The Alaska
BAR RAG

Watch your E-mail for Bar Elections online voting!

VOLUME 34, NO. 1
January - March, 2010

Dignitas, semper dignitas

King Day events in Anchorage and Juneau a success

Law clerk Lars Johnson gets help with the courthouse quiz drawing from a young visitor during Martin Luther King outreach.

By Jon Katcher

For many years East Coast communities have celebrated Martin Luther King Day by using this special day not to relax and recreate but to assist the needy. For them, it's a day on, not a day off. Every year in cities like Philadelphia tens of thousands of people participate in a variety of community service projects. Russ Winner, while attending the Obama Inauguration, learned of these activities and returned to Anchorage with a truly inspiring idea: Why can't the Alaska Bar Association come together to serve the public on MLK Day by offering a free legal clinic on that day? Russ presented the idea to the Bar's Board of Governors, and it immediately passed a resolution in support. Pro Bono Director Krista Scully, with her usual initiative and drive, helped form and lead a committee to develop an Anchorage program.

In partnership with the Alaska Court System, the two organizations planned an event to assist people navigate the often thorny justice system. Various members of the Bar stepped up to assist in putting

Continued on page 30

Criminal defense lawyers form new organization

By: Darrel J. Gardner

For many years, the Alaska Association for Justice (formerly the Alaska Academy of Trial Lawyers) was a combined organization for both plaintiff's lawyers and criminal defense attorneys. However, some of the AAJ members began to realize that AAJ had grown considerably over the past few years as a preeminent organization for plaintiffs' lawyers, but that the criminal defense membership had fallen off considerably. It seemed that AAJ had reached a point where the needs of the civil and criminal practitioners had outgrown the capacities of one organization. This evolution has been seen in the professional legal associations of many other states as their bars have grown and progressed.

Therefore, a core group of criminal defense attorneys believed that the time was right for the criminal defense bar to stand on its own, to come together, to be united, and to fight for the fundamental rights of all of Alaska's citizens. They worked diligently for many months to create the new Alaska Association of Criminal Defense Lawyers ("AKACDL"), an Alaska non-profit corporation. The goal of this new organization is to focus on the very specific and challenging needs of criminal defense attorneys in Alaska.

The organization has exciting plans for the future:

• First and foremost, the goal is continuing education, for new attorneys as well as seasoned practitioners, and for public defenders as well as private practitioners. In Spring 2011 AKACDL will resume (in the great tradition of the Alaska Academy of Trial Lawyers) the All-Stars Litigator's Conference. AKACDL intends to present numerous nationally recognized out-of-state speakers at a grand two-day event in Girdwood. Before then, AKACDL plans to offer several half-day seminars, as well as regular luncheon meetings, all very reasonably priced. AKACDL will also look into working with our sister organizations in the Pacific Northwest for potential CLE opportunities.

The organization also:

Continued on page 3

Non-Profit Organization
U.S. Postage Paid
Permit No. 401
Anchorage, Alaska

Alaska Bar Association
P.O. Box 100279
Anchorage, Alaska 99510

BIG BROTHER, BIG REWARDS -- PAGE 26

IN THIS ISSUE

Jan Crawford
CBS News
Chief Legal
Correspondent

Keynotes at the convention
Page 32

PRESIDENT'S COLUMN

Thank you for giving your considerable time and skills to the bar

By Sid Billingslea

Welcome to the new decade! This is my last president's column, and my last of 6 years on the board of governors. It has been an honor and a pleasure to serve this community of lawyers, and to have served with so many interesting people. Thank you all for giving your considerable time and skills to the bar: a special thanks to the nonlawyer members of the board – your insight and perspective are valuable, and I think helps to keep us from becoming too "self-important." This bar cannot run well without countless volunteer hours from its members and civilians who give their time to the committees, community service projects and education programs we sponsor.

With elections to the board coming up, I encourage everyone to vote for their candidate of choice, and to those who put their names in for consideration I hope you find the experience of participation rewarding. And if you do not have the time, energy or inclination to run for office, please do come to a meeting now and then, join a committee, be on a panel. Perhaps you will be inspired.

Lately I have been trying to effect change in the courthouse security process. Specifically, I have proposed that attorneys have access using a form of ID such as a bar card that allows us to bypass the screeners. Many states, counties and large cities with populations much greater than Alaska permit such bypass. The idea has been enthusiastically embraced by practitioners who use the courthouse routinely, as it saves time and aggravation. The decision to change is in the hands of our state Supreme Court. It is an administrative decision. There is some disagreement among judges on all levels about whether lawyers should be allowed into the building without being screened for weapons. As of this writing I do not know if change will happen.

"I call for a change. We have an ethical responsibility to the court and we should be trusted to comport ourselves accordingly."

Lately I have been trying to effect change in the courthouse security process. Specifically, I have proposed that attorneys have access using a form of ID such as a bar card that allows us to bypass the screeners.

I am dismayed that lawyers who become judges are fearful of lawyers who appear before them. That the level of acrimony in a courtroom can rise to a point that a lawyer could be considered to be dangerous to the court or the people in it. That a lawyer would bring a weapon into a courtroom to use. Or that a lawyer would abuse the trust granted. How did we get this way? How does a judge, who is a person we see at the grocery store or in the gym, come to fear us when we go to court? How does a lawyer, who appears to be "normal" at the grocery store or gym, turn into the weapon toting time bomb? Of course, there has not been a case where a lawyer has used a weapon on a judge in a courtroom here, either before security was installed in the cities or in the rural areas where there is still no security. Nevertheless, judges are concerned, and they have the right to voice their concern and potentially control the question. So what can we do to reassure them?

As someone who can remember going to court before metal detectors, and who still goes to court in the gun rich rural parts of the state where there are not any metal detectors, I am nostalgic. I also think that if judges in Philly, Chicago and New York can live with attorney bypass access, then judges in Anchorage, Palmer and Kenai can too. I call for a change. We have an ethical responsibility to the court and we should be trusted to comport ourselves accordingly.

In closing, and in the spirit of our Martin Luther King day of service, let me leave with the following thought (expressed by then-candidate Barack Obama): "Dr. King once said that the arc of the moral universe is long but it bends towards justice. It bends towards justice, but here is the thing: it does not bend on its own. It bends because each of us in our own ways put our hand on that arc and we bend it in the direction of justice...."

EDITOR'S COLUMN

Let the counter-revolution begin

By Thomas Van Flein

Lately I've taken to asking complete strangers (usually at places that sell coffee) if they will join me in revolution. It goes like this: "I'm starting a revolution. I need fighters, anarchists, saboteurs, spies, informants, collaborationists, and sappers. You in?" To my surprise, no one has yet said no. In fact, most people seem a little too eager to join a revolution. But they ask me what the revolution is about and that is where things come to a halt. I say "Don't know yet. I am still working on the details." And they say "Hit me up when you are ready."

After giving it some thought, it is not a revolution I seek, but a counter-revolution. Let me preface this by pointing out I am not a full Luddite. I believe I am 1/8th Luddite on my grandfather's side. Nor do I consider myself part of the neo-luddite movement. I have accepted the fact that we live in an electronic-digital society, and I accept the fact we need to frequently buy upgraded software, new phones, better mpeg players, and Bluetooth ear pieces (even though these ear pieces create the impression of a severe schizophrenic episode to passers-by who see someone earnestly engaged in conversation with themselves). But here is where the counter-revolution may start: we are too connected and yet not connected enough. I may exchange a half dozen emails with my law partner who has an office on the same floor with me but not see him all day. Are we connecting?

I carry the world on my hip most days in the form of a Blackberry hooked on my belt and it vibrates every 5-10 minutes or so to let me know someone is telling me something. Which is good to a degree, but distracting. The beckoning is so frequent that I have detected phantom Blackberry vibrations long after it has been taken off.

The urge to check the latest email while taking a deposition will not serve the deponent or the email interests well. So I turn it off to ignore it, only to return to the office with 40 to 90 new emails waiting as well as a half-dozen text messages some of which say "I sent you an email." My personal record for emails received in a 12 hour period is 247 (not including a few legitimate emails that were caught in the spam filter). My average day is about 100. These are almost entirely work related, everything from staff reminders, associates reporting in, group discussions on joint defense cases and clients posing questions. And one partner down the hall who likes to forward Internet jokes.

"The very items that should have the most time devoted to it are getting squeezed by items that have temporal urgency but not long term substantive import."

Addressing these emails in a timely fashion is becoming daunting. What is timely is subject to debate. Not long ago it was expected that you had two or three days to respond to a standard mailed letter from opposing counsel; faxes shortened that riposte to 24 hours, and email protocol suggests an eight hour turn-around. How do I know that? Because usually if someone sends an email and they have not heard back after about eight hours they send another one asking "did you get my email?"

The problem is that with the exponential growth in direct communications, the time for researching, writing, thinking, discussing, and planning is compressed. The very items that should have the most time devoted to it are getting squeezed by items that have temporal urgency but not long term substantive import.

Here is my counter-revolutionary strategy: I will not create an internet presence. No Myface page, no Spacebook, no Twitter, no Linked-in. I am un-linking. No collective group think known as blogs. Jaron Lanier writes of the "strange allure of anonymous collectivism online" and notes that the "beauty of the Internet is that it connects people. The value is in the other people. If we start to believe that the Internet itself is an entity that has something to say, we're devaluing those people and making ourselves into idiots." So I will try a more personal approach. Phone calls. Lunch in person. Actual meetings with real people in attendance.

I don't have a solution yet to the email explosion. Perhaps my fellow counter-revolutionaries will come up an idea for that. If you do, email it to me. Then I will Tweet it to the rest of you. And I will report the results of my counter-revolution on my blog and link it to my Facebook. On the other hand, maybe this counter-revolution is doomed from the start

The Alaska BAR RAG

The *Alaska Bar Rag* is published quarterly by the Alaska Bar Association, 550 West 7th Avenue, Suite 1900, Anchorage, Alaska 99501 (272-7469).

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

Board of Governors meeting dates
Sept. 17-18, 2009
Oct. 29-30, 2009
January 28-29, 2010
April 26-27, 2010
April 28-30, 2010 (Annual Convention, Anchorage)

Alaska Association of Criminal Defense Lawyers

Continued from page 1

• Is developing a website (www.akacdl.org) with members-only access to legal resources such as briefs, motions and memoranda, as well as important legal links and news.

• Will have access to AKACDL's confidential electronic listserve, providing a daily resource for exchanging knowledge and communications via email.

• is working to be the only recognized Alaska affiliate of the National Association of Criminal Defense Lawyers.

• will be heard in Juneau. Senator Hollis French has already met with several founding members of AKACDL and has pledged to listen to the unique concerns of the criminal defense constituency. AKACDL will actively lobby against the death penalty, and on behalf of legislative changes that benefit criminal defense practitioners, clients, and the criminal justice system.

The association now offers the following membership classifications and annual dues:

• Founding Member - $500. Available only until December 31, 2010. Founding members will receive a custom printed certificate commemorating their special contribution, and will be permanently recognized in the association's history.

• Regular Member – $250.

• Associate Member – $175. Investigators, paralegals, judges, or persons supporting the goals of the organization who are not licensed or practicing attorneys.

• New Lawyer Member – $165. Practitioners with less than 3 years experience.

• Public Defender Member –$125. Currently employed by a local, state, or federal public defender agency.

Finally, as this is a professional association, AKACDL is looking for dedicated individuals willing to volunteer their time and effort as members of the Board of Directors. The founding board members include Rich Curtner (646-3412); Darrel Gardner - Secretary/Treasurer (278-1940); Andrew Lambert – Vice President (276-2135); and, Steve Wells – President (279-3557). The newest board member is Beth Trimmer from the Office of Public Advocacy (269-6074). Please feel free to contact any of the directors for more information or if you are interested in becoming a member.

Letters

UAA has new law society

My name is Candice Perfect, and I am a student at UAA and President of the Pre-Law Society of UAA. I am writing to inform the Bar Association of this newly formed organization in hopes of gaining your support.

This is the first Society of its kind at the University of Alaska Anchorage, and although freshly formed, we have high hopes and many goals to accomplish. Our primary goal is to help students build their resumes throughout their undergraduate experience in order to gain more in depth knowledge in the legal field, and give them a competitive edge against other qualified candidates. As we know, the law school application process is not only a rigorous task but also very competitive. Students who have more extracurricular activity experience fare better than those who do not. The Pre-Law Society will strive to provide opportunities such as internships, networking, community service and volunteer opportunities, as well as sponsor guest lectures from attorneys in the Anchorage area.

Currently, the Pre-Law Society is searching for members of the Alaska Bar Association who would be interested in becoming affiliated with the Pre-Law Society of UAA by providing internships to our members. We're also looking for attorneys who would be interested in participating in discussions or lectures, and attending luncheons and/or dinners to mentor the future generations of attorneys in Alaska.

Also, since we are looking for community service and volunteer opportunities, please let me know of any events or activities that our members would be able to partake in.

I am hoping the Alaska Bar Association will support this organization and perhaps sponsor the Pre-Law Society of UAA in one of the ABA newsletters. If you would like more information or have any questions, please do not hesitate to contact me. My email address is ascmp58@uaa.alaska.edu, and my telephone number is (907) 301-6671.

Thank you for your time and I look forward to working with you.

--Candice Perfect Pre-Law Society of UAA, President

Supreme Court creates 2 new access committees

The Alaska Supreme Court recently convened two new committees to address issues of fairness and access in the courts.

The Fairness, Diversity & Equality Committee, charged with increasing racial, ethnic and gender diversity on the bench and throughout the profession and eliminating racial, ethnic and gender disparity in the justice system, is led by Justice Dana Fabe, Chair, and Judge Eric Smith, Vice Chair.

The Access to Civil Justice Committee, charged with enhancing legal services and pro bono service and providing assistance to self-represented litigants, is chaired by Justice Daniel Winfree.

Both committees follow in the footsteps of past efforts to ensure that Alaska's state courts are fair and accessible to all. In 1997, the supreme court's former Fairness and Access Advisory Committee made numerous recommendations for improvement in these areas. As a result, a Fairness and Access Implementation Committee was created in 1998 under leadership of Justice Robert Eastaugh (Ret.). For the next 10 years, progress was made towards implementing the original recommendations, which was outlined in the 2007 Status Report of the Alaska Supreme Court Fairness and Access Implementation Committee, available on the court's website at www.courts.alaska.gov/fairaccess2007.pdf<http://www.courts.alaska.gov/fairaccess2007.pdf>.

The new committees will develop initiatives for continuing this work. Pictured here at a joint committee luncheon held February 22, 2010, at the close of the inaugural meetings in Anchorage are, L-R (Seated): Judge Mark Rindner, Justice Daniel Winfree , Justice Dana Fabe, Judge Eric Smith.

L-R (Standing): Erick Cordero, Lynda Limon, Eric Goldwarg, Carol Heyman, Barbara Jones, Judge Joel Bolger, Pamela Washington, Thomas Van Flein, Krista Scully, Andy Harrington, Stacey Marz, Judge Michael McConahy, Judge Larry Card (Ret.), Judge Stephanie Joannides, Judge Ben Esch, Judge Sen Tan, Teri Carns, Marla Greenstein, Mara Kimmel, Natalie Landreth, and Rex Butler.

Fairness Diversity and Equality Committee members:

Justice Dana Fabe, Chair
Judge Eric Smith, Vice Chair
Judge Joel Bolger, Alaska Court of Appeals
Judge Larry Card (Ret.), Anchorage Superior Court
Judge Patricia Collins, Presiding Judge, First Judicial District
Judge Ben Esch, Presiding Judge, Second Judicial District
Judge Stephanie Joannides, Anchorage Superior Court
Judge Sen Tan, Anchorage Superior Court
Rex Butler, Rex Lamont Butler & Associates
Teresa Carns, Alaska Judicial Council
Marla Greenstein, Alaska Commission on Judicial Conduct
Carol Heyman, Chugach Electric Association Inc.
Mark Kroloff, First Alaskan Capital Partnership
Natalie Landreth, Native American Rights Fund
Lynda Limon, Limon & Walker
Troy Buckner-Nkrumah, Anchorage Urban League
Ethan Schutt, Cook Inlet Region Inc.
Pamela Scott Washington, Anchorage Municipal Prosecutor's Office

Access to Civil Justice Committee members:

Justice Daniel Winfree, Chair
Judge Mark Rindner, Vice Chair
Judge Michael McConahy, Fairbanks Superior Court
Judge Philip Pallenburg, Juneau Superior Court
Andy Harrington, Alaska Legal Services Corporation
Krista Scully, Alaska Bar Association Pro Bono Coordinator
Erick Cordero Giorgana, ALSC Pro Bono Program
Stacey Marz, Family Law Self Help Center
Katherine Alteneder
Mara Kimmel, Alaska Immigration Justice Center
Thomas Van Flein, Clapp, Peterson, Van Flein, Tiemessen & Thorsness, LLC
Johnny O. Gibbons, Dickerson & Gibbons, Inc.
Barbara Jones, Anchorage Equal Rights Commission
Greg Razo, Cook Inlet Region Inc.
Eric Goldwarg, Anchorage Superior Court Law Clerk

It's the age of managing patent translation risks

By Martin Cross

As the globalization of intellectual property continues, ever more patent practitioners find themselves relying on translations, and while problems with translations can damage overseas filings, leave domestic patents open to challenge and undermine litigation strategies, few practitioners have policies in place to mitigate these risks.

To understand translation risk, it must be remembered that there is no such thing as a perfect translation. A word or a phrase in one language rarely corresponds exactly to a single word or phrase in another language. For example, the simple English term "you" can be expressed by numerous different words Japanese, depending on the relationship between the author and the person being addressed . By choosing one of these possible translations for "you", the translator excludes the others, necessarily making the Japanese translation narrower than the English original. Because there is no single right way of dealing with such problems, translation is an interpretive art. As such, all translations necessarily carry the risk of loss or distortion of the original message.

To understand translation risk, it must be remembered that there is no such thing as a perfect translation. A word or a phrase in one language rarely corresponds exactly to a single word or phrase in another language.

Skilled human translators are able to minimize this loss but, being human, they are also capable of making things worse as result of errors of omission and misunderstanding. The resulting distortion will be familiar to anyone who has played the children's game of Telephone.

Because patents describe cold hard technology and are written in highly explicit language, they suffer less from inherent translation loss than highly cultural texts such as poems or advertising copy. Nonetheless, patents are challenging for most translators. A first difficulty is the complexity of the technology described. To produce a reliable translation, the translator must understand the text. It will be clear that understanding the context is a prerequisite for choosing an appropriate translation, if we consider the different possible meanings for terms such as beam, factor or even impregnate. Complex sentence structures, particularly in the claims, and the need maintain the breadth, narrowness or ambiguity of the original language also contribute to the particular translation challenge posed by patents.

For these reasons, patents tend to be translated by expert translators who understand both the technical field and at least the basics of patent practice. To minimize the human errors mentioned above, a reliable translation will always have been reviewed by a second translator. This makes patent translations expensive, ranging from a few hundred dollars for shorter patents, to tens of thousands of dollars for massive biotechnology specifications.

When choosing strategies to reduce these costs, as when making any decisions regarding translation, it is essential to understand the specifics of the risks involved and how they can be mitigated.

For translations of prior art, the most significant risk is that of being mislead. For example, a practitioner who accepts a finding based on a machine translation cited by the PTO may be missing the opportunity to successfully traverse the examiner based on a more accurate human translation. Another less obvious, but potentially more serious risk is that of a poor translation causing the practitioner to believe that a particular foreign publication poses no threat to their patent, when in reality it anticipates or renders obvious their claims. In this case, if the practitioner supplies the faulty translation in an information disclosure statement, prosecution may not be a problem, but a real worry would be that of a better translation being produced years later during litigation.

When procuring the final translation of an important document, it may be possible to transfer some of the risk by making sure that the translation provider has adequate professional insurance.

It should also be noted that patents can be found unenforceable for inequitable conduct during prosecution, in cases where the applicant or the prosecuting attorney is able to read a related foreign language document (for example, when the applicant is a national of the country where the foreign language document was published) but they do not provide the examiner with an adequate translation of that document .

For prior art, the probability of transition loss leading to serious consequences increases with the relevance of the foreign document to the application being prosecuted (or litigated). If your application is directed to a method of measuring window size in a house, and a machine translation or a conversation with a bilingual colleague reveals that the cited publication is directed to estimating the size of a window of opportunity in a business method, you probably have all the information that you need. In this case, there is no point in paying for a top-notch translation. Conversely, if the only thing that differentiates your patent from the prior art is that your method works for rectangular windows, while the foreign patent is limited to square widows, you will want to be very sure of your translation.

There is clearly no case in which a poor translation will stand up in prosecution, much less enforcement, but there are some situations in which translation loss has greater potential to cause problems than others.

It can be useful to take an incremental approach to assessing relevance, and hence risk. The first step is to check databases for English language equivalents that have been filed as part of international prosecution. If no equivalents exist, machine translation can be a fast way to grasp the gist, or at least the subject matter, of the technical idea disclosed. Practitioners in larger firms may be able to find a bilingual secretary, and sometimes even an attorney, who speaks the language in question. Keep in mind, however, that just as not all inventors are good at drafting patent specifications, not all bilingual people are good at translating. Rather than asking them to translate the entire document, it may be better for them to read it over and let you know if it mentions the matters that you are interested in. If none of these options are available, overseas discount translation providers, which have proliferated on the Internet in recent years, can sometimes provide a rough idea of the content at a fraction of the price of an expert translation. Some domestic translation agencies also offer lower prices for first-draft translations, which have not been reviewed by a second translator.

The result of such preliminary translations may be that certain sentences or paragraphs appear to have particular relevance, while the rest of the document does not. In this case, it makes sense to obtain an expert translation of only the relevant sections. If this partial translation shows that the relevance is in fact very high, it may be a good idea to get an expert translation of the entire document.

When procuring the final translation of an important document, it may be possible to transfer some of the risk by making sure that the translation provider has adequate professional insurance. Requesting a statement of certification/verification may also help to focus the attention of the translator, but keep in mind that such statements only attest to the good faith belief of the translator, and are not a guarantee of quality.

Risks associated with translations for overseas filing must be assessed differently. There is clearly no case in which a poor translation will stand up in prosecution, much less enforcement, but there are some situations in which translation loss has greater potential to cause problems than others. In Japan translations can be corrected during national phase prosecution and some corrections to the translation can be made even after the patent has issued . China allows for correction of PCT applications but within narrower time limits and South Korea allows no correction of the translation after the expiration of the time limit applicable under PCT Article 22 or 39(1) . When making decisions about important translations, it is essential to know what remedies will be available if a problem arises.

As with translations of prior art, risk is best mitigated by ensuring that the translation is prepared and reviewed by experts. Most foreign law offices provide translations, but it is important to realize that while, in some firms, these are prepared in-house by the attorneys themselves, others offices farm translations out to the lowest bidder and file them with little or no review. In addition to foreign law firms, both domestic and foreign translation agencies can be used, and similar variations in quality assurance can be expected. Prices for translations vary greatly, meaning that clients with large portfolios or particularly long specifications are well served by shopping around, but it is important to ask for a description of the translation process and the people involved in it. A good translation and review process will never be so complicated that it cannot be described in a few sentences. Keep in mind that vague answers are usually indicative of vague policies. For maximum risk mitigation, you may want to consider having some translations reviewed by a third party, either as an occasional quality spot check, or when filing a patent that is particularly likely to see litigation. Many translation agencies provide this service.

The risk associated with patent translation is the product of the severity of the consequences (how much is riding on the patent) and the probability of an unredeemable problem arising (for prior art this varies with the relevance of the document, while for foreign filing it is impacted by opportunities for correction). As risk increases, practitioners can mitigate, by using more reliable translation services and/or requesting independent review, and transfer by way of the translator's insurance coverage. No policy will eliminate risk but proactive risk assessment and knowledge of your options will lower costs and help you to sleep better.

--Submitted by The American Translators Association

ECLECTIC BLUES

Your hands are good tools in life

By Dan Branch

My father earned my tuition money at St. James the Less Grade School by riveting aluminum skin onto nuclear missiles. I still have his ball-peen hammer and backstop. He stretched his meager salary by doing all the home and car repairs himself. On Saturdays I would join Dad and Uncle Larry in the garage where we would work to keep the family fleet on the road.

Even though I lacked his natural mechanical skills, Dad would let me do the brake jobs — even on his beloved Studebaker Champion. This was dirty, brutish work for a 10-year-old. Lug nuts needed twisting off and road grime had to be wiped away to expose the brake drum and then the brake shoes and slave cylinder. In season, we'd listen to Vin Scully announcing the Dodgers games — his voice bringing a bright crispness to a world of grease, solvents and road darkened steel.

I remember that my greasy fingertips would spot the clean gray asbestos of the brake shoes when I lifted them from the box and that I would have to repeatedly depress the brake peddle while Dad monitored the little valve at the back of the slave cylinder until all the air had escaped the brake line.

I also remember how I often ended up doing things twice and how much it hurt when my hand slipped off a greasy wrench to strike the hardness of the engine block. On such an occasion after I had started high school, Dad told me that I had better do well enough in school to get into college because I would live a miserable life as a mechanic. It was the garage version of the touch of death that put an end to many a young artist's aspirations.

"Working with my hands helps me to draw inspiration from the legal world — especially when facing some task that will drain energy and patience in equal measures."

I didn't argue with Dad after he spoke that simple truth but the memory of that day stayed with me through law school. Every time I thought about going skiing rather than to class, his words would rise in my mind like a Dickens ghost. They kept me in college even though it meant driving a dying Studebaker Lark while my friends with real jobs drove muscle cars that gave a pleasing roar when they passed. To this day the sound of a well-tuned American V8 engine turns my head.

I may never have picked up a tool again if I had stayed in California. But this is Alaska, where men must be men and good contractors are more sought after than water in the desert. If you don't do it yourself, it may never get done. Money and a Juris Doctorate can't change that. It was worse in the Bush, where if you didn't know how to drain gas from the flooded carburetor of your snow-go you might freeze far from home.

Working with my hands helps me to draw inspiration from the legal world — especially when facing some task that will drain energy and patience in equal measures. Building a rock wall can be like brief-writing. After a good foundation is in place you start searching for the rocks that will fit with their neighbors so that the final wall can survive the destructive forces of opposition. (Oral argument skills come in handy when explaining to family members why your wall ended up covering part of the Bleeding Heart plant.)

There is more to manual labor than hard work, bruised fingers, and dirt. There is also the satisfaction that comes in knowing that tomorrow you can troll for king salmon unimpeded by guilt and with only the whisper of self doubt to cloud the day. Often even that cloud will never form.

That's the biggest advantage of hand work— you can usually tell if you screwed up right away. The fence will either fall down or it won't. Faucets will leak right away or not at all. You can't know how well your appellate brief will be accepted until the court rules in the case months or sometimes years later.

In the meantime, you have to look at your opponent's brief and wonder whether he built the better wall.

American Bar adopts new policies

The American Bar Association House of Delegates took action on a series of national and state-level policy issues, during its 2010 Midyear Meeting in February in Orlando.

In the area of immigration, the House of Delegates supported creation of a new Article I court system to hear both trials and appeals of immigrant removal cases, and approved specific measures to create a more professional, independent and accountable immigration judiciary. The House of Delegates urged the Department of Homeland Security to implement procedures to improve consistency, fairness and efficiency in removal proceedings and to enhance transparency and fairness in reviews of immigration cases by the Board of Immigration Appeals. It also called for restoring review of immigration cases by federal judges, and urged Congress to legislate provisions to make sure noncitizens are treated fairly in the adjudication process.

Addressing issues affecting women and others, the delegates called for passage of the Paycheck Fairness Act and to reauthorize and fully fund the Violence Against Women Act.

For lawyers serving the nation in the military, the delegates urged that Congress amend the Higher Education Opportunity Act of 2008 to make them equally eligible with other government-employed lawyers for federal student loan forgiveness programs.

For a complete list of all policies adopted by the ABA House of Delegates this week, and reports explaining the views of advocates for those reports, see http://www.abanow.org/house-of-delegates-resolutions-2010-midyear-meeting/

--American Bar Assn. press release

Jefferson's 13th Amendment and the Original Logic of the Federal Constitution

By Peter Aschenbrenner

I'm interviewing Thomas Jefferson.

"Tell me about the Thirteenth Amendment," I ask our country's third President. "Yours."

"I was going to abolish slavery," he replies. "Starting with the Louisiana territory. I thought my proposal would be numbered the Fourteenth Amendment. The Twelfth chased Aaron Burr into history. The lapsed Thirteenth can be blamed on Bounaparte."

"Background our readers," I urge Jefferson.

"Americans got their knickers in a twist," Jefferson begins, "when Jérôme Buonaparte married that girl from Baltimore."

"Elizabeth Patterson," I interject. "This was 1803, right after the Senate ratified the treaty with France. The Louisiana Purchase."

"She's the grandmother of the founder of the FBI," he adds. "If I may digress."

"So J. Edgar Hoover's agency's founder's grandfather's brother was Napoleon Buonaparte," I muse. "Wow! History does mean something."

"Can we get back to the Titles of Nobility Amendment?" he asks me.

"Its purpose was to banish Americans who married into the nobility," I show off. "But the amendment, although obtaining the requisite endorsement by Congress, never got enough states to pass the ratification bar."

"And so, back to my proposal. It was dead on arrival."

"Which made it – "

"Incredibly successful," Jefferson declares. "Unlike the other Thirteenth. TONA in your parlance."

"You proposed a constitutional amendment to incorporate the Louisiana Territory into the United States and to establish territorial government in the lands purchased from France," I rattle along. "But your amendment never got a hearing in the Eighth Congress."

"I was the last of the old believers."

He pours one for himself and one for me.

"As you know I objected to the constitution-without-limits-on-federal-power. This is 1787. The restrictions, the 'no's,' were pretty sparse. A guarantee of jury trial in Article III, Section 2 and miscellaneous provisions of Article I, Section 9 being the exceptions proving my point. I was looking for a lot of restrictions, limits and burdens on government functionaries. Popular opinion backed me up, starting in the spring of '88. So Madison did a 'u-turn.' Voilà, we got a mish-mash of limits on the national government. The Bill of Rights as proposed by Congress to the states for ratification in 1789."

"But in 1803 you advocated Madison's original logic," I point out.

"The national government was obliged, I argued, to obtain a *new* constitutional pedigree for every *new* activity. More work for us.gov/ requires more permissions from the Constitution. As a growing continental power, and in our first trans-Mississippi foray, that expansion required an amendment to the Constitution."

"But everyone had gone over to Madison's way of thinking," I point out.

"But they didn't," Jefferson winks, "tease out the implications of their acceptance of the not-so-limited concept of federal powers. I did."

He pours another round. We ching-ching.

"My cunning plan – this is 1803 – outfox'd the Republicans, on the one hand, and the Federalists, on the other hand. It outflank'd both Southerners and Northerners, that is, slavery apologists and slavery abolitionists, who were more or less in the preliminary stages of the bad sportsmanship we may call the surliness between the States."

"You proposed, if I may draw on my reading in the archives at the Library of Congress, that the Constitution be amended to give the federal government the power that a state government would have in territories acquired from France and organized by Congress."

"There's an analogy in your Alaska Constitution," Jefferson suggests. "Acquired forty-one years after my death and also by treaty of purchase."

"Quite so," I reply.

"I didn't want you to think I was moldering away, Professor."

"The Alaska Constitution makes the state legislature," I mind my cue, "the borough assembly for so much of the state as is not organized within a local government."

"Article X, Section 6," Jefferson provides the cite and quote. " 'The legislature … may exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough'."

"Exactly so. Back to the fall of 1803," I go on. "Somebody had to provide local government in the west after the treaty was ratified."

"The federal Congress would be expected to do for the Trans-Mississippi what the Congress of the Confederation did with the Trans-Appalachia we acquired in the Treaty of Paris."

"Seventeen eighty-three," I ahem the citation.

"Territories would be organized in various degrees of autonomy. These may be regarded as, in essence, territories palatinate, and even, in the case of New Orleans, sophisticate, and most recently, triumphant. The constitutional amendment I wrote," Jefferson continues, "assumed that Congress would have the power of a state government in any unorganized expanse that was left over after territories and states were carved out at (more or less) the rate of two degrees of latitude to three degrees of longitude, rivers approximating boundaries as necessary. Or vice versa."

"The powers of Congress," Jefferson cites to p. 448, "are to be considered as a 'trustee charged with the duty of prompting the interests of the whole people of the union'."

"This is going to bring us around to Dred Scott's case," I ask. "Right?"

"In a minute. Take the distinction between enslaved persons *escaping* from one state to the next, on the one hand, and *migrating* from one state to another," Jefferson continues, "on the other hand."

"Since Congress addresses these points in Article IV, Section 2 and Article I, Section 9, clause the first," I suppose, "these are two different topics for constitutional consideration."

"The right of a state to control migration must be conceded because the federal constitution imposes on states the duty to surrender any escaped person, even if 'in consequence of any law or regulation' the escaping person would otherwise 'be discharged from such service or labor'."

"I see your point," I have to agree.

"And therefore," Jefferson declares, "it must be conceded that states had the power to make such laws or regulations, ante-1787, because they gave up such rights in the federal Constitution of that year."

"But Taney argued – "

"That the Confederacy Congress should not have adopted the Land Ordinance of 1784. Which I drafted."

"You proposed, if I may draw on my reading in the archives at the Library of Congress, that the Constitution be amended to give the federal government the power that a state government would have in territories acquired from France and organized by Congress."

"Taney referenced the 1787 Northwest Ordinance," I mumble the citation to pages 446-447. "Same deal."

"Taney relied on Madison's Federalist No. 38," Jefferson adds.

"The only example of founder's intent he could or would muster," I slip in. "You're on a roll here, Mr. J."

"But what Madison actually said," Jefferson explains, "is this: 'Congress have undertaken … to erect temporary governments, to appoint officers for them, and to prescribe the conditions on which such States shall be admitted into the Confederacy. All this has been done; and done without the least color of constitutional authority'."

Jefferson signals me, via raised eyebrow.

" 'Yet no blame has been whispered; no alarm has been sounded,' Madison said. In 1788," I add, "he blew the whistle on your theory of federal power, vintage 1784."

"So," Jefferson concludes, "Congress had the power that the states would (eventually) have in territories acquired from France."

"Whether or not," I suppose, "Congress ever created states in that territory."

" 'Is the importation of slaves permitted by the new Constitution for twenty years?" Madison argued. 'By the old it is permitted forever.' "

Jefferson gives me a wink.

"You see, Madison is arguing that the Confederacy Congress was too powerful. In arguing that the federal Congress will have less power than the Continental Congress, he concedes the proposition that, absent some express limit, Congress has or will have the power of a state in the Louisiana Territory. The only true measure of a power of a state is the power the thirteen states enjoyed in the interval from 1778 – "

"The organization of the Continental Confederacy," I slip in.

"To 1789," he adds.

"The organization of the federal government," I mind my cue.

"Where Taney really let the cat out of the bag," Jefferson declares, "was his insistence, that 'the the words of the Constitution [should not be given] a more liberal construction in their favor than they were intended to bear when the instrument was framed and adopted.' At 405."

"He then proceeded to rely on none of the framers' opinions or views," I point out.

"Except for Taney relying on Madison criticizing Jefferson," Jefferson tut-tuts. To be fair," Jefferson adds, Taney never said that the court should give two hoots for the framers' intent."

"And, like Madison, Taney argues from the original logic of the federal Constitution, indeed the Articles of Confederation," I counterpoint.

"When you analyze the power to regulate slavery in the territories as a function of Congress's power to make new states then you are working from 'yes' to get an answer regarding the civil rights of African Americans, which answer must be a 'no' answer. To avoid oppression, naturally."

"That's what a 'no' answer is," I agree. "One man's answer to tyranny. Like the guy standing in front of the tank at Tien An Men Square."

"In short," Jefferson muses, "to get fairness for any one person, Taney and I agree you work from goodness. For the group or collective."

"Ditto," I presume, "analyzing the power to make treaties of purchase or to declare and conclude war."

"Ditto analyzing Congress's power in the territory acquired under the treaty of 1783. All of these are," Jefferson concludes, "the same approach to constitutional interpretation.

"That is the substance of Taney's argument. What happens when government says yes? Benefits, entitlement programs, subsidies to business, and so forth."

"Up to the point that," I summarize pp. 449-450, "Taney concludes that the powers of Congress in Louisiana are limited by the property rights of individual slaveowners in slaveowning states."

"The powers of Congress," Jefferson cites to p. 448, "are to be considered as a 'trustee charged with the duty of prompting the interests of the whole people of the union'."

"Question begging, if I do say so myself," I allow myself to sniff. "Because the majority opinion launched the question, 'where do property rights end and civil rights begin'?"

"You don't seem to have gotten the big picture," Jefferson counter-sniffs and in my direction. "The answer to the question, 'What does the original logic of the federal constitution tell us about the power of Congress in territories it acquires by treaty?' can hardly be found in the property rights of some citizens in some but not all of the states."

"And he used Madison to trash the Land Ordinance of 1784."

"Unforgiveable," Jefferson sighs, while aspirating his esters.

"Your cue," I prod our Third President.

"We've got a lot of rivers in North America," Jefferson considers his favorite legislation from that decade. "I suggested states named after abstract

Continued on page 7

Bar People

Leroy Latta will be retiring from the State of Alaska, Office of the Attorney General on April 30, 2010 after 27 years of state service.


Craig S. Howard

The law firm of Delaney Wiles, Inc. announces the addition of **Craig S. Howard** as an Of Counsel attorney with the firm. Craig is a graduate of the University of Denver School of Law. Prior to joining Delaney Wiles, Craig worked as an associate for the law firm of Richmond & Quinn, 2004-2010, the Alaska Public Defender Agency as the senior trial attorney, 1982-2004, and with Alaska Legal Services Corporation, 1980-81.

Craig joins our litigation practice group. He is admitted to the Alaska Bar Association and the United States District Court, District of Alaska.


Rebecca Holdiman-Miller

The law office of Holmes Weddle & Barcott is pleased to announce that **Rebecca Holdiman-Miller** has become a shareholder in the firm, effective March 1, 2010.

Ms. Holdiman-Miller practices law in the firm's Anchorage office, where she offers representation in the areas of workers' compensation defense and general civil litigation.

She is admitted to practice in the Alaska State Courts and the United States District Court for Alaska, and handles many cases before the Alaska Workers' Compensation Board and the Alaska Worker's Compensation Appeals Commission.

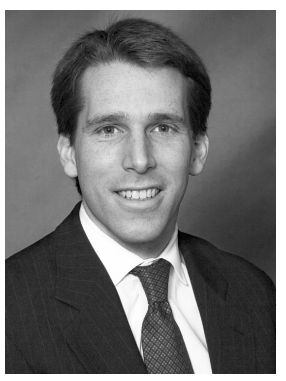

William H. Timme

Stoel Rives LLP, a full-service U.S. business law firm, today announced that corporate attorneys **William H. Timme** and **John D. Kauffman** have joined the firm's Anchorage office.

Established in October 2008, the Stoel Rives Anchorage office provides local solutions for Alaska-based clients and clients with interests in Alaska, on corporate, energy, environmental, labor and employment, commercial litigation, intellectual property and white collar criminal defense matters.

Most recently a partner at Timme & Cain, P.C., Timme has spent over 35 years counseling mostly Alaska Native Corporation clients. His clients have included, among others, regional corporations Bristol Bay Native Corporation, Doyon, Ltd., Koniag, Inc. and Koniag Development Corporation, and NANA Regional Corporation, Inc. and NANA Development Corporation. Over the years, Timme has helped his clients address a broad gamut of issues, from initially implementing ANCSA, to negotiating oil and gas and mineral exploration programs, handling Net Operating Loss sales, advising clients regarding EVOS Trustee Council Acquisitions, and handling general corporate and transactional matters.

Kauffman makes the move from the Stoel Rives Seattle office, where he has represented corporate management, investors and entrepreneurs on a variety of business and strategic issues over the last 10 years. His work has included mergers and acquisitions, entity formation, negotiating joint ventures and commercial contracts, corporate governance, equity and debt financing, and public company reporting and compliance. Kauffman has been named a "Rising Star" by Washington Law & Politics, and he is the chief author of "Business Law Practice" in the Washington Lawyers' Practice Manual.


John D. Kauffman

"We've had a number of clients tell us they wish we had the Alaska-based capacity to help them with their corporate and transactional matters," said Anchorage office managing partner James E. Torgerson. "We're delighted that we can now do so with Bill joining the firm and John and his family moving to Alaska. As his clients already know, Bill has not only great legal skills but also an unparalleled understanding of their businesses and business environment. It is our honor and privilege to welcome him to Stoel Rives. John developed a reputation in Seattle as an outstanding transactional lawyer. Having him join us here in Anchorage will be a great benefit to our Alaska-based clients."

Williams joins Perkins Coie

Perkins Coie is pleased to announce that **Christine Williams** has joined the firm as an of counsel. She will be based in the firm's Anchorage office.

Williams focuses her practice on complex civil litigation matters, including construction litigation. She is experienced in working with Alaska Native and 8(a) clients on a wide range of issues. She also advises clients on issues related to competing in the government contracts arena, including bid protests, contract negotiations, claims preparation and litigation.

"We are delighted that Christine has joined the firm," said Eric Fjelstad, Anchorage managing partner. "We are committed to providing our clients with exceptional service. Christine's experience is an excellent addition to our strong government contracts and litigation practice in Alaska."

She joins a team of more than 300 litigators who represent plaintiffs and defendants across a spectrum of disputes. In addition to complex civil litigation, she also represents clients in other dispute resolution procedures, including mediation and arbitration.

Williams earned her J.D. from the Santa Clara University School of Law and her B.A. from the University of Alaska.

Jefferson's 13th Amendment and the Original Logic of the Federal Constitution

Continued from page 6

concepts. Like the 'land between the rivers'?"

"Metropotamia? Polypotamia?" I demur. "It's all Greek to me. If Congress had the power of a state in new territories, acquired by treaty of 1783 or 1803, then Congress did not need a constitutional amendment to exercise the power of a territorial legislature for the unorganized territory west of the Mississippi River."

"Everyone fell for it," Jefferson permits himself a presidential guffaw.

"So your proposal forced Congress," I suppose, "to choose between the Madison of 1787 and the Madison of 1789."

"A 'sucker' punch I believe it's called," Jefferson swirls his cordial. "Of course, Madison could hardly whirl about – in a second volte face – and claim to be an old believer. I was the old believer. Everyone else believed in inherent municipal power with necessarily explicit limitations."

Jefferson reaches for his Blackstone.

"I became the last Madisonian. Of course, I could have relied on Sir William's aphorism. 'The public good is in nothing more essentially interested than in the protection of every individual's private rights, as modelled by the municipal law'." 1 Blackstone 135 (1765).

"Whoa!" I blurt. "I think I get it. Congress has only limited, enumerated powers. But if one of those powers is the power to do everything a state can do, then *those* powers are unlimited. Or limited only by the 'nay's' set forth in the Constitution or the Bill of Rights."

"You're still one step behind," Jefferson corrects me. "Sir William's municipal law promotes the public good by protecting private rights. Very interesting, wouldn't you say?" Jefferson smiles. "Teasing *no* from *yes*."

"This throws into stark relief the list of commands and permissions in Article I, Section 9, for example," I work through the logic offered me. "That which is yes to the *federal* soul seeking to do good works, may be set off against the people's *no*, written, eight to ten times, your choice, in the Bill of Rights."

"This throws into stark relief the list of commands and permissions in Article I, Section 9, for example," I work through the logic offered me. "That which is yes to the *federal* soul seeking to do good works, may be set off against the people's *no*, written, eight to ten times, your choice, in the Bill of Rights."

"Have you ever wondered why the laundry list of federal powers in the Constitution fits so badly with the first ten amendments?"

"Madison's list of unpowers in the Bill of Rights?" I answer his question with my own. " 'What may be called a bill of rights … was neither improper nor altogether useless.' Madison wasn't wild about the idea, as you can see," I add.

"The original yes's," Jefferson continues, "are set off against the second-after-thoughts in the Bill of Rights, in which the people say their nay's to Congress. No one in the last two hundred years has teased out a connection between what Congress may and should do, on the one hand, and what Congress shall not do, on the other hand."

"Does Jeremy Bentham have anything to do with this?" I wonder.

"I, too," Jefferson considers my point, "have often blamed the War of 1812 on the Dark Lord."

"Perhaps," I venture, "this is what happens when you let the people loose. They ratify constitutions but fail to supply that grand unified theory that pleasures the Academy."

"I'm sure you can figure it out," Jefferson sniffs.

"Now that we have that resolved," I press the interview to its conclusion, "invasion of private rights by congressional action should be weighed in this balance. Does it lack a pedigree as precise as that crafted – in your five separate versions – to authorize the government of the Louisiana territories?"

"Take warrantless wiretapping," Jefferson assures me. "We old believers argue that Congress and the President have no power to approve warrantless wiretapping because there is no constitutional pedigree for any wiretapping. The technology was not in existence as of 1787."

"There are not many old believers, are there?"

"We do have our own bowling team."

"And that would be?" I ask.

"Dolley Madison and Sally Hemmings, along with Dred Scott."

"I understand he lived a free man, at least at the end of his life," I reply.

"Amazingly enough," Jefferson explains, "Sandford's brother's widow's husband was an abolitionist Congressman, who found out about the Supreme Court proceedings only a month before the decision came down. He emancipated Scott, who died a free man in St. Louis."

Jefferson reaches for the decanter.

I accept the pour on offer.

"Don't forget," Jefferson reminds me, "to dissect this mystery: Why is it that those who govern by *yes* must take *no* for an answer?"

Lessons learned in persevering for life's marathons

By Keith Levy

Keith Levy is still smiling, despite a 50-mile marathon.

When I first started running marathons I frequently told people I had no interest in running any greater distance. But a few years ago I accepted the painful truth that my marathon times are never going to get any faster and I needed a new challenge. I set a goal of completing a 50 mile race.

Lesson learned: *Be careful what you wish for . . .*

I chose a July trail race and training began in earnest in the spring of 2009. By May I had completed several three and four hour runs and was feeling strong. In late May, although I felt the early symptoms of flu, I ran the Seacoast Relay, a Juneau race consisting of five legs for a total of 22.5 miles. I ran it solo and finished fourth overall. But over the course of the next few days the flu symptoms got worse. I developed a bad cough, fever, and intense chest pain. By the following weekend things had deteriorated to the point where my wife, ever insensitive to the fragile male ego, made me go to the emergency room. As I had predicted, I did not have the flu. What I had was pulmonary embolisms. Blood clots. In my lungs. In every lobe.

Lesson learned: *Those studies that show married men live longer should look into how much of that is attributable to the fact that their wives make them seek medical attention.*

Okay, so this was more than a minor setback. Once on a blood thinner, though, I was more or less out of danger and my Juneau doctors said I could start running again when I felt up to it. More than a month went by before that happened, so my July race was out of the question. But the biggest setback was when a doctor in Seattle expressed concern about the risks of distance running while on a blood thinner. He wanted me to limit intensity (no racing or speed work) and distance (no running longer than an hour). His fear was the risk of bleeding, both internal and from falling off a steep mountain trail.

This was not going to stand. I scoured the web to see if others had experienced problems running long distances while on a blood thinner. I found a handful of people who were doing just fine under circumstances similar to mine, and no evidence of endurance athletes experiencing negative effects from blood thinners. (My wife suggested that was because those people were all dead.) I persevered and in the end I negotiated an agreement with the doctor that allowed me to gradually increase intensity and then distance. I ran a respectable time on the easiest leg of the Klondike Road Relay with no ill effects and felt ready to start doing longer runs again.

Lesson learned: *Don't argue with your wife, but feel free to bargain with your doctor.*

I signed up for a January race, the Running from an Angel 50 miler, a road run around Lake Mead near Las Vegas. Training went fairly well, save for missing a few long runs due to minor injuries. But the week before the race I came down with a bad cough, so my taper became a complete layoff. By mid-week I was feeling somewhat better and decided to make the trip and run if my cold subsided enough. We were supposed to fly to Las Vegas the Wednesday before the race, but the Juneau weather shut down every flight for nearly two days. We finally got out but didn't get to Seattle until 3:00 a.m. Friday, which meant sleeping on the floor in the airport to make the 6:00 a.m. flight to Las Vegas.

Lesson learned: *Sometimes it's hard to tell whether the challenges that rise up to confound your goals are just a final test, or a not so subtle message that you should give up some crazy idea.*

The day before the race I was feeling somewhat better but still had some doubts about what was going to happen. Once I started running, though, all doubts were gone. The race started in the dark at 6:00 a.m. The weather was perfect. It was forty degrees at the start, warming to the upper fifties. Even when the sun came out, there was a constant breeze. The course was hillier than I expected, but no worse than the roads around Juneau. My wife was out cheering for me the second half of the race. The aid stations were well stocked. I ate and drank as planned. The day went very well. I confess to slight disappointment that I did not quite make the time goal I had set and I did not win my age group. (I know I told everyone I just wanted to finish. So I lied.) But I was very satisfied at the end, having accomplished a goal I did not know I could complete when I started.

Lesson learned: *Don't put things off too long. You never know when you may run out of time.*

A few weeks after my victory Ultrarunning Magazine named Juneau runner Geoff Roes the 2009 runner of the year. Geoff is an inspirational runner who has set course records at some of the toughest 100 mile races in the country. At a party to celebrate his accomplishment, several runners asked me if I was aware that my 50 mile finishing time of eight hours and 54 minutes qualified me to enter the lottery to run the Western States 100 mile Endurance Run.

Lesson learned: *Runners never learn their lesson.*

NEWS FROM THE BAR

Rules would require prosecutorial disclosure, modify VCLE/MECLE

The Board of Governors invites member comments regarding the following proposed amendments to the Alaska Bar Rules and the Alaska Rules of Professional Conduct. Additions are in italics while deletions have strikethroughs.

Comment period extended for prosecutor disclosure rule

Alaska Rule of Professional Conduct 3.8. Special Responsibilities of a Prosecutor. The American Bar Association House of Delegates adopted an amendment to Model Rule of Professional Conduct 3.8 at its August 2009 Annual Meeting adding new subparagraphs (g) and (h).

Subparagraph (g) adds that when a prosecutor knows of new, credible, and material evidence creating a reasonable likelihood that a convicted defendant did not commit the offense for which the defendant was convicted, the prosecutor must promptly disclose the evidence to an appropriate court or authority, and, if obtained in the prosecutor's jurisdiction, promptly disclose the evidence to the defendant unless a court authorizes delay and undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.

Subparagraph (h) adds that when a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

The Alaska Rules of Professional Conduct Committee considered this amendment at a meeting on August 28, 2009. The Committee voted to recommend adoption of the amendments to the Board. The Board voted to publish the rule for comment at the October 2009 meeting and considered it once again at the January 2010 meeting. In light of requests for additional time to comment on the proposed rule, the Board voted to re-publish and consider the rule at the April 26-27, 2010 meeting.

Rule 3.8 Special Responsibilities of a Prosecutor.

…

(g) When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:

(1) promptly disclose that evidence to an appropriate court or authority, and

(2) if the conviction was obtained in the prosecutor's jurisdiction,

(A) promptly disclose that evidence to the defendant unless a court authorizes delay, and

(B) undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.

(h) When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

COMMENT

[1] A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice, ~~and~~ that guilt is decided upon the basis of sufficient evidence*, and that special precautions are taken to prevent and to rectify the conviction of innocent persons*. ~~Precisely how far the prosecutor is required to go in this direction~~ *The extent of mandated remedial action* is a matter of debate and varies in different jurisdictions. Many jurisdictions have adopted the ABA Standards of Criminal Justice Relating to the Prosecution Function, which in turn are the product of prolonged and careful deliberation by lawyers experienced in both criminal prosecution and defense. *Competent representation of the sovereignty may require a prosecutor to undertake some procedural and remedial measures as a matter of obligation.* Applicable law may require other measures by the prosecutor and knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of Rule 8.4.

