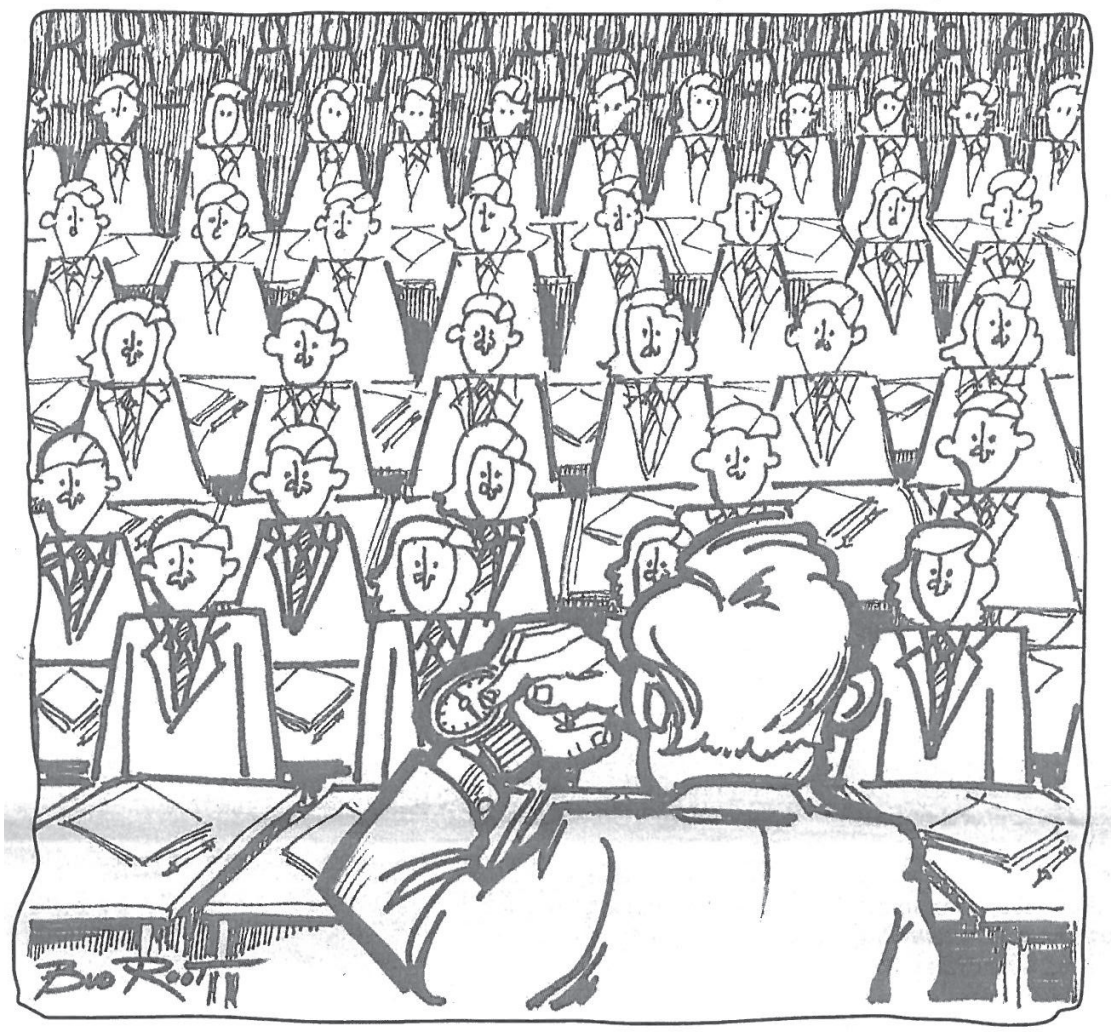
The Alaska
BAR RAG

VOLUME 37, NO. 1
January - March, 2013

Dignitas, semper dignitas

Uniform bar exam (UBE) proposed for Alaska



On the table is a proposal to adopt the Uniform Bar Exam (UBE), a national bar exam administered by the National Conference of Bar Examiners (NCBE).

The Alaska bar exam currently utilizes two of the three components that make up the UBE: 1) the Multistate Bar Examination (200 multiple-choice questions based on substantive law); and 2) the Multistate Performance Test (two essays testing for analytical and writing ability rather than substantive law).

See the pros and cons on pages 4 & 5

In addition to these two components, the Alaska Bar Exam currently includes nine essay questions—three one hour essays and six half-hour essays--that test substantive knowledge of Alaska specific law. All nine essay questions are drafted, edited, calibrated and graded by local Alaskan attorneys who serve on the Law Examiners Committee. Most often, those who draft the essays are experienced practitioners in the area of law that their particular essay seeks to examine. The UBE essay portion (MEE), which would replace the current essay questions, consists of six, half-hour essay questions chosen from 12 possible legal subjects that are not state specific. The 12 possible legal subjects on the MEE include several subjects not currently tested in the essay portion of the Alaska Bar Exam. Among the nine subjects the Alaska Bar Exam currently test, Business Law, Family Law, and Real Property are not among the six subjects tested on the MEE. Additionally, Conflicts, Trusts and Estates, and the Uniform Commercial Code are tested on the MEE and not currently tested in Alaska.

The Board of Governors is reviewing the proposal to adopt the UBE, and is seeking input from the legal community. Comments on the proposal should be sent to oregan@alaskabar.org.

— The Alaska Law Examinars Committee.

Governