefit financially, his client suffered no harm, and his misconduct was an isolated act not likely to be repeated. There were no aggravating factors.

Mr. Vance and the Bar Association stipulated to his suspension for six months and his payment of $1,000 in costs. The Disciplinary Board and the Supreme Court accepted the stipulation. Subject to approval by the Court,

Mr. Vance will be eligible for reinstatement to practice on October 6, 2018.

Bar People

Schwabe opens new office in Anchorage to expand industry reach

Schwabe, Williamson & Wyatt has opened an office in Anchorage and recently hired three maritime attorneys. With the addition of **Bert Ray, Philip Lempriere** and **Zach Berne** the firm is expanding its Transportation, Ports and Maritime industry group to 29 attorneys. The move bolsters the firm's presence in Alaska and its other locations along the West Coast.

Bert, Phil and Zach have more than 60 years of combined maritime industry experience.

Bert Ray joins Schwabe as shareholder and will lead the Anchorage office. Bert has practiced in Anchorage for most of his 30-year career, and he brings deep maritime experience to Schwabe's environmental, maritime, commercial, insurance, securities, malpractice and white collar criminal matters.

Philip Lempriere joins Schwabe as shareholder in the Seattle office. His legal experience coupled with his time serving as both a deck cadet and third officer aboard U.S. ships positions him to understand clients' admiralty and maritime legal issues.

Zach Berne joins Schwabe as an associate in the Anchorage office. His practice focuses on maritime, environmental, insurance and securities matters. Zach works on and is eager to learn about all manner of maritime matters, from injury accidents and fatalities to collisions to claims for reimbursement from the National Pollution Funds Center.

Chambers USA lists Holland & Hart

Holland & Hart LLP recently announced that Chambers USA: America's Leading Lawyers for Business, an annual guide identifying top attorneys and law firms in the U.S., ranked two Holland & Hart attorneys and one of the firm's Chambers-defined practice areas in Alaska in its 2018 edition. Highlights of the firm's Anchorage office 2018 Chambers rankings include: Practice Area, Alaska; and Environment, Natural Resources & Regulated Industries, **Kyle Parker**, and **Jon Katchen**.

Outgoing President Darrel Gardner and Piper Kerman share moment. (Photo by Lynn Coffee)

Lawyer suspended for six months

The Alaska Supreme Court suspended Fairbanks attorney Lawrence Reger for six months for misconduct.

The Alaska Bar and Mr. Reger agreed that his misconduct involving neglect, failure to provide adequate oversight of an office employee and failure to account and return client files was done with a mental state of negligence, the least culpable mental state. The parties also agreed that suspension was appropriate as Mr. Reger's neglect resulted in missed hearings, failure to file responsive pleadings, and failure to communicate with his clients. His failure to account and return unearned fees promptly also warranted suspension.

Factors that served to aggravate Mr. Reger's conduct included a pattern of misconduct, multiple offenses and substantial experience in the practice of law. However, the parties agreed that mitigating factors served to minimize the aggravating circumstances of pattern misconduct and multiple offenses because Mr. Reger made a concerted effort to reach clients and cure lapses once he realized that his paralegal had misled him regarding the performance of her duties. Other factors that served to mitigate Mr. Reger's misconduct included no prior disciplinary record, an absence of a dishonest or selfish motive, a timely good faith effort to make restitution or to rectify the consequences of misconduct, full and fair disclosure to the disciplinary board and cooperative attitude toward the proceedings, and remorse.

In addition to the six month suspension, Mr. Reger will complete six hours of continuing legal education in the area of law office management and three hours in legal ethics as a condition prior to seeking reinstatement to the practice of law. He must also pay the Alaska Bar Association $1,000 in costs.

Court imposes interim suspension

On April 10, 2018, the Alaska Supreme Court suspended Erin Gonzalez-Powell from the practice of law, effective immediately, agreeing that the Bar had established that Ms. Gonzalez-Powell's misconduct constituted a substantial threat of irreparable harm to her clients. The Bar's request to interimly suspend Ms. Gonzalez-Powell's license under Bar Rule 26(e) was supported by a letter from Presiding Superior Court Judge William Morse who expressed concerns that Ms. Gonzalez-Powell was not performing as an attorney should, and a detailed report was prepared by the Bar and filed confidentially.

On April 26, 2018, the Bar filed a Petition for Formal Hearing which specifically sets forth the charges of misconduct following an investigation of nine grievances. Misconduct allegations included charges that Ms. Gonzalez-Powell failed to appear at court hearings, failed to file motions timely, failed to communicate with clients and opposing counsel, failed to avoid a conflict between her clients' interests and her personal interests, and failed to safekeep property.

Bar Counsel will present charges before a Hearing Committee and have the burden at hearing of demonstrating by clear and convincing evidence that Ms. Gonzalez-Powell has, by act or omission committed misconduct. Interim suspension will terminate upon the final disposition of disciplinary proceedings, or upon the earlier entry of a Court order terminating interim suspension.

New olde "retro" decision: parties à la mode at Supreme Court

By Peter J. Aschenbrenner

"The weather outside's delightful." Hans Kelsen sings along, adding for emphasis, "I died four years before the *H.A.M.S.* debacle, which does add that Viennese touch to current fashions."

Jemmy and Dolley consult Casemaker.

"Tis true enough. Hans died in Berkeley; the year was 1973. The aforesaid disaster took place in 1977."

Bill Egan and his sister-in-governance Sarah vocalize the citations. "*H.A.M.S. Company, et al. v. Electrical Contractors of Alaska, et al.,* 563 P.2d 1258 (Alaska 1977), *ever-so-slightly but still – in the regard relevant herein – reversed by H.A.M.S. Company, et al. v. Electrical Contractors of Alaska, et al.,* 566 P.2d 1012 (Alaska 1977). The former had a useful life of 20 days," they add.

"When do we get the facts?" a well-known caricature from that decade (or the next one) speaks up. "And where's the beef?"

"A shareholder sought to 'Facebook' corporate shareholders," Zuckerberg enters, intones and departs.

"Data belonging to shareholders could be abused, if the corporation drops its guard," Governor Bill explains. "The company took on the role of trustee for an individual stockholder's personal information: names, addresses, number of shares and so forth."

"Edgy," The Sarah intones.

"Gritty," Jay Hammond and Tony Knowles agree.

"Isn't AS 10.06 up-to-date and au courant on this point? I mean, Wiki-Peeks is everywhere," I blurt.

"Regrettably not," several legislators chorus via telegraphic link from Douglas-by-the-Sea. "Shareholder privacy – not governed by the Securities Act of 1933 (or the Securities Exchange Act of 1934), as respectfully amended – is vulnerable to Wiki-Peeks and the Internet Research Agency of St. Petersburg."

"I could see it from my house," Sarah sniffs. "Back in the day."

A gent, sans shirt, flashes his more-so torso and signals his willingness to address the assembly on this subject. "What does this slogan mean?" he asks us. " 'We cheat the other guy and pass the savings on to you'? I mean, sounds good to me."

"So it was up to the corporation to fight to the last man, defending shareholder privacy," Bill Egan makes sense of the overriding chaos once Vlad has departed in his rent-a-Ziv. "Oh, wait. Citation: Slip. Op. 7236."

"ASRC made him sign an NDA, a non-disclosure agreement," Sarah adds. "They're quite popular these days, as I understand it."

"He signed the non-disclosure agreement and then declared it was invalid," a new voice is heard. "Isn't this my story?"

Stormy joins the party in progress.

"For a professor of political science," she checks out Hans Kelsen's biceptuals, "you keep yourself in good shape."

"The plaintiff-attorney-shareholder moved for summary judgment; ASRC asserted its CR 56(f) rights," Governor Wm. I intones. "The court rescheduled the trial (rightly so) and from there the case swirled into the toilet bowl."

"An otherwise nameless Lt. Governor," Sarah names the next speaker to Dolley and Jemmy.

"Won't somebody bring *H.A.M.S.* into the conversation?" LG Terry Miller asks. "I didn't just sell manufactured homes for a living," he adds the necessary corrective, waiving his diploma from the Spenard (Night) School of Law and Embalming.

"Iceberg ahead," Bill Egan gavels the assembly to order.

"A contractor's lien – AS 34.35 makes its arrival – had been authenticated when it should have been verified." Kelsen states the facts before the Supreme Court. "I'm dead, but I do like to keep up on things."

"Don't we all," Jemmy and Dolley agree.

"After the firestorm erupted," Jay Rabinowitz joins in the fray, "the court signalled 'back to the ships, lads' and full-on retreat. I dissented, by the way. 'Our decision in H.A.M.S. Company et al. v. Electrical Contractors of Alaska, Inc. et al., 563 P.2d 258 … requiring verification that the facts stated in lien claims are true, will be otherwise applicable only to the following cases'."

"It was a great day for judicial independence," Wally Hickel declares. "The Bar complained on behalf of the non-parties the Court injured. The Supreme Court obeyed."

"In the finest tradition of the common law," Sarah adds, "the Supremes had taken advantage of the parties to write a new rule for non-parties to the suit. Hence, *H.A.M.S. I.*"

"But the best part was, in my personal opinion, that the second ruling appeared in 20 days and without any reference to who sought the relief or what filings had taken place. *H.A.M.S. I* was held to be prospective only (in application) by *H.A.M.S. II*.," Kelsen concludes. "So the non-parties to *H.A.M.S. I* had nothing to fear from the common law."

"I don't think there's much common law law-making left in this state," Jemmy sniffs. "Or in any state."

"But the Supreme Court must have saluted AS 01.10.010, titled 'Applicability of common law,' " I gasp. " 'So much of the common law not inconsistent with the Constitution of the State of Alaska or the Constitution of the United States or with any law passed by the Legislature of the State of Alaska is the rule of decision in this state'."

"In this *ASCRC* case the Supremes had to ground their decision on an NDA – sorry Stormy, this one was enforceable – to get to the heart of the matter. Where did the court make any common law in this case?"

"We certainly agree," the assembly nods. "We've been looking high and low for the common law lo' these many years."

"Like crime in a multi-storey car park," Kelsen continues, "Facebooking is wrong on so many levels."

"So the common law in Alaska is dead!" I wail a wail of Biblical proportions. "And all because of one crummy misdrawn lien."

"It's the job of an appellate judge," Rabinowitz explains. "We make parties to litigation slog about for years, spending the net worth of a Viennese Bezirk on legal expenses, and then, whammo, we get a published opinion out of it and name winners and losers between the parties, but – mostly – we've been deciding cases to govern the rights and duties of those who can't file JCC grievances against us."

"And yet this is all old hat, counsellor," Kelsen reminds the assembly. "In 1892 states banded together into the National Conference of Commissioners on Uniform State Laws. Where's the decent respect for Heywood's case in that?"

"Don't forget the Restatements of the Law. If judge-made cases are such a beautiful thing to behold," Jemmy asks, "why did the American Law Institute set about rewriting caselaw into code-like formulae?"

"The year was 1923," Dolley recalls. "Cardozo was quite the manly man in those days. He could press 200 pounds. Or stones. I forget which."

"Doesn't anyone remember," Sarah concludes matters, "that Anchorage once held the record for the world's longest banana split?"

"The year was 1972," Terry Miller and Wally Hickel lapse into dreamy reminiscence. " 'Twas out on the Park Strip. Bliss 'n' summertime in Anchorage, Alaska."

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 48 of his articles.

NOTICE TO THE PUBLIC

By order of the Alaska Supreme Court, entered 2/21/2018

MICHAEL A. STEPOVICH
Member No. 8406051
Fairbanks, AK

is reinstated to the practice of law effective February 21, 2018.

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

A great dane wearing a race Tee joined the runners.

Racers begin the 5k May 6.

More than 100 participate in Anchorage Race Judicata

The Anchorage Bar Association Young Lawyer's Section held its annual Race Judicata 5k May 6. This event raises money for the Anchorage Youth Court, an organization that empowers local students to serve as defense attorneys, prosecutors and judges in cases involving their peers.

With generous donations from Anchorage attorneys, private firms, and local businesses, the YLS raised more than $7,000 for the Youth Court. Thank you to the 100+ runners for your support.

Young Lawyers officers from left are: Cameron Jimmo, YLS social chair; John Periman, YLS communications chair; Audra Passinault, YLS co-president; and John Blodgett, YLS co-president.

Legal tweets

A lawyer having no child, no money, home, blind mother, prays to God...

God says he will grant him ONE wish!

Lawyer: I want my mother to see my wife putting diamond bangles on my child's hands, in our new bungalow!

God: Damn! I still have a lot to learn from these lawyers!! :)

NOTICE TO THE PUBLIC

By order of the Alaska Supreme Court, entered 3/19/2018

HENRY E. GRAPER III
Member No. 9811065
Anchorage, AK

is reinstated to the practice of law effective March 21, 2018.

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

ESTATE PLANNING CORNER

The extraterritorial reach of the Constitution's Property Clause

By Steven T. O'Hara

Second in a Series

The Property Clause is found in Article IV of the U.S. Constitution. This clause is recognized as giving Congress a level of authority over not only federal land, but also land located next to federal land. This authority is known as the extraterritorial reach of the Property Clause.

Recognition of the Property Clause's extraterritorial reach dates back to 1897, when the U.S. Supreme Court decided *Camfield v. United States, 167 U.S. 518 (1897)*. Here the Court unanimously held that Congress has the constitutional power to enact legislation to protect federal land from being hemmed in on all sides by fences erected on adjoining privately owned land. *Id*. at 528. The *Camfield* Court's recognition of the Property Clause's extraterritorial reach is clear, but scholars debate the meaning of the case in terms of the extent of that reach.

"*Camfield* stands only for the classic doctrine that the federal government has a power to protect its property which somewhat exceeds the self-help powers of private proprietors…," wrote Professor David Engdahl. David Engdahl, *State and Federal Power Over Federal Property*, 18 Ariz. L. Rev. 283, 352 (1976) ("*State and Federal Power*").

On the other hand, Professor Eugene R. Gaetke has written that the Supreme Court in *Camfield* "viewed the … [Congressional] Act as protecting the potential users of the federal property, not the property itself." Eugene R. Gaetke, *The Boundary Waters Canoe Area Wilderness Act of 1978: Regulating Nonfederal Property Under the Property Clause*, 60 Ore. L. Rev. 157, 171 n. 73 (1981) ("*Regulating Nonfederal Property*").

In other words, some students of the Property Clause believe Congress may regulate conduct beyond the boundaries of federal land only insofar as the regulation protects federal land from physical harm. *See State and Federal Power at 308 and 352*; Note, *The Property Power, Federalism, and the Equal Footing Doctrine*, *80 Colum. L. Rev. 816, 821 (1980)*.

Others believe Congress, under the Property Clause, may also regulate private activity on non-federal land if the activity threatens to interfere with the designated purpose or use of federal land. Eugene R. Gaetke, *Congressional Discretion Under the Property Clause*, 33 Hastings L.J. 381, 388-90 (1981); *Regulating Nonfederal Property* at 169-174; Joseph L. Sax, *Helpless Giants: The National Parks and the Regulation of Private Lands*, 75 Mich. L. Rev. 239, 252-53.

The threat-of-physical-harm limitation on the Property Clause's extraterritorial reach is supported at first glance by *U.S. v. Alford*, *274 U.S. 264 (1927)*. Here the Court upheld a statute that prohibited the careless use of fire dangerously near federal land. *Id*. at 267. In 1979, the Ninth Circuit used *Alford* to hold that federal regulations prohibiting camping and building campfires without a permit within a national forest were applicable to the state-owned riverbeds within the national forest. *U. S. v. Lindsey*, *595 F. 2d 5, 6 (9th Cir. 1979)*.

In *Alford*, the Court cited *Camfield* for the proposition that "Congress may prohibit the doing of acts upon privately owned lands that imperil the publicly owned forests." *Alford*, 274 U.S. at 267. But *Alford* has long been distinguished from *Camfield*. "[T]he *Camfield* statute had nothing to do with protection of the federal property from physical harm," Professor Gaetke wrote. "Instead, its purpose was to ensure access to the public lands for pasturage and ultimately for settlement." *Regulating Nonfederal Property* at 170-71. In his view, the *Camfield* statute "was protecting the congressional policy that the public lands should be settled as soon as possible." *Id*. at 171. He observed that the narrower, threat-of-physical-harm use of the Property Clause in *Alford* is fully supported by the broader use of the Property Clause upheld in *Camfield*. *Id*. at 170 n. 69. "The fact that the rule in *Camfield* is authority for the rule in *Alford* does not mean, however, that the rules are coextensive," he wrote. *Id*.

" Perhaps all would agree that the Supreme Court has shown a level of consistency when it comes to the Property Clause."

According to Professor Gaetke, the Court in *Camfield* recognized the distinction between regulating non-federal land to protect federal land from physical harm and regulating non-federal land to protect a congressional policy for the purpose or use of federal land. He called attention to the Court's statement: "If it be found to be *necessary for the protection of the public, or of intending settlers*, to forbid all enclosures of public lands, the Government may do so…." Id. at 171 n. 73 (emphasis provided by Professor Gaetke).

Support for Professor Gaetke's argument can be found in a 1976 unanimous decision of the U.S. Supreme Court, *Kleppe v. New Mexico*, 426 U.S. 529 (1976), which upheld the Wild and Free-Roaming Horses and Burros Act of 1971. While the *Kleppe* Court at one point wrote unambiguously that "*Canfield* [sic] holds that the Property Clause is broad enough to permit federal regulation of fences built on private land adjoining public land when the regulation is for the protection of the federal property," *Id*. at 538, the Court later wrote, quoting from *Camfield*, that the Camfield statute was "for the protection of the public, or of intending settlers [on the public lands]." Id. at 540 (insert provided by the Court). This equivocation supports Professor Gaetke's argument that the *Camfield* Court recognized that it was upholding a statute designed to protect a congressional policy for the purpose or use of federal land.

The Court in *Kleppe* identified a passage in *Camfield* that "refers to the scope of congressional power to regulate conduct on *private* land that affects the public lands." *Id*. at 538 (emphasis original). In *Camfield*, the Court wrote:

While we do not undertake to say that Congress has unlimited power to legislate against nuisances within a State, which it would have within a Territory, we do not think the admission of a Territory as a state deprives it of the power of legislating for the protection of the public lands, though it may thereby involve the exercise of what is ordinarily known as the police power, so long as such power is directed to its own protection. Camfield, 167 U.S. at 525-26.

Professor Gaetke interpreted the above *Camfield* passage as showing the Court recognized that Congress has the power, under the Property Clause, to regulate conduct on non-federal land in order to further a congressional policy for the purpose or use of federal property, although the conduct poses no physical threat to the federal property itself. *Regulating Nonfederal Property* at 170-71 n. 71. He supported this interpretation with a three-tiered argument. First, the singular "its" in the final clause of the passage is not parallel with the plural "public lands" used earlier in the passage. *Id*. Second, although this problem may be dismissed as merely a grammatical error, the Court probably intended "its" to refer to Congress itself. *Id*. Third, the Court was simply "recognizing a power in Congress to legislate 'for the protection of the public lands' … so long as such power is directed to protecting the congressional policy for the use of those lands." *Id*.

The Eighth Circuit rejected Professor Gaetke's interpretation of "its" in *Camfield*. The Eighth Circuit explicitly read "its" to mean "public lands." *Minnesota v. Block*, 660 F.2d 1240, 1249 (8th Cir. 1981), *U.S. Cert. den. in* 102 S.Ct. 1645. The court could have just as well adopted the professor's interpretation because the court's understanding of the power granted under the Property Clause lead to the same result the professor commended to the courts.

In *Block*, the Eighth Circuit upheld the sections of the Boundary Waters Canoe Area (BWCA) Wilderness Act of 1978 that prohibit motorboats and other motorized vehicles on non-federal land and lakes within and partly outside the BWCA. The court found the Act was designed to preserve the BWCA as wilderness, *Id*. at 1250-51, not to protect federal land from physical harm. The court observed that limiting Congress' extraterritorial reach to the factual situations of *Camfield* and *Alford* would be a "narrow and improper construction of the property clause," *Id*. at 1249 n. 18, concluding: "Under this authority to protect public land, Congress' power must extend to regulation of conduct on or off the public land that would threaten the designated purpose of federal lands." *Id*. at 1249.

Perhaps all would agree that the Supreme Court has shown a level of consistency when it comes to the Property Clause. "Over the years, the Supreme Court has interpreted the Property Clause infrequently but consistently," wrote Professor Michael C. Blumm and student Oliver Jamin. "With nearly no exception, the Court has ruled that the federal power under the Property Clause is 'without limitation.'" Michael C. Blumm and Olivier Jamin, *The Property Clause and Its Discontents: Lessons from the Malheur Occupation*, 43 Ecology L.Q. 782-783 (2017).

Also consider the work of Professor Peter A. Appel, a student of the history of the Property Clause as well as its application. He has concluded that the framers of the Constitution intended a broad reading of the Property Clause. Peter A. Appel, *The Power of Congress "Without Limitation": The Property Clause and Federal Regulation of Private Property*, 86 Minn. L. Rev. 1, 8 n. 29 and 117 (2001).

In a future issue of this column, I will propose a hypothetical federal statute I call the Denali Wolf Protection Act as an illustration of the extraterritorial reach of the Property Clause. And in one or more future issues of this column, I will explore judicial review under the Property Clause and propose what I call the *Alford-Camfield* Nexus Rule, which courts might apply when faced with a challenge to an extraterritorial provision in a statute or regulation.

In a future issue of this column, I will propose a hypothetical federal statute I call the Denali Wolf Protection Act as an illustration of the extraterritorial reach of the Property Clause.

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

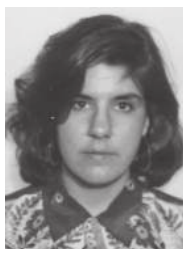
ALASKA BAR ASSOCIATION 1988 - 2018

25 Years of Bar Membership


William Aitchison


John Aschenbrenner


Sheila Bacchus


Nora G Barlow


Ryan Bell


Karen Bendler


Ruth Berkowitz


Ron Best


Daniel Boone


James Butler


Sherry Clark


Jacqueline Colson

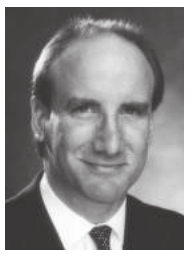

Jennifer Coughlin


Susan Crocker


Richard Curtin


John Darnall


John Donovan


Neil Dorfman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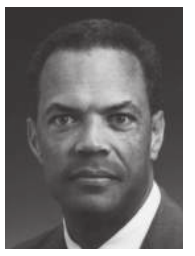
Katherine Dreyfus


Paul Eaglin


Maurice Ellis


S. Lynn Erwin


Daniel Fitzgerald


Elizabeth Friedman


Patrick Galvin


Kimberly Geariety


James Glaze


Darin B Goff


Jeff Gould


John Groen


Leigh Michelle Hall


Bethany Harbison


Wayne Hawn


Scott Highleyman


Jennifer Holland

Theodore Hoppner


Grant Hunter


Patrice Icardi


Jennifer Jacobsen

Joyce Weaver Johnson

Steven Jones

Robert Kehoe

Vernon Keller

Mark Kennedy

James Knoll

Mark Kroloff

Steven Lamb

Keith Laufer

Jeffrey Leclerc

Tony Lee

Janice Levy

Lynda Limon

Bernard Link

Andrew Lundquist

Byrona Maule

Linda McKinney

Tom Montgomery

Kevin Morley

David Murrills

Shannon O'Fallon

Christi Pavia

Herbert Pearce

Retta-Rae Randall

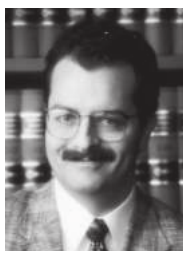
ALASKA BAR ASSOCIATION 1988 - 2018

25 Years of Bar Membership


Audrey Renschen


Verne Rupright


Martin Schultz


Christopher Stead


Margaret Stock


Nicole Stucki


Kevin Sullivan


David Symes


Debra Taylor


Wallace Tetlow


Samuel Thompson


Irene Tresser


Amy Vaudreuil


Herman Walker


Heidi Wanner


Martin Weinstein


David Wensel


Dennis Wheeler


Benjamin Whipple


Dale Whitney


Daniel Wilkerson


Chad Wilton


Julia Younker

NOT PICTURED
Elizabeth Baker
Michael A Barnhill
Shawn Mathis
Peter Putzier


From left: Judge Herman Walker, Margaret Stock, Martin Schultz and S. Lynn Erwin were among those marking 25 years as members.

50 Years of Bar Membership


Bruce Bookman


Edmond Burke


Marshall Coryell


Roger Dubrock


Robert Eastaugh


Leland Edwards


Richard Folta


Gary Gantz

NOT PICTURED: Mark Copeland and Richard Felton


Among those recognized for 50 years of membership were from left: Bruce Bookman, Roger DuBrock, Joseph Palmier and Collin Middleton.


Norman Gorsuch


James Johnston


R. Collin Middleton


Joseph Palmier


Sylvia Short


W. Clark Stump


William Tull

Robert Wagstaff

David Young

Bar Convention High

BAR'S ANNUAL AW

Bryan P. Timbers Pro Bono Awards

Jimmy White and Kim Colbro accept the award from Chief Justice Craig Stowers for Hughes White Colbo Wilcox & Tervooren LLC.

Marc June accepts a Pro Bono Award from Chief Justice Stowers.

Patrick Reilly accepts the International Law Human Rights award from Marla Greenstein.

Incoming President Brent Bennett as he receives the gavel, presents his predecessor Darrel Gardner with a thank-you gift for his service, a donation to a recently established scholarship fund.

President Darr
his service to c
Blake Chupka.

Barbara Jones and Lee Holen catch up at the banquet reception.

Attendees gathered around tables at the convention opening reception.

HLIGHTS — ANCHORAGE

WARDS PRESENTED

Fischer, winner of 2018 Jay Rabinowitz Public rvice Award, is joined by Jessica Dillon and Bud Carpeneti.

Bar Foundation gives the Rabinowitz Public Service Award dual whose life work has demonstrated a commitment to ice in the state of Alaska.

Kevin Clarkson holds his Distinguished Service Award.

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

Susan Wibker receives the Professionalism Award.

The Alaska Bar's Professionalism Award recognizes an attorney who exemplifies the attributes of the true professional, whose conduct is always consistent with the highest standards of practice, and who displays appropriate courtesy and respect for clients and fellow attorneys.

Photos by Lynn Coffee and Rebekah Lewing, Lewing Photography & Design

rel Gardner presents plaque of appreciation for outgoing Alaska Bar Association Board Member

Dean Chemerinsky, dean of Berkley Law, delivers an evocative update on proceedings within the Supreme Court.

Sharon Barr, John Bernitz and Annie Steward shared a table at the opening reception.

Rich Curtner offers up a toast at the reception.

ATTORNEY CONDUCT AND DISCIPLINE

Tone down the language to make a more persuasive case

By Nelson Page

Here is language from an actual case:

> *You're an a**hole dan. I have everything taped. And yes, under ny law and the rules of professional conduct, it's allowed. If you think you're going to sully my clients with your fictions, you're a fool. If you try any s*** with the court, I welcome it. We have provided all requested data, all requested backups and have provided it in an orderly and accessible manner, unlike your clients.*
>
> *Don't f*** me. I'm done with your unethical behavior. Any motions by you, if you're trying to build a case for some unmeritorious motion to deflect from your clients' unethical behavior, will include my recordings from today.*
>
> *Please govern yourself accordingly.*[1]

Choose your favorite paragon of legal virtue. Does anyone believe that words like these would ever be uttered by Atticus Finch or Abraham Lincoln? Does anyone really think that calling opposing counsel "a**hole" is an effective way to persuade a judge of the legal merits of your case? There is a lot of discussion about the need for civility in the practice of law. Yet judges and lawyers are constantly bombarded with name-calling, unfounded accusations, bombastic hyperbole and threats of unspecified harm in briefs and correspondence. Such tactics certainly fall under the definition of "unprofessional." Worse, they are counterproductive. And most important of all, they may be unethical. If you want to be a more effective advocate, cut out the meaningless posturing and try to present yourself as the grownup in the room.

If you want to be a more effective advocate, cut out the meaningless posturing and try to present yourself as the grownup in the room.

1. "It's a free country. I can say whatever I want."

No, actually, you can't. The standard for what an attorney can say under the first amendment was discussed in *Garrison v. Louisiana*,[2] a companion case to the landmark *Sullivan v. New York Times* decision in 1964. In *Garrison,* the U.S. Supreme Court held that "only those false statements made with the high degree of awareness of their probable falsity demanded by *New York Times* may be the subject of either civil or criminal sanctions."[3] Although this freedom is broad, it is not unfettered. Lawyers have been disciplined regularly for ignoring the boundaries. *Garrison* notwithstanding, the U.S. Supreme Court has recognized that, [A] State may regulate speech by lawyers representing clients in pending cases more readily than it may regulate the press. Lawyers are officers of the court, and, as such, may legitimately be subject to ethical precepts that keep them from engaging in what otherwise might be constitutionally protected speech.") [4]

"There is a lot of discussion about the need for civility in the practice of law."

Given that standard, jurisdictions across the country have upheld attorney discipline based on the use of insulting or threatening language in correspondence, in briefs, in open court, and in public. For example, in Jabary v. McCullough,[5] the court sanctioned an attorney who consistently accused the court of "ignoring" the opposing party's "falsehoods"," "condoning perjury", and "refusing to permit justice to be done." After what appears to have been a non-stop barrage of such language in pleading after pleading, the court lost patience and, after a hearing at which the lawyer was invited to provide any proof he might have to support his accusations, fined counsel $3,000 and ordered him to attend classes on "Ethical Behavior and Maintaining Dignity." The basis of the sanction was counsel's violation of Federal Rule of Civil Procedure 11(b), which requires an attorney to certify that there is evidentiary support for the factual contention made in the pleadings.

Other rules also apply. Alaska Rule of Professional Conduct 8.2 makes clear that it is unethical to "make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer, or public legal officer, or a candidate for election or appointment to judicial or legal office." On that basis lawyers have been censured, suspended and disbarred across the country. *In re Michael Palmisano*,[6] dealt with a lawyer who apparently got fed up with losing his cases, and decided that the only possible reason was corruption. After being removed from a case, he sent letters to various judges accusing "the crooks calling themselves judges and court employees" of being "too busy filling their pockets to act judicially." The Court indicated that if Palmisano had been able to demonstrate any factual basis for his allegations the outcome might have been different. But he could not, and he lost his license.[7]

Alaska Rule of Professional Conduct 3.5 states that, "A lawyer shall not engage in conduct intended to disrupt a tribunal." This obviously applies to conduct within the courtroom, but has also been used to justify discipline for scandalous and inappropriate pleadings. *In Re Zeno*,[8] involved an attorney respondent who filed pleadings seeking reconsideration of an adverse ruling. He could not refrain from accusing both opposing counsel and the court of, among other things, "bias," and laughing in open court and "making a mockery of the argument of the undersigned." In finding that Zeno had violated Rule 3.5, the First Circuit concurred that this behavior was part of "a pattern of disrespectful conduct disruptive of the judicial process" and imposed severe sanctions.[9]

Discipline is not limited to disrespectful behavior toward judges or other counsel. ARPC 4.4 requires that lawyers show respect for the rights of third parties and prohibits the use of "means that have no substantial purpose other than to embarrass , delay, or burden a third person…" In *In re: S.C.,*[10] counsel was disbarred for, among other things, referring to her client's developmentally disabled daughter as "akin to broccoli" and "pretty much a tree trunk," whose testimony was "jibber jabber." The court was appropriately shocked at what it characterized as "shameful editorializing" and found the language "gratuitous [and] offensive."[11]

The upshot of all this is that you can find yourself in real trouble with both the court and the bar if you let your emotions carry you away. Mere percussion is not persuasion. It may subject you to discipline.

The upshot of all this is that you can find yourself in real trouble with both the court and the bar if you let your emotions carry you away. Mere percussion is not persuasion. It may subject you to discipline.

2. "I'm just being a Zealous Advocate."

No, you aren't. Take any of the insults and epithets that have been quoted here. Do any of them seem to have any persuasive value? I can attest from discussions with judges about this topic that they are very busy people who would prefer to spend their time reading legal arguments as opposed to insults. The most effective thing a lawyer can do is make sound legal arguments based on the facts. Calling opposing counsel — or the judge — an "A**hole" is probably not the best way to win over judicial hearts and minds. In addition to wasting time and space, such tactics immediately give rise to the suspicion that the advocate is "pounding the table" because there are no supporting facts. The words of the Delaware Supreme Court in *In re: Abbott*, seem to capture the general reaction of judges to unnecessary hyperbole:

> Use of such language does nothing to assist the Court in deciding the merits of a motion, wastes judicial resources by requiring the Court to wade through superfluous verbiage to decipher the substance of the motion, does not serve the client well, and generally debases the judicial system and the profession.[12]

The examples here are extreme. But the problem exists even when an advocate makes a bombastic argument without using words that can only be reprinted with asterisks. It is perhaps worth noting that the offensive language in *Abbott* did not consist of outright insults or unprintable names. Among the offending words were adjectives such as, "fictionalized," "laughable," "make-believe" and "fabricated." I have seen entire briefs, even in Alaska, where such counterproductive sarcasm made up a substantial percentage of the words used.

You should regularly go through your briefs to remove adjectives like "disingenuous," "ridiculous," "outrageous," "illogical" and "irrational." If you use the word "completely" make sure it isn't attached to some pejorative characterization of counsel, or the other side's brief. Phrases such as "completely unsupported", or "intellectually dishonest" should be redlined every time. Do this editing exercise a few times and compare the two versions. I guarantee that the brief that has been whittled down will be tighter, more professional, and more persuasive. As the Court in *In Re S.C.* stated, "While exaggeration may not violate rules of court and standards of review, it is not an effective tool of appellate advocacy"[13]

It is hard to exaggerate the damage done to the profession by the stress caused through this kind of behavior. Nobody likes being shouted at, insulted or threatened. There is enough stress in the practice of law without adding to it through aggressive "in-your-face" posturing. We are fortunate here in Alaska that some of the worst excesses are not yet a regular part of the practice. But we must guard the gates. If you want to be seen as a consummate professional and an effective advocate, act like one.

Nelson Page is the Bar counsel at the Alaska Bar Association, formerly of Burr, Pease and Kurtz and former Alaska Bar president.

Footnotes

[1]Citation intentionally omitted.

[2]379 U.S. 64 (1964)

[3]Id. At 74.

[4]Gentile v. State Bar of Nevada, 501 U.S. 1030, 1081-82 (1991) (Citations omitted) (O'Connor, J, concurring).

[5]2018 BL 92116, E.D. Tex., No. 4:10-CV-00711, 3/19/18; 2018 WL 1383221

[6]70 F.3d 483 (7th Cir. 1995)

[7]Id. At 487.

[8] 504 F.3d 64 (1st Cir. 2007),

[9] Id. At 66.

[10]41 Cal. Rptr. 3d 453 (Cal. App 2006)

[11]Id. at 458

[12]In re: Abbott, 905 A.2d 482, 485 (Del. 2006).

[13]In re S.C., supra, at 470.

Attending the installation from left are: Judge David Mannheimer, chief judge, Alaska Court of Appeals; Chief Justice Craig Stowers, Alaska Supreme Court; Judge Michael Logue, Anchorage District Court; Judge Gregory Motyka, Anchorage District Court; and Judge Michael L. Wolverton, Anchorage Superior Court.

Logue installed in District Court

Judge Michael B. Logue was installed to the Anchorage District Court bench May 3 in the Supreme Court courtroom of the Boney Memorial Courthouse. He was appointed Feb. 1 by Gov. Bill Walker.

Judge Logue was born in Philadelphia, PA. He graduated from Villanova University in 1981 and Villanova University School of Law in 1986.

In 1988, he moved to Alaska from Brooklyn, NY, where he had been working as a prosecutor. He was a partner at the firm of Gorton and Logue and in 2014 he began working at Denali Law Group until his appointment to the District Court.

Lawyer joke …

I believe you keep a lawyer. I have always kept a lawyer, too, though I have never made anything out of him. It is a service to an author to have a lawyer. There is something so disagreeable in having a personal contact with a publisher. So it is better to work through a lawyer--and lose your case.

- Mark Twains Speeches, "Author's Club"

Judge Michael Franciosi is accompanied on the left by his daughter Katherine and on the right by his wife Anita.

New judge joins Anchorage District Court

Judge Michael Franciosi was appointed to the Anchorage District Court by Gov. Bill Walker Sept. 17, 2017.

Franciosi was born in New Jersey and raised in Minnesota. He is the son of Dr. Ralph Franciosi and Dr. L. Patt Franciosi.

He received a B.A. in Philosophy from St. Bonaventure University in 1987 and a J.D. from Creighton University in 1991. He worked for the firm of Atkins, Zimmerman and Carney until 1995 when he moved to Valdez. He and William Bixby practiced law together in Valdez from 1995 until 2015. In 2015 Franciosi moved to Glennallen to serve as a magistrate judge and standing master with the Alaska Court System. He has been with the Anchorage District Court since October 2017 and is currently a training judge for the Second Judicial District.

He is married to Anita Franciosi and has two daughters Katherine and Victoria Franciosi.

TALES FROM THE INTERIOR

A birth date in early April leads to some serious fake news

By William R. Satterberg Jr.

I was born on April 1. And "Born in the U.S.A." But in Seattle, Washington, not New Jersey like "the Boss." My mother told me that I entered this world at exactly 12 noon. I missed my father's March 30 birthday by two days. My birth apparently was long distance targeting by my folks. Either that, or they had enjoyed a wild evening the previous summer.

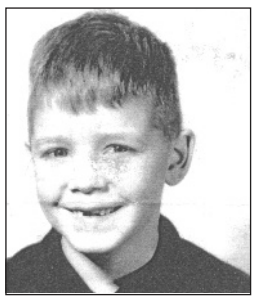
I often am told that I live up to my April Fool's reputation as a jokester.

Over the years, I have played various jokes. Some of them follow:

There was one time when Ralph Seekins, another April Fools baby, and myself announced on the Michel Dukes talk show that we had purchased the University Park Elementary School at a surplus auction to establish a sex and drug rehabilitation center. Using Ralph's political connections at the time, we had secured federal grant monies funded by the National Institute for the Modification of Behaviorally Impaired Youth (NIMBY). The joke did not go over too well, especially when I discussed our pilot "Take an Offender Home" program, where an offender could babysit the kids when the parents went out for a wild night on the town. I explained that the experiment had a 75% success ratio, but was expected to improve with time. The locals took it rather seriously. The call-in lines were all blinking for the entire show. Accusations of misconduct by a used car dealer and an ambulance chasing attorney were rampant. So, Ralph and I had to appear on a local television show the following day to explain our antics. That helped a little, (but not much) as Ralph futilely tried to gain political acceptability by justifying the exercise as a preconceived experiment designed to underscore a serious societal problem in Alaska. Bunk! To me, it was just another tasteless joke. (Ralph, incidentally, is the father of Fairbanks District Court Judge Ben Seekins and once served in the Alaska State Senate.)

Then there was the time that I announced that the Yukon River 800 Race would start in Talkeetna, Alaska, proceed up the Yukon River over the Alaska Range and then down again into the Tanana River Valley, ultimately concluding at Galena. It was a tradeoff for the Iditarod starting in Fairbanks due to a regular lack of snow in Anchorage. Forget the fact that there is a mountain range in between the two river systems. Some people bought that one, as well. After all, Fairbanksans love conspiracy theories. To add to the fun, Anchorage residents were chagrined to learn they had lost their most cherished event. But this was before doggie drug testing.

I once allegedly planted a remote controlled fart machine under then Assistant District Attorney Ben Seekins' chair for Judge Burbank's last day on the bench at trial call. I allegedly got three loud bursts out as public defenders walked behind Ben's chair before Judge Burbank decided I was the likely culprit, accusing me personally on the record. So much for due process. No one knew then that Ben would later fill Winston's seat. As for me, I wisely maintained silence and acted innocent until well after the five-year ethics statute of limitations.



"I often am told that I live up to my April Fool's reputation as a jokester."

I have also been the victim of jokes. For example, years ago then Assistant District Attorney David Manheimer, now a Court of Appeals judge, had me served by a police officer with a lawsuit from a girl that I had dated only one time seeking compensation for her "yet unborn child." That caused a serious halt in my heart rhythm. Besides, I had always protested that "we had done nothing," when accused by nosey staff. This was before the days of DNA testing. But, what hurt most was that folks actually believed that the lady would never have slept with me, even though she was named after a famous stripper, Candace Barr.

There was the time that my office served me with official union notice paperwork announcing that they all were joining the local IBEW. I was cautioned that I was to take no steps which might be viewed as illegal union busting. The consequences could be quite serious. With the door to my office closed, I sat and brooded for almost an hour before I realized the date.

There was the time that my office served me with official union notice paperwork announcing that they all were joining the local IBEW.

There's more. Now deceased attorney, Don Logan, once took out an ad in my name in the local Swap and Sell which appears on tables at the cheaper cafes in Fairbanks, announcing that I was giving away free legal advice. Don even gratuitously included my office phone number, boasting I accepted calls 24 hours a day. The joke was clearly in very poor taste.

Probably one of the biggest jokesters in Fairbanks is a good friend named Craig Compeau. Craig is the proprietor of Compeau's — a long standing local recreational vehicle store. As Craig's famous grandfather once lectured Craig after a discounted sale, "We're not here to seek out a modest profit." Craig has a dream life — owning an adult toy store — boats, four-wheelers, and sleds. For the past three years, Craig has played an April Fool's joke upon me — buying an ad in the local newspaper to publish what masquerades as a legitimate news article.

Craig's model followed an ad I had one year with an announcement that I was campaigning for the space which had been vacated by local District Attorney Michael Gray. Mike had moved to Bethel to round out his retirement. Needless to say, this particular rumor caused many law and order eyebrows to go up. For several weeks, local lawyers and police officers did not quite know what to make of the matter as I fed the mill, dropping not so subtle hints about my new job. The buildup was slow in coming, extending through the preceding month of March. When the announcement was finally made in the newspaper on April 1 that I had accepted the position as the new district attorney for Fairbanks, some people were seriously contemplating resignations. Even Gov. Bill Walker got a good laugh out of it when reassured that he actually had not really signed my appointment papers.

So Craig took up the baton from there, releasing an article the next year on April 1, again unsolicited by myself. Craig's news release reported that I had gone to the Fairbanks City Council to complain that the city was sanding the streets. The sanding was reducing hazards. I protested the amount of government money spent on this frivolous safety campaign, and, more critically, how it was destroying my personal injury practice. In the end, when being grilled by irate council members, I had to leave early, purportedly hearing an ambulance and excusing myself for one of my "many bathroom breaks," not to be seen again.

The next year, Craig reported that I opened a food trailer at Arctic Man to sell cheese on a stick while offering discounts for legal advice to any patrons who bought enough cheese curd.

But Craig's best April Fool's joke so far was when it was revealed in 2018 that I would be a local guest on the popular TV show "Naked and Afraid." Many of my clients took it seriously, (which does not say much for them). Rather than trying to explain this antic, I am simply reproducing it, below, in its complete form:

Local attorney to appear on 'Naked and Afraid'

Local Attorney Bill Satterberg will be featured on the Discovery channel today during episode six of the new season of Naked and Afraid. The American reality series chronicles the lives of two survivalists, (1 man; 1 woman) who meet for the first time and are given the task of surviving a stay in the wilderness, naked for 21 days. After they meet at the assigned location, (in this case a mosquito infested bog behind the old McKees pig farm off Chena Hot Springs Road), the pair must power through everything from severe hunger to butt cheek-bug bites and frigid evening temperatures.

The episode, filmed during the last week of September 2017 features Satterberg and Harriet Willard, an unemployed former lactation specialist from Palmer who many say bears an uncanny likeness to former presidential candidate Hillary Clinton.

Rules of the show specify that each person can bring one item and one item only for the three week survival adventure. For this episode, Willard brought a 17" Condor Golok machete with a high carbon steel blade. Satterberg brought nothing but a handful of business cards.

On the seventh day of filming, the evening temperature dipped to 21 degrees and Satterberg threatened to walk off the set the following morning. The local attorney insisted the film crew hand over footage of what he would only describe as "shrinkage" and to stop the uncontrollable laughter. Filming eventually resumed, but included several days of conflict between the two Alaskans. One incident on day 16 including a wrestling episode after a famished Satterberg attempted to run off into the woods with an injured baby owl that Willard claimed as hers after capturing it in a makeshift trap constructed of willow boughs.

The couple came within 12 hours of completing the 21 day wilderness challenge when the distant sound of ambulances responding to an ATV accident in the area caused Satterberg to grab his business cards, and sprint off in the general direction of the highway. Police and members of the film crew searched for the local attorney for 18 hours until they were advised Satterberg had hitched a ride back to Fairbanks on the ambulance. He allegedly insisted he be dropped off at Big Daddy's BBQ in downtown Fairbanks where many hours later he was in what onlookers described as a "diabetic coma." The episode is scheduled to air on the Discovery Channel at 9 P.M. on April 1.

Admitted to the Alaska Bar in l976, William R. Satterberg Jr. has a private, mixed civil/criminal litigation practice in Fairbanks. He has been contributing to the Bar Rag for so long he can't remember.

WOODPILE CHATTER
(or Contemplating Retirement…)

I chirp at the squirrel
The squirrel chirps at me
So are we talking?
We might as well be.
I'm saying "Squirrel,
You stay in your tree!
Stay out of my eaves
And I'll let you be."

While the squirrel say "Man,
Just leave me alone.
I'm busy up here
Gathering cones."

So tell me then squirrel
Just how do you know
When you've gathered enough
And can burrow below
Deep in the wood pile
Surrounded by cones
Your food within reach
Your midden, a throne.

I envy you there
Curled up in a ball
Sleeping through winter
With your tail as a shawl.

But how do we know
When it's time to retire,
To put the axe down
And come in by the fire?
But by now, he is gone
And all that remains
Are rustling cones
Falling like rain.

From Cameron Leonard,
a Fairbanks wood-burner
managing cabin fever.

An Alaska defense attorney learns to tread lightly in Kabul

Continued from page 1

Given the medieval nature of gender relations, of course we ate separately from the women lawyers.

The Asia Emerald Hotel had a 300-person capacity but only about 30 guests. All were ex-pats and they included a German and a Swiss woman, some Brits, Pakistanis and a Swede who did production work for the BBC, and a loquacious Bulgarian who may speak English but I couldn't understand because he didn't move his lips except to insert another cigarette.

Terrorist attacks are frequent in Kabul. The International Hotel was hit while I was there with a reported death toll of 22, including three Americans. My driver, Ehsan, reported the next morning that the actual toll was 43 killed according to social media. Two or three of the six terrorists were reportedly guests at the hotel and the rest entered through the kitchen after getting through at least one checkpoint where the metal detector was down.

Two of the principals of the security company responsible for security at the Intercontinental fled to our hotel. I met Kenny, the overall supervisor and an American veteran who had worked in-country for 10 years, at dinner where he seemed to be on amphetamines and couldn't shut up. Tomas, a young Hungarian was still trembling so badly that I hugged him and he started crying hysterically. Two of our security men took him upstairs to the bar for an alcohol remedy.

I spoke several times to both Kenny and Tomas in the ensuing days and emphatically recommended that they leave the country immediately. The Afghan Penal Code language on conspiracy and negligent homicide is quite expansive and I believed the government would be looking for scapegoats. This was confirmed by our lawyers who were unanimously convinced they would be charged.

I ran into Kenny again one morning over coffee. He believed that he would not be charged because he was "very smart" — a questionable claim he repeated four times in five minutes — and the Interior ministry people had been "nice" to him. The US Embassy staff, including the FBI, who interviewed him and Tomas extensively, also told them to leave the country and promised to make the arrangements. Kenny believed that if he could fully explain how professional he was to the Interior ministry, he would not have a problem. He thought they just wanted his help in the investigation. They wanted him to sign a statement but he was too "smart" to do that. So far as I could determine, his sole defense was that his firm was only responsible for external security and the government guards, who fled, were to secure the interior of the hotel. I didn't try to explain the problem with the defense: At least three of the terrorists entered through his security checkpoint where the scanner was inoperable and his guards (unbelievably) were not armed.

The defense attorneys among the readership will immediately recognize Kenny as a prime example of an uncontrollable client with significant criminal exposure who is too "smart" to listen to his lawyer — not that we don't have a better example in the White House.

The defense attorneys among the readership will immediately recognize Kenny as a prime example of an uncontrollable client with significant criminal exposure who is too "smart" to listen to his lawyer — not that we don't have a better example in the White House.

Just before I left there was a suicide bombing three blocks away as people were leaving for lunch at the Swedish embassy and the Ministry of Interior. I thought it was an earthquake until the huge boom hit a split second later. My instinct, as a former combat medic, was to run downstairs and grab our big first aid bag. I was stopped at the gate by the guards. I felt helpless as most of the staff left to donate blood.

These indiscriminate attacks leave everyone there uncertain when they leave their families in the morning that they will ever see them again.

The next morning at 4:40 I was almost through the last of seven checkpoints at the airport when I felt a tap on my shoulder. It was Tomas and he was on my flight to Istanbul. He was weeping. Kenny had disappeared.

Though everything was worse than when I last worked in Kabul in 2005, the Afghan lawyers, particularly the brave women, were a daily source of joy and inspiration in that city of constant horrific tragedy.

Brant McGee, a lifelong Alaskan, has been a lawyer for 40 years and is very glad to be home.

New members sworn in to Bar Association

Marilyn May in white at left, reads the Oath of Attorney to new members of the Alaska Bar Association sworn in at a May 23 ceremony. They are: Russell Arens, Shana Bachman, Skylarr Bailey, Mark Clark, Traci Emerson, Brittany Gershel, Laura Jungreis, Deanna Kalil, Huhnkie Lee, Ian Van Tets and Sam Turner. The judges from left are: Presiding Judge William F. Morse, of the Third Judicial District: Judge Morgan Christen; Supreme Court Justice Peter J. Maasen, Chief Judge David Mannheimer, of the Alaska Court of Appeals; and District Court Judge Kari McCrea.

Old Man

By John C. Pharr

An old man in his easy chair
With hair of white and gray
Folds and wrinkles everywhere
He whiles the hours away

Shelves and tables rife with stuff
And photos sepia-toned
The detritus of a life
He contemplates alone

Ticking clock the silence breaks
Were that she's still here
Loneliness that God forsakes
All run out of tears

Memories that flitter past
Randomly imposes
He drifts off to sleep at last
Quietly he dozes

Now he's young and strong and free
Ruddy face aglow
Facing immortality
Wild oats he sows

So many things that he must do
With youthful energy
Stayed busy and the time just flew
Frenzied activity

Meticulously built a life
Built family and home
Dealt with all life's storm and strife
And now he is – alone

Emerges from a dreamlike state
Wakes and looks around
Recognizes time and place
As many times he's done

Looks like the little dog's asleep
The only one he talks to
It could be he needs to pee
Time to grab the walker.

John C. Pharr is a criminal defense attorney practicing in Anchorage.

Board of Governors action items May 7 & 8, 2018

- Approved the February 2018 Alaska bar exam results, with 24 passing applicants.
- Approved 15 reciprocity and 11 UBE score transfer applicants for admission.
- Approved Rule 43 (ALSC) waivers for Renee Gregory and Nicholas Feronti.
- Adopted the bylaw change establishing a scholarship committee.
- Voted to publish Bylaw amendments allowing members who have resigned to reinstate under certain conditions.
- Voted to publish amendments to Rule 43.1 extending the length of time for military attorney waivers.
- Referred ARPC 5.5 to the ARPC Committee for consideration.
- Approved the minutes of the January board meeting.
- Appointed Erin Lillie and Thomas Jamgochian to the regular and alternate positions on the ALSC Board of Directors in the 2nd judicial district; and appointed Elizabeth LeDuc and Tina Grovier to the regular and alternate positions on the ALSC Board in the 3rd judicial district.
- Voted to accept the stipulation for discipline in ABA File No. 2016D058, recommending a six month suspension and conditions.
- Voted to approve the Licensed Lawyer program.
- Voted to appoint Diana Wildridge as New Lawyer Liaison.
- Voted to approve the LawPay program.
- The President appointed a subcommittee on Bar dues to consider options, the fiscal impact and to report back to the Board.
- Voted to approve online Bar cards, with an option for any member to get a hard copy card on request.
- Voted to recommend the slate of Bar officers:
- President-elect: Rob Stone
- Vice President: Molly Brown
- Secretary: Cam Leonard
- Treasurer: Bill Granger

Andrew Fastow, former Enron CFO, recounts his last moments of freedom following his conviction in the Enron scandal. He served more than five years in prison in a plea deal. He had been indicted on 78 counts, eventually pleading guilty to two.

NEWS FROM THE BAR

Board proposes changes for JAG lawyers practicing in Alaska

The Board of Governors proposes amending Alaska Bar Rule 43.1 which allows JAG attorneys permission to practice law in Alaska in the course of representing military clients or their dependents, or when accepting a case under the auspices of a qualified legal services provider. The Board proposes extending the time limit from two years, to as long as the person is stationed in Alaska. Address comments to Executive Director Deborah O'Regan at oregan@alaskabar.org.

Rule 43.1 Waivers to Practice Law Under a United States Armed Forces Expanded Legal Assistance Program.

Section 1. Eligibility. A person not admitted to the practice of law in this state may receive permission to practice law in the state if ~~for a period of not more than two years~~ such person meets all of the following conditions:

(a) The person is a graduate of a law school which was accredited or approved by the Council of Legal Education of the American Bar Association or the Association of American Law Schools when ~~he~~ the person entered or graduated and is an attorney in good standing, licensed to practice before the courts of another state, territory or the District of Columbia, or is eligible to be admitted to practice upon taking the oath of that state, territory or the District of Columbia.