…

[7] When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a person outside the prosecutor's jurisdiction was convicted of a crime that the person did not commit, paragraph (g) requires prompt disclosure to the court or other appropriate authority, such as the chief prosecutor of the jurisdiction where the conviction occurred. If the conviction was obtained in the prosecutor's jurisdiction, paragraph (g) requires the prosecutor to examine the evidence and undertake further investigation to determine whether the defendant is in fact innocent or make reasonable efforts to cause another appropriate authority to undertake the necessary investigation, and to promptly disclose the evidence to the court and, absent court-authorized delay, to the defendant. Consistent with the objectives of Rules 4.2 and 4.3, disclosure to a represented defendant must be made through the defendant's counsel, and, in the case of an unrepresented defendant, would ordinarily be accompanied by a request to a court for the appointment of counsel to assist the defendant in taking such legal measures as may be appropriate.

*[8] Under paragraph (h), once the prosecutor knows of clear and convincing evidence that the defendant was convicted of an offense that the defendant did not commit, the prosecutor must seek to remedy the conviction. Necessary steps may include disclosure of the evidence to the defendant, requesting that the court appoint counsel for an unrepresented indigent defenda*nt *and, where appropriate, notifying the court that the prosecutor has knowledge that the defendant did not commit the offense of which the defendant was convicted.*

[9] A prosecutor's independent judgment, made in good faith, that the new evidence is not of such nature as to trigger the obligations of sections (g) and (h), though subsequently determined to have been erroneous, does not constitute a violation of this Rule.

Please send comments to: Executive Director, Alaska Bar Association, PO Box 100279, Anchorage, AK 99510 or e-mail to info@alaskabar.org by April 16, 2010.

2 panels would also qualify for VCLE/MECLE credit

Bar Rule 65. Continuing Legal Education. This rule currently allows members of the Law Examiner's Committee, the Ethics Committee, the Alaska Rules of Professional Conduct Committee, and any standing rules committees appointed by the Bar Association or the Alaska Supreme Court to qualify for VCLE or MECLE credit, as appropriate, for the work they perform on these committees.

Since members of the Area Discipline Divisions and Area Fee Dispute Resolution Divisions frequently consider substantive legal and/or ethics issues in the course of their work, it would be appropriate to permit them to receive VCLE or MECLE, as appropriate, in the same manner as members of the committees already named in the rule.

This proposal would add a new subparagraph (g) to Bar Rule 65 to permit this VCLE or MECLE credit.

Rule 65. Continuing Legal Education.

…

(g) ***CLE Activities***. The MECLE and VCLE standards of this rule may be met either by attending approved courses or completing any other continuing legal education activity approved for credit under these rules. If the approved course or activity or any portion of it relates to ethics as described in (a) of this rule, the member may claim MECLE credit for the course or activity or for the ethics-related portion of it. Any course or continuing legal education activity approved for credit by a jurisdiction, other than Alaska, that requires continuing legal education is approved for credit in Alaska under this rule. The following activities ~~may be considered~~ *are approved* for credit when they meet the conditions set forth in this rule:

(1) preparing for and teaching approved MECLE and VCLE courses and participating in public service broadcasts on legal topics; credit will be granted for up to two hours of preparation time for every one hour of time spent teaching;

(2) studying audio or video tapes or other technology-delivered approved MECLE and VCLE courses;

(3) writing published legal articles in any publication or articles in law reviews or specialized professional journals;

(4) attending substantive Section or Inn of Court meetings;

(5) participating as a faculty member in Youth Court;

(6) attending approved in-house continuing legal education courses;

(7) attending approved continuing judicial education courses;

(8) attending approved continuing legal education courses including local bar association programs and meetings of professional legal associations;

(9) participating as a mentor in a relationship with another member of the Alaska Bar Association for the purpose of training that other member in providing effective pro bono legal services;

(10) participating as a member of the Alaska Bar Association Law Examiners Committee, the Alaska Bar Association Ethics Committee, the Alaska Rules of Professional Conduct Committee, or any standing rules committees appointed by the Alaska Bar Association or the Alaska Supreme Court;

(11) participating as a member of an Area Discipline Division or an Area Fee Dispute Resolution Division.

Become a court-appointed volunteer for youth

By Maria-Elena Walsh

Alaska has one of the nation's highest rates of child abuse and neglect. On any given day, more than 2,000 children in Alaska are wards of the state due to domestic abuse and neglect, and are living in foster homes. Each year, hundreds of abused and neglected children and youth in Alaska "fall through the cracks." In reality, many of these vulnerable children will become trapped in the court and child welfare maze, moving from one temporary home to another.

A "CASA" changes that. CASA is a national volunteer movement that began more than 25 years ago, when Judge David Soukup in Seattle decided he needed to know more about the children whose lives were in his hands. His solution was to ask community volunteers to act as a "voice in court" for abused and neglected children. These Court Appointed Special Advocates™ (CASA) provided him with the detailed information he needed to safeguard the children's best interests and ensure that they were placed in safe, permanent homes as quickly as possible. The program was so successful that it was copied around the nation.

For over 20 years, Alaska CASA, a program of the Office of Public Advocacy has trained volunteers to advocate for abused and neglected children in court. In fact, CASA is the only volunteer organization that empowers citizens as officers of the court. Unfortunately the Alaska CASA Program is currently able to provide only one out of every four children in state custody a trained volunteer advocate.

Friends of Alaska CASA (FAC) is a non-profit organization that supports the work of the Alaska CASA program. As a non-profit organization, FAC raises funds to support and expand the CASA both in urban and rural communities.

Friends of Alaska CASA's goal is to support CASA programs train and assign more CASA volunteers for abused and neglected children. Our goal is to recruit a team of 100 CASA supporters and volunteers by June 30, 2010. We are asking you as a citizen of this great state to STAND UP and be part of the Team 100 and support the CASA program. Now is the time to help a child in need.

Members of the Alaska Bar Association and their staff can join the Team of 100 to STAND UP for an abused and neglected child. There are several ways you can help as a team member:

1. Become a CASA volunteer,

Court Appointed Special Advocates are community volunteers trained by the Office of Public Advocacy (OPA) to speak up for abused and neglected children in court. With the information provided by the CASA volunteers, judges are able to make more informed decisions as to what is best for the child.

2. Sponsor a CASA volunteer.

Not ready to be a CASA volunteer? For as little as $100 a month, you can sponsor a CASA volunteer for one year. It costs the CASA program approximately $1000 to recruit, train and support a new CASA volunteer. A two-year commitment of $1,000 each year means a CASA volunteer will be advocating for vulnerable children in Alaska.

3. Support a colleague.

Support a member from your firm to become a CASA volunteer by giving them administrative leave when they need to attend meetings or court appearances with the child;

4. Host an informational meeting.

Help recruit CASA supporters by hosting a 45 minute informational gathering of 10 or more friends/relatives/associates in your home, law office or before a professional organization/association or your place of worship.

If you are a member of an organization holding a public or in-house event, invite Friends of Alaska CASA to have a free informational table on Alaska's CASA program.

5. Get informed.

Visit our website at www.friendsofalaskacasa.org to learn more about Friends of Alaska CASA and to donate to help us continue with our mission.

For more information or questions, call Friends of Alaska CASA at 222-2534 or email me at mariaelena@friendsofalaskacasa.org

The author is the Outreach Coordinator, Friends of Alaska CASA
P. O. Box 242484, Anchorage, Alaska 99524/ 907-222-2534

Quote of the Month

"I am not bound to win, but I am bound to be true. I am not bound to succeed, but I am bound to live by the light that I have. I must stand with anybody that stands right, and stand with him while he is right, and part with him when he goes wrong."

— *Abraham Lincoln*

Alaska Pro Bono Program hosts second Wills Clinic for Habitat For Humanity

By Kara Nyquist

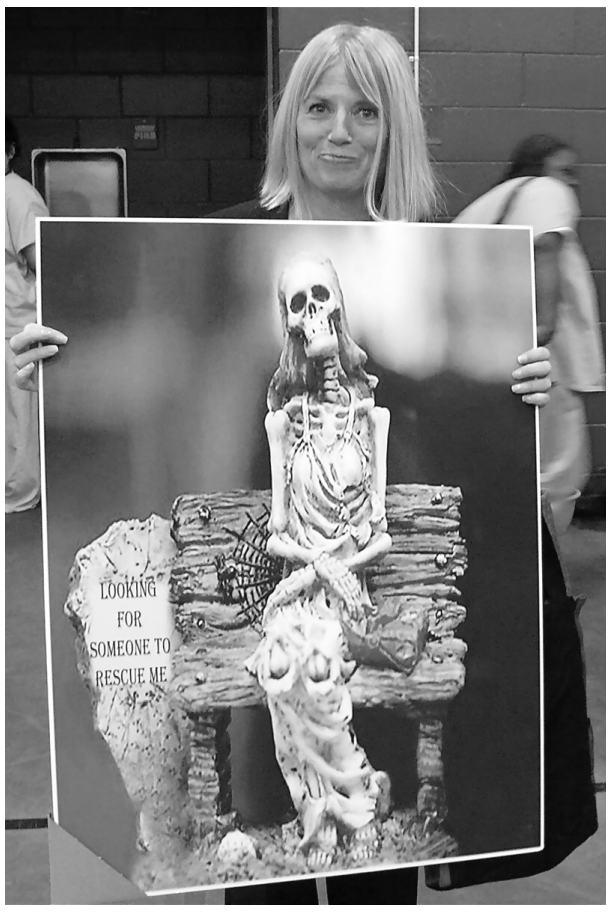
A Wills clinic was held on February 10, 2010 that benefited 12 Habitat for Humanity housing recipients. Kara Nyquist, Executive Director of the Alaska Pro Bono Program, Krista Scully, Pro Bono Director at the Alaska Bar Association, and Margaret Forbes Family Services Coordinator at Habitat, organized the event that brought together seven families-including Hmong and Spanish-to provide vital life planning assistance to secure their new homes.

The clients received direct service from seven volunteer attorneys, four volunteer paralegals, and two language interpreters hired from the Language Interpreter Center housed at the Alaska Immigration Justice Project to leave with a Will in hand.

Many thanks to volunteer attorneys Chris Brecht from Bankston Gronning O'Hara P.C., Susan Foley and Bill Pearson from Foley & Foley P.C., Amrit Kaur Khalsa, Maribeth Conway, Larry Wood, and Michael Shaffer. Additional thank you's to paralegals Cheri Shrader of Dorsey Whitney LLP, Kim Pinkerton of Alutiq, Debbie Simpson of the State of Alaska, and Dena Bryant of Feldman Orlansky & Sanders.

Three more clinics will be held in Anchorage over the next two years to assist additional Habitat for Humanity housing recipients. Attorneys, paralegals, and interpreters interested in volunteering should contact Kara Nyquist at knyquist@alaskaprobono.org<mailto:knyquist@alaskaprobono.org>. The next clinic is expected to take place in October 2010.

CLASSIFIED ADVERTISING



Each year at SIO, Assistant Public Defender Margi Mock relates her personal experiences as a young mother who spent most of her high school years on probation. She encourages participants to look for strength within themselves, and shares the sign she keeps in her office, which reads, "Looking for someone to rescue me."

Conference sponsors and corrections officials gather before the opening ceremony, L-R: Dean Marshall, Superintendent, Hiland Mountain Correctional Center; Denise Morris, Executive Director, Alaska Native Justice Center; Commissioner Joe Schmidt, Department of Corrections; Sandra Schmidt; Justice Dana Fabe; Janice Weiss, Executive Director, YWCA.

Anchorage businesswoman and civic leader Eleanor Andrews conducts a mock job interview for SIO participants.

Former inmates share their stories of re-entry during a conference panel.

100 inmates participate in "Success Inside and Out"

One hundred women inmates participated in the most recent Success Inside & Out event, held October 31, 2009, at Hiland Mountain Correctional Center near Anchorage. SIO is a program to support women prisoners in re-entry that was founded by Justice Dana Fabe in November 2006.

Recidivism rates in Alaska are high, and re-entry programs such as SIO offer a promising way to reduce recidivism by giving released prisoners a stronger chance of success in their transition back into the community.

The SIO program brings women judges and professionals from the community to for a full day of workshops and plenary sessions designed to prepare women inmates for the transition to life outside jail.

Alaska Commissioner of Corrections Joe Schmidt, who has championed re-entry programs, offered the keynote presentation. Also featured were a wide variety of workshops on topics such as parenting, economic advancement, addiction treatment, succeeding in the workplace, mental health resources, fostering creativity, surviving probation, and promoting wellness.

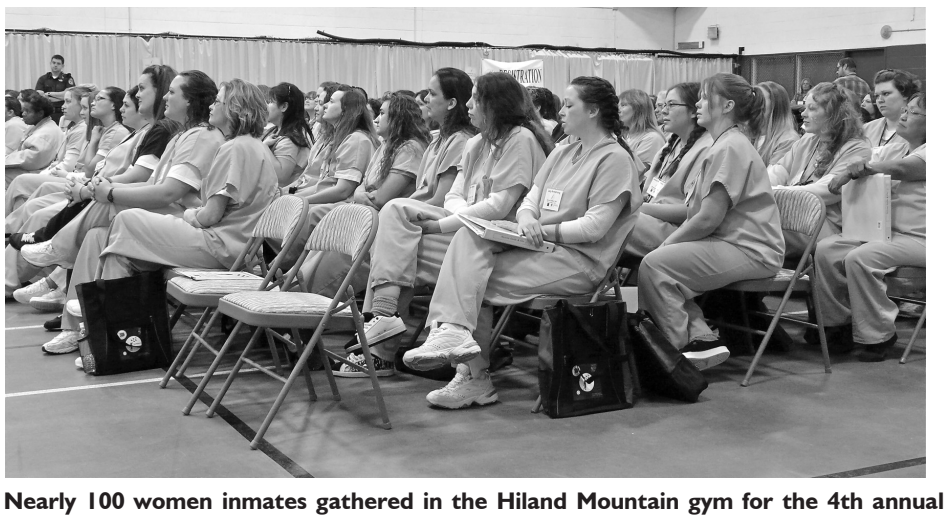
Highlights of the day included the traditional luncheon fashion show, which this year focused on building a basic wardrobe; mock job interviews; a session on journaling; and several interludes of motivational speaking and music.

The program continues to grow and garner community support, and to fulfill its mission of providing mentorship, encouragement, and information to women prisoners facing re-entry through interaction with women judges and professionals. Over 30 professional men and women served as volunteer presenters at the conference, and over 15 organizations participated in the various activities. SIO is sponsored by the National Association of Women Judges, the Alaska Court System, the Alaska Native Justice Center, and the YWCA. For more information, please contact SIO Coordinator Brenda Aiken (264-8266, baiken@courts.state.ak.us).

Stacey Marz of the Alaska Court System's Family Law Self-Help Center conducts a conference workshop.

Conference sessions include workshops on health and wellness. Here, inmates enjoy an introduction to Yoga.

A highlight of the SIO program each year is the luncheon fashion show, during which inmates model clothing from Second Run, a high-end Anchorage consignment shop. Shop owner Ellen Arvold, seen here at the podium, volunteers to coordinate the fashion show each year.



Nearly 100 women inmates gathered in the Hiland Mountain gym for the 4th annual program.

ESTATE PLANNING CORNER

The 2010 Tax Act is here

By Steven T. O'Hara

Estate planning is complicated because clients' lives and taxes are complicated. For 2010, estate planning has become even more complicated.

Remember the Tax Act of 2001? Under that law the estate tax and the generation-skipping tax disappeared January 1, 2010 but are scheduled to *come back in full strength on January 1, 2011.* It is possible but now appears unlikely that the federal government will reinstate these taxes sooner than January 1, 2011.

For the year 2010 only, the tax basis step-up rule is replaced with limited basis-increase opportunities (Economic Growth and Tax Relief Reconciliation Act of 2001, Sec. 901). Recall that the concept of "basis" is used in determining gain or loss from the sale or other disposition of property (IRC Sec. 1001 & 1011). If a client purchases stock for $1,000,000, for example, her basis in the stock is $1,000,000 (IRC Sec. 1012). If she then sells the stock for $3,000,000, her taxable gain is $2,000,000, which is the consideration received in excess of basis.

Under prior law, when a property owner died the person entitled to the property obtained a basis in the property that is "stepped-up" to the fair market value of the property (IRC Sec. 1014). Using our above example, if our client died when the fair market value of her stock is $3,000,000, her estate or beneficiary would obtain under prior law a fully stepped-up basis of $3,000,000 in the stock. Her estate or beneficiary could then sell the stock for as much as $3,000,000 at absolutely no federal income-tax cost.

The 2001 tax act provides that this step-up-in-basis rule will not apply in 2010 (IRC Sec. 1014(f)). The Act provides that beginning January 1, 2010, the carryover-basis rule that applies for gifts made during lifetime will apply to transfers at death (IRC Sec. 1022(a)(1)). (Recall that when a lifetime gift is made, the donee takes, in general, a carryover basis in the gifted property (IRC Sec. 1015).)

Suppose our client dies when the carryover-basis rule is in effect. Suppose the fair market value of our client's stock is $3,000,000 at the time of her death. Here her estate or beneficiary would appear to obtain a carryover basis of $1,000,000 in the stock (not a stepped-up basis of $3,000,000 as under prior law).

The 2001 tax act provides, however, some tax-basis increases for certain transfers at death occurring in 2010. These tax-basis increases are to be allocated among property by election by the decedent's personal representative (IRC Sec. 1022(d)(3)).

"For 2010, estate planning has become even more complicated."

For individuals dying in 2010, $1,300,000 of basis increase may generally be allocated among the decedent's property (IRC Sec. 1022(b)(2)(B)). Additional basis increase may be available in an amount equal to certain tax losses that were, or could have been, realized by the decedent (IRC Sec. 1022(b)(2)(C)). For married individuals dying in 2010, an additional $3,000,000 of basis increase may generally be allocated among the decedent's property that passes to the surviving spouse (IRC Sec. 1022(c)).

Continuing our above example, suppose again that our client dies when the carryover-basis rule is in effect. Suppose at the time of her death she was unmarried and her only asset was her stock with a basis of $1,000,000 but a fair market value of $3,000,000. Suppose she had no tax losses. Under the 2001 tax act, the personal representative of the decedent's estate may elect to increase basis from $1,000,000 to $2,300,000 (i.e., $1,000,000 carryover-basis plus $1,300,000 basis-increase election). If the stock is then sold for $3,000,000, the taxable gain would be $700,000, which is the consideration received in excess of basis.

The 2001 tax act is a reminder that clients need to review their asset ownership. All things being equal, clients will want to structure asset ownership so that sufficient property is owned by persons who can maximize any basis-increase opportunities.

Moreover, recall that the amount that may pass tax free at death ("applicable exclusion amount") and the amount that shelters generation-skipping transfers ("GST Exemption") increased to $1,500,000 in 2004, $2,000,000 in 2006 and $3,500,000 in 2009. These exclusion and exemption amounts are scheduled to return to about $1,000,000 on January 1, 2011.

Thus estate planning documents may need to be designed not only for years when the estate tax and the generation-skipping tax and prior basis-step-up rules are applicable, but also for the year 2010.

The answer to all the issues raised by the 2001 tax act appears to be "flexibility." For example, clients ought to create estate planning documents that are flexible in terms of giving the various players in the unfolding drama, as it were, the opportunity to move wealth around within various trusts.

The following provisions are offered as an example of possible flexibility that a married client might adopt as part of a Revocable Living Trust that is subject to Alaska law. They contemplate that the surviving spouse might disclaim property into the Family Trust (also known as the bypass or credit-shelter trust). The surviving spouse may be a beneficiary of the Family Trust, although the surviving spouse cannot have a testamentary power over any disclaimed property without disqualifying the disclaimer under tax law (Treas. Reg. Sec. 25.2518-2(e)(5) (Examples 4 and 5)).

The following provisions are for illustration purposes only and, in any event, must not be used without being tailored to the applicable law and the circumstances of the client:

A. If my spouse survives me, then as of the date of my death the Trustee shall set apart out of Net Trust Principal a separate trust named the Family Trust and shall allocate to it:

1. All trust principal that is not Qualified Property (defined below) and which is not otherwise effectively disposed of;
2. A fraction of Qualified Property (determined and defined below); and
3. Any portion of the Marital Gift (determined and defined below) disclaimed by my spouse.

B. The numerator of the fraction shall be the largest amount, if any, which, if allocated to the Family Trust, would not increase the total of any federal estate tax and those state death taxes computed by reference to any credit allowable under IRC Section 2011 payable from all sources by reason of my death.

C. The denominator of the fraction shall be an amount equal to the value of Qualified Property, as finally determined for federal estate tax purposes.

D. "Qualified Property" means any Net Trust Principal included in determining the value of my gross estate for federal estate tax purposes (including the proceeds of such property), which is not otherwise effectively disposed of and with respect to which a federal estate tax marital deduction can be obtained by election or otherwise. I recognize that if there is no federal estate tax system in existence at the time of my death, no Net Trust Principal will be Qualified Property.

E. As of the date of my death:

1. The Family Trust, if any, shall be divided and allocated into shares, per stirpes, for my descendants who survive me; provided, however, that since it is my intent here to allocate a share for my spouse as well, my spouse shall be considered a child of mine (under this subparagraph 1) for purposes of the per stirpes allocation;
2. Notwithstanding any other provision of this instrument, if my spouse disclaims any portion of the share allocated for him, the portion disclaimed shall devolve under this instrument as if my spouse had predeceased me, and if a descendant of mine for whom a share is allocated disclaims any portion of that share, the portion disclaimed shall be distributed outright and free of trust to my spouse as of the date of my death; and
3. The shares -- to the extent they remain after any disclaimer -- shall be considered derived from the Family Trust and administered as provided or referenced in Article VI, subject to the directions for maintaining GST Exempt and non-Exempt principal in separate, but related, trusts, as provided elsewhere in this instrument.

F. If my spouse survives me, then as of the date of my death the Trustee -- after providing for any allocation to the Family Trust -- shall divide and allocate the balance of Net Trust Principal (the "Marital Gift") into two separate trusts, one named the Marital Election Trust and the other named for my spouse.

G. The Trustee shall allocate to the Marital Election Trust a fraction of the Marital Gift. The numerator of the fraction shall be an amount equal to the unused portion of my GST exemption remaining after all allocations of such exemption before or after my death other than to the Marital Election Trust. The denominator of the fraction shall be an amount equal to the value of the Marital Gift, as finally determined for federal estate tax purposes. The Trustee shall allocate the balance of the Marital Gift to the trust named for my spouse.

H. The trust named for my spouse, if any, and the Marital Election Trust, if any, shall each be administered as provided in Article VII.

Alaska Supreme Court launches "Supreme Court Live" program

On February 19, 2010, the Alaska Supreme Court visited West High School in Anchorage for the first "Supreme Court LIVE" educational program. The court heard oral arguments in two pending cases before an audience of 400 high school students from across the Anchorage School District.

The first case—*Olsen v. Hooper Bay*—is a civil matter addressing whether police officers are entitled to qualified immunity against claims they used excessive force when they tasered a man multiple times while arresting him in his home. Michele Power of Power & Brown in Bethel argued the case for Appellant Thomas Olsen, and William Ingaldson of the Anchorage firm Ingaldson, Maassen & Fitzgerald PC argued the case for Appellees City of Hooper Bay and three of its police officers.

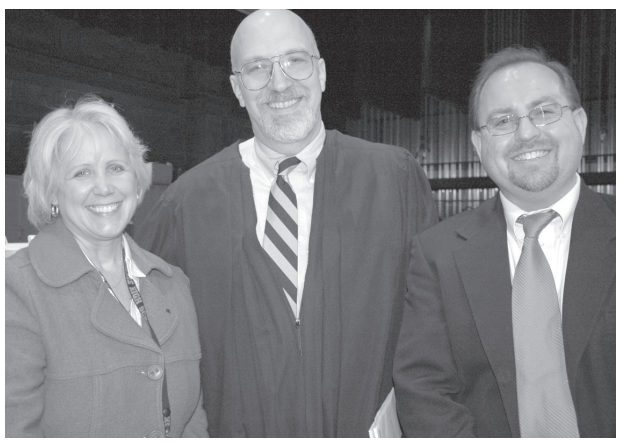
The second case—*State v. Gibson*—is a criminal matter involving whether the "emergency aid" exception to the search warrant requirement applies when police respond to a domestic violence call, secure the likely victim and perpetrator outside a home, then enter the home without a warrant and discover a methamphetamine lab. Assistant Attorney General W. H. Hawley argued for Petitioner State of Alaska, and Assistant Public Defender Sharon Barr argued for Respondent Robert Gibson.

Teams of volunteer attorneys from the Alaska Bar Association's Law-Related Education Committee and Appellate Law Section visited participating classes in the weeks before the event to help students understand the appellate process and the cases themselves, using case summaries and information made available on the court's website: http://www.state.ak.us/courts/outreach.htm#scl.

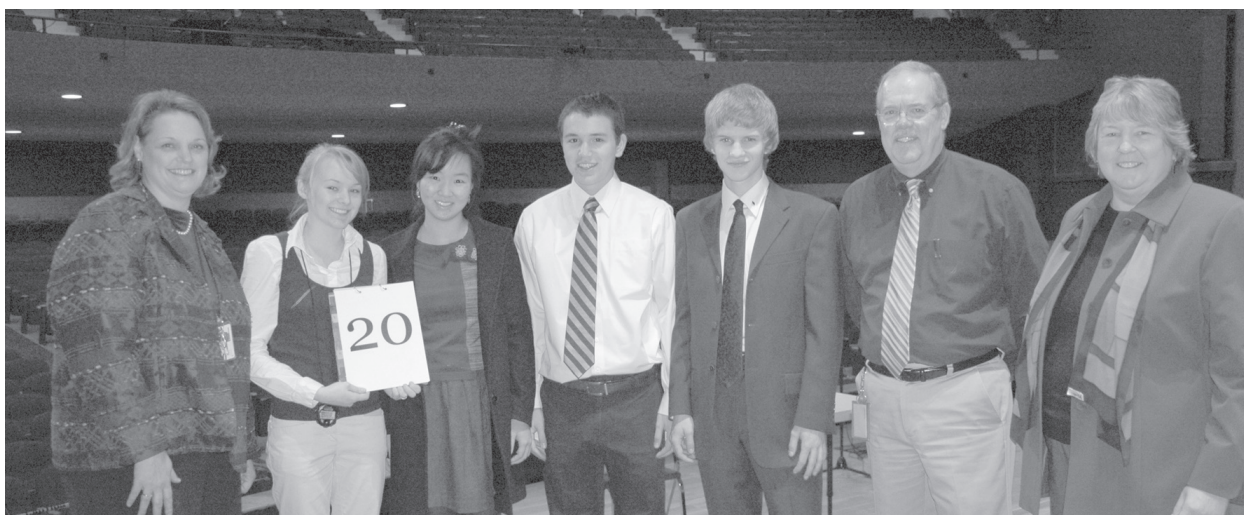
Following each oral argument, attorneys answered questions from the student audience while the supreme court met in conference.