(b) The person is an active duty member of the United States Armed Forces assigned to the Judge Advocate General's Corps or the United States Coast Guard; and

(c) The person has not failed the bar exam of this state.

Section 2. Application. Application for such permission shall be made as follows:

(a) The Staff Judge Advocate of the Military Installation to which the applicant is assigned shall apply to the Board of Governors on behalf of a person eligible under Section 1;

(b) Application shall be made on forms approved by the Board of Governors; and

(c) Proof shall be submitted with the application that the applicant is a graduate of an accredited Law School as provided in Section 1 of this rule and is an attorney in good standing, licensed to practice before the courts of another state, territory or the District of Columbia, or is eligible to practice upon taking the oath of the state, territory or the District of Columbia.

Section 3. Approval. The Board of Governors shall consider the application as soon as practicable after it has been submitted. If the Board finds that the applicant meets the requirements of Section 1 above, it shall grant the application and issue a waiver to allow the applicant to practice law before all courts of the State of Alaska. The Board of Governors may delegate the power to the Executive Director of the Bar Association to approve such applications and issue waivers, but the Board shall review all waivers so issued at its regularly scheduled meetings.

Section 4. 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, 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.

Section 5. Duration and Termination of License. The permission to perform legal services under this rule shall be limited by any of the following events:

(a) The attorney is no longer a member of the United States Uniformed Services;

(b) The attorney's military orders are changed to reflect a permanent change of station to a military installation other than Alaska;

(c) The attorney is admitted to the general practice of law in Alaska under any other rule of this court; or

(d) The attorney is suspended or disbarred, or pending suspension or disbarment, in any jurisdiction of the United States, or by any federal court or agency, or by any foreign nation before which the attorney has been admitted to practice.

If any of the events listed in subparagraph (a)-(d) occur, the attorney granted permission under this rule shall ~~promptly~~ notify the Board of Governors in writing within 30 days of the limiting event. The permission and authorization to perform services under this rule shall terminate 90 days after the date of the limiting event.

Board to publish bylaw amendments on resignation

The Board of Governors voted to publish proposed amendments to Bylaw II, section 7(a)(6), the resignation bylaw, allowing members who resigned to seek readmission if it has been less than five years since their resignation. The accompanying Standing Policy which provides the process is included. Comments should be send to Executive Director Deborah O'Regan at oregan@alaskabar.org.

Bylaws II, section 7(a)(6)

Section 7. Resignation.

(a)(6) the member understands that upon acceptance of the member's resignation by the Board, that he or she may only seek readmission to membership in the Alaska Bar Association and the practice of law in Alaska as follows:

i) if he or she has been resigned five years or less, by seeking readmission according to the Policies of the Board of Governors and payment of the application fee for readmission; or

ii) if he or she has been resigned more than five years, by seeking admission under Alaska Bar Rule 2 by bar exam, admission by reciprocity, or UBE score transfer.

Standing Policies

VI. Membership

B. 4. Readmission after Voluntary Resignation

A member who has been resigned for more than five years must seek admission under Bar Rule 2 via bar exam, reciprocity or UBE score transfer.

A member who has been resigned for less than five years may seek readmission by submitting the following:

(a) A letter requesting readmission to active status;

(b) An affidavit which lists:

(1) The name(s) and address(es) of any employer or business with which the member has been associated while on resigned status;

(2) Whether the member has been the subject of any disciplinary proceedings in any jurisdiction;

(3) At least three professional references who have knowledge of the member's work as an attorney;

(4) The name(s) and date(s) of three MCLE approved ethics credits earned within the year prior to readmission.

(c) The member should have the jurisdiction in which he or she has been practicing since leaving Alaska certify directly to the Alaska Bar that (s)he is a member in good standing of that jurisdiction.

(d) To attain reinstatement, a readmission fee equal to the reciprocity fee must be paid. The member shall resume payment of annual dues owed by February 1 of each calendar year following reinstatement.

(e) He or she must submit an affidavit that he or she has read and is familiar with the Alaska Rules of Professional Conduct (ARPC).

DO YOU KNOW SOMEONE WHO NEEDS HELP?

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

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

Fairbanks: Aimee Oravec, aimee@akwater.com

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

Anchorage: Michael Walsh, walshlawak@gmail.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, transportation, medical community contacts and referrals, and other possible solutions through the contacts of the Alaska Bar Association and its membership.

For inmates close to release, success is measured in numbers

By Neil Nesheim

For the 56 inmates who took part in the annual *Success Inside and Out* program at Juneau's Lemon Creek Correctional Center, life can be measured in numbers. How many days until I am released? How many potential employers can I contact? How many support services exist in the community? And how many people would like to see me never return to wear the matching yellow jersey that defines Alaska's correctional institution?

For those unfamiliar with *Success Inside and Out*, this is a day-long program that was first started by former Chief Justice Dana Fabe and is held in Anchorage and Juneau for inmates who are within 18 months of release. The programs take months to develop and for Juneau, the event is emceed by committee chair and organizer, Judge Kirsten Swanson.

Lt. Gov. Byron Mallott speaks to inmates at Lemon Creek Correctional Center (Photo by Retired Judge Keith Levy)

Inmates were treated a large number of guest speakers and volunteers who showed up to support and encourage participants at this all-day event March 10. Some of the speakers were former inmates who shared their stories of life on the outside. And some of the former inmates weren't from Juneau, yet they found the support from the Juneau Reentry Coalition

Other presenters, such as Tlingit storyteller David Katzeek, spoke in two languages before getting to the primary theme: one's involvement in our surroundings. Katzeek's powerful voice and message was that everyone is worthwhile. He had all audience members — inmates and guests — shout enthusiastically and repeatedly in Tlingit and in English, "I am important! I am important!" Katzeek also shared his own personal story and the number that was significant in his life: 28. Katzeek was just a few days away from celebrating 28 years of sobriety.

Local radio host and franchise owner, Wade Bryson, spoke to the inmates after the annual fashion show. His message discussed the number of qualities and characteristics it takes to be successful outside of the institution. Bryson was once fired as a towel boy and soon learned that values such as honesty, integrity, diligence, attitude and perseverance were all important factors in changing his life around. He encouraged participants to consider those same values when they are released.

Lt. Gov. Byron Mallott and Judge Kirsten Swanson, Juneau District Court (Photo by Neil Nesheim)

Throughout the day, inmates could choose among several tables to get information and advice on a variety of topics including: banking, law, housing, employment, addiction and treatment, peer support, health, fitness and well-being and more. The day could not have been successful without the 30-40 volunteers who helped make the program happen.

Perhaps the best number that each inmate walked away with was the personal cell phone number of Lt. Gov. Byron Mallott, who spoke to the inmates about the challenges inside and outside of the institution and how everyone needs a support system. After interacting and creating dialogue with everyone, Mallott's message was simple: "If you need anything, call me." For those waiting to be released, those are some pretty nice numbers.

Neil Nesheim is the area court administrator for the First Judicial District.

Mari and Bud Carpenti attended the banquet reception.

Marilyn May and Justice Susan Carney chat during the banquet reception.

Anchorage Bar donates to Bean's Cafe

The Anchorage Bar Association presented Lisa Sauder and Diana Arthur of Bean's Café with a $1,000 donation in memory of the following attorneys who died during 2017: Seaborn Buckalew, Timothy Dooley, Peter Ellis, Stanton Fox, James Gorton, J. Michael Gray, John Holmes, Karen Ince, Richard Kerns, Kathleen Murphy, Mark Osterman, Grace Schaible, Daveed (CQ), Schwartz, James Scott, and Howard Staley. Pictured Diana Arthur, development manager and Lisa Sauder, executive director of Bean's Cafe; and Peter Sandberg, president and Jolene Hotho, administrative director of Anchorage Bar Association.

Lynda Limon, Judge Herman Walker and Suzanne DiPietro share a moment.

Marc June chats with a friend.

Party Pix?

Small groups gathered in conversations all around the room during the opening reception of the Alaska Bar Association annual convention.

Samantha Slanders

Advice from the Heart

Dear Samantha,

The first Star Wars film came out when I was ten. Since then, I've heard thousands, no, tens of thousands, of Star War references. Even though I am a normal, intelligent, born-in-America citizen, I don't care about the Star War universe. (I don't speak Klingon either.) But people insist on working words like "wookie," "droid," and "feel the force" into conversations with me. Is there an app for my phone that translates geek into English?

Sincerely,
Firmly on the Ground

Dear Grounded,

There are countless Star Wars apps available for more-intelligent-than-you devices such as your phone. But they all assume the user has seen all the movies 30 times and has gained the resultant mastery over terms and concepts. What you need is a Star Wars-to-English dictionary. I am afraid that you are out of luck. There is "Wookieepedia," which defines terms used in each of the forty thousand Star Wars movies. But it is useless without a basic knowledge of every plot line. I am afraid that there are not enough Star Wars troglodytes like you to make creating an app worthwhile.

Why don't you embrace your ignorance. Come up with witty little responses. When someone wishes that the force be with you, say, "No thank you, I live in the real universe."

May the force ignore you,
Samantha

Dear Samantha,

My wife's uncle Olaf, a lawyer from some rain-soaked Alaska town just asked if he could spend the winters with us. He says the weather is finally getting to him. It's been too wet to make lutefisk and recently a kid was born in the local hospital with webbed feet.

Long her favorite uncle, who made each Christmas of her childhood memorable with his Ole and Lena jokes, my wife wants me to give up my man cave to make room for Olaf. But I don't get Scandinavian humor and hate the smell and taste of lutefisk. If he moves in the house will always smell of smoked black cod and Budweiser. Should I put my happiness before that of my wife's?

Sincerely,
Doomed

Dear D,

Why not compromise? To show how much you care for your wife and her favorite uncle, erect a wanigan and outdoor kitchen in the back yard. Let him stay there while you winter over in your man cave. You might want to install an air filtration system in the house for the times when Olaf brings out the lye or smoked fish.

Sincerely,
Samantha

Dear Samantha,

Why is it that everyone running for political office in the state feels compelled to tell voters how may years he or she has lived in Alaska? I just qualified for a PFD, which as everyone knows, makes me a true Alaskan. Why should I care if the guy my district sends to Juneau was here when there were still Kmart stores in the state?

Sincerely,
Loud and Proud,

Dear Loud,

You have obviously failed to take into account how weird things are in the Upper One. We are so outside the mainstream we don't have a Trader Joes and only have one Cabela's store. Even Nanaimo, B.C., had one before us. More important, one can't really represent the people of Alaska until watching at least 10 years of TV ads demonstrating all the contributions made in the great land by the multi-national oil companies. If you want to understand us, sign a 10-year cable TV contract.

Sincerely,
Samantha

Attending the session are front row from left: Tim Elder, auditorium director for Kenai Central High School; Magistrate Judge Martin Fallon; Charles Evans; Theresa Hillhouse; Mike Graves, law clerk to Judge Moran; Sean Kelley; and Nan Thompson.
Back row: Alaska Supreme Court Justice Joel Bolger; Justice Daniel Winfree; Chief Justice Craig Stowers; Justice Peter Maassen; and Justice Susan Carney.

Supreme Court holds a session for Kenai high school students

The Alaska Supreme Court visited Kenai Central High School March 29 for the *Supreme Court LIVE* educational program. *Supreme Court LIVE* brings Supreme Court oral arguments in actual cases to student audiences at Alaska high schools. Designed to help students better understand the justice system, this unique learning opportunity debuted in 2010.

The court heard oral argument in *State of Alaska v. Alaska Democratic Party*, which involves a dispute related to the way political parties choose the candidate who will represent them on a general election ballot. The Alaska Democratic Party sought to allow persons who are not affiliated with any political party, including those who registered to vote as nonpartisan or undeclared, to run as candidates for the Democratic Party in a primary election. A state law requires candidates who want to run in a primary election for a political party's nomination to be registered to vote as a member of the political party whose nomination they are seeking. The Alaska Democratic Party sued the State of Alaska, arguing that the law was unconstitutional. The trial court agreed with the Democratic Party. The state appealed to the Alaska Supreme Court asking the court to decide if the law is constitutional.

Volunteer attorneys from the Alaska Bar Association and staff from the court system visited Kenai Peninsula high schools in the days preceding the program to help students understand the appellate process and the case itself, using a case summary and information from the court's website: http://courts.alaska.gov/outreach/index.htm#scl. The program included question-and-answer sessions with the attorneys arguing the cases, and with members of the Supreme Court.

Below are links to some of the news coverage of the event.

Peninsula Clarion goo.gl/3pSVWh
KDLL goo.gl/ZjEKXb

Students listen to oral arguments at Kenai Central High School.

Tanana Valley Bar races for the cause

Tanana Valley Bar Association's second annual Race Judicata through downtown Fairbanks started with balloons fastened to the walking bridge and signage posted along the route identifying not our cause, but another very important cause (Out of the Darkness walk to support survivors of suicide) shared the route with us.

The sky was bright and clear and the air was crisp. We had a good turnout and we'd like to thank several important members who helped make this race happen:

Judge Kleinfeld and his wife started the course and Judge Kleinfeld was cloaked in a wig and robe, not to mention his1986 original Race Judicata t-shirt, it was terrific. We really appreciate the history and tradition behind this race, and want to keep it going. We did not get pictures of the racers and would like some if anyone has pictures, please let us know.

Other important volunteers during the race, included, but were not limited to: Charles Hamby (route planner), Gail Ballou (bib pickup), Rachael Delehanty (ALSC), Scott Davidson (law clerk), Joshua Tinajero (law clerk), Jeff McAlpin (law clerk), Julie Matucheski (law clerk), Jeff May (TVBA VP), Jeff Thompson (paralegal) and the Rabinowitz Courthouse for providing a place and accommodations for the race. Many of you offered support throughout the planning stages of the race and we are thankful for you too.

Race results below were to be published in the News-Miner later.

RANK	BIB	NAME	TIME
1	1821	David Leonard	20:48
2	1847	Jacob Parker	20:49
3	1852	Jacob Case	21:33
4	1848	Jeff May	22:52
5	1831	Dennis Hedgecock	24:56
6	1841	David Scott	26:30
7	1842	Victoria Smith	27:30
8	1854	Gary Pohl	29:09
9	1845	Arthur Hussey	29:09
10	1843	Rebecca Missler	30:14
11	1856	Brent Bennett	30:20
12	1835	Any Harrington	30:42
13	-----		30:47
14	1838	Jim Dunbar	31:41
15	1844	Janet Daley	31:47
16	1849	Patrick Kalen	32:35
17	1836	Christopher Simon	32:57
18	1840	Eastlyn Fell	33:58
19	1846	Patrick Carroll	38:23
20	1839	Karen Fell	38:50
21	1853	Helen Rave	39:33
22	1855	Dan Reed	40:29
23	1837	Jason Weiner	43:59
24	1832	Gary Stapp	53:05
25	1833	Brenda Stapp	53:06
26	1857	Runner	1:00.55
27	1901	Runner	1:07.13
28	1851	Runner	1:07.58
29	1850	Runner	1:07.58

Next year TVBA hopes to double the turnout and raise more for the North Star Youth Court. Please let the association know if you have any suggestions on how to make it a better race in years to come.

Bethel Yup'ik interpreter wins Judge Nora Guinn Award

By Teresa Cotsirilos

KYUK, Bethel
Used by permission

The criminal justice system can be intimidating for English-as-a-second-language speakers. The stakes are high, the hearings take hours, and it can be hard to understand what's going on. Luckily, the Yukon-Kuskokwim Delta has Crystal Garrison in its corner. She became the Alaska Court System's first certified Yup'ik interpreter in 2016, and just received a prestigious award for her work.

Recently, Crystal Garrison's boss called her into her office. "She had her boss on the phone on speaker phone and they asked me to shut the door," Garrison said with a laugh. "I kinda got wide-eyed and wondered, 'what did I do now?'"

They told her that she'd just won the Judge Nora Guinn Award. Every year, the Alaska Bar Association awards it to professionals who've devoted their careers to helping rural, Native residents navigate the legal system. They've chosen to recognize Garrison for her work as a Yup'ik interpreter.

A supervisor of Bethel's in-court clerks, Garrison has worked at the court for almost two decades. She's a fan of Judge Nora Guinn, who was the first woman and the first Native person to serve as an Alaska District Court judge. Garrison has a painting of Guinn on the wall next to her desk, hanging above her pictures of her children and a printed-out picture of Beyonce.

"I was speechless," said Garrison. "I haven't done this for the accolades, I've done it to help Yup'ik people in our region."

Garrison grew up in Eek, where she spoke Yup'ik and English at home. She didn't interact with the criminal justice system when she was growing up, and when she started working at Bethel's courthouse, parts of the system surprised her. Garrison says that she was alarmed by her region's crime rate, and she was struck by how alienating the criminal justice system was to many of the Yup'ik speakers who were trapped in it.

"Some people in the smaller villages don't even travel much outside their smaller villages," said Garrison. "If they get in trouble and they have to deal with the justice system? What a different world that is altogether for them."

Garrison: Bethel court supervisor Crystal Garrison poses next to her painting of Judge Nora Guinn. Garrison recently received the Judge Nora Guinn award for her work as a Yup'ik interpreter. (Photo by Teresa Cotsirilos, KYUK)

Language barriers are a big part of that culture shock. "It's confusing even if you speak English as your first language," Garrison said. Many of the terms and phrases used in court aren't used anywhere else, and a number of key terms are in Latin.

David Case is an assistant public defender in Bethel who's known Garrison for years. "Very often, people are brought before the court and people don't realize that they are not fully comprehending what is happening," he said. They might misunderstand the role of the judge, the role of the prosecutor, or the charges they're facing.

Bethel's courthouse has often struggled to find Yup'ik interpreters, said Case, and has sometimes been forced to improvise. "I've seen the court say, 'hey, you're in the back there. Would you like to interpret?'"

In some cases, residents have been asked to translate for relatives who are testifying. And while a number of Y-K Delta community members speak Yup'ik fluently, working with untrained interpreters can create some serious problems. Garrison remembers clerking for one trial a few years into her career. "The person that was having the interpreting done for them said something, and the person interpreting basically told him to answer in a different way," she said. "That was kind of what was alarming to me. I told the judge to stop; that interpretation is not accurate."

So Garrison decided to become an interpreter herself. In 2016, she passed the National Center for State Courts' written examination, where she was quizzed on court terminology and ethical standards. She scored a 93 on that test. The center didn't have a test for Yup'ik proficiency, so Garrison's language skills were assessed through a series of classes at the University of Alaska Fairbanks' Kuskokwim Campus.

Garrison says her interpreting work is challenging. Certain ideas are articulated differently in Yup'ik and English, like the concept of a no-contest plea. Garrison has to take the time to deconstruct them.

Case describes Garrison as a consistent, and often lone voice for the fair treatment of non-English speaking people in the Y-K Delta. And Yup'ik interpreting is getting better at Bethel's courthouse, Garrison said. She has seen a decrease in family members interpreting for one another, and an increase in credentialed interpreters.

Garrison received the Judge Nora Guinn Award May 11 in Anchorage. It was an important moment for her; in another sense, too. She says her husband is actually a relative of Guinn's. When Garrison won the award, they called her husband's grandfather, Guinn's last surviving sibling, right away.

"He kind of got emotional," said Garrison. "He said, 'I'm so happy for Crystal for carrying on something my sister worked so hard to do all her life.'"

Garrison encourages other bilingual speakers to pursue careers as interpreters. She recommends that they check out the Language Interpreter Center in Anchorage.

Mike Schwaiger, chair of the Bar Historians Committee, presents the Guinn award to Crystal Garrison. (Photo by Ronald Woods, Fourth Judicial District Area Court Administrator)

Crystal Garrison with her husband Darrell, who is a distant relative of Nora Guinn, for whom the award is named. (Photo by Ronald Woods, Fourth Judicial District Area Court Administrator)

Alaska lawyer navigates the maze of international arbitration

By Brian Riekkola

When you land in Paris on a rainy morning surrounded by four banker boxes and your garment bag, you will probably think as I did: I should have shipped these boxes to the arbitration venue. The ICC Hearing Centre in Paris was chosen as the venue for an arbitration hearing after discovering that — for counsel and witnesses traveling from Anchorage, Phoenix, London, Milan, Frankfurt, Calgary, Kirkuk and Baghdad — the normal venue of Geneva created numerous travel difficulties.

But first, let us back up for a moment. How does an Anchorage litigation firm become involved in international arbitration? Random chance and happenstance. After the death of Saddam Hussein and the installation of a new government in Iraq, bids were solicited for the construction of oilfield infrastructure. A Canadian company founded by Iraqi émigrés submitted the winning bid and began the planning and procurement of materials for construction. The intermittent instability of the region resulted in multiple disputes between the branch of the Iraqi government that issued the contract and the Canadian company. After many years of informal attempts to resolve the disputes, the parties resorted to the arbitration clause in the contract. Enter the International Chamber of Commerce ("ICC").

The ICC was created in 1919 to facilitate international commerce. Established in 1923, the ICC's International Court of Arbitration pioneered international arbitration through the 20th century, securing a worldwide reputation as one of the most efficient means of resolving international commercial disputes, bolstering international recognition for the quality of its services and its ability to effectively integrate all cultures and legal traditions. In the typical international commercial dispute, the parties would be of different nationalities and diverse linguistic, legal and cultural backgrounds. Unsurprisingly, the ICC is closely associated with the United Nations as a signatory of the UN Global Compact. It has even been granted "Observer Status" at the United Nations General Assembly.

It is not surprising that companies from varying areas of the world would prefer arbitration in a neutral setting to conceding to one another a home-court advantage in a formal court of law. Here, both parties to the arbitration chose to be represented by firms located in other countries. The Canadian company ("Claimant"), chose to employ the Anchorage law firm Jones Law Group. The project issuing company wholly owned by the Ministry of Oil of the Republic of Iraq ("Respondent"), chose to employ the international firm Cleary Gottlieb Steen & Hamilton. This varied group of participants began the arbitration, in English thankfully, and in accordance with the ICC Rules of Arbitration.

As with most arbitration proceedings, the ICC arbitration process differs significantly from the procedure of the United States judicial system. As a result of the vast differences in legal traditions between claimant and respondent, the ICC arbitration process allows for flexibility in tailoring the proceedings to the individual characteristics of the dispute and parties. The first step under the ICC arbitration standard procedure begins with a claimant filing a request for arbitration and an initial filing fee of $3,000. The respondent is then granted 30 days to submit an answer to the request, which may include counterclaims. After receiving the request for arbitration, the secretary general of the ICC is charged with setting a provisional advance on costs to cover the arbitrators' fees and expenses until a more formal estimation of costs is established. Finally, following the respondent's submission of an answer, both parties must agree to the arbitration location, or if this is not possible, allow the ICC to select the location. The same process dictates the parties' negotiation of the number of arbitrators, though there is a presumption in favor of a single arbitrator.

Brian Riekkola

After establishing the parameters of where and how the arbitration will take place, the ICC transmits the answer and response to the selected arbitrators otherwise known as the arbitral tribunal ("tribunal"). With input from the parties, the tribunal holds a case management conference and sets a procedural timetable and deadlines for document exchange and briefings. The tribunal and the parties have vast latitude in determining whether to set an arbitration hearing or to argue the case solely by legal briefing. Following the closing of the proceedings, be they legal briefs, oral argument, or some combination of the two, the tribunal deliberates and then drafts an award. Once a draft award is completed, the tribunal submits the draft to the ICC for scrutiny and approval. If the award is approved, the tribunal finalizes the award and notifies the parties. By submitting to arbitration, every award is legally binding on the parties and all other forms of recourse by either party are waived.

But do not worry about the workload of the tribunal as it should never be said that the arbitrators of the ICC are underpaid. In the case at hand, arbitration was initially requested in April 2015. The formal award was issued in April 2018. Claimant sought damages in excess of $30 million while the respondent counterclaimed in excess of $110 million. Accordingly, the cost fixed by the tribunal to hear the case was $760,000 to be paid in equal shares by both parties. The contract required that the language of the arbitration would be English, and the applicable law would be that of Iraq. Claimant selected one arbitrator, Respondent chose one arbitrator, and the ICC nominated a third arbitrator to act as president of the tribunal.

The tribunal set deadlines for a total of four separate briefings with the final two briefs being simultaneous submissions of the parties. This was one of the most distinctive, and occasionally frustrating, procedural decisions. Simultaneous submission of briefs occasionally resulted in arguments that were miles apart from the points raised by the opposing party — two ships passing in the night. It remains unclear as to how helpful this style of submission was to the tribunal.

However, an interesting byproduct was created from the simultaneous submission of briefs and the final submission of all documents, witness statements, expert reports, and legal references. After the last briefing was submitted, no additional information or documents could be discussed at the arbitration hearing. This intersection of rules resulted in a bit of unavoidable gamesmanship, as the last brief submitted was a simultaneous submission with no opportunity to respond. Inevitably both Claimant and Respondent submitted rebuttal expert reports in the last submission that the opposing party had no opportunity to counter or address.

However, an interesting byproduct was created from the simultaneous submission of briefs and the final submission of all documents, witness statements, expert reports, and legal references. After the last briefing was submitted, no additional information or documents could be discussed at the arbitration hearing. This intersection of rules resulted in a bit of unavoidable gamesmanship, as the last brief submitted was a simultaneous submission with no opportunity to respond.

It is noteworthy that the arbitration hearing itself was not used to enter testimony or enter evidence into the record as opposed to a standard courtroom proceeding in the United States. Instead, the arbitration hearing was used, primarily by the tribunal, to assess the credibility of previously submitted witness statements and expert reports, as well as to allow opening and closing arguments by counsel. The witnesses sat in the center of horseshoe-shaped hearing room, surrounded by three arbitrators, two attorneys from Jones Law Group, three attorneys from Cleary Gottlieb, an observing attorney from the Iraqi Ministry of Oil, numerous client representatives, three expert witnesses, two interpreters, an ICC secretary, and an ICC transcriptionist. It was in the center of this arena that each witness sought to persuade the tribunal that the prior testimony was truthful. Some witnesses were successful and some were decidedly not, both to the benefit and detriment of each party.

After three years of preparation, the tribunal limited the total time allowed for direct examination of each witness to twenty minutes, and allowed seventy minutes for cross-examination. Experts were limited to a presentation of thirty minutes with one hundred minutes reserved for cross-examination. But the procedural rules imposed by the tribunal on the parties were not extended to the arbitrators themselves. The tribunal reserved, and exercised, the right to ask unlimited questions of any witness, expert, or attorney.

To prevent the parties from exceeding the scope of the previously disclosed documents and statements, claimant and respondent were each required to provide a "hearing bundle" (hard copy of all documents ever submitted) to the tribunal. Both the tribunal and the parties also used each party's hearing bundle exhaustively as a "quick" reference for clarification, verification and impeachment. Claimant's hearing bundle consisted of four fully-packed banker boxes, weighing approximately 60 pounds. One of the unforeseen challenges of the venue was protecting 60 pounds of paper from the Paris rain.