To close the program, members of the court returned to the stage for a question and answer session about the legal system and legal careers.

According to Chief Justice Carpeneti, the court hopes to hold future Supreme Court LIVE programs each year in Anchorage and every other year in Fairbanks and Juneau as a way to foster better understanding of the justice system. "We'd like (students) to have a sense of what it is that we do and how we do it," he said.



Pamela Orme, L, West High Social Studies Department Chair and We the People coach, served as the school liaison for Supreme Court LIVE. Here she meets with Chief Justice Walter Carpeneti and West High Principal Rick Stone, who hosted the event.



Members of the West High School We the People team served as timers for the oral arguments. L-R: Lori Wade, Chief Deputy Clerk of the Appellate Courts; Sofiya Kostareva, Geurim (Junie) Kim, Michael Notti, and Jeffery Linxweiler, West High We the People; Rob Lauriguet, Appellate Case Manager for Case #1; and Marilyn May, Clerk of the Appellate Courts.

Sean Brown and Michele Power of the Bethel firm Power & Brown appear at counsel table on the West High Auditorium stage.

Members of the Alaska Supreme Court gather in the Green Room of West High Auditorium before the start of the Supreme Court LIVE program, L-R: Justice Daniel Winfree, Chief Justice Walter Carpeneti, Justice Dana Fabe, Justice Morgan Christen, and Justice Craig Stowers.

THANK YOU
TO THE FOLLOWING ATTORNEYS FOR VOLUNTEERING TO VISIT CLASSROOMS TO HELP STUDENTS PREPARE FOR SUPREME COURT LIVE

Brooks Chandler
Erin Dougherty
Jeff Feldman
Gregory Fisher
Laura Fox
Stephanie Galbraith
Leslie Hiebert
Barbara Jones
Susan Orlansky
Bryan Schroder

Chester v. Thaler: Dispatches from New Orleans

By Jeff Feldman

In 2003, Jeff Feldman and Susan Orlansky took on a death penalty case in Texas pro bono. The defendant, Elroy Chester, was on death row for having committed five murders over six months in 1997-98 in the east Texas town of Port Arthur. In July 2002, the U.S. Supreme Court held, in Atkins v. Virginia, that execution of mentally retarded individuals violates the Eighth Amendment ban on cruel and unusual punishment. School and prison records document Elroy Chester's mental retardation, so Feldman and Orlansky began what became a lengthy battle to vacate Chester's death sentence. With the case now pending in the Fifth Circuit Court of Appeals, the report below picks up on Feldman's 2004 "Dispatches from Beaumont."

•

Day 1

Five and a half years have passed since the trial in Beaumont, Texas -- a trial that resulted in a finding by Jefferson County Judge Charles Carver that Elroy Chester is not mentally retarded and that he lawfully may be executed by the State of Texas. That ruling was contrary to the great weight of the evidence, and was based on an application of Texas law that stands the diagnostic world of mental retardation on its head. So the battle has continued.

Subsequent to the trial court's decision in 2004, Elroy Chester's case was heard -- and affirmed -- by the Texas Court of Criminal Appeals ("TCCA"). The TCCA has about the worst track record of any state court in the country on death penalty cases, as measured by reversals by the U.S. Supreme Court (which, itself, is no weak-kneed body when it comes to enforcing capital punishment). So, we were not optimistic that the case would take a turn for a better direction in that forum. By contrast, the state was so confident of its chance of preserving the trial court's decision, it did not even file a brief with the TCCA. As things worked out, our lack of optimism was not misplaced. Elroy Chester's case was decided by an appellate panel that included Presiding Judge Sharon Keller, a jurist whose views on death penalty cases are so predictable that she often is referred to by Texas defense lawyers as "Judge Killer."

Ironically, after the Texas appeals court decided the Chester case, Judge Keller found herself in legal trouble of her own and was called to task by the Texas Commission on Judicial Conduct for her handling of another death penalty case. Lawyers at the Texas Defender Service for Michael Richards sought a stay of his execution pending a decision by the U.S. Supreme Court in the Baze case (which challenged the constitutionality of lethal injections).

Due to computer problems, the Texas Defender Service could not file the stay of execution request before 5 pm, when the clerk's office closed, so they called the clerk to ask if they could file late. The court clerk called Judge Keller to ask if the clerk's office could stay open late to accept the stay request. Keller told the clerk to tell the lawyers that "the clerk's office closes at 5." The clerk did as directed. Richards was executed later that night. It was not Judge Keller's finest moment, nor her first brush with controversy. See http://en.wikipedia.org/wiki/Sharon_Keller.

One surprise in Chester's case was that the TCCA took until February 2007, almost two and a half years, to issue its decision. The other surprise was that the TCCA reversed the trial court on one key finding; it determined that we had established that Chester's IQ is below 70, which puts him in zone where mental retardation is diagnosed. But mental retardation requires proof of subaverage adaptive functioning as well, and the TCCA, looking mostly at the horrific nature of Chester's crimes and disregarding the scientific and clinical ways in which adaptive functioning is generally assessed, affirmed the trial court's decision that Chester had not proved his subaverage adaptive functioning. So the death sentence was affirmed.

Once the Texas Court of Criminal Appeals had issued its decision, we were thankfully done with the state courts in Texas. We then filed parallel petitions, one for habeas corpus relief with the federal court in the Eastern District of Texas and the other for issuance of a writ of certiorari with the U.S. Supreme Court.

Pursuing a direct appeal to the Supreme Court at that point was an obvious long shot, but there was no downside risk. So we let fly with the two long briefs within a short time of one another. The Supreme Court took up Chester's petition for certiorari first, in the beginning of its fall term in 2007.

The week before the court session commenced, we were encouraged when ScotusBlog, a Supreme Court monitoring blog run by some heavyweight academics and Supreme Court practitioners, listed the Chester case as "one to watch" and predicted that the court might grant review.

The U.S. Supreme Court had been doing battle with the Texas courts for some time in death penalty cases, and our hope was that the court would see Chester as a vehicle by which it could redress the latest effort by Texas to avoid the court's limitations on imposition of the death penalty.

Our petition was slated to be considered by the justices at an early conference in the 2007 term and we anxiously awaited the court's first report of "Petitions Granted" and "Petitions Denied." Unexpectedly, the court reviewed our petition in Chester and did not grant or deny the petition. Instead, the court decided to hold the petition for further review at the following week's conference. We learned that this likely meant that three justices had voted in favor of granting the petition (one less than the four votes needed to obtain review by the court), and that the case had been held over to give those justices time to try and round up another vote; not as good as a decision granting review; but better than a decision denying it.

Facing a second conference, our optimism had swelled. It was apparent -- we thought -- that the court was taking the petition seriously and that the court watchers and bloggers were correct in their early assessments.

But following the second consideration by the U.S. Supreme Court of the certiorari petition in *Chester v. State of Texas,* we received word that the petition had been denied. Apparently, the needed fourth vote never materialized. Despite the long (impossible) odds of securing review by the court, we'd been seduced by the court's protracted process over the prior three weeks and, when the decision finally was rendered, it cast a pall that lingered for a while. Hope is a dangerous thing in capital punishment cases.

The parallel habeas corpus petition filed in the federal court in the Eastern District of Texas was still pending, so we soon directed our attention to that matter. We completed the briefing of the habeas petition in early 2008 and, in the spring, the court rendered its decision, declining to reverse the decisions of the Texas state courts and denying the habeas petition. The speed of adverse decisions was starting to increase and it felt bad.

•

The current appeal to the Fifth Circuit Court of Appeals followed. The Fifth Circuit is the equivalent, on the federal level, of the Texas Court of Criminal Appeals and it similarly enjoys a well-earned reputation as the toughest circuit court in the country on death penalty cases. But it is comprised of a mix of Clinton-era and Bush-era judges, so it's not monolithic and outcomes are sometimes driven by the luck of the draw on judicial assignments.

The Chester case is assigned to a panel comprised of Chief Judge Edith Jones (who was on the Bush short list for Supreme Court appointments and has a reputation for being very tough on death penalty cases) and two Clinton-era judges (James Dennis, a University of Virginia grad from Louisiana and Carl Stewart, an African-American graduate of Loyola).

Briefing on Chester's federal appeal was completed in late 2008. We requested oral argument, but we were advised repeatedly by Texas death penalty lawyers that the Fifth Circuit rarely grants oral argument in death penalty cases.

So, after the briefing was completed, we watched the notices from the court with trepidation, never sure when word would come of another adverse decision in Elroy Chester's case.

Months went by and we heard nothing from the court. Then, unexpectedly, we received word late in October 2009 that the court had set the case for oral argument on November 30 in New Orleans. It was, undeniably, a good sign. But we received word of the court's decision to grant argument with the cautious optimism tempered by our Supreme Court experience in 2007.

The few weeks leading up to the argument were spent re-reading briefs and court decisions and discussing strategy with our death penalty colleagues in Texas.

I already was slated for an appellate argument in another case in Alaska just a couple of days after the Chester argument. So, we decided that it would be best if Susan took the lead on the Fifth Circuit argument, and the heavy lifting for preparation fell to her.

Elroy was happy about the news of the argument, but he also confessed to being afraid of what "that fift circit (sic)" would do. Apparently, the court's reputation in capital cases is widely known and understood, even among cognitively impaired inmates on death row in Livingston, Texas.

On the Saturday following Thanksgiving, Susan and I rendezvoused at the Seattle airport and flew on to New Orleans. It was the first time we'd been on the road for this case since 2004 and the memories of the trial in Texas predictably came rolling in.

When we initially received word from the Fifth Circuit about the oral argument, we sent Elroy a letter and explained what was occurring in his case. In short order, we received a note back from him. It was written in the form we've long become familiar with: lined notebook paper, neat penmanship, written in pencil, with the broken syntax and malformed words of a second-grader.

Elroy was happy about the news of the argument, but he also confessed to being afraid of what "that fift circit (sic)" would do. Apparently, the court's reputation in capital cases is widely known and understood, even among cognitively impaired inmates on death row in Livingston, Texas.

Day 2

There's a sense of dislocation be-

Continued on page 15

Chester v. Thaler: Dispatches from New Orleans

Continued from page 14

ing here in New Orleans for the Fifth Circuit argument. The Chester case is deeply rooted in Texas. Elroy Chester was born and raised in Port Arthur, Texas, which also was the birthplace of Janis Joplin and is the model of a small, poor, and seriously run-down Texas town.

The 2004 trial took place in Beaumont, Texas, and, while Beaumont is larger and richer than Port Arthur, from its barbecue to its beer and cowboy boots, it's still very much Texas. And embedded in the Chester case was the record of a long history between Chester and the State of Texas that started with the Texas school system, then moved on to the Texas courts and the Mentally Retarded Offenders Program in the Texas Department of Criminal Justice, and ending with death row in Livingston, where all of Texas' 346 prisoners awaiting execution reside.

But here we are in Louisiana. And, as close as it is, New Orleans is definitely not Texas.

This was apparent when we took a break from our preparations for tomorrow's argument and went for a walk this afternoon through the French Quarter. Nineteenth Century buildings with overhanging balconies, narrow streets, music and gumbo on every corner. Even post-Katrina, New Orleans has a level of charm and grace that seems seriously un-Texan. It feels almost as if the Chester case has been airlifted to Paris.

At one point I said to Susan, "one thing about this case, the surroundings and food keep getting better." And that much, at least, is true. It would be a pleasant development if the quality of judicial decision-making in the case could start to follow along with the cuisine.

There's not much question that Susan is well-prepared for tomorrow's argument. I spent time this afternoon grilling her, trying my best to morph into as tough a judge as possible since that's what we've been told to expect from Chief Judge Edith Jones.

I must have done OK, as Susan made some reference to Torquemada, which I took to be a compliment although it may not have been intended as such. Whether tested on the facts or the law, Susan held her ground ably and I'll be surprised if she draws a question tomorrow to which she lacks a good answer.

We picked apart a few of the responses, talked through some of the issues, and reviewed the strategy for the argument. But it mostly was just for peace of mind -- she's been living with this for a long time and is ready. We'll have time tomorrow for a final run through, and then make our way to Fifth Circuit courthouse on Lafayette Square, around the block from our hotel.

Day 3

The argument this afternoon in front of the Fifth Circuit lasted an hour. It was alternately vigorous, tough, challenging, engaging, and annoying.

The Fifth Circuit Court of Appeals sits in an old, stately, and meticulously maintained stone building on Lafayette Square in New Orleans. The halls in the building are wide enough for two lanes of car traffic. The ceilings are 30 feet high. And it's as quiet as a library.

The West Courtroom, where the argument was held, likewise is large and graceful, and is paneled in dark wood. It's very "old-school" and one of those courtrooms that reminds you that, as a lawyer, you're part of a very old tradition. Before the argument began, the clerk of the court handed each of us an official U.S. Fifth Circuit Court of Appeals ballpoint pen. It was the first time Susan or I ever received a souvenir for going to court and I thought it was a nice, if somewhat curious, gesture. (The pen, like most things these days, was made in China.)

It's clear that the Chester case has the court's attention. As she announced the case and called on counsel, Chief Judge Edith Jones described the matter as "an interesting case" and, during the course of the arguments, both she and the attorney arguing for the State of Texas characterized the matter as "a close case." That's the most significant concession Texas or any judge has given us to date. And were it a proper legal argument, it would have been nice to have been able to suggest that perhaps, in close cases, the decision should tilt in favor of not killing the defendant.

After a few minutes of introductory remarks that set the stage, Susan's opening argument quickly morphed into an extended colloquy between her and Chief Judge Jones.

My assessment was that Chief Judge Jones was prepared, assertive, hostile to the case, protective of Texas and its judges, but professionally appropriate in demeanor. Susan was less charitable in her assessment, and it's possible that Susan's view on this is better than mine. Susan handled all of the questions that were put to her deftly, so my take was that if you hit a home run there's not much mileage in complaining that the pitcher was trying to bean you. But, that said, it doesn't mean that the pitcher wasn't trying to bean you and, as the designated beanee, I can understand that Susan legitimately could have a different perspective.

Apparently, when Susan hit the 20 minute mark in her argument and was in the equivalent of Round 18 with Judge Jones, Judge Dennis took some pity on her and weighed in with some friendly questions. That broke up some of the sparring and soon thereafter Susan's time expired and the State's lawyer was up at the podium.

The State's lawyer drew very few questions from Chief Judge Jones, and what questions she asked were friendly and lightweight, mostly indicating how deeply Chief Judge Jones likely is in the State's corner.

But both Judge Dennis and Judge Stewart came alive during the State's argument and peppered the State's lawyer with questions that, while not hostile, communicated obvious doubt and skepticism on their part with the State's position.

At one point Judge Dennis stopped the State's lawyer in mid-sentence and simply pronounced, "I just disagree with you." I'll confess that it was tough to sit still and not walk up to the bench and hug the guy.

Judge Dennis's active questioning of the State's lawyer came as a surprise. He has a reputation for being very quiet in oral argument, so much so that no lawyer in Texas that we spoke with in preparing for the argument so much as ever heard him speak in court. If the tone and content of his questioning of the State's lawyer wasn't enough to make me love him, as a Louisianan, Judge Dennis speaks very slowly. Actually, that's not true. He speaks v e r r r r y y y s l l o w w w l l y y. So, it was gratifying to see him both pummel the State's lawyer and eat up a lot of the State's argument time in a single, long, drawn out, unhappy question.

Susan had about five or six minutes for rebuttal, cleaned up a few issues that cropped up in the State's argument, and we were done. Chief Judge Jones requested supplemental briefing on three specific points -- which Susan regards as a chance to help the state plug some gaps in its argument.

At the end of the argument, Judge Stewart asked how it was that we were handling this case. He clearly was puzzled by the presence of lawyers from Alaska in a courtroom in Louisiana representing a defendant from Texas. Susan told him the short version of the tale, but I'm not sure if it completely resonated with him and I was left wondering if Judge Stewart wasn't sure who might be more cognitively impaired: Elroy or his lawyers.

There apparently is wide variation in the speed of Fifth Circuit decisions. We heard reports of one case in which the court issued a decision before the lawyer made his way back to his office following oral argument. And other cases that took as long as a year. The norm seems to be a few months and it seems likely that that will be the case here.

The court was well-versed in the case, seems to understand the issues, and each of the judges seems to have a perspective on the case. The outcome likely will hang on what effort they make to harmonize their views and just how much leeway two of the three of them are willing to give Texas in deciding who is and who is not mentally retarded.

As I've said, hope is a dangerous thing in the world of death penalty litigation but, smart or not, I'm hopeful.

Ed. Note: As the Bar Rag went to press in early March 2010, no decision had yet been rendered by the 5th Circuit in New Orleans.

Christen, Greenstein honored for achievement

Justice Morgan Christen of the Alaska Supreme Court and Marla Greenstein, executive director of the Alaska Commission on Judicial Conduct, were each honored as Women of Achievement at the 20th annual BP-YWCA Women of Achievement Awards luncheon held Dec. 9, 2009, in Anchorage.

Justice Christen's colleagues on the supreme court and several supreme court law clerks joined them to celebrate the occasion. L-R: William Wailand, law clerk to Justice Fabe; Rebecca Windt, law clerk to Justice Christen; Justice Daniel Winfree; Chief Justice Walter Carpeneti; Justice Christen; Neil Weare, law clerk to Justice Christen; Marla Greenstein; Justice Dana Fabe; Kelly Taylor, law clerk to Justice Fabe; Jessica Karbowski, law clerk to Justice Fabe; and Nicholas Muscolino, law clerk to Justice Christen.

Historical Bar — Early Juneau Judges "The Pioneers"

By Walter L. Carpeneti, Chief Justice

These remarks were first delivered at the Alaska Bar Association Convention and Judicial Conference in Juneau, Alaska on May 6, 2009, and reprised in Anchorage on December 10, 2010, as part of the Alaska Legal History Series commemorating the 50th Anniversary of Statehood. They were accompanied by a slide presentation from which the photos included are taken, available on the Alaska Court System website at www.courts.alaska.gov/outreach/50yrs-earlyjudges.pdf.

The Alaska Legal History Series, presented by the Alaska Bar Association and the Alaska Court System to commemorate the 50th Anniversary of Alaska Statehood, concluded on December 10, 2009, with the program "Early Juneau Judges-The Pioneers" by Chief Justice Walter Carpeneti. Judge James von der Heydt, the first judge appointed to the Juneau Superior Court, was honored at the event and presented with a photograph of the first Alaska Supreme Court and first judges of the Alaska Superior Court, taken in Juneau in November 1959. Pictured here are: (front, L-R) Myrna von der Heydt and Judge James von der Heydt; (back, L-R) Leroy Barker, Chair, Alaska Bar Historians Committee; U.S. Magistrate Judge Leslie Longenbaugh; U.S. Magistrate Judge John D. Roberts; Justice Morgan Christen; and Chief Justice Carpeneti.

I. Introduction

Fifty years ago Alaska left behind almost 100 years of second-class status as an American possession and joined the ranks of the American states. Statehood marked the end of a decades-long fight for the right to self-determination in the former territory, and it was achieved against substantial odds.

The list of Alaskan grievances against territorial status was long, and many of the complaints are familiar to most Alaskans today: dominance of the Territory's economic and political affairs by the large Outside commercial interests; salmon packing; minerals and other resource extractive industries; lack of control over our internal affairs; no voting representation in Congress.

But another deeply-held grievance concerned the judicial system, in which judges were appointed by officials in far-off Washington, DC. These judges, as political appointees, lacked independence, and were subject to dismissal if their decisions did not meet with the approval of the executive branch, the appointing authority. In addition, there were only four trial judges for the entire Territory, creating huge backlogs and long delays.

Also, there were no appellate judges in Alaska: Appeals were taken to the Ninth Circuit Court of Appeals in San Francisco. Finally, commissioners (the lower-court judges of that time) were dependent upon fines collected to pay for court expenses (and possibly salaries)! It made for a judicial system out-of-touch with the people it served, non-responsive to them, horribly slow, inefficient, and expensive.

The story of the creation of the state court system--practically out of whole cloth and in a breathtakingly short time--is what I'd like to talk about for a few moments today. And a big part of the story centers around three early Juneau pioneers: Tom Stewart, John Dimond, and Jim von der Heydt.

Tom Stewart's role in establishing the court system was multi-faceted: He set up the Constitutional Convention (1955); served as its Secretary, (1955-56); was a member of the Territorial House and first State Senate; served as the second Administrative Director of the Court System (1961-66); and as a superior court judge in Juneau (1966-81). John Dimond was appointed to the first supreme court (1959) and worked on the multiple tasks necessary to create a court system, from the promulgation of Rules of Court and the establishment of administrative procedures, to the leasing of facilities, creation and securing of a budget. Nominally retiring in 1971, Justice Dimond would serve an additional dozen years as a senior justice, helping to bring the ACS into the modern era. Jim von der Heydt was appointed at statehood to serve as the first superior court judge in Juneau, where he served until his appointment to the federal district court, where he remains a senior judge to this day.

II. Thomas B. Stewart

Tom Stewart was born January 1, 1919, to Ben and Edna Stewart of Juneau. Ben Stewart, after whom the tallest mountain on Douglas Island is named, was a towering figure, himself: A territorial mine inspector, mayor of Juneau, and confidant of governors. Tom was educated in Juneau public schools, showing a patriotic bent at an early age when he and his younger sister posed as Uncle Sam and the Statue of Liberty on the 4th of July. As a boy, he roamed all over the area: on and off the trails, on rivers and lakes, and in the mountains, becoming an expert skier.

Graduation photo Juneau-Douglas High School

Following graduation from Juneau High School, he earned his undergraduate degree at U. of Washington in 1941. In that year, he enlisted as a private in the Army, eventually attaining the rank of captain. During World War II, he saw action in the Aleutians and in Italy with 10th Mountain Division. He earned a silver star and two bronze stars for valor at the taking of Riva Ridge—the point at which the 10th Mountain Division broke through the Gothic Line, breaking the 2-year stranglehold the German Army had had on the Italian peninsula.

After the war, from 1946-1950, Stewart earned degrees from the School of Advanced International Studies at Johns Hopkins and from the law school at Yale. He also studied Russian at Middlebury during the summer. Following school, he returned to Alaska in 1951 to clerk for Judge George Folta of the territorial court, then worked for three years as an Assistant Attorney General in the territorial A.G.'s office. (The other assistant A.G. was John Dimond.)

In 1955, Stewart was elected to the House of Representatives, where he served as Chair of the Joint House-Senate Committee on Statehood and Federal Relations. In that capacity, he was involved in planning Alaska's Constitutional Convention. At his own expense, he embarked on a six-week trip across the country to locate the finest constitutional scholars and the best experts in the field of writing a constitution, to provide advice and guidance to the convention. Regarding that service, an article commemorating his 2005 Harley Award from the American Judicature Society, presented to him in Juneau by former U.S. Supreme Court Justice Sandra Day O'Connor said this: "The Constitution crafted by convention delegates has stood the test of time, with certain articles heralded nationally and internationally as models to follow."

Upon statehood in 1959, Alaska became one of the first states in the nation to adopt merit selection for judges under the Judiciary Article of its new constitution. In 2000, the late Justice Jay A. Rabinowitz remarked that the choice of merit selection was "probably one of the great things that the Constitutional Convention did because, in my view, the Judiciary Article is a splendid example of foresight and incredibly skillful drafting. Now there are about 35 states that have some form of our system, and there isn't a single state that wouldn't want our system in full.

In 1959, Tom was elected to first Alaska State Senate, where he served as Chair of the State Affairs Committee and a member of the Judiciary Committee. In the 1961 election, Tom at first appeared to have been re-elected by one vote, but he trailed by two votes upon a recount by the Elections Division. He decided not to request full recount, instead accepting a position as the second Administrative Director of the Court System. He held that position for five years, from 1961-66.

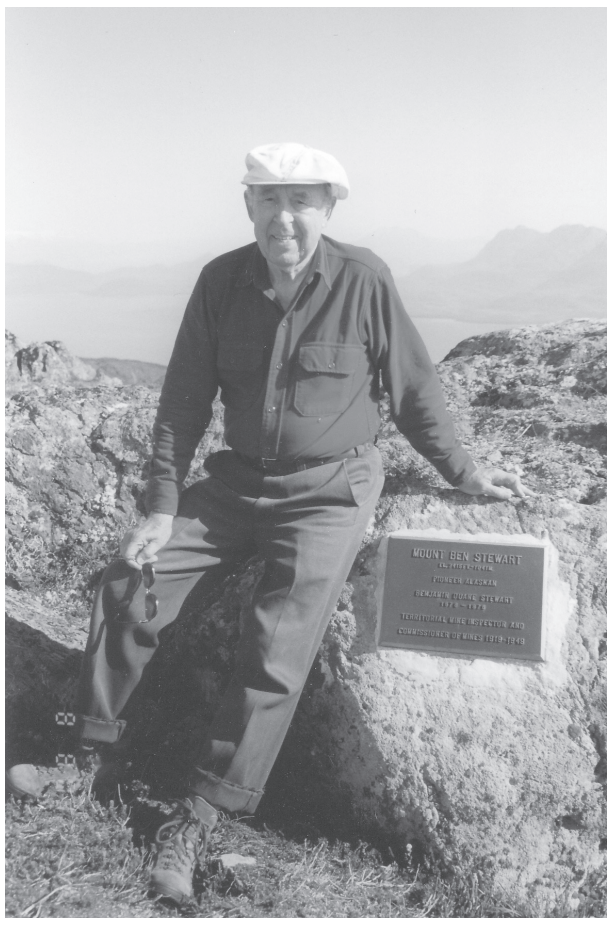
Being the second administrative director of the brand new court system was a huge job: 5,000 cases were transitioned immediately from the federal system, and the new state system was starting from nothing, as I'll discuss more fully when talking about John Dimond. In the early days, even furniture and supplies in great demand, with one early magistrate on the Kenai reporting that he had to use a Blazo box for a bench.