At the close of the hearing, the tribunal requested additional post-hearing briefing to apply all facts and arguments to the relevant portions of the contract law of Iraq. Because Iraqi laws are not written in English, each party worked from the same translation, which likely prevented the numerous issues which would have arisen in the event each party provided its own translation of the original Arabic. Translating Arabic legal language into English made for unintended interpretations, as did the influence of Iraqi culture on the construction of the relevant statutes. It is undeniable that certain aspects of Iraqi law are unique and distinct from the standard language found in the principles of United States contract law and any direct translation will lose some of the original meanings.

For example, the parties exhaustively briefed Iraqi Civil Code, Article 155 which states, "(1) In contracts, intentions and meanings must be implied and words and forms (constructions) must be disregarded. (2) Basically words imply the reality; but if the truth is impossible they will imply the metaphor." Additionally, Article 156 states, "The truth is left out (disregarded) where custom indicates otherwise." The annotation to Article 156 clarifies "For example: a man who asked his servant to fire the lamp did not mean to burn the lamp; what he actually meant was to light a candle which is within the lamp; the usage being in that area to say fire the lamp; so the true meaning of fire is left out (disregarded) because usage indicates that fire means sparking the light of the candle within the lamp." As you can imagine, the above language leant itself extremely well to more than one interpretation in the briefing.

Even among other arbitration cases, this case was unique in that several essential documents were missing, multiple witnesses had died or disappeared, and there were multiple occasions when a witness refused to answer a particular question or clearly gave a false and prepared answer. For a contract period that extended from 2005 to 2010 and was marked by war, corruption and changing authorities, it is foreseeable that nuggets of truth will forever remain hidden. In making its final award, the tribunal was tasked with reconstructing the facts and timeline, but was denied the sufficient tools to do so. It truly should be credited with all accolades for being able to make sense of the case at all. After the final accounting in the 85-page decision, Claimant prevailed and was awarded one third of its requested relief.

Brian Riekkola is a commercial litigator who practices at Jones Law Group.

Youth Court participants gathered on the Nome Seawall during the conference.

United Youth Courts of Alaska conference meets in Nome

By Pamela Smith

Youth courts in Alaska provide the opportunity for students in grades 7-12, who are accused of breaking the law, to be judged by their peers. The roles of attorneys, judge, bailiff, clerk and jurors are filled by youth. There are 10 active youth courts in Alaska.

Every year the youth courts in the state gather for the United Youth Courts of Alaska conference to share ideas and help participants develop skills and professionalism. This year, the conference was held in Nome. The idea to host the conference there started with the previous Nome Youth Court director Joseph Balderas. Joseph, who at the time also worked as a law clerk for Nome's superior court judge, chaperoned students attending the 2015 Youth Court conference in Kodiak. The Kodiak conference presented unique travel and housing challenges, given the number of people attending, a challenge that Joseph realized Nome could accommodate if it was chosen as a host site for the conference some day.

In January 2016, the Nome superior court judge fell ill, and as a result, over a span of 15 months, nine different judicial officers from around the state traveled to Nome in order to cover the superior court calendar. Joseph worked closely with each judicial officer.

In March 2016, Joseph chaperoned the Nome Youth Court students to the Anchorage Youth Court conference. Just a few months later, in June, Joseph disappeared without a trace from Nome. Despite the largest search and rescue effort in Nome's history, Joseph was never found.[1] During this time of devastating loss to the Nome Youth Court, the local magistrate judge, Robert Lewis, stepped in and managed the youth court cases with the student volunteers until the next youth court director was hired.

At the 2017 conference in Fairbanks, the UYCA directors, inspired by Joseph's idea to hold the annual conference in Nome, invited Nome to host the 2018 conference. Many of the pro tem judges who provided coverage to the Nome Court were invited to return and speak at the conference.

Fairbanks Superior Court Judge Jane Kauvar, and District Court Judge Matthew Christian volunteered with the Nome Youth Court students during their multiple visits to Nome in 2016 and 2017. They eagerly accepted the invitation to return to Nome to host sessions with participants. Judge Kauvar taught mediation techniques, and Judge Christian co-hosted a session with the Nome Youth Court youth volunteers on giving sentencing remarks as a judge.

Retired Palmer Superior Court Judge Eric Smith, who also helped cover the Nome Court and has been instrumental in furthering circle sentencings with the court, agreed to host a session on circle sentencing at the conference along with Kawerak Katirvik Cultural Center Director Lisa Ellanna and Colleen Reynolds.

Additionally, students participated in a mock trial hosted by Nome Superior Court Judge Romano DiBenedetto and local Nome attorney, Erin Lillie.

Conference attendees were welcomed to Nome with a museum tour, a culture class taught by Kawerak, and a scavenger hunt. The scavenger hunt required exploring Nome to find unique regional items such as a gold pan, a real bar of gold, a polar bear, dog sleds, mukluks, ivory, jade, the public defender agency, and the mayor's signature. The students also enjoyed watching traditional native dances performed by the Nome St. Lawrence Island Dance Group and the King Island Dance Group.

Erin Lily, Paige Meadows, Judge Bob Lewis, Chris Steppe, and Judge Romano DiBenedetto gathered following the mock trial.

Members of the Nome Youth Court meet with Judge Jane Kauvar.

Chief Justice Craig Stowers kicked off the second day of the conference with a keynote speech, in which he candidly shared his story and law school experiences. He then honored the newest bar members by swearing all of them in.

In a special presentation, the Nome Youth Court volunteers gave Magistrate Judge Lewis a gift and designated him as an Honorary Youth Court Member. He was thanked for taking over youth court after Joseph's disappearance and for his endless support to youth court events and meetings.

In the final moments of the conference, the UYCA directors surprised the Nome students and youth court director, by presenting a Joseph Balderas Memorial Scholarship of $850.00 to each of the four student volunteers who worked with him before his disappearance. The scholarship recipients were Maya Coler, Katie Kelso, Hunter Bellamy and William Herzner.

The conference in Nome was a success thanks to broad community involvement and the interactive sessions that showed how Nome came together to host a statewide youth conference and to honor the person who inspired our community to host the event.

Pamela Smith is the Nome Youth Court director and law clerk to Superior Court Judge Romano DiBenedetto.

Footnote

[1]https://www.facebook.com/findingjosephnomeAk/

District Court Judge Matthew Christian speaks at a sentencing workshop.

Photos by Pamela Smith

A new hip and the funny money of medicine

By Cliff Groh

First of a series

Homer resident Tina Seaton needed surgery to replace one of her hips in late 2016. Her story is a window into the money side of medicine, a tale of medical tourism and a springboard into a discussion about potential changes to the structure of health care in our state and our country.

Cliff Groh

Tina Seaton and her husband Paul got two sets of quotations of prices for the hip replacement surgery. One set of quotations was for surgery to be performed at Alaska Regional Hospital in Anchorage by an independent orthopedic surgeon and anesthesiologist, and the other set of quotations was for surgery at Virginia Mason Facility in Seattle. The Seatons found that it was easy to get the quotations online from Virginia Mason, while it took multiple phone calls to get the quotations from the Anchorage providers.

The prices quoted were:

	Anchorage	Seattle
Facility	$104,630.57	$43,027.22
Orthopedic Surgeon	$7,000-7,500	_____
Anesthesiologist	$ 2,160-2,640	_____
Clinic/Doctor	_____	$ 5,296.22
TOTAL	$113,790.57-$114,770.57	$48,323.44

The Seatons saw that these quotations show that the "all-in" or "all-inclusive" price of Tina Seaton's hip replacement surgery in Seattle would be well under half what the total price would have been in Anchorage.

Tina Seaton chose to have the surgery at the Virginia Mason Facility, which — like Alaska Regional Hospital — is in the network of her insurance company Aetna. Aetna paid for her to travel from her home in Homer to Seattle to have the surgery. Her husband traveled with her at his own expense.

The surgery was on a Monday. Tina Seaton then spent two nights in the hospital and flew home that Friday after a follow-up appointment. As of November of 2017 — approximately a year after the surgery — she had some "twinges" but no follow-up care since that week in Seattle. (Tina Seaton would also like you to know that she believes her recovery was aided by her doing the exercises her doctors recommended before and after her surgery and by her taking 5,000 IU of Vitamin D every day.)

Note that by far the biggest difference in prices was in the facility charge quoted by the hospital in Anchorage vs. that charged in Seattle. According to the Centers for Medicare and Medicaid Services, Alaska has the highest health care costs of any state (with only Washington, D.C. being higher). The latest federal data show that on average an Alaskan spends each year more than $3,000 more on health care than the average American spends. About half of that extra $3,000 in annual spending comes from the category of hospital care, and about half is in the category of physician and clinical services. And these overall comparisons of course mask much bigger disparities for certain procedures and treatments, as Tina Seaton's story shows.

A hospital CEO's explanations for the price disadvantage in Alaska

You might see the problem here is that the price of a hip replacement surgery is apparently more than $60,000 higher in Anchorage than in Seattle, but that is not how the head of that Anchorage hospital viewed it when I e-mailed her the details of the price quotations the Seatons received. Julie Taylor, Alaska Regional Hospital CEO, suggested that the problem was miscommunication between the Seatons and Alaska Regional staff about the Seatons' insurance status.

Given Paul Seaton's status as an Alaska state legislator and the resulting good insurance through Aetna for him and his wife, Taylor said that instead of $104,630.57, Tina Seaton should have quoted a facility fee figure of $56,831. With that adjustment, the total price for the surgery in Anchorage would be no more than $66,971, less than 40 percent higher than the "all-in" Seattle price of $48,323.44, as opposed to being well over double.

Taylor said that she can justify that smaller difference in prices in Anchorage over those in Seattle by the need to support a local health care infrastructure to handle emergencies and urgent conditions in the more expensive environment of Alaska, which features higher costs for construction and energy.

"With our risk pools being smaller than you would see in larger markets such as Seattle, we are spreading those costs over a much smaller population which drives up costs," Taylor said. Taylor contended that competitive pressures — including growth in the use of free-standing surgery centers — would help hold down the growth in health care expenditures in Alaska. Another recent change is that orthopedists and other specialist physicians in Alaska have largely come into insurance company networks, which will also help lower fees for such specialists' procedures.

Taylor also said the uninsured or lightly insured would likely not have to pay that $104,630.57 price given the availability of deep discounts — some as high as 75 percent off of the initial charges — from the hospital, which employs financial counselors to work with financially distressed patients. She noted the Municipality of Anchorage has a new ordinance requiring medical providers and facilities to provide within 10 business days of request an estimate of reasonably anticipated health care charges for non-emergency medical services.

The powerful, hidden hand of the chargemaster

Notwithstanding these explanations, Taylor did not dispute that in November 2016 Alaska Regional Hospital would at least initially charge some patients that $104,630.57 figure for the use of the hospital for a hip replacement and a two-day stay, which is more than $45,000 more than the $56,831 charge for patients with a certain kind of good insurance.

The higher number is the product of a chargemaster. The chargemaster is a list of prices for the services and goods a hospital provides from which the hospital negotiates discounts with payers of the bills (insurance companies, employers, patients). Think of the chargemaster prices as equivalent to the rack rate of a hotel, except that the chargemaster prices never appear on a brochure. Experts have found that the prices on the chargemaster are both high and arbitrary in that they often bear almost no relationship to the hospital's actual cost of providing those services and products.

Health care executives sometimes justify the high prices on their chargemaster because of the "Saudi sheikh problem." The CEO of California Pacific Medical Center told Elisabeth Rosenthal of the *New York Times* in 2013 that "You don't really want to change your charges if you have a Saudi sheikh come in with a suitcase full of cash who's going to pay full charges."

But it's of course much more likely to be those Americans without insurance — or inadequate insurance — who would face (at least initially) the super-high chargemaster prices, not Saudi sheikhs (who seem to be in short supply among patients at Alaska hospitals). Those with insurance get the big discounts from the chargemaster prices without ever having to speak with financial counselors, and those with excellent insurance get the insurance company to pay all or almost all the bill.

The high prices on hospital chargemasters are vital to the complex and opaque American health care system. "What the U.S. has is tiered coverage to support tiered pricing," as the author Dan Munro pointed out in *Forbes* in 2017. "Medicare, Medicaid, VA, Indian Health Services, employer-sponsored insurance, Obamacare and the uninsured are all different tiers of coverage–with different pricing." Complexity and cost do not guarantee quality. The U.S. has by far the world's highest prices for health care while our country's life expectancy lags years behind other poorer countries like Spain and Italy. (Even the notoriously cash-strapped Greeks outlive us.)

Additional questions raised by this story of a new hip

1. What happens if every Alaskan gets his or her major non-emergency medical care in Seattle? As one physician (not an orthopedic surgeon) pointed out, if that happens there will be no orthopedic surgeons in Alaska to care for the patient who breaks a leg. In the words of an Anchorage emergency room doctor, "If I have an unstable spinal fracture, I sure want to be stabilized right here in town. Transferring to Seattle adds a layer of risk that is too high, and at a cost of $100,000 for the transport."

2. What would have happened if Tina Seaton had had complications — such as an infection — upon her return to Alaska? If she had suffered such complications, she might well have had difficulty finding an orthopedic surgeon in Alaska who would treat her. As another physician (also not an orthopedic surgeon) said, if he engaged in medical tourism he would stay at the location where he had the surgery or procedure done until he felt sure that he would not face complications upon coming back to Alaska. Depending on the case, that might be a long wait — and many patients should probably not feel as comfortable in assessing the risks as that physician.