In 1966, Steward left the top court administrative post to accept appointment by Governor Bill Egan to the superior court in Juneau to replace Judge von der Heydt. That appointment would begin a sparkling judicial career,

Continued on page 17

Historical Bar

Early Juneau Judges "The Pioneers"



Stewart relaxes onn Mount Ben Stewart.

Judge Thomas Stewart in Juneau, circa. 1970s.

Stewart receiving Bronze Star from General Hayes.

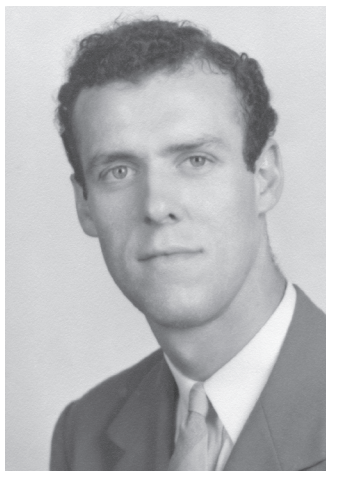
Continued from page 16

lasting until 1981, during most of which period he served as the presiding judge of the 1st Judicial District. I was immensely fortunate to arrive in Juneau a few years after his appointment, and to spend almost a decade appearing in his court. I was even more honored years later to be appointed to succeed him on the superior court. He was everyone's ideal of a judge.

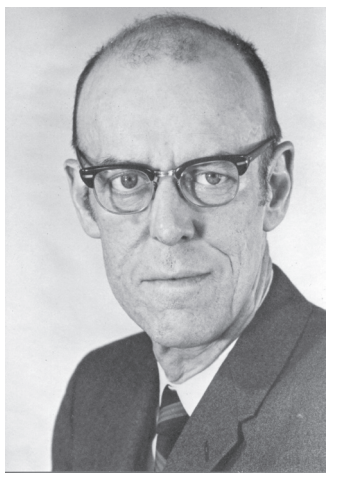
I'm happy to report that the Alaska Legislature, in recognition of Tom Stewart's monumental contributions to the State of Alaska, passed legislation during the 2009 session to name the former Scottish Rite Temple, which is in the process of being transformed into an annex to the State Capitol Building, the Thomas B. Stewart Legislative Office Building. The building is situated across the street from the Capitol and from the Dimond Courthouse, which is named, of course, for our next pioneer Juneau judge.

III. John H. Dimond

John Dimond was born in Valdez, Alaska, on Christmas Day, 1918, the son of Alaska's delegate to Congress and later federal judge Anthony Dimond. Although many who came to know John Dimond only relatively later in life think of him as slim and even somewhat frail, as a youth in Valdez, he grew big and strong.



John Dimond



Roger Connor, a colleague on the supreme court for many years, wrote this about John Dimond in a long piece in the Bar Rag::

"One other anecdote has been related about John's size and strength as a youth. Once in Valdez, in the 1930's, Bill Egan, later to become Alaska's first governor after statehood, was giving boxing lessons to some young fellows, including John Dimond and George Sullivan (later mayor of Anchorage). When John's turn to spar with Bill arrived, John with his first punch knocked Bill through a window and onto the ground outside. The lads inside waited for Bill Egan to reappear, but several minutes went by. When Bill finally came through the door he said, 'OK boys, the lesson is over for today'."

After Anthony Dimond's election as delegate to Congress, John attended a school run by the Christian Brothers in D.C. and then St. John's Military Academy.

John Dimond was extremely active as a young man, joining expeditions led by Father Hubbard, the "Glacier Priest," (after whom the Hubbard Glacier north of Yakutat is named). He was also seriously burned in a boating accident while helping to build the Shrine of St. Therese near Juneau, after fumes from gasoline that had leaked from a tank exploded. After a hospital stay that lasted months and involved several skin grafts, he traveled to Catholic University, in Washington, D.C., for college, and graduated in 1941.

In 1942, he joined the Army, completed OCS, and was commissioned a 2d lieutenant. As a platoon leader (1st lieutenant), he saw action in three campaigns in the South Pacific, for which he received the Silver Star, the Bronze Star, the Purple Heart, the Asiatic Pacific Medal with two bronze stars, and the Philippine Liberation Service Medal with a bronze star. One award citation he received includes the following description of his valor by O.W. Griswold, Major General, U.S. Army, Commanding:

"For gallantry in action at Bougainville, Solomon Islands, on 13 March 1944. Upon learning that a carrying party had received a heavy concentration of enemy mortar fire resulting in several casualties. Lieutenant Dimond, without regard for his own safety, advanced 250 yards to assist the fallen men. While aiding a wounded soldier amidst bursting mortar shells, Lieutenant Dimond was hit in both legs by shell fragments. although painfully wounded, he refused evacuation until all other casualties had been removed. Lieutenant Dimond's courageous action was an inspiration to his men, and exemplifies the highest traditions of gallant leadership."

When the war ended in 1945, John left the Army as a Captain. On the advice of Bob Bartlett, then Alaska's Delegate to Congress, he changed his study plans from mining to law, and enrolled in law school at Catholic University. After graduating in 1948, he returned to Alaska. His employer, J. Gerald Williams, was elected Attorney General, and John joined him in Juneau. Soon Tom Stewart joined the staff, and they worked together until 1953. John left to open an office with his father, but the elder Dimond died suddenly and John returned to Juneau, first for three years in sole practice and then three years with the Faulkner Banfield firm.

In 1959, Gov. Egan was tasked with appointing the first supreme court. Apparently forgiving the young John Dimond's knockout punch 25 years before, Gov. Egan appointed John Dimond to the supreme court. The court was appointed in August, 1959, with the plan for a gradual transition of responsibility from the federal to the state system. (The Congressional Statehood Act provided that the federal court would remain an "interim" court with jurisdiction for not more than three years. The first state legislature had initially provided that the transition from federal to state court would take place in 1962, three years after statehood.) That plan was interrupted by the threat of a lawsuit challenging the federal courts' jurisdiction over cases in the new state. Alaska's first chief justice, Beull Nesbett, described the predicament in a letter read many years later at Justice Dimond's memorial service in 1985:

"Immediately after John Dimond and I were sworn in by Gov. Egan on Aug. 7, 1959, we met in a borrowed office in Juneau to commence planning the Alaska Court System. We had no judges, no courtrooms, no offices or furniture, no rules of court, relatively limited funds and were faced with the immediate prospect of having to decide appeals as soon as activation occurred. Until the Alaska Court System was activated in February 1960 Justice Dimond worked night and day on almost every aspect of the organization with tremendous ability and utter selflessness."

Chief Justice Nesbett might well have added that there were "no law books, or at least not enough," to his list of shortages in 1959, as an item in the August 1960 Alaska Court System newsletter makes clear. An editorial entitled "Let'sGet Up To Date" stated:

"Would you look at a 1959 calendar to determine dates in 1960? Or follow a 1957 tide table to decide when to fish this year? Probably not, but SOME Alaska courts apparently still apply 1959 law, or older ones. At least slips have not been received from them indicating that their codes have been annotated. Bringing your codes up to date by marginal notations is a tedious and

Continued on page 18

Historical Bar Early Juneau Judges "The Pioneers"

Continued from page 17

time-consuming task, but it is absolutely mandatory that only law currently in effect be applied."

By December 1959, the Alaska Supreme Court issued its first opinion, in a decision written by John Dimond.The frenetic work of the court to organize a viable system in six months had paid off. It was lean and mean, as the list of the entire personnel of the ACS in 1960--comprising all of one page!--shows, but it was up to the task.

IV. James von der Heydt

Born in Miles City, Montana in 1919, Jim von der Heydt was fascinated by Alaska throughout his youth, and so he headed north shortly after graduating from Albion College in 1942. Arriving in Valdez, he obtained a construction job in the war effort, and he worked on building a steel bridge over the Nenana River near Tok. During the next few years he would also work on the Alcan Highway and at Marks Air Force Base in Nome.

He was eventually offered the job of Deputy U.S. Marshall in Nome, where he served from 1945 to 1948. He was responsible for law enforcement in a region that spanned from Hooper Bay to Barter Island, and he traveled extensively by dog team, umiak (Native skin boat), or bush plane--"whatever method was needed to get me where I had to go." (Unfortunately, we have not been able to locate a picture of Judge von der Heydt mushing a dog team.)

In 1948, he went to Northwestern Law School, returning to Nome in 1951, serving briefly as U.S. Commissioner, then U.S. Attorney (until 1953), then in private practice until 1959.

As the only private lawyer in town, he was assigned all the criminal appointments from the court. He served as Nome City Attorney for several years, and on the board of governors of the Alaska Bar, serving as its president in 1958-59. He was also elected to the last territorial House of Representatives in 1957.

With statehood, Gov. Egan appointed von der Heydt to the superior court, one of only eight superior court judges throughout the new state. All of the new superior court judges were sworn in together, in a joint session in Juneau, on Nov. 29, 1959. The new judges promptly were sent to New Jersey for training, a precursor to the National Judicial College training made available to new judges nowadays.

Judge James von der Heydt at work circa. 1959.

Especially in the early years, all of the judges worked on planning for the new system. Judge von der Heydt served the Alaska Court System as the superior court judge for Juneau for nearly seven years, helping guide the new state's judicial system through a period of critical transition. He was vigorous in attacking the backlog in Juneau

In 1965, President Lyndon Johnson appointed Judge von der Heydt to the federal district court in Alaska. He has served the state, through his service to the federal District Court in Alaska, for more than four decades since then.

V. Conclusion

The achievements of Tom Stewart, John Dimond, and Jim von der Heydt – in planning and helping create a new state constitution, in planning and executing a new state court system, in implementing installation of that system in Juneau -- were remarkable both for the breadth of their undertakings, the excellence of their work, and the speed with which their tasks were completed.

I think that this brief look at the backgrounds of these remarkable men gives us some hint as to how they could achieve what they did: They were all grounded in practical experience, tested by either combat or challenging experiences in the real world before they attended law school, and they all brought these experiences to the task of building an entire judicial system from scratch.

It is probably easy to take their work for granted, but we should not do so. Instead, we should remember that, rather than judges appointed for political reasons and beholden to the appointing authority, we now have judges who are independent and answerable only to the electorate in periodic retention elections.

Instead of an understaffed system dependent on fines to pay court expenses, we now have an integrated and centralized system that is properly funded on a statewide basis. Instead of backlogs that date back decades, we have a system that tries cases in timely fashion. And instead of a system that requires litigants and their lawyers to go to San Francisco for an appeal, we hear appeals in all the major cities of the state on a regular basis.

With the work of people like Tom Stewart, John Dimond, and Jim von der Heydt, we have a very different, and much better system, than the one we abandoned in 1959. We owe a great debt to these early Juneau pioneers. I hope we pause for a moment today, 50 years after our admission to the Union, and acknowledge our debt to these giants.

Judge von der Heydt in his Anchorage chambers after 40 years on the bench, 2000.

Judge James von der Heydt being sworn in by Governor William Egan, 1959.

American Bar wants more solos

The American Bar Association says it is retooling its dues structure "as a big step in rethinking how it serves the lawyers of America.," and to attract more solo and small-firm attorneys.

The House of Delegates approved a new dues structure that will reduce costs by up to 50 percent for solo practitioners and by 25 percent for those who already receive a discount: government lawyers, lawyers employed by nonprofit legal services programs and judges.

"We understand that practicing law is changing in myriad ways, and we are poised to help lawyers in diverse practice settings jump ahead of the challenges, no matter what their practice is," said Carolyn B. Lamm, association president.

"The message to solo practitioners all over the country is that the ABA wants you," said delegate Sharon Stevens, a solo practitioner from Keizer, Ore.

Historical Bar

"Law in the Last Frontier: Commemorating the District of Alaska's 50th Anniversary"

*By Gregory S. Fisher**

I. Introduction

This essay celebrates the 50th Anniversary of the United States District Court for the District of Alaska. Alaska joined the Union in January 1959 as the 49th state. The federal court in Alaska—the District of Alaska—was commissioned in February 1960. In the intervening 50 years Alaska has anchored itself within the national constellation, yet retained many of its unique characteristics.

Commemorating a District Court's 50th Anniversary is no small task and could be approached in a number of different ways. This brief essay approaches the task by examining some of the more significant state and federal cases that have shaped law and policy in Alaska. The premise is that a good way to understand a people is by examining their disputes. Published cases offer an objective view on how disputes are analyzed and resolved. They also give us a window into a jurisdiction's values, concerns, and priorities. Part II of this essay sets the stage by introducing the reader to Alaska. Part III reviews some of the more significant cases that have been decided in the past 50 years, arranged by major field or practice area. No attempt is made to analyze the cases in a law review format.

II. A snapshot view of the State

All of Alaska is divided in three parts. The Southeast or Panhandle is the most remote and by design or coincidence houses State government. Fishing, tourism, mining, and timber constitute the region's economic foundation. The Railbelt Corridor divides the State through its center and links the Kenai Peninsula and Anchorage in the south with Fairbanks in the north. This is Alaska's commercial and financial center. Most of Alaska's 670,000 citizens live on or near this corridor. North and West is the great beyond, the Bush, a land of limitless potential, abundant resources, and weather-hardened, resourceful people. Oil, mining, commercial fishing, and tourism drive the economy. Each region shapes both the law and its practice in the Last Frontier. Each region enjoys its own challenges and opportunities.

Alaska is America in miniature--a place where individual rights and community responsibility coexist. At its best, Alaska is the type of place where stranded motorists can expect help. It is a big small state. We are the largest state by area occupying 656,425 square miles. However, we are one of the smallest by population, ranking 48th with 626,932 people in the 2000 census, and an estimated population of only 670,000 now. In terms of population density we are dead last with about 1 person per square mile. We typically refer to our elected officials by their first names not necessarily out of deference or support, but simply because we have met them or know someone who has.

Our fellow Americans do not know what to make of the Great Land or Alaskans. We are often held in affectionate disregard as the nation's backward country cousins.[1] This was true even B.S. ("Before Sarah")--as reflected by the television series *Northern Exposure*--and is probably not too different from how the English viewed Americans in colonial times or Australians more recently.[2] A good number seem to view us as some sort of national wildlife preserve with two senators and a congressional representative. Each year we welcome visitors who descend on the natural beauty of our parks, some of whom display an uncanny ability to get hopelessly lost before their boot tread collects dust. No one can find us on a map. Alaska is often depicted somewhere south and west of Catalina Island.

Many base their knowledge of Alaska solely on the image of crabbers battling raging storms in the Bering Sea or dog mushers and their teams running through the night. These first impressions are bound to disappoint those who confront the reality of McDonald's or Wal-Mart on their first drive through an Alaskan town. Our law (to which we now turn) reflects many of these same competing and conflicting dynamics.

III. The Law

(A) Alaska: Privacy Rights

Privacy rights most clearly pit individual rights against state interests, and are a good way to explore how individuals relate to their government. Alaskans cherish privacy rights to an extent unimagined by most other Americans. It is possible to fly for hundreds of miles in Alaska and never see another soul or perhaps to see nothing but a cabin's light or a musher's head lamp somewhere in the arboreal forest between Fairbanks and Galena.

An Alaskan's view of privacy rights can only be approached by reference to *Ravin v. State*,[3] a 1975 case in which the Alaska Supreme Court held that the right to privacy found in Alaska's state constitution conferred a protected right for adults to possess a limited amount of marijuana in their home for personal use. Remarkably, the opinion contains no facts. No one can tell how exactly Ravin was charged. "The record does not disclose any facts as to the situs of Ravin's arrest and his alleged possession of marijuana." The court noted that "[i]f there is any area of human activity to which a right to privacy pertains more than any other, it is the home." The court further observed that, "[o]ur territory and now state has traditionally been the home of people who prize their individuality and who have chosen to settle or to continue living here in order to achieve a measure of control over their own lifestyles which is now virtually unattainable in many of our sister states." The court concluded that private, noncommercial activities that took place in one's home and did not pose a risk to public health or safety were constitutionally protected. The "*Ravin* right" has subsequently been quantified as four ounces, and remains recognized law in Alaska. In recent years, Alaska's Court of Appeals affirmed a superior court ruling striking down a search warrant because the warrant failed to establish that the marijuana inside a residence exceeded the personal use amount protected by Ravin and its progeny.

Alaska's protection of privacy rights is also seen in its treatment of drug testing policies. For example, in *Anchorage Police Department Employees Association v. Municipality of Anchorage*,[4] the Alaska Supreme Court struck down random drug testing policies for Anchorage's police and fire departments on the grounds that such testing subjected personnel to "continuous and unrelenting scrutiny that exposes the employee to unannounced testing at virtually any time," was more intrusive than necessary, and also lacked any significant grounds given the absence of any documented history of substance abuse. This result followed even though the overwhelming majority of state and federal courts examining similar policies for public safety personnel have upheld random testing.

In the private employment context, the Alaska Supreme Court held in *Luedtke v. Nabors Alaska Drilling, Inc.*,[5] that an employer's action in suspending employees who failed a drug test violated the implied covenant of good faith and fair dealing because the employer tested the employees without prior notice of a drug testing policy, no other employee was similarly tested, and the employer immediately suspended the employees upon learning the results of the test without affording them a chance to explain, rebut, or refute the test results or to request a retest. The court had previously rejected the employees' claim that the drug test violated privacy rights, holding that constitutional provisions did not apply to private employers and that no tort for invasion of privacy was committed because there was no evidence that the manner or method of testing was unreasonable.

Although these are not federal cases, they tell us much about how Alaskans view their own personal space. Alaska is not Humboldt County north. However, examining privacy rights in the context of drug-related cases is useful because the exercise reflects that Alaska draws the line at a level of recognized protection that most other states would not acknowledge. Alaskans view privacy as something more than an abstract legal construct. It is a social and cultural value that defines Alaska and Alaskans.

(B) Alaska: Residential and Employment Preferences

If privacy rights draw the clearest distinction between individual rights and state interests, preferences offer insights into expectations—into what we as citizens expect or want from our government. Alaska is peopled with Outsiders. Almost every Alaskan came from somewhere else. Identity as an Alaskan is hard to earn for those of us (like me) who transplanted here from elsewhere. We could live here for a lifetime, yet some would never accept us because we were not born and raised in Alaska. Once here, however, there is a tendency to close the doors. Alaska has adopted several preferences illustrating this tension.

The best example is seen in *Zobel v. Williams*,[6] a 1982 case that examined Alaska's permanent fund dividend system. With the discovery of vast oil resources, Alaska established a permanent fund with deposits from mineral resources income. This fund yields a dividend each year. It does not quite work the way as depicted in *The Simpsons* (where Homer is handed $1,000 upon crossing the state border), but it sometimes seems that way. As initially devised, the dividend was paid out to residents based on the length of time that they lived in state. The system created perpetual classes of citizens based on durational residency. For example, by 1979 a person who had lived in Alaska since statehood (1959) received twenty times more than a person who had moved to Alaska in 1978. The State justified this system on three grounds: (1) it encouraged people to stay in Alaska; (2) it encouraged prudent management of the permanent fund; and (3) it equitably distributed Alaska's energy wealth by allocating the dividend in recognition of past contributions to the state—the theory being that the longer one had lived in the state, the more one had contributed to the state's commonweal and thus the more one should receive as a dividend.

Ron and Patricia (Penny) Zobel filed suit arguing that the preference violated Equal Protection rights. The Alaska Supreme Court upheld the system based on the "past contributions" theory. The Zobels sought and secured certiorari, and on review the United States Supreme Court Court reversed 8-1. The litigants believed that the case would turn on the review standard --rational basis or intermediate scrutiny. The Court, however, perceived no rational basis supporting any of the stated purposes for Alaska's tiered durational residency standards. Chief Justice Burger noted: "If the states can make the amount of a cash dividend depend on length of residence, what would preclude varying university tuition on a sliding scale based on years residence—or even limiting access to finite public facilities, eligibility for student loans, for civil service jobs, or for government contracts by length of domicile? Could states impose different taxes based on length of residence?" The Court further observed that, "Alaska's reasoning could open the door to state apportionment of other rights, benefits, and services according to length of residency. It would permit the states to divide citizens into expanding numbers of permanent classes. Such a result would be clearly impermissible."

The Court's analysis was based solely on the Equal Protection Clause. Neither Article IV's Privileges and Immunities Clause nor the Fourteenth Amendment's Privileges or Immunities Clause was relied upon. However, the Privileges and Immunities Clause was implicated in an earlier case challenging Alaska's Employment Preference Act, *Hicklin v. Orbeck*.[7] *Hicklin* examined an Alaska Hire law enacted during construction of the trans-Alaska oil pipeline that required contractors and unions to hire qualified Alaskan residents instead of any nonresidents for public construction work. The Act included a one year durational residency requirement, and effectively operated as a 100% residential preference because few could survive for a year in Alaska without work in order to claim residency to secure a job.

Continued from page 20

Historical Bar

"Law in the Last Frontier: Commemorating the District of Alaska's 50th Anniversary"

Continued from page 19

Hicklin and other nonresidents could not find jobs. They filed suit. The Alaska Supreme Court struck down the one year residency requirement, but upheld the law in all other respects. On review, the United States Supreme Court reversed based on application of the Privileges and Immunities Clause. Writing for a unanimous Court, Justice Brennan noted that, among other features, the clause protected the rights of all citizens to travel and ply their respective trades. Alaska made no attempt to demonstrate that unemployment among its citizens was caused by nonresidents. Instead, the evidence suggested that unemployment was attributable to other factors such as lack of experience, education, and training. Moreover, Alaska's residential preference was overbroad in that it granted all Alaskans a blanket preference regardless of their individual unique characteristics. The Court observed that, a "highly skilled and educated resident who has never been unemployed is entitled to precisely the same preferential treatment as the unskilled, habitually unemployed Arctic Eskimo enrolled in a job-training program." It necessarily followed that Alaska's residential preference could not survive.

A final example of a preference with a twist was addressed in *Malabed v. North Slope Borough*. The North Slope Borough ("NSB") enacted an employment preference for purposes of increasing local hire for Inupiat Eskimos. Six of seven NSB council members were Inupiat Eskimo as was the Mayor. The NSB vetted the preference through the EEOC Commissioner's office in 1996. The EEOC concluded that the NSB could rely on Title VII's employment preference for businesses located on or near an Indian Reservation. This opinion, in turn, was based on a 1988 EEOC opinion (by then Commissioner Clarence Thomas) that equated land held by Alaska Native Claims Settlement Act land as a "reservation" for purposes of Title VII's exemption.

Robert Malabed, a Filipino-American, worked off and on as a temporary security guard for the NSB between 1994 and 1997. The NSB hired Malabed as a full-time security guard in July 1997. Immediately thereafter he was fired because the hiring had been undertaken without regard for the NSB's employment preference. Malabed filed suit in federal court alleging multiple claims. The NSB argued that its preference was based on a political classification and therefore subject to relaxed rational basis scrutiny. The NSB also argued that it could rely upon Title VII's exemption for businesses located on or near an Indian reservation.

The district court, Judge Sedwick presiding, rejected the NSB's contentions and struck down the employment preference on Equal Protection grounds.[8] Intervening United States Supreme Court precedent had established that ANCSA land was not Indian Country. This proved fatal to the NSB's reliance on Title VII's exemption. With respect to the Equal Protection arguments, Judge Sedwick observed that there was no evidence that Native Americans had been discriminated against by the NSB. In fact, the evidence supported the opposite conclusion. Moreover, states and political subdivisions do not enjoy remedial powers under the Fourteenth Amendment. The major problem with the preference, however, was that it was designed by the majority to benefit the majority—it was the type of preference that is "virtually always repugnant to the principles of a free and democratic society" because NSB's political base was dominated by Inupiat Eskimos. Six of seven NSB Assembly members were Inupiat Eskimo, as was the Mayor. The inescapable conclusion required that the preference be invalidated.

The NSB appealed to the Ninth Circuit. The Equal Protection claim raised a difficult issue concerning when and whether employment preferences for Native Americans should be analyzed as political or racial preferences. Perhaps as a consequence, the Ninth Circuit certified a state law question to the Alaska Supreme Court, essentially asking whether the preference violated Alaska law. The Alaska Supreme Court answered affirmatively, holding that NSB's hiring preference violated the state's Equal Protection Clause.[9] Alaska's Equal Protection Clause is applied using a tiered analysis that first explores the significance of the individual interest at issue, then examines the importance of the government's interest, and finally evaluates the means used by the government to achieve its goals "to determine the closeness of the means-to-end fit." Applying this methodology, the Alaska Supreme Court quickly concluded that the NSB's preference violated state law. The court confirmed that the right to work was a significantly important individual right. The NSB's interest, in contrast, was suspect because it was purporting to reduce unemployment among a special classification of Borough residents at the expense of other Alaskans. Finally, the preference was not closely related to any avowed goal of reducing unemployment. The preference applied to all jobs across the NSB regardless of an individual's skills, education, or training, and was not limited in time, scope, or degree. After the Alaska Supreme Court answered the certified question, the Ninth Circuit then issued its own opinion validating the Alaska Supreme Court's decision, and further affirming Judge Sedwick's disposition of the dispute.[10]

Alaskans are quick to state their opinion whether informed or not. It is a "citizen state" in which we claim part ownership of state resources. We are familiar with our political leaders. These facts along with the healthy disrespect many Alaskans have for government institutions often lead to an ongoing clamor of dissent for dissent's sake.

Notwithstanding the consistent rejection of employment or residential preferences, the dynamics of the political process make it likely that exclusionary preferences will persist in Alaska. Local hire is a "can't miss" vote multiplier. No politician can resist trumpeting support "for Alaska," and if and when such preferences are struck down, one can always blame a rogue court system rife with activist judges intent on frustrating the people's will. Consequently, we will probably see more cases involving preferences in the next 50 years.

(C) Alaska: Free Speech

Alaskans are quick to state their opinion whether informed or not. It is a "citizen state" in which we claim part ownership of state resources. We are familiar with our political leaders. These facts along with the healthy disrespect many Alaskans have for government institutions often lead to an ongoing clamor of dissent for dissent's sake.

Morse v. Frederick,[11] —the "BONG HiTS 4 Jesus" case—illustrates the point. Joseph Frederick was a senior at Juneau Douglas High School. In January 2002 the Olympic torch relay wound its way through Juneau's streets. Deborah Morse, the high school's Principal, allowed students out to watch the relay as a sort of school-sponsored community affairs event. Frederick stood across the street from school grounds with some friends. As the torch relay approached, Frederick and his posse unfurled a banner that stated "Bong HiTS 4 Jesus." Frederick later explained that the banner meant nothing, and was calculated for no other purpose than to attract television cameras (one suspects girls as well).

Morse saw the banner. She construed it as expressing a drug-related message. Morse demanded that Frederick and the others drop the banner. All but Frederick complied. Morse suspended Frederick for ten days. After the local superintendent upheld the suspension, Frederick filed suit in federal court alleging a civil rights violation for infringement of his First Amendment rights.

Morse and the school district moved for summary judgment on qualified immunity grounds. The district court, Judge Sedwick presiding, granted summary judgment, concluding that the defendants were entitled to qualified immunity and that they had not violated Frederick's First Amendment rights. On appeal, the Ninth Circuit reversed. Relying on what it believed to be existing precedent, *Tinker v. Des Moines Independent Community School Dist.*,[12] the court held that although Morse could have reasonably concluded that the message conveyed a drug-related message, she was not entitled to qualified immunity because it had never been shown that Frederick's banner gave rise to a "risk of substantial disruption." *Tinker* had held that student speech could be suppressed but only if school officials reasonably concluded that the speech "materially and substantially disrupt[ed] the work and discipline of the school." *Tinker*, however, involved political speech. Subsequently, the United States Supreme Court held that school officials could suppress lewd and offensive speech without any showing of disruptive impact.

Continued on page 21

Historical Bar

"Law in the Last Frontier: Commemorating the District of Alaska's 50th Anniversary"

Continued from page 20

On review, the United States Supreme Court reversed, holding that Frederick's speech was not entitled to protection under the First Amendment. The Court reasoned that "schools may take steps to safeguard those entrusted to their care from speech that can reasonably be regarded as encouraging illegal drug use" and that no violation occurred from the simple act of "confiscating the pro-drug banner and suspending the student responsible for it."

Although one cannot disagree with the final result, Alaskans could be forgiven if many of them sympathized with young Mr. Frederick. Speech, even irreverent speech, promotes the germination of democratic institutions and thought. The last anyone heard, Joseph Frederick was teaching English in China. If we are lucky, perhaps he will plant some small seed of Alaskan home-grown irreverence before returning home.

(D) Native rights and Urban-Rural Conflicts

The Native Law issues arising in Alaska are far too numerous and complex for treatment in this essay. Generally speaking, however, Native rights and ongoing conflicts between urban and rural interests have led to significant legislative and judicial action in Alaska's first 50 years. Alaskan natives draw upon cultural and social traditions that are thousands of years old and tied to the rhythms of a harsh arctic climate. Subsistence fishing and hunting rights are fundamental imperatives that sustain both life and traditions. These interests almost immediately clashed with Alaska's emerging rights as a new state--rights that cannot be discounted and must be honored if Alaska is to enjoy equal footing as a sovereign state.

In *Organized Village of Kake v. Egan*,[13] the United States Supreme Court examined whether or not Alaska could regulate fish traps permitted by the federal government. Alaska prohibited the use of fish traps. Two Indian villages south of Juneau—Kake and Angoon, operated fish traps under permits from the U.S. Army Corps of Engineers. Alaska threatened prosecution, and then arrested individuals using the traps. Kake and Angoon filed suit to enjoin the state's prosecution. Their complaint was dismissed. Seeking review by the Court, Kake and Angoon argued that they were immune from state prosecution by virtue of the Statehood Act, under which the federal government reserved absolute jurisdiction over Indian property (including fishing rights), and the White Act, which granted the Secretary of the Interior authority to regulate fishing. Kake and Angoon asserted that their permits precluded state prosecution.

In an opinion authored by Justice Frankfurter (one of the last he wrote, as he retired five months later in August 1962), the Court rejected their arguments. The Court concluded that the federal permits only acknowledged that the fish traps did not violate federal law, but did not prevent Alaska from regulating or prohibiting fish traps. The White Act, the Court concluded, only conferred authority to regulate or limit fishing, and not to grant any rights. With respect to the Statehood Act and the federal government's absolute jurisdiction, the Court clarified that the Alaska's disclaimer of property was only a disclaimer regarding proprietary interests, and not governmental rights. The Court held that the federal government's absolute jurisdiction was not the same as exclusive jurisdiction. It necessarily followed that Alaska retained the right to regulate the use of fish traps.

Less than ten years later, Congress extinguished aboriginal rights by passing the Alaska Native Claims Settlement Act ("ANCSA") in 1971. ANCSA transferred approximately a third of the land in Alaska to regional native corporations created by Alaska tribes. The shareholders of the native corporations were Alaska Natives. This allowed, in concept, economic and social development for purposes of tribal self-determination. ANCSA also sought to construct a new model for federal-state-tribal relations, and to depart from paternalistic policies that had characterized prior relations. In exchange all reservations in Alaska were revoked (with one exception) and aboriginal rights were extinguished.

It was not precisely clear, however, the extent to which federally recognized tribes could assert tribal jurisdiction over ANCSA lands. The issue came to head in Venetie, a native village in the Interior, that sought to impose a business tax on a private contractor working with the State of Alaska to construct a public school. Alaska challenged Venetie's right to impose the tax. The district court, Judge Holland presiding, concluded that, although Venetie was a federally recognized tribe, it was not in Indian Country and therefore lacked authority to tax the contractor. The Ninth Circuit reversed. On review, the United States Supreme Court reversed the Ninth Circuit. The Court unanimously held that ANCSA land was not Indian Country, and therefore that the Village of Venetie lacked authority to tax the private contractor.

When Congress enacted ANCSA its expectation was that both the state and federal government would take steps to recognize subsistence rights. However, neither the state nor federal agencies took any active steps to do so. Congress therefore enacted the Alaska National Interest Lands Conservation Act (ANILCA) in 1980. Title VIII established a federal regimen to protect subsistence hunting and fishing in rural Alaska. Congress also conferred authority on Alaska to enact legislation for purposes of administering subsistence hunting and fishing with sport or recreational hunting and fishing. The Alaska Legislature attempted to do so by enacting a law that conferred a rural subsistence priority for hunting and fishing, but in 1989 the Alaska Supreme Court held that the law violated the state's equal protection clause.[15] Federal authorities stepped into the vacuum to enforce Title VIII.

Subsistence fishing rights immediately came to the fore. ANILCA requires that subsistence fishing and hunting be given a priority over other uses on public lands. Defining public lands in the context of waterways, however, is difficult. Initially, the federal government adopted temporary regulations that defined public lands narrowly to exclude navigable waters. Both Alaska and Native interests filed suit challenging the federal regulations. Native interests argued that the definition was too narrow and that public lands should include all navigable waters. Alaska argued that the federal government lacked authority to regulate waters. The federal government, meanwhile, revised its interpretation and concluded that public lands included those waters in which the federal government had an interest by virtue of the reserved water rights doctrine. The district court, Judge Holland presiding, concluded that public lands should include all navigable waters encompassed by the federal navigational servitude. On appeal the Ninth Circuit reversed.[16] The court held that the federal government's revised interpretation was reasonable, and that public lands should be defined as those navigable waters in which the United States had an interest under the reserved water rights doctrine. The court further concluded that the responsible federal agencies were responsible for defining those waterways. Fifteen years later the issue remains mired in ongoing litigation and there is still no clear answer.[17]

An added twist to ANILCA litigation has concerned how to define "rural" land for purposes of applying federal subsistence preferences. Initially, the district court adopted Alaska's proposed definition by which "rural" was defined in connection with those areas where traditional use of fish and game was a principal characteristic of that area's economy. However, in *Kenaitze Indian Tribe v. State of Alaska*,[18] the Ninth Circuit rejected this definition and instead held that "rural" should be defined by reference to the commonly understood understanding of what "rural" meant; that is, as the term "rural" was defined and applied in the Lower 48. Unfortunately, this approach has proved difficult to adapt and apply in Alaska. Consequently, the rural-urban divide remains unbridged.

(E) Maritime

Alaska's coastline exceeds 6,600 miles—longer than the coastline of the rest of the United States combined. Fishing, environmental concerns, and the maritime industry feature prominently in the state, and no better example could be seen than in Alaska's own Bleak House, the Exxon Valdez oil spill.[19]

The Exxon Valdez ran aground on Bligh Reef in Prince William Sound early on the morning of March 24, 1989. Its captain left the bridge during a critical maneuver. He was later discovered to have had a blood alcohol level of .061 eleven hours after the accident. Millions of gallons of crude oil were spilled into Prince William Sound, befouling the ocean and shoreline,

Continued on page 22

Historical Bar

"Law in the Last Frontier: Commemorating the District of Alaska's 50th Anniversary"

Continued from page 21

and wreaking devastating environmental and economic damage. Several lawsuits followed, the primary of which was a class action involving over 30,000 plaintiffs and presided over by Judge Holland. A jury eventually imposed punitive damages of $5 billion in 1994. Appeals followed, and the Ninth Circuit twice remanded for re-analysis of punitive damages based on intervening Due Process precedent. Eventually, the award was fixed at $2.5 billion and Exxon sought and secured review before the United States Supreme Court. Three issues were raised: (1) can Exxon be vicariously liable for its captain when maritime precedent (based on early nineteenth century case law) established otherwise?; (2) does the Clean Water Act pre-empt imposition of punitive damages?; and (3) should punitive damages be permitted in the context of maritime law and if so what limitations or restrictions should govern such awards?

On the vicarious liability issue, Exxon argued that a ship-owner should not be held vicariously liable for a captain's mistakes, relying on an argument that traced back to an 1818 case, *The Amiable Nancy*. Plaintiffs countered that this reasoning was based on the practical realities of 1800s maritime shipping where wooden ships left port under sail and were not heard from for months or even years later. Owners had no effective means to communicate with or monitor decisions being made by ship captains in that era. Concerning the punitive damages award, Exxon noted that it acted quickly to initiate clean up efforts for which it spent more than $2 billion, pled guilty to federal criminal violations, and paid fines and restitution in the range of $125 million. Exxon also settled other state and federal claims, agreeing to pay $900 million to restore natural resources and entering other voluntary settlements with private parties in an amount over $300 million. Enough, it believed, was enough. Exxon argued as a matter of first impression that maritime law—subject to federal common law—should recognize limits on punitive damages. Plaintiffs stressed that the punitive damages that had been imposed survived Due Process analysis and that, in context, the amount of punitive damages was nothing compared to the expansive nature of Exxon's profits or the devastating range of damage that was inflicted upon the Prince William Sound.

The case was finally decided in 2008—over 19 years after the Exxon Valdez spilled its oil. A fractured Court upheld imposition of liability under a vicarious liability theory on a 4-4 split, and rejected Exxon's argument that the Clean Water Act pre-empted imposition of punitive damages. On the punitive damages issue, the majority concluded that rational predictability should govern any award imposed as a penalty. The Court struggled with establishing practical guidelines, and ultimately (by a 5-3 vote) seized upon a guiding principle that the amount of punitive damages in the maritime context should not exceed a 1:1 ratio for compensatory damages, thereby reducing the amount of punitive damages from $2.5 billion to $500 million (approximate).[20] Exxon's declared profits for 2007 (the preceding year) were reported as exceeding $40.6 billion. From the perspective of establishing rational predictability in a system imposing damages, it is telling that one vote separated the difference between the initial punitive damages award of $2.5 billion being upheld in its entirety (which is what would have happened had the 5-3 majority split 4-4) and that same award being "zeroed out" (which is what would have been the result had the 4-4 result on the vicarious liability issue swung 5-3).

The case was finally decided in 2008—over 19 years after the Exxon Valdez spilled its oil.

The most recent maritime case of interest involves a relatively obscure provision in the Constitution, the Tonnage Clause. The Tonnage Clause prohibits ports from imposing fees (a duty) for the privilege of entering port. In *Polar Tankers, Inc. v. City of Valdez*,[21] the United States Supreme Court analyzed a property tax imposed on certain boats over 95 feet in length. The practical effect of the tax was to limit its application to oil tankers. Polar Tankers, an oil company subsidiary, challenged the tax as violating several constitutional provisions. The state superior court rejected Polar Tankers' Tonnage Clause argument, but held the tax unconstitutional on Due Process and Commerce Clause grounds because the tax was allocated based on the amount of time spent in Valdez as compared to other ports, a method which could theoretically create a risk of multiple taxation. The Alaska Supreme Court reversed, holding that a tax based on the value of property was not a duty of tonnage and that the tax survived scrutiny under Due Process and Commerce Clause grounds. Polar Tankers sought review. The Court granted certiorari and reversed. Writing for the majority, Justice Breyer noted that the Tonnage Clause was necessary to protect the scope of a companion clause that prohibited states from imposing duties on imports and exports. The majority determined that the tax imposed a fee for the privilege of entering the port of Valdez, that the tax related to a ship's capacity (its tonnage) because it only applied to larger ships, and that the tax was not related to services provided to a ship such as pilotage, wharfage, or other similar maritime services. It followed that it ran afoul of the Tonnage Clause.

(F) Environmental

Alaska's abundant natural resources have led to numerous cases in Environmental Law. These cases tend to reflect the same competing interests. On one side are developers promoting jobs and economic growth. On the other side are citizens concerned by the pace of unchecked development and the extent to which public safety and health can sometimes be placed at risk. In between are satellite (but important) interests such as small-scale commercial fishers, Native and rural subsistence hunters and fishers, and those working in tourism, all of whom rely upon undamaged natural resources for their livelihood.

Many are familiar with *Alyeska Pipeline Service Co. v. The Wilderness Society, et al.*,[22] in which the United States Supreme Court set clarifying guidelines on when, and whether, courts could award attorneys' fees to prevailing parties in federal court. The Court held that fees could not be awarded to environmental groups under a "private attorney general" theory. Instead, the "American Rule" by which parties were responsible for shouldering their own fees was the presumed rule governing practice in federal court. Only Congress could authorize an exception by expressly allowing for recovery of fees under statute. *Alyeska Pipeline* remains one of the leading cases on attorneys' fees awards.

A case more closely falling into Environmental Law with significant import

Continued on page 23

Historical Bar

"Law in the Last Frontier: Commemorating the District of Alaska's 50th Anniversary"

Continued from page 22

arose in *Alaska Department of Environmental Conservation v. EPA*,[23] where the United States Supreme Court held that the Environmental Protection Agency had authority to overrule a state agency's decision that a company was using the "best available controlling technology" to prevent pollution under the Clean Air Act. The case involved a mining company that requested a permit to build an additional diesel generator at one of its mines. The Alaska Department of Environmental Conservation issued the permit. The permit required the mining company to adopt and use a particular form of technology on all of its generators (not just the new one) to reduce polluting emissions. The EPA stepped in, however, and determined that an even better form of technology was available. ADEC petitioned for review to the Ninth Circuit arguing that the EPA lacked any right to disturb its decision. The Ninth Circuit rejected ADEC's arguments. On review, the Court affirmed. The Court held that EPA's oversight authority conferred by Congress included the right to make sure that state authorities made decisions concerning the best available controlling technology that were reasonable in light of the statute's goals and purpose.

The most recent environmental case of significant importance is *Coeur Alaska, Inc. v. Southeast Alaska Conservation Council*,[24] decided last Term. In *Coeur Alaska*, a mining company sought and secured a permit to deposit tailings on a landfill. However, after the price of gold plummeted, the company began looking for a more cost-efficient option. It fell upon the option of depositing the tailings into a lake that was close to the mine. The lake fell within the scope of navigable waters of the United States, implicating the Clean Water Act . Under the Act, there are two separate permitting programs. A Section 404 permit may be issued by the U.S. Army Corps of Engineers for fill material. A Section 202 permit may be issued by the EPA for all other pollutants, but such a permit is subject to the effluent limitations under Sections 301 and 306 of the Act. In 2002, the EPA and the Corps had promulgated regulations defining fill material to include tailings. The mining company therefore sought a permit under Section 404 to deposit its tailings into a lake as fill material. The Corps issued the permit. The district court, Judge Singleton presiding, upheld the permit on challenges filed by environmental groups. However, the Ninth Circuit reversed, holding that a Section 404 permit was still subject to the limitations or restrictions set forth by Sections 306 and 306 for effluents. On review, the United States Supreme Court reversed, holding that the Corps and not the EPA had the authority to issue the governing permit, and that the Corps complied with the law when it issued its permit.

(G) Criminal

Alaska has not generated too many significant cases in the context of criminal law and procedure. However one recent case generated national interest even though it was a civil rights action filed under 42 U.S.C. § 1983, and not a criminal case. In *District Attorney's Office v. Osborne*,[25] the United States Supreme Court examined whether Due Process required states to allow inmates a right to post-conviction DNA testing. Osborne was convicted of sexual assault and related offenses in state court in 1994. He filed a Section 1983 action seeking access to biological evidence still in the state's possession so that this evidence could be subjected to improved DNA testing. After initial proceedings clarified that Osborne's claim was not challenging the validity of his confinement, and therefore did not violate the rule set forth by *Heck v. Humphrey* and its progeny, the district court, Judge Beistline presiding, granted summary judgment for Osborne. Judge Besitline ruled that under the specific facts there was a limited Due Process right to access the evidence for purposes of post-conviction DNA testing because the testing method in question had not been available to Osborne at the time of his trial. Judge Beistline also reasoned that the State could have no reason for punishing the innocent, and therefore no reason to deny Osborne access to evidence that might prove to be exculpatory. The Ninth Circuit affirmed, primarily holding that under its precedent Osborne's *Brady* rights survived to post-conviction proceedings, thereby requiring the State to produce potentially exculpatory evidence after trial as well as before and during trial. The Ninth Circuit based its holding on the unique facts and limited circumstances presented by the case, including that the evidence could be secured by the state, the conviction was based on that evidence, the testing sought had not been available at the time of the conviction, the testing would conclusively establish whether the biological evidence could be traced to Osborne, the testing could be completed without cost or prejudice to the State, and the evidence was material to post-conviction relief. The Ninth Circuit defined materiality as being evidence that would establish a reasonable probability that he was entitled to post-conviction relief.

The State sought review, and the Court reversed 5-4, holding that Osborne had no constitutional right to compel post conviction testing of the State's evidence. The majority determined that Osborne's *Brady* rights affording him pretrial disclosure of exculpatory evidence did not survive to post conviction proceedings. Instead, a less searching inquiry governed post conviction analysis, and there was nothing in Alaska's post conviction relief procedures that was "fundamentally inadequate" to protect substantive rights. The Court expressed reluctance to constitutionalize an issue that States were already addressing through a variety of legislative measures. Alaska, however, is not yet one of those states and has not undertaken the "prompt and considered legislative response" contemplated by the majority's opinion.

V. Conclusion

It is probable that one could find five or more cases for every case reviewed in this brief essay that perhaps had a greater impact on Alaska and Alaskans. And, even the cases reviewed here deserve far more comprehensive treatment than this essay can provide. However, if nothing else, the issues and opinions discussed here provide a glimpse of Alaska's first 50 years and the role played by the District Court of Alaska in the State's development.

**Gregory S. Fisher is a Member with Birch, Horton, Bittner, and Cherot in Anchorage, Alaska. He received his J.D. from the University of Washington in 1991, where he served on the Washington Law Review. Mr. Fisher is also a former law clerk for Hon. Barry G. Silverman, U.S. Court of Appeals for the Ninth Circuit, and Hon. John W. Sedwick, District Judge for the District of Alaska. The views expressed in this article, along with any mistakes, are the author's alone. This essay is not an official statement or view from the United States District Court, District of Alaska. This essay is dedicated to the late David H. Thorsness, Esq., an excellent lawyer, mentor, and Alaskan.*

Footnotes

[1] *See* Todd Purdum, "It Came from Wasilla," Vanity Fair (August 2009).

[2] I neither intend nor imply any criticism of former Governor Sarah Palin.

[3] 537 P.2d 494 (Alaska 1975).

[4] 24 P.3d 547 (Alaska 2001).

[5] 834 P.2d 1220 (Alaska 1992).

[6] 457 U.S. 55 (1982).

[7] 437 U.S. 518 (1978).

[8] *See* Malabed v. North Slope Borough, 42 F. Supp.2d 927 (D. Alaska 1999).

[9] *See* Malabed v. North Slope Borough, 70 P.3d 416, 427-28 (Alaska 2003).

[10] *See* Malabed v. North Slope Borough, 335 F.3d 864 (9th Cir. 2003).

[11] 551 U.S. ___, 127 S. Ct. 2618 (2007).

[12] 393 U.S. 503, 506 (1969).

[13] 369 U.S. 60 (1962).

[14] *See* Alaska v. Native Village of Venetie Tribal Government, 522 U.S. 420 (1998).

[15] *See* McDowell v. Alaska, 785 P.2d 1 (Alaska 1989).

[16] *See* State v. Babbitt, 72 F.3d 698 (9th Cir. 1995).

[17] My firm represents the State of Alaska in some of the pending water rights litigation that remains unresolved.

[18] 860 F.2d 312 (9th Cir. 1988).

[19] My firm represented several plaintiffs' interests in the Exxon Valdez oil spill litigation.

[20] *See* Exxon Shipping Co. v. Baker, 554 U.S. ___, 128 S. Ct. 2605 (2008).

[21] 557 U.S. ___, 129 S. Ct. 2277 (2009).

[22] 421 U.S. 240 (1975).

[23] 540 U.S. 461 (2004).

[24] 557 U.S. ___, 129 S. Ct. 2458 (2009).

[25] 557 U.S. ___, 129 S. Ct. 2308 (2009).

Originally published in The Federal Lawyer, January 2010 issue.

Historical Bar

Interviewing Alaska's Territorial Lawyers; Memories of the Last Frontier

By Holly Suozzo

Every state bar has its legal legends. In Chicago, there was Clarence Seward Darrow, a brilliant trial lawyer who abandoned his corporate practice to defend against the death penalty, becoming one of the most famous criminal lawyers of all time and the current subject of a one man play. In Louisiana, Edward Bermudez was the chief justice of the Louisiana Supreme Court and an attorney known for his pride in his Creole heritage despite his fight for the Confederacy. In Wisconsin, one hears stories of judges and lawyers who traveled the circuit on foot, whether through muggy swamps or during blizzards in snow shoes, to deliver justice to the Wisconsin town sites. While the stories surrounding great attorneys that have come before us abound, the lives of these legends have generally ended long before ours began. However, in the great State of Alaska, its legal legends still thrive, most of them in their 80's and some of them still very much active in the legal field and in the Alaska community. As a result, the ingenuity, tenacity and independent spirit of these pioneers permeates Alaska's present day legal culture. Soon, however, Alaska's legal greats will live only in our memories like the early legal giants in our sister states. Thus, as Alaska celebrates 50 years of statehood, we set out to interview some of the attorneys practicing in Alaska when statehood began and to document, if not preserve, the essence that has become such a fundamental component of the identity of the Alaska bar.

One of the legal heavyweights of the mid 20th century in Alaska was Jack Asher. Asher was the first prosecuting attorney of the State of Alaska and continues to practice law today at the Illinois law firm of Asher, Smith and Isaf. Mr. Asher is an exuberant man who easily and energetically retells the many stories of his decade or so in southern Alaska. In less than an hour after we start our interview, Mr. Asher has touched upon a myriad of crazy Alaskan adventures, both in and out of the courtroom. He recalls trying a case with a man who burned down a house of ill repute in an effort to rob the jukebox, and a man who confessed to killing his brother only to have the trial interrupted by the arrival of the allegedly dead brother. He remembers the interactions he had with law enforcement and their efforts to track escaped criminals throughout the wilderness. He also recalls the drinking and camaraderie he shared with both the Alaskan attorneys and the territorial police, and the shenanigans that followed a moose hunt gone awry in the untamed Alaskan mountains.

...in the great State of Alaska, its legal legends still thrive, most of them in their 80's and some of them still very much active in the legal field and in the Alaska community. As a result, the ingenuity, tenacity and independent spirit of these pioneers permeates Alaska's present day legal culture.

While Asher has plenty of stories regarding the Wild West persona of territorial Alaska, he also remembers the opportunities that Alaska offered a new lawyer. Soon after graduating law school, Asher and his wife Jane embarked for Alaska. Asher was offered a job as an assistant territorial attorney general. At the time, the territorial attorney general had a mere staff of four, which consisted of a chief assistant, two assistant attorney generals, and a law clerk. Immediately upon arriving, Asher was directed to draft a writ of certiorari for the United States Supreme Court. Asher was given no direction from his supervisor except the telephone number of opposing counsel in the case. Thankfully, opposing counsel pointed him in the right direction and Asher filed his first pleading, a writ to the United States Supreme Court. Not only was Asher's writ granted, but the Supreme Court reversed the Ninth Circuit and the attorney general's office was awarded a much needed financial victory during its transition from territory to statehood. Young lawyers in Alaska are often told of the value of learning to sink or swim on one's own, instead of slowly wading into the field of law. Even today, Alaskan attorneys are quickly involved in court proceedings and are encouraged to interact with clients. As the same men and women who were thrown to the lions in the mid 1900's continue to train and mentor incoming attorneys, the expectation that young lawyers will take ownership of their training lives on.

Asher was not only involved in the early State of Alaska legal system; he also took part in its early political life. Asher and his wife were actually primarily responsible, along with a democratic engineer named Felix Toner, for drafting the first election procedure for Alaska.

Like her spouse, Asher's wife Jane was also a formidable figure in early statehood. Jane Asher was hired by the first Alaska state legislature to draft the first State of Alaska statutes. She was also hired as the "statute reviser." She was responsible for drafting all the bills for the state legislature. Mrs. Asher's role in Alaska's transition to statehood is a testament to the progressive outlook of the Alaska legal community and its ability to embrace talent, regardless of the gender in which it was showcased. Today, Mrs. Asher has left the field of law and runs a humane society in Illinois.

Although the Ashers left the State of Alaska to return to their hometown, some of the lawyers who practiced in Alaska during statehood continue to do so today. One such lawyer is Kenneth Atkinson, who practices law at Atkinson, Conway & Gagnon at the young age of 83. Atkinson's adventurous spirit took hold when he arrived in Alaska as a 22 year old in July 1948. After his arrival, he tried his hand at salmon fishing on the Kenai Peninsula in Southcentral Alaska and settled into a cabin on a remote lake in Southcentral Alaska a few hours from Anchorage. There were two other cabins on the lake, one owned by native Alaskans Shem and Billy Pete and the other owned by two of the most preeminent attorneys of the time, Stanley McCutcheon and Buell Nesbett. Later Nesbett would become the first chief justice of the State of Alaska Supreme Court.