3. What are the range of options to change the health care structure in Alaska and the U.S. to address the issues of price, quality and availability of health care raised here? This last question, at least, has an answer: In the next issue of your *Alaska Bar Rag*.

Cliff Groh is a lawyer and writer in Anchorage, and he speaks only for himself in this piece. He thanks Tina Seaton (who fully waived confidentiality while providing documents for review), Paul Seaton and Julie Taylor, who each spent considerable time providing details and context regarding this case. He also appreciates the comments of several people — including medical providers — on an earlier draft of this piece. He welcomes your bouquets, brickbats, tips and questions at cliff.groh@gmail.com.

Kristine Schmidt and presenter David Mann meet at the opening reception.

HI-TECH IN THE LAW OFFICE

When digital enhancement goes overboard

By Joe Kashi

When does enhancement of evidentiary digital images become too much of a good thing?

When properly "enhanced" with appropriate software like Adobe Lightroom, even lower quality digital imaging can reveal critical evidentiary data otherwise latent in a generic out-of-camera (OOC) JPEG image file.

However, good-faith but clumsy "enhancement" can go too far, introducing so-called "artifacts," false apparent detail that's not actually present in the photographed scene or objects. When offered as factual proof, proving technical accuracy become important.

Most often, digital enhancement works best and most reliably when a "RAW" format image file is corrected in connection with Adobe Lightroom or other standard photographic "post-processing" software that produces a complete audit trail and non-destructive changes to the underlying file. If working with an image intended for evidentiary use, always save the original out-of-camera photo or video file in its totally unaltered state. Use an authenticated copy to make any "enhancements" or other changes, never the original, which may be needed later for comparison.

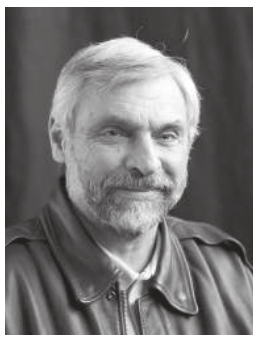
If you're forced to work with a smart phone photo or similar image files of inherently lower technical quality, then most likely you'll need to make some basic corrections later with post-processing software in order to make a presentable exhibit.

Whether post-processing is appropriate or goes too far for evidentiary reliability should be decided by the trier of fact on a case by case basis. Some general guidelines are discernible, though.

Some corrections to original images are fairly straightforward, indeed traditional, if not taken to excess. In fact, some corrections to basic OOC image files may be necessary to correct for the known foibles of almost all photographic and videographic instruments. Cameras are susceptible to being tricked by varying brightness and color conditions because essentially all non-specialist cameras adjust the exposure, contrast and color balance of each image based upon an assumption that every scene averages out to an overall color-neutral medium grey.

As an example, out-of-camera photos of very bright snow and beach scenes, which are much brighter than the assumed medium grey, are usually underexposed by a camera and appear much too dark unless exposure is manually corrected by a knowledgeable photographer when the photo is first taken or later in post-processing. On the other hand, darker scenes, such as a dense spruce forest, tend to be overexposed and appear unnaturally bright unless manually corrected.

Similarly, the automatic white balance of the camera may not properly correct the brownish light of a dim incandescent light bulb or the greenish light of most florescent lamps. There, correcting white balance to reproduce visually accurate color rendition is acceptable and may even be necessary.



Joe Kashi

In some situations, particularly where photos are relied upon by an expert, correcting improper exposure and inaccurate physical color imbalance should be done before evidentiary use, particularly by an expert, so long as you can retrace all enhancement steps and show that the digital post-processing only corrected expected exposure, contrast, and color balance deficiencies without introducing false artifacts.

For example, in *John's Heating Service v. Lamb, 46 P.3d 1024 (Alaska, 2002)*, photographs of corroded heating system pipes were admitted for use by a heating system expert to support tort claim for carbon monoxide poisoning, but only after the court was reasonably comfortable that photographs accurately depicted the actual condition of the corroded pipes. In John's Hearing Service, accurate color balance and exposure was important. In that case, however, intentionally and selectively altering the color balance to substantially accentuate, for example, only the bluish color of corroded copper, would be easy to do with any modern photo software but so inaccurate as to be a possible fraud upon the court.

Whether post-processing is appropriate or goes too far for evidentiary reliability should be decided by the trier of fact on a case by case basis.

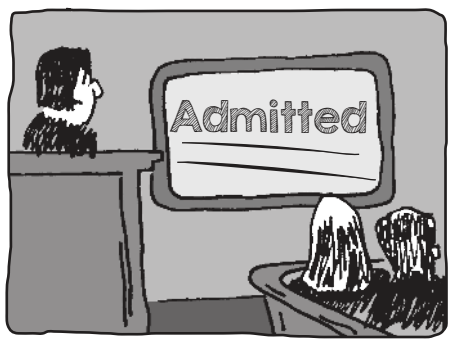
Similarly, correcting the final brightness of an image to produce a result that accurately replicates a scene's appearance may be not only acceptable but necessary. One example might be a dark alley where an assault occurred. The evidentiary image should replicate the lighting conditions in the alley at the time the assault occurred from the shadows. An uncorrected out-of-camera image most likely would be over-corrected and appear much brighter than the actual scene, reducing the evidentiary value.

One reported example of inadmissible excessive exposure alteration resulted in an overturned conviction. In *Good v. Curtis, 601 F.3d 393, (C.A. 5, 2010)*, a detective assembling a photo lineup intentionally darkened one African-American subject's skin color, resulting in an erroneous identification and conviction. On appeal, the Fifth Circuit indicated its belief that intentionally changing the exposure to darken the defendant's relatively light skin color was an excessive enhancement rising to the level of manipulation and evidence fabrication.

Similarly, altering exposure and increasing the contrast of domestic violence photos to make bruising look darker and more severe likewise could rise to the level of excessive "enhancement" and a fraud upon the court. In such instances, retaining both the original OOC image file and an audit trail showing each step between OOC image and final exhibit would be important to demonstrate the accuracy of the final exhibit.

In a prior article, we discussed visual perspective, basically the spatial relationships of objects to each other and the potential visual distortion of shape, size and other physical relationships due to natural optical and geometric effects. Perspective is an important source of physical information and altering the perspective of any evidentiary image, something that's very easy to do with modern digital photography programs, calls for substantial skepticism by the trier of fact. That's particularly true when those photos might be offered to demonstrate spatial relationships and actual dimensions and shapes of an object, an accident or crime scene, etc. See, fpr example: *Kaps Transport, Inc. v. Henry, 572 P.2d 72, (Alaska 1977) at 572 P.2d 76.*

Case law is developing around the country about the acceptable limits of photographic enhancement



and we'll take a deeper look at that developing case law in a later article.

Soldotna attorney Joe Kashi received his BS and MS degrees from MIT in 1973 and his JD from Georgetown law school in 1976. Since 1990, he has written and presented extensively throughout the US and Canada on a variety of topics pertaining to legal technology and served on the steering committees responsible for the ABA's annual TechShow and Canada's Pacific Legal Technology Conference. While at MIT, he "casually" studied photography with famed American fine art photographer Minor White. Since 2007, he has exhibited his photography widely in a variety of statewide juried exhibits and university gallery solo exhibits.

Convention 2018

Gimme that old-time (80s?) rock and roll

The band I love Robots rocked the house.

Dance moves were pretty much reminiscent of the 80s.

CLE TourAlaska

Register at **alaskabar.org**

Programs with low attendance 14 days out may be cancelled.
Those who are pre-registered will be notified.

JULY 2018

Fluff is for Pillows, Not Legal Writing

3.0 General CLE Credits | Registration fee: $115 | Register less than 7 days in advance: $140

- July 18 – 8:30 – 11:45 a.m., Juneau, Dimond Courthouse, 123 4th Street, 3rd Floor, Room 312
- July 20 – Noon – 3:15 p.m., Kenai, Paradisos Restaurant, 811 Main St.
- July 23 – 8:30 – 11:45 a.m., Fairbanks, Rabinowitz Courthouse, 101 Lacey Street, Room 504
- July 25 – 1:00 – 4:15 p.m., Utqiagvik, Utqiagvik Courthouse, 1250 Agvik Street
- July 27 – 8:30 – 11:45 a.m., Anchorage, ACS, Business Technology Center, 600 East 36th Avenue

Presented by: Stuart Teicher, Esq.

Join, "The CLE Performer," Stuart Teicher, Esq, as he explains the fundamental elements for writing in the modern practice: a new paradigm called the "Surgical Strike."

Stuart explains how lawyers can make their writings clear, concise, and direct by using Plain English and also by placing renewed relevance on the building blocks of our writing.

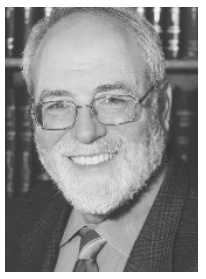
Get down and dirty with some technicalities of sentence structure, get the lowdown on Stuart's "Shortwriting" method for reducing long sentences, and (if time permits) get the skinny on "the only punctuation you'll ever need to know."

SEPTEMBER 2018

The Law of the Jungle: Keeping the Beasts at Bay

("In the jungle, the mighty jungle, the lion sleeps tonight....")

3.0 Ethics CLE Credits | Registration fee: $115 | Registration less than 7 days in advance: $140



- September 11 – 1:00 – 4:15 pm., Utqiagvik, Utqiagvik Courthouse, 1250 Agvik Street
- September 12 – 1:00 – 4:15 pm., Fairbanks, Rabinowitz Courthouse, 101 Lacey Street, Room 504
- September 18 – 9:00 am – 12:15 pm., Kodiak, Kodiak Fisheries Research Center, 301 Research Court
- September 21 – 1:00 – 4:15 pm., Juneau, Dimond Courthouse, 123 4th Street, 3rd Floor, Room 312
- September 26 – 9:00 am – 12:15 pm., Anchorage, ACS, Business Technology Center, 600 East 36th Avenue
- September 28 – Noon – 3:15 pm., Kenai, Paradisos Restaurant, 811 Main St.

Presented by: Nelson Page, Bar Counsel, Alaska Bar Association

This CLE presents a survey of the hot issues in legal ethics in Alaska. Included in the presentation will be a discussion of conflicts in the modern age, the application of modern technology to the legal ethics environment, changes in the marketing and delivery of legal services, and special ethics issues facing government practitioners. Other matters to be covered will include the ethics of handling money – yours and the clients – and what to do if you are accused of an ethical violation. Satisfies the annual Ethics CLE requirement for Alaska practitioners. Don't get trampled by an ethics stampede at the end of the year!

DECEMBER 2018

"Nobody Told Me There'd Be Days Like These!":

Stress, Pressure and Ethical Decision-Making in the Practice of Law

3.0 Ethics CLE Credits
Registration fee: $115 | Registration less than 7 days in advance: $140

- December 11, 9:00 a.m. – 12:15 p.m.
  Anchorage, ACS, Business Technology Center, 600 East 36th Avenue
- December 12, 1:00 – 4:15 p.m.
  Fairbanks, Rabinowitz Courthouse, 101 Lacey Street, Room 504
- December 14, 1:00 – 4:15 p.m.,
  Juneau, Dimond Courthouse, 123 4th Street, 3rd Floor, Room 312

Presented by: Michael Kahn, JD, LPC, ReelTime CLE

Most serious legal malpractice claims and problematic bar disciplinary actions are brought not for debatable violations of arcane, ambiguous, provisions of the Rules of Professional Conduct, but, in fact, for clear breaches of obvious, well-defined ethical obligations. (Don't take money from the client trust account. Keep clients reasonably informed about the developments in a case or a transaction — even when it's bad news. Don't sleep with the attractive domestic client you are representing in an ongoing divorce proceeding. Be candid with the court., etc..) It's not rocket science — in fact, anyone who has sat in on a basic Professional Responsibility class would know such conduct is ethically problematic. And yet it happens. A lot. Even to our own friends and colleagues at the bar.

This engaging, highly interactive CLE workshop provides a fresh and practical perspective on the fundamental question, "Why do 'good' lawyers 'go bad'?" Vignettes from an engaging original short film, written and co-produced by ReelTime CLE founders Michael Kahn and Chris Osborn, serve as the catalyst for a practical and informative consideration of the intersection of ethical decision-making and the manifold sources of stress encountered by lawyers in managing the day-to-day practice of law.

Wellness in Reel Life—

Practical Guidance on Self-Care from the Movies

3.0 Ethics CLE Credits
Registration fee: $115 | Registration after December 4: $140

- December 11, 1:00 - 4:15 p.m.
  Anchorage: ACS, Business Technology Center, 600 East 36th Avenue Anchorage

Presented by: Michael Kahn, JD, LPC, ReelTime CLE

The term "self-care" is becoming a common topic in our culture. More significantly, the ABA and state bars have identified lawyer well-being as a critical issue that needs immediate attention. But what does self-care mean and why do so many of us struggle to practice it? Well, as one character in the film Grand Canyon said, "All of life's riddles are answered in the movies." This seminar features scenes from various well-known films, highlighting the messages (good and bad) and tips they may offer concerning a thoughtful--and most-importantly, workable--understanding of wellness. Participants will leave with a greater understanding of the importance of self-care and self-awareness, and, most importantly, practical steps to improve their quality of life.

Convention 2018

Gov. Bill Walker and Anchorage Mayor Ethan Berkowitz put in appearances at the Law Day luncheon. (Photo by Lynn Coffee)

David Nesbett, Mara Michaletz and Adolf Zeman share tall tales at the opening reception.