Mr. Atkinson recalls these men and their stalwart appetites for the outdoors, good conversation…and alcohol. In exchange for digging a well, Atkinson and his friend moved into the larger and more convenient cabin owned by McCutcheon and Nesbett. McCutcheon and Nesbett would come up to the cabin on the weekends, with "gallon jugs of whiskey and steaks" for all. Mr. Atkinson remembers fondly drinking a bit too much whiskey one evening and retreating to his down sleeping bag, which had some holes in it, while the other men continued chatting. In the middle of the night, Nesbett, who was a large burly man, picked Atkinson up, sleeping bag and all, feathers flying, and sat him down so Nesbett could continue to give Atkinson advice on life and the law.

Atkinson speaks freely about the accomplishments and the gregarious personalities of his peers. However, he is much more hesitant to discuss his own place in Alaska's legal history. Soon after beginning his career as a lawyer in Alaska, Atkinson entered a law partnership with George McLaughlin, a well known and loved attorney in Anchorage who went on to chair the judiciary committee of the Alaska Constitutional Convention. McLaughlin died of a heart attack before reaching 50. Atkinson continued practicing law in the private sector, eventually becoming a partner in Atkinson, Conway & Gagnon, which remains one of the oldest and most respected law firms in Alaska.

Today Atkinson remains an active member of the Anchorage community, not only continuing his practice, but also embracing the outdoors by cycling and skiing hundreds of miles a year.

Another lawyer practicing during territorial times and early statehood in Alaska was Russ Arnett, a colleague of Mr. Atkinson who also seems to thrive in the Alaska wild. Arnett came to Alaska on the advice of current federal judge James von der Heydt. Judge von der Heydt went to law school with Arnett and regaled him with stories of von der Heydt's time as a truck driver and a Deputy Marshal in Nome. Arnett was enamored and decided to head up to Alaska after his graduation. In his first few years in Alaska, Arnett worked as a longshoreman and a United States Commissioner. Since Alaska was a territory, U.S. Commissioners were appointed to deal with various legal issues throughout Alaska. These commissioners were not usually lawyers and often found themselves acting as judge, jury and lawyer on various legal issues. Arnett also recalls traveling by boat to Kodiak where he would step off the ferry and be bombarded with individuals with various legal ailments. As a result, he would find himself practicing law off the cuff in an effort to provide legal representation to a population who had only spotty access to lawyers.

Although Arnett warmly recalls his days as Kodiak's attorney and his first introductions to the law of the frontier as a U.S. Commissioner, his primary focus during our discussions revolved around the difficulty of practicing law without an established and fully functioning court system. In the mid 20th century there were only a handful of federal judges appointed to the territory of Alaska despite the vibrant economy and social life that existed in all the Alaskan towns. For the most part, Alaskan communities had "sanctioned" prostitution and gambling, and alcohol was a free flowing libation enjoyed by many. There was a surprising sense of openness among Alaska's residents and an interesting kaleidoscope of different nationalities and backgrounds. Even women were active members of the community, often taking on professional and political roles that may not have been so accepted in the Lower 48. These women were unique in their own right, taking up hunting and fishing with their male counterparts and, for some, going so far as to support prostitution, even if only as a means of keeping the rough Alaskan men away from their daughters. The native Alaskan population also actively engaged with new immigrants to Alaska, despite notable discrimination against the Alaska Native population by both the immigrants to Alaska and the territorial government. Alaska was also a treasure trove of natural resources, where discoveries of gold and fishing windfalls were commonplace. The whirlwind of activity and interaction throughout Alaska brought with it crime and disputes. Tension between the settlers and the Alaska Natives created additional legal challenges.

The territorial courts simply could not accommodate the constant need

Continued on page 25

NOTICE TO THE PUBLIC

By order of the Alaska Supreme Court,
entered November 12, 2009

JAY D. DURYCH
Member No. 8811180
Anchorage, Alaska

is reinstated to the practice of law
subject to conditions
effective January 5, 2010

Published by the Alaska Bar Association,
P. O. Box 100279, Anchorage, Alaska 99510-0279
Pursuant to the Alaska Bar Rules.

Historical Bar

Interviewing Alaska's Territorial Lawyers; Memories of the Last Frontier

Continued from page 24

for legal representation and dispute resolution. In Anchorage, where Arnett was practicing, there was only one appointed judge for hundreds, if not thousands, of cases. Many plaintiffs would give up hope of getting any relief and abandon their cases, and their lawyers, in despair. Criminal defendants would be stuck in limbo as they waited for their case to go to trial. It was the inadequacy of the territorial court system that Arnett believes led many to support statehood. The promise of an Alaskan court system that would provide a reliable form of justice was extremely appealing. Further, the territorial judges often clashed with the mindset of the Alaska bar members, who were fierce advocates for their clients and often brilliant lawyers, but who were also born of the last frontier, often with whiskey bottles in their desk drawers and memories of jobs where they worked alongside the longshoreman and fishermen they represented.

Finally, after statehood was achieved, the governor appointed the first chief justice of the Alaska court, Buell Nesbett. Nesbett, who was a good friend of Messrs. Arnett and Atkinson, was reportedly a brilliant lawyer and a military hero known for his strong will. Despite the importance of his appointment, Judge Nesbett and the two other judges appointed to the Alaska Supreme Court still did not equate to a full state court system and the attorneys continued to struggle with the lack of judicial relief in a flooded court system. It was not until much later and after a long hard fight by the Alaska bar that Alaska's state courts came into existence and the lawyers in the state could guarantee their clients proper judicial access.

Alaskan attorneys during the push towards statehood were not only pioneers of the Alaska legal system; they also helped shape the cultural birth of the State of Alaska. One of the most preeminent members of Alaska's business and financial community is Daniel Cuddy. Today Cuddy is the president of First National Bank of Alaska, a bank worth approximately $2.6 billion. While he has the sophistication and charm one would expect of a bank president, the independent Alaskan spirit is unmistakable as he describes both his childhood and the lessons he passed on to his children.

Cuddy was born in Valdez, Alaska in 1921 and moved with his family to Anchorage in 1933. Soon after arriving in Anchorage, he began working in a cannery. At the age of 17, Cuddy was promoted to the position of can loft supervisor of the cannery. He used the money from that position to pay his way through college. He also ran a trap line in high school that helped fund his education. After college and World War II, Cuddy went to law school at the University of Washington. He dropped out after a year and came back to Alaska to work as a law clerk. Ultimately, he decided to take the apprenticeship route to joining the bar, a practice still accepted in Alaska at that time. Cuddy passed the bar in the late 1940's. While he only practiced law for five years, he remembers the characters and zealous litigators he practiced beside, including Wendell Kay, a partner in his father's law firm who was known for his excellent and colorful litigation skills.

Perhaps one of the most revealing anecdotes told by Cuddy was not of his legal feats but rather of his interaction with four of his daughters during the days after oil was discovered in Prudhoe Bay.

> The pipeline was going on in those days, and I wanted them to work, so I knew an Oily and the Oily said he'd hire them in Prudhoe Bay. So I took the Oily out to dinner and I asked him what the girls would be doing and he said 'well they'd be driving a pickup truck.' How much money would they be making? 'Oh probably $3,000,' which was good money. My wife asked if they'd be safe. And the Oily said, 'Oh if they're good girls; they probably will come back as good girls.' Well, that was the end of that! So I took them gold mining we operated a gold mine up at Cache Creek…and the girls operated it for three years. Just the four girls running bulldozers, giants, cleaning out the sluice box; they did very well too. That was a good experience for them.

These living legends teach young lawyers the importance of dignity in the practice of law while creating an atmosphere of openness and opportunity, challenging today's attorneys to carry on their legacy.

Cuddy's determination to infuse his daughters with the same independent and can do mindset that he developed at such a young age exemplifies the impact all of the early pioneers still bring to the great State of Alaska. These living legends teach young lawyers the importance of dignity in the practice of law while creating an atmosphere of openness and opportunity, challenging today's attorneys to carry on their legacy.

Special thanks to Kate Williams, whose research and assistance made this article possible. Holly Suozzo is an attorney at Birch Horton Bittner & Cherot in Anchorage, Alaska. She graduated from Northeastern University School of Law in 2004 and practices both general litigation and transactional work, specializing in the representation of local and state government entities. Kate Williams is an attorney at Birch Horton Bittner & Cherot in Anchorage, Alaska. She graduated from the University of San Diego School of Law in 2004.

Originally published in the Jan. 2010 Issue of The Federal Lawyer. Reprinted with permission.

ATTORNEY DISCIPLINE

Court orders a three year suspension for violating duties to clients

On December 16, 2009, the Supreme Court suspended attorney David York from the practice of law for three years. The court ordered that the suspension period run from the date that Mr. York transferred to inactive status on May 9, 2008.

Mr. York transferred to inactive status and later agreed to the imposition of a suspension in acknowledgement that he failed to act with reasonable diligence, failed to keep clients reasonably informed about the status of their matters, failed to charge reasonable fees and accepted fees when he knew or should have known that he could not adequately serve his clients, failed to properly withdraw from representation of clients, and committed other conduct that reflected adversely on his fitness to practice. Mr. York demonstrated remorse for his misconduct and expressed regret for the client harm that resulted from his pattern lack of diligence.

The court also ordered Mr. York to comply with conditions prior to seeking reinstatement to the practice of law. Conditions include making full restitution of all amounts owed to the Lawyers' Fund for Client Protection of the Alaska Bar Association, restitution to the Alaska Bar Association for services provided by Trustee Counsel, completion of 13 hours of continuing legal education, and compliance with Bar Rule 30(g) to demonstrate fitness to practice law. Additionally Mr. York must serve a two year probation by practicing law under the mentorship of an actively licensed Alaska Bar Association member with more than five years experience after Mr. York is reinstated to the practice.

Big Bro, Lil' Bro

By William Satterberg

Years ago, a friend of mine suggested that I do something to help the community. It was a unique concept to me. He said I should help youth before they became existing clients. Obviously, the guy had no business sense. Still, he was persistent. There was a program which had been around for a long time, Big Brothers/Big Sisters. He said I was a "natural".

Having been the object of more than one beating from my little sister, Julie, as a teenager, when I grew up, I immediately had reservations about any organization that referred to itself as Big Brothers and Big Sisters. After all, if Little Julie could clobber me with ease, what could a Big Sister do? Besides, such a program would take time and would cut into billable hours.

I placed the suggestion on hold. But, even as a lawyer, I actually have a social conscience, and it eventually got the better of me. One day, I decided that there might be some benefit to checking his suggestion out. It would be a politically acceptable move. Moreover, many of the contacts could lead to clients. When I mentioned this to my friend, he pointed out to me that Big Brothers/Big Sisters only took kids through age 18. Since I ordinarily do not do juvenile cases, the usual economic draw ceased to exist.

I did my research. In so doing, I soon realized that many of the kids involved had very distinct needs for adult mentoring and constructive role modeling. In contrast to my own past, when I left home at age eighteen with $44 in pocket change in search of the wide open world, only to end up on a fishing boat in Bristol Bay, Alaska, (read the upcoming article, *Alaska's Ugliest Catch*) many of the kids in Big Brothers/Big Sisters find themselves on the outs even earlier than I, often coming from broken families that are genuinely affected by various hardships often beyond their control.

In time, I decided that I might really have something to offer. Even more importantly, I concluded that the program, itself, might have even more to offer me in terms of fostering a relationship with a Little Brother. I figured that I have never had a son, but that a Little Brother could be a close second.

"I concluded that the program, itself, might have even more to offer me in terms of fostering a relationship with a Little Brother."

In this regard, I also considered that both of my children are girls. Although my two darling daughters are quite delightful and have been absolute joys to raise, I still missed some of the more "manly" things, that "guys do". It was time for a new adventure.

My decision was made.

The first step was easy. I simply had to pick up the phone and call the local Big Brothers/Big Sisters office. The number was in the directory, so I had no excuses. I told the receptionist that I was interested in becoming a "Big". Shortly thereafter, I was contacted by a representative of the program. I was asked to come in and fill out an application.

The first step was easy. I simply had to pick up the phone and call the local Big Brothers/Big Sisters office.

Fortunately, the application process was not complicated, either. I had to answer some biographical questions and to explain why I was interested in becoming a "Big". In addition, in order to separate the desirables from the undesirables, I had to undergo a background check. Fingerprinting was painlessly done at the local police station. Fingerprinting did not necessarily bother me, since I had already been fingerprinted once when I was busted in Judge Funk's courtroom several years previously by an overly zealous state trooper, who was later to receive a promotion. As such, I figured that I most likely would receive a clearance. Fortunately, the most recent charges had been dismissed, and the others were buried deeply in records created and likely lost long before the computer age.

Following a one-month background check, I was invited back to the Big Brothers office. Apparently, I was acceptable. I then underwent an in-person interview to confirm why I wanted to join the program. I was also familiarized with the goals and expectations of the program. Apparently, I again answered the questions satisfactorily, since I was soon placed on a waiting list.

In less than a month, I was contacted again. There was a "match" for me in a "Little". His name was "TJ". I was advised that TJ most likely met my criteria. TJ was from a military family of three children. His father was being deployed to Iraq as an infantry sergeant. It would be a one-year, obviously dangerous tour of duty. TJ's mother had explained that she wanted someone to be a role model to her son. In addition, that person would need to be available should problems develop during his father's deployment.

I had been asked at my intake interview about the type of "Little" I would like to mentor. Options existed from younger "Littles" to older "Littles", and from "Littles" with special needs to those not having special needs. I was also asked if I wanted to be an in-school Big Brother, an out-of-school Big Brother, and if my wife would enjoy being part of a "Big Couple". I stated that I was available for any choices. For me, the field was open.

An appointment was set for my introduction to "TJ". Upon arrival, I met first with a counselor who would be assigned to help us should issues ever develop. The counselor explained that TJ was in the other room, and anxious to meet me. I felt as if I were going to a wedding. I, too, was actually nervous over the whole thing. Compared to what I was facing, jury selection was a snap.

Following reassurance that the first meeting would be short as more of a "get to know you" session, I was led into another room and met TJ. TJ's mother was also present. As an ice breaker, we were asked by the counselor to talk about what we liked to do and what we looked forward to doing. In contrast to myself, TJ was reserved and timid. In fact, it took some time to draw TJ out of his shell, but he eventually opened up. To assist, TJ's mother explained that TJ had two other, younger siblings in the family, but that he needed a man to help him through the adolescent process. Academic challenges were a priority, and, personally, TJ had concerns about his future. The unspoken concern was that TJ's father might or might not be returning from his tour of duty, and might have serious injuries if and when he did return. I soon realized that I was accepting a most important responsibility in this young man's life.

Our first encounter continued on like two male dogs meeting in a park. TJ and I, figuratively speaking, seemed to "sniff" at each other. Like all males, we then figuratively walked around the room and metaphorically tinkled in each corner, symbolically staking out our territory. Apparently, it was a man thing, since no one else participated. In fact, for a moment, I thought that I might be thrown out of the program.

TJ and I next adjourned to a separate room. For about 30 minutes, we visited privately with each other. At the end of the visit, TJ and I had our pictures taken together to be placed on the Big/Little Wall. We then made a date for our next visit for the coming weekend.

Much like any growing relationship, our first encounters were a bit tentative. Each of us cautiously approached various subjects, not wanting to scare the other with a bad impression. Fortunately, a good friend of mine had once told me that, "One of the best ways to get to know a kid is to take them for a drive". He called it "windshield time". In retrospect, the concept of "windshield time" was not unknown to me, but I very seldom had luck getting my daughters to share windshield time with me. After all, the girls had gotten wise at an early age to Daddy's Tricks, and knew all too well that any time spent in the car with Dad would be met with nonstop lectures on virtually anything, not to mention the occasional bout of gastrointestinal upset. "Boring…"

TJ, on the other hand, was not aware of my reputation. He would be an innocent victim.

So, for our first trip, TJ and I took a drive. Right off, we discussed what we really liked to do and not just what the counselor wanted to hear. I confessed to TJ that I had a penchant for "blowing things up". I enjoyed watching sports, snowmachining and four-wheeling, and definitely liked the outdoors. In contrast, TJ had led a relatively sheltered life as a military child. Yet, all of these things seemed to be attractive to him. Clearly, he was a kid in search of adventure.

Over the next several months, our regular weekly meetings came and went. TJ and I soon became the best of friends and eagerly looked forward to our outings. TJ's father, meanwhile, had dispatched to Iraq. Fortunately, overseas communications were good and TJ's father would contact the family whenever his time permitted. But, the personal presence of TJ's father still was not available.

Continued on page 27

Big Bro, Lil' Bro

Continued from page 26

Inwardly, I knew that TJ's father was a very capable soldier in charge of a platoon and would likely survive his tour unscathed, but there were still risks. Most importantly, he was a good father to his son, and I wanted him to remain as such, since I was not a substitute for TJ's father. Instead, I was TJ's big brother.

During our time together, TJ's emotional growth with me was decidedly progressive. TJ learned to operate snowmachines, four-wheelers, chainsaws, and how to split wood. But, that was not all. On a social level, I also taught TJ the mechanics of mastering a healthy belch, as well as my creative theories on girl chasing, politics, and how to skip school and hopefully not get caught. TJ was a remarkable success in almost all of these skills. He made me proud.

Eventually, TJ's father safely returned from Iraq. Upon arrival, he thanked me for being a like surrogate father to his son. In response, I shared with TJ's father that I was not like TJ's father, but was TJ's Big Brother, and that his father had nothing to fear. (After all, I probably could have been TJ's grandfather if I had exploited my youth.) I explained that it was much better for me to be a Big Brother. In response, TJ's father remarked that our relationship was obviously good as a Big/Little, and had clearly grown into a fond friendship. There was no jealousy.

Ultimately, TJ's father was given a change of duty assignment. It was another unspoken event that we had all feared would someday happen. TJ's father had been promoted to be a drill instructor at Fort Bragg. In a few short months, the family would have to relocate to North Carolina.

The remaining time passed all too quickly. As expected, TJ eventually had to leave with his family, but one of the greatest rewards and joys of knowing TJ was his reassurance to me when we said our farewells that he intended to enter college. In fact, TJ said that he might very well attend college in Alaska. It was at that point that I realized that I had been a major part of TJ's life. In retrospect, over the two-plus years that TJ and I were "brothers", not only had TJ and I become the best of buddies, but TJ's grades had improved admirably and he had clearly matured into a responsible young adult. Most importantly, TJ had stayed away from many of the temptations to which youth his age often succumb such as drugs, truancy, and blowing things up.

When the day came to say goodbye to TJ, I was teary-eyed. A very good friend was leaving. It hurt, but it had to be. I wished TJ the absolute best as we shared a good-bye hug, confident that we would meet again. For several months, TJ and I remained in relatively close touch and still do make contact from time to time, although not as much as before. I chalk it up to teenage hormones and other interests. Unfortunately, TJ's telephone numbers have also changed, and it is difficult at times to reach him. Maybe I should try Facebook, if I ever figure out how it works. Still, despite the lack of close contact, I am absolutely certain that we continue to enjoy our close bonds of friendship and I would not be surprised in the very near future to find that the young man has matriculated to college at the University of Alaska – with or without his girlfriends.

Following my loss of TJ as a Little Brother, I went through a period of mourning. I was later to learn that this was a normal thing. For a time, I simply did not want to have a Little Brother. I had enjoyed my time with TJ and believed that the likelihood of anybody else ever reaching TJ's standards would be difficult, if not impossible. It was like the last scenes out of the movie, *Old Yeller*.

Fortunately, I would discover that I was wrong. Four months after TJ had left town I was asked if I was ready to take on another "Little". Clearly, the counselor realized that I needed personal time to regroup, and had wisely and compassionately given me that time. I replied that I was "probably ready", and that I would consider doing it again. However, I added that I was hopeful that my new "Little" would remain in Fairbanks. I was told there could be no guarantees in that regard, but that my concerns would be noted.

Soon, I learned that another "Little" had been located. This "Little" was a teenager named Josh. Josh lived in Fairbanks and close to my house. The best part was that there were no plans to relocate. Like myself, Josh was on a rebound from a first match. As such, we shared many of the same concerns. At the orientation session, the counselor told me that Josh was "a very quiet young man". Once again, I would have to work to draw my "Little" out, but the counselor claimed I was good at it. I was also told that Josh "rarely smiled". According to Josh's mother, Josh was an only child, who was not familiar with the things in life that I found most interesting, which still included snowmachines, four-wheeling, chainsawing, hunting, and, of course, blowing things up.

When I met Josh, my eyes almost popped out of my head. Even if Josh was a "Little" in age, Josh was far from it in size. As a full grown man, I am 5-feet 9-inches tall. Yet, at age 14, Josh was already a good 6-feet plus. To boot, Josh's mom said he was still growing. To me, from the looks of it, Josh was already able to stop the entire front line of the Lathrop High School football team, if given even half a chance.

Following the customary introductions, Josh and I met one-on-one to visit. As in the past, pictures were taken. We then made our date for the next weekend.

Once again, the adults were mistaken. At our next contact, as soon as Josh and I got together alone, and did our "windshield time", Josh began to open up. I soon learned that Josh could smile and even laugh at my jokes. He also learned how to shake hands with a grasp that could make me wince. Over the next several months, Josh and I also became close friends. To attest to this, we developed numerous mutual pursuits that exist to this very day. In addition to snowmachining, four-wheeling, and blowing things up, Josh is now at an age where he wants to learn how to drive. Having instructed emergency driving when I was a firefighter years ago, it seemed natural that I would be the one to teach Josh this skill. We soon added to our list of accomplishments "spinning out" on ice in empty parking lots, driving uncontrollably at high speeds, and even once running a red light. For me, I learned that patience was a virtue. In time we also practiced more benign tasks, such as parallel parking, placing two hands on the wheel and keeping one's eyes on the road, and not on the cute girls standing alongside. We even tried actually stopping at red lights and driving the speed limit, as well, and Josh has become a good driver.

For sports and fun, golf has become our favorite exploit. Josh has already impressed me with his uncanny ability to locate lost golf balls, which is how we keep score. His tee-shot is also long and impressive. Josh has told me that he wants to be just like Tiger Woods, but he hits more like Happy Gilmore. We discuss many things while golfing, and, on the Tiger Woods issue, our discussions have sometimes moved to different perspectives on just what professional "scoring" means, since it is well known that Tiger now has a game both on and off the course. Clearly, there are times when role modeling does have its challenges, and Tiger Woods currently may not be the best example. Nor is Happy Gilmore, for that matter.

Initially, this seemed like a lot of time to spend every week with a young person. However, as I became more involved with my Littles, I soon realized that the true benefit to the program was a mutual benefit and that the time goal was too short.

For outdoors pursuits, my wife, Brenda, has drafted us to pick berries from time to time. This past summer, Josh and I again went berry picking with Brenda. Ironically, Brenda claims that she actually feels safer in the woods when we are around, proving once again that ignorance is bliss. During one outing, Josh spotted a bull moose. Bored by then with mundane berry picking, we decided we would go down the hill and do some stalking. To our mutual surprise, we were successful in bagging the critter, which was really not part of the plan, but just a passing thought. Still, in retrospect, the experience was a challenge, and several new tasks were learned. Thus began another lifelong memory.

One of the attributes of the program is that, following an initial period of six months, the Bigs and the Littles can be approved to have overnight outings together. These trips can be quite enjoyable, and are often a time for increased bonding. In Alaska, camping is a great time to create shared experiences.

Josh is now nearing his senior year in high school. Similar to TJ, I have seen Josh's grades improve appreciably. Although Josh has a definite aptitude in mechanics, and has been helpful more than once when my boy toys break, I personally have recognized in Josh the ability for a smart young man to attend college, and have been encouraging such to him. But, it will be Josh's decision in the end. In this regard, my role is to provide guidance and to act as a resource. But, I am already confident that, given his talents, Josh, too, will succeed in life.

I already accept that my relationship as a Big/Little with Josh will eventually end. It is part of the overall process. In fact, the program anticipates that the Littles will eventually become Bigs, and will someday take on a Little of their own. It is one way how the program promulgates itself.

We all have things we enjoy in life. To me, life is a gift. It is a growing experience to be cherished and shared. Personally, I believe that we should all give back to our community more than that which we have received over the years. I also believe that helping a younger person to mature into a responsible adult is one of our highest duties. In fact, if one candidly recalls their own childhood, it was probably difficult to talk to "the parents" about many things. Still, we needed to look to somebody for guidance, and assurance that, just perhaps, "the parents" were not entirely off base with all of their stupid rules. With both TJ and Josh, I found early on that I had become a valuable sounding board and source of guidance. To that end, I felt pride in even my limited abilities to steer them in the right direction and away from the bad and dangerous influences in today's world.

Admittedly, when I first contacted Big Brothers, I was somewhat selfish, even though I had an interest in the program. At that time, I did not like the idea of taking valuable time out of my day. I thought about that enticing recruitment advertisement by the National Guard that tells its targets that they only need to dedicate "one weekend a month", and "three weeks a year" to duty. In the scheme of things, especially with those of us professionals who are slaves to the time sheet, even a weekend a month and three weeks a year represents a lot of billable time. In addition, unproductive or unprofitable time can feel worse than a high school commencement speech prior to the obligatory senior party.

In Big Brothers, I was told that the goal would be for four hours per week spent with the Little. Initially, this seemed like a lot of time to spend every week with a young person. However, as I became more involved with my Littles, I soon realized that the true benefit to the program was a mutual benefit and that the time goal was too short. Not only was I hopefully meeting those needs that my Littles had and which could not be furnished by their parents for various reasons, but my Littles, in turn, were supplying a very basic need for companionship in my life. With all respect and love to my family, this personal need also had to be met from outside.

Without doubt, Big Brothers/Big Sisters is a worthwhile endeavor. Perhaps some, like my prankster nemesis, Don Logan, may never qualify to be a "Big" once even the most rudimentary background checks are completed. After all, a person's moral turpitude is a factor. Still, Don might qualify as a "Little" – if an age maturity exception can be made. On the other hand, most applicants will easily meet the qualifications. Finally, for those who do become "Bigs", rest assured that, once a relationship develops, the "Bigs" will be receiving far more in the end than they are giving. And, most importantly, the rewards and memories will last for at least two lifetimes.

The northern artist goes legal: A visit with the Arnetts

By Jean Bundy

At the University of Chicago I discovered January is still blah no matter how exciting to paint in the studio of sculptor Laredo Taft. Winter can be a chance to reconnect so I ignored ennui and visited with Betty and Russ Arnett in their Turnagain home now overlooking the Anchorage bowl.

"Let me reheat your tea," Betty sliced up fruitcake. Russ sat by the window watching the remains of the day, sun dripping off the sill onto his mustard shirt. Beyond the spruce lives daughter Heather, the kids were given lots nearby.

"Husband Dave once worked on a case with you, in the '70s. It was Joe Rudd's death," I tried to remember what Dave had mentioned. "No, it was Gene Guess," Russ insisted as he explained how their shaken home had left a crumbled foundation and tractored up the Hillside in '64. "We almost lost it on the inclines, today we're upgrading for energy efficiency," He chortled about taking every case that came in the door, "No specialists in my day!"

Russ grew up near the University Of Chicago. He talked about choosing Northwestern over Hyde Park while I regaled him on meeting the unknown Obama, during graduate orientation.

Classmate Judge von der Heydt suggested he apply to Nome as a commissioner. "There weren't many girls up North so I left for Seward, even worked as a janitor." Russ looked at his watch, musing about meeting Betty at a square dance…. "all there was for socializing." He then headed down his steep drive for weekly tea and political jousting at daughter April's midtown condo.

The Arnetts' cedar dining room was filled with memories from raising three children. Crystal candlesticks seem content next to cartoon salt shakers. Betty's mural of their girls piled high cheerleading was down the hall, an assuring contrast to a recent conversation with the telephone repair man who told me about an emergency call when a woman insisted he use the service entrance.

I was beginning to feel the theatricality, watching Betty's smile radiate through tangerine lipstick and dangling earrings. She talked about the National Storytelling Network and telling tales from Appalachia to Oahu. Mrs. Arnett had been a story telling ambassador to South Africa and when cruising the Yangtze was chosen to entertain. "I like telling stories with laughter, concerned as some didn't speak English. Next morning when signaling the cook about breakfast, I relaxed when he smiled, 'you good story teller.'" I could smell breakfast as Betty recounted her experience and demonstrated hand gestures for scrambled and over easy eggs.

"Memorizing doesn't work, it's all between the teller and the audience," Betty said passionately as she stressed breathing techniques and eye contact, "I write, borrow, and rearrange but always give credit."

Each narrative gets its own envelope, "I make a story map and tuck the diagram in my pocket for good luck, never use it when performing."

The story boards looked familiar and I later learned she too had taken illustration from UAA professor Joan Kimura. Betty often wears a costume and her own story about baboons destroying crops in Uganda is a favorite, "I have fifty-five stories in my head, add one a year. You aren't a professional unless you can recall ten in thirty minutes and work with a live group." She pointed to her bedroom retelling pieces from her earthquake tale about crawling under the bed with her children. "I can tell when the audience isn't reacting."

Betty performed with Frank Brink in early ACT, "I played Tennessee Williams' Laura," but a growing family and Russ' legal career made the late nights of costume making and scenery painting problematic. Discovering the art of storytelling meant remaining in the limelight with added creativity. The teller plays all the parts and can vary the verbiage provided the storyline stays fixed.

After graduating from the University of Tennessee, Betty was sent by the Methodists to the Jesse Lee Home, Seward. "There were single sex dormitories with the younger children sleeping altogether, each given a bureau." Annie came to mind as did amusing conversations I recalled with the late Justice Rabinowitz who would often recite pieces of the musical at local swim meets.

Mrs. Arnett's skills have been tested as a classroom teacher, an artist in residence and radio reader to the blind (AIRRES). Yearly, she participates in the international Tellabration, but working on her memoirs about becoming a house mother to wayward children is keeping performing to a minimum. I paraphrase:

One night I found a young boy trying to wash his sheets. A lot of bedwetting, he had probably witnessed a murder. Occasionally psychologists would come through and tell us we were doing the best we could, without training. No dawdling after Sunday church, the kitchen made fried chicken while the older boys cranked ice cream. We grew root vegetables and the railroad gave us moose kill. You could tell when the moose had tried to outrun the train, ketchup was needed and the youngest asked to have their meat cut up.

Betty laughed when telling about Jesse Lee's dairy cows who had the hots for bovines at the local diary. "It became too difficult to fence them, well…it was a change to have steaks and hamburgers for a while." Groceries came from Seattle as did clothing in missionary baskets. When the children went to school we patched jeans, and organized sizes and toys in the attic, newer goods were kept for birthdays. No place to go, we had one old truck."

After two years, Betty left the Home for Russ and Anchorage. An avid outdoors woman, she's training to hike Crow Creek Pass with her son this July. "Storytelling isn't memorization, I read silently and out loud. At the Storytellers Guild of Anchorage, we sometimes read together."

Jean Bundy AICA, writes on the arts and other topics while her spouse practices the law.

King Day events in Anchorage and Juneau a success

Retired Juneau Superior Court Judge Peter Froehlich assists a King Day event attendee.

Volunteer attorney Karen Godnick of Faulkner Banfield in Juneau assists a King Day participant.

Juneau King Day event organizers Marie Marx of Baxter Bruce et al., Libby Bakalar, Jessica Shrader, and Hanna Sebold all of the Attorney General's Office.

Thank You

As many know, on January 18, 2010, in honor of Martin Luther King Day, local attorneys offered free legal advice as a call to the challenge for this day of service. As a result of the hard work of many, 75 Juneau residents received free legal assistance.

This event would not have been possible without the list of volunteers who provided time and money. Special thanks go the following:

Jessica Srader	Marie Marx
Kelly Jantunen	Dawn Germain
Sarah Felix	Vance Sanders
Karen Godnick	Louis Menendez
Holly Handler	Russ Levigne
Michele Kane	Jan Rutherdale
Peter Froehlich	Janine Reep
Tom Wagner	Robert Briggs
Tom Jantunen	Debra O'Gara
Leslie Longenbaugh	Libby Bakalar
Ann Bennett	Deborah Behr
Fred and Jean Sebold	Annie and Bud Carpeneti
Keith Levy	Steve Weaver
The Glory Hole	AWARE
Juneau Bar Association	Kelly Henriksen
Ben Brown	Neil Nesheim
KTOO	Alaska Legal Services, Corporation
Juneau Courthouse	Juneau Empire
Heritage Coffee	Tlingit and Haida Central Council

I think the volunteers got as much out of it as the clients; I encourage everyone to participate next year.

Hanna Sebold

How's your firm doing?

The American Lawyer online magazine reported in February that the legal sector lost another 1,100 jobs in January, "a noticeable drop-off from previous months."

The magazine has been tracking unemployment reports released by the Bureau of Labor Statistics since last year. According to seasonally adjusted BLS data, the legal sector lost 2,100 jobs in December, 2,900 jobs in November and 5,800 jobs in October. Since January of last year the legal services industry shed 44,700 workers.

The Business Insider recently noted that firm layoffs were 88 percent lower in January 2010 than they were a year ago. American Lawyer speculated that a contributing factor to the improved jobs numbers for the legal sector could be that many deferred first-year associates reported to their firms for work in January, thereby offsetting layoffs elsewhere.

Alaska Bar Association 2010 CLE Calendar

March 17	2:00 – 3:00 p.m.	Social Networking Webinar Series: Facebook, LinkedIn & Twitter – How to Use Modern Tools for Investigative Research CLE# 2010-023 1 general CLE credit Price: $35	Webinar/Online
April 7	2:00 – 3:00 p.m.	Social Networking Webinar Series: How Lawyers Can Use Social Networking for Business Development CLE# 2010-024 1 general CLE credit Price: $35	Webinar/Online
April 14	2:00 – 3:00 p.m.	Social Networking Webinar Series: Ethical Traps & The Need for Usage Policies CLE# 2010-025 1 ethics CLE credit Price: $35	Webinar/Online
April 20	8:30 – 10:45 a.m.	We the Jury find the Defendant… CLE: #2010-027 2 general CLE credits Price: $70	Anchorage Hotel Captain Cook
May 12	2:00 – 3:00 p.m.	Webinar: Networking Effectively and Ethically with Roy Ginsburg CLE: #2010-028 1 ethics CLE credit Price: $35	Webinar/Online
May 20	1:30 – 4:00 p.m.	From the Mouths of Babes CLE # 2010-026 2.5 general CLE credits Price: $75 Sponsored by: Family Law Section	Anchorage Hotel Captain Cook

Go to www.alaskabar.org for more CLE info.

King Day events in Anchorage and Juneau a success

Continued from page 1

the program together: Justice Dan Winfree, Russ Winner, Dave Case, Jon Katcher, Stacey Marz, Zach Manzella, Leslie Need, Lynne Lloyd, and Kathryn Hovey. The committee worked hard to plan for the event.

The Mountain View Community Center in Anchorage graciously made its facilities available. The Committee worked with other community groups to promote the event. Much time was devoted to pre-event logistics including setting up the venue, and advertising to draw clients. Pre-event training sessions educated the volunteer attorneys on the ethical issues attendant to serving clients on a limited walk in clinic basis.

The clinic was a great success. One hundred fifty clients were served by sixty seven attorneys and forty three non-lawyer volunteers including interpreters, law clerks and paralegals. While the attorneys were presented as available to provide advice on family law, public benefits and landlord tenant, they did not hesitate to assist clients with a number of other issues including consumer protection and wills. During the event there was a lunch, organized by Celeste Hodge on behalf of the Martin Luther King Foundation, with speeches by Senator Mark Begich, Mayor Dan Sullivan, Justice Dana Fabe and Reverend Alonzo Patterson.

We were also pleased to hear of an equally successful event in Juneau where twenty volunteer attorneys served seventy five clients. Led by Board of Governors member and Assistant Attorney General Hanna Sebold, the Juneau MLK Day event utilized the Juneau courthouse's jury room, law library, and lobby to provide assistance and lunch to participants.

The committee intends to continue this MLK Day Clinic in the future, including possibly serving Bush areas through a phone bank. We also hope that in addition to Anchorage and Juneau the Bar in communities like Fairbanks, Kenai and Bethel will take up the mantle and organize events in their locales. Pro Bono Director Scully and the rest of the committee would be more than happy to provide assistance.

One image continues to come to mind. A roomful of lawyers, young and old, from a variety of practices, sitting across from clients with problems large and small, all mutually benefitting from these limited interactions: the clients having their burdens of life lightened by lawyers, and the lawyers knowing they made a difference in the lives of others. Dr. King would have appreciated our honoring him through this service.

Louise Driscoll offers advice on a Landlord/Tenant law matter during the morning session.

As an access to justice project in honor of King Day, Anchorage law clerks helped create an educational display about the Boney and Nesbett Courthouses, which mapped the main court offices and courtrooms in the two buildings and translated each location into Spanish and Russian. The goal of the display was to help familiarize members of the community with the courthouses and make visits to court less confusing and intimidating. Visitors to the display were offered a quiz that required them to identify which courthouse they would go to for a range of services—whether checking on a traffic case (Boney) or reporting for jury duty (Nesbett). Each quiz participant entered a drawing for a free gift basket, and drawings were held every hour throughout the event. L-R: Law clerks Eric Goldwarg, Jessica Spuhler and Lars Johnson staff the court display.

Dignitaries attending the King Day luncheon at Mountain View Community Center included, L-R: Anchorage Mayor Dan Sullivan, Justice Dana Fabe, and Rev. William Green of the (Anchorage NAACP). Mayor Sullivan and Justice Fabe spoke at the event, along with U.S. Senator Mark Begich.

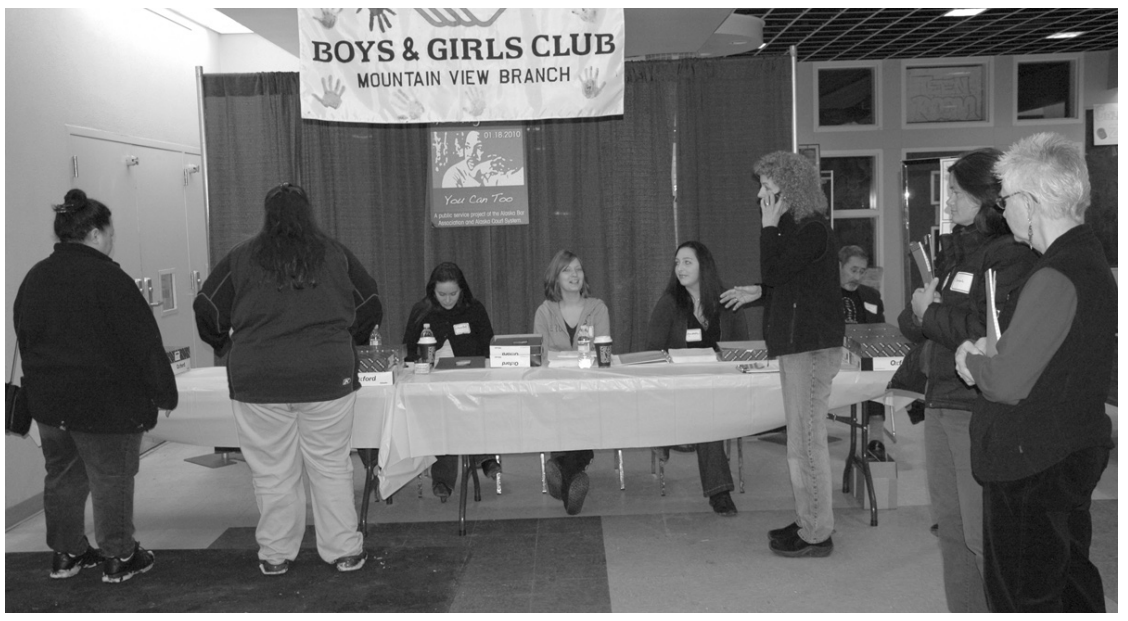
An Anchorage senior citizen thanks the Alaska Bar Association's Pro Bono Director Krista Scully, who coordinated the "He Changed Lives... You Can Too" program on King Day.

Anchorage attorneys Martha Shaddy and Rhonda Butterfield offered legal advice on Family law matters.

Anchorage attorney Bill Cummings offers advice on Landlord/Tenant law.

Anchorage attorney Don McClintock, a member of the Alaska Bar Association Board of Governors, helps screen potential clients at the triage station during the day-long legal clinic.

Law clerk Eric Goldwarg helps youth from Mountain View Community Center Boys & Girls Club complete the courthouse quiz.



Mountain View Community Center Boys and Girls Club was transformed into a bustling legal clinic. Here, staff of the Alaska Bar Association serve at the registration table, L-R: Chantal Reese, Julia Smith, Amanda Clark, and Deborah O'Regan are assisted by community volunteers Sarah Ballard and Susan Klein who assisted with check-in. Not pictured but present is Lindsay Cuzzort.

At the close of the luncheon celebration, MC Rev. Alonso Patterson joins Anchorage attorney Russ Winner, a founder of the Bar Association's MLK Day event; Sid Billingslea, President of the Alaska Bar Association; and Justice Dana Fabe.

Resolution to come

A sneak peek at a resolution to be presented at the annual business meeting at the Bar Convention in April:

RESOLUTION

WHEREAS Congress has declared that Martin Luther King Day should be not a day of rest and recreation but a day of service to the community, and,

WHEREAS on Martin Luther King Day January 18, 2010, sixty seven members of the Alaska Bar Association came together with forty three non-attorney volunteers to put on a free legal clinic in Anchorage that served one hundred fifty clients, and

WHEREAS on Martin Luther King Day January 18, 2010, twenty members of the Alaska Bar Association put on a free legal clinic in Juneau that served seventy five clients, and

WHEREAS other local bar associations and communities have expressed interest in organizing Martin Luther King Day free legal clinics in the future,

NOW BE IT RESOLVED THAT the Alaska Bar Association hereby encourages all members to support and promote Martin Luther King Day free legal clinics in the future in perpetuity.

100+ turn out to help in Anchorage

DOROTHEA G. AGUERO
ADAM ALEXANDER
MEGAN ALLISON ZALETEL
ELLA ANAGICK
KATHY L. ATKINSON
MARIA AVELLANEDA
SARAH BALLARD
SILVINA BARREIRO
ILONA M. BESSENYEY
JOSY BEVINGTON
SIDNEY K. BILLINGSLEA
BRUCE A. BOOKMAN
DARIO BORGHESAN
RHONDA F. BUTTERFIELD
RICK CABERO
LARRY D. CARD
KATHIE CASAUS
DAVID A. CASE
MATTHEW W. CLAMAN
AMANDA CLARK
LORI ANN COLBERT
BRYON E. COLLINS
WILLIAM S. CUMMINGS
LINDSAY N. CUZZORT
CAROL H. DANIEL
JODY L. DAVIS
LAURA J. DERRY
JAN HART DEYOUNG
LOUISE R. DRISCOLL
DENISE EGGERS
JOHN W. ERICKSON
ROBERT C. ERWIN
JUSTIN ESCHBACHER
SUSAN FALK
CHARISSA FELTMAN
HUGH W. FLEISCHER
MARYANN E. FOLEY
H. RYAN FORTSON
DIANE L. FOSTER
MARSHA FOWLER
DEIDRE S. GANOPOLE
DAVANN GARRETT
JOHNNY O. GIBBONS
MARY A. GILSON
ERIC GOLDWARG
JON K. GOLTZ
HAROLD W. GREEN JR
MAGGIE GREGA
KATO KAKALA. HA'UANGA
EMMA HADDIX
ERSULA HARKLEY
LILA HOLLMAN
MAX DAMIAN. HOLMQUIST
BARBARA J. HOOD
MICHAEL L. HOROWITZ
KATHRYN CASWELL. HOVEY
TRAYCE HOWE
DEBBIE HULEN
PATRICE A. ICARDI
PAULA M. JACOBSON
WOELBER & JACOBSON LLC
NEQUAI JAKAILA
MARC A. JAKUBOVIC
LISA JOHNSON
LARS JOHNSON
ANDREW L. JOSEPHSON
MARC W. JUNE
JONATHON A. KATCHER
MEGHAN KELLY
JENNIFER L. KING
SUSAN KLEIN
LUIS LAGOS PEREZ
LYNNE LLOYD
ZACHARY T. MANZELLA
STACEY MARZ
LINDA MCALLISTER
DONALD W. MCCLINTOCK
KRISTIN MCCUNE
D. JOHN MCKAY
MARY-ELLEN MEDDLETON
ALLISON E. MENDEL
MATTHEW A. MICHALSKI
JUDI MILLER
JAIME MUHR
VIVIAN MUNSON
LESLIE R. NEED
RUSSELL A. NOGG
KARA A. NYQUIST
DEBORAH O'REGAN
SUSAN C. ORLANSKY
ROBERT P. OWENS
MIA OXLEY
MARY PATRICK
STEPHANIE B. PAWLOWSKI
WILLIAM PEARSON
DOUGLAS C. PERKINS
CHANTAL NOELLE. REESE
RYAN R. ROLEY
ALEXANDER SCHUTZ
KRISTA SCULLY
MARTHA C. SHADDY
MICHAEL D. SHAFFER
JULIA SMITH
PENNY SORENSON
JOHN M. STARKEY
MARY JANE SUTLIFF
R. SCOTT TAYLOR
MARJORIE THAYER
FRED H. VALDEZ
LINDSAY VAN GORKOM
KENNETH M. WASCHE
PAMELA SCOTT. WASHINGTON
JULIE L. WEBB
MARTIN M. WEINSTEIN
IAN WHEELES
VERA WILKAINSON
RUSSELL L. WINNER

Stacey Marz, Director of the Alaska Court System's Family Law Self-Help Center, L, and Ersula Harkley-Harrington, a facilitator for the FLSHC, were on hand throughout the MLK Day event to offer information and assistance.

Assistant Attorney General Laura Derry assists at the triage station.

Anchorage attorney volunteers Pam Washington and Fred Valdez from the Municipality of Anchorage.

ANCHORAGE BAR ASSOCIATION
Resolution No. 2010-1
A RESOLUTION SEEKING REPEAL OF CIVIL CASE REPORTING REQUIREMENTS

WHEREAS, AS 09.68.130, Alaska Civil Rule 41(a)(3) and Appellate Rule 511(e) presently require the submission of information about the resolution of Civil Cases to the Alaska Judicial Council upon the completion of many civil cases on a form prepared by the Alaska Judicial Council,

WHEREAS, the preparation and filing of these forms is a burden on many attorneys and a financial burden on their clients without any corresponding public benefit,

WHEREAS, there is no apparent effective sanction imposed for non-compliance,

WHEREAS, the Alaska Judicial Council does not have adequate funding and resources to do anything meaningful with this information, and nothing is presently being done with it,

WHEREAS, whatever purpose the collection of this information was originally supposed to fulfill has been fulfilled by the published report of the Alaska Judicial Council dated February 2000, for data collected from September 1997 to May 1999,

WHEREAS, repeal of AS 09.68.130, Alaska Civil Rule 41(a)(3) and Appellate Rule 511(e) will allow the State, the members of the Alaska Bar Association, and their clients to save substantial amounts of time and money which are now spent to prepare these reports,

WHEREAS, the Alaska Bar Association may engage in legislative efforts relating to the practice of law,

WHEREAS, since 2003, resolutions substantially similar to this one were adopted annually by both the Anchorage Bar Association and by the members of the Alaska Bar Association, and,

WHEREAS, the Alaska Bar Association met with interested parties in September, 2009, and reported its progress in the December, 2009, issue of the Alaska Bar Rag, and

WHEREAS, further assistance is still needed.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF THE ANCHORAGE BAR ASSOCIATION AND THE MEMBERS OF THE ALASKA BAR ASSOCIATION, that:

During 2010 and 2011, the Alaska Bar Association shall actively work with the Alaska Judicial Council and the Alaska Legislature to secure the repeal of AS 09.68.130, Alaska Civil Rule 41(a)(3), and Appellate Rule 511(e), and its members are encouraged to actively assist in this effort. The Board shall report its progress to the membership on or before December 31, 2010.

Family violence process gets boost

A California firm has developed a risk assessment process for use in family violence matters.

Borders McLaughlin & Associates said in February that the Texas courts have become the first to accept its risk assessment process as meeting scientific requirements of evidence.

The Family Violence Risk Assessment (FVRA) process uses scientific evidence, technology, analytics and expertise in human-behavior to better predict outcomes in cases dealing with such issues as custody and visitation

The firm says the process is superior to "opinion-based assessments from therapists and others who interview families" in high-risk family violence matters.

Although it has been used in other courts in the U.S., " this is the first time it was used as evidence in a court case in Texas," said Borders McLaughlin & Associates chief executive officer, John McLaughlin. "We are committed to changing the way courts address high-risk assessments," he said. During the Texas case, John and associates where able to uncover a pattern to the accusations of abuse and molestation thereby providing the court with a clear pattern of behavior. That, in addition to other findings by the FVRA, provided sufficient factual evidence to convince the judge to rule that the supervised visitation should remain in place.

Borders, McLaughlin is the only privately held firm authorized to use MOSAIC, a highly-developed computer-assisted method that provides guidance in the evaluation of situations that may escalate to violence. MOSAIC is used by governmental agencies to assess threats to public figures, celebrities, Supreme Court Justices and other governmental officials.

For more information on the firm's Family Threat Assessment solutions, visit http://www.bmaa.com.

--Interesting press release

2010 Alaska Bar Convention

April 28-30, 2010 • Anchorage

Watch for details in the convention brochure!

SINCE 1896
ALASKA BAR ASSOCIATION

Awards Banquet Keynote Speaker

Jan Crawford, CBS News Chief Legal Correspondent

WEDNESDAY, APRIL 28

- **So Little Time, So Much Paper®: Organization and Time Management Techniques for Lawyers**

Of all the elements everyone has to work with, none is more precious than time. You have invested years learning the substance of the law. Now you can invest a few hours to learn the principles of organization and time management and how to apply them every day to do more work in less time.

- **Bar Lunch – Keynote Speaker: Dean Bob Klonoff, Lewis and Clark Law School**

Dean Klonoff, former Assistant to the Solicitor General and counsel in many Supreme Court cases, talks about the Supreme Court confirmation process. Among other things, he will discuss the failed nomination of his former law professor, Judge Robert Bork, and the nomination and confirmation of his classmate and friend Justice Sonia Sotomayor.

- **Law, Justice and the Holocaust**

This Ethics session will explore the legal system in Nazi Germany and the role of law in the Holocaust through the interpretation of images from the 1930s and 1940s with special emphasis on the role played by law and jurists in the persecution of targeted minorities, the loss of judicial independence and in the reign of terror imposed by the Nazi legal system during World War II.

- **Opening Reception at the Anchorage Museum at Rasmuson Center**

Appetizers and an unforgettable evening of art, history and science.

Questions/More Information
Check out the convention page on the Alaska Bar website: www.alaskabar.org
Call the Alaska Bar office at 907-272-7469
or E-mail: info@alaskabar.org

THURSDAY, APRIL 29

- **U.S. Supreme Court Opinions Update**

Dean Erwin Chemerinsky and Professor Laurie Levenson review the decisions of the highest court in the land.

- **Bench and Bar Lunch**

Special recognition to Alaska Bar members who have practiced 25 and 50 years

- **Alaska Appellate Update**

Dean Erwin Chemerinsky presents his annual analysis of Alaska Supreme Court decisions.

- **Concurrent Breakout CLE Sessions**
  - Implicit Bias in the Legal System
  - The National Academy of Sciences Report on Forensic Science: A Critical Review of Forensic Evidence
  - How to avoid In re: (your name here)
  - New Tricks for Old Dogs: Collaborative Practice for Everyone

- **Awards Reception and Banquet**

Keynote: Jan Crawford, CBS News Chief Legal Correspondent

FRIDAY, APRIL 30

- **Media Coverage of the Law**

Join a panel discussion with Jan Crawford, CBS News Chief Legal Correspondent, Judge Deborah Smith, Judge Mark Bennett and Judge Bernice Donald.

- **Alaska Bar Association Annual Meeting and Lunch**

Join us for a discussion on resolutions and a presentation of the Robert Hickerson Public Service Award, say good-bye to the outgoing Board Members and watch the passing of the gavel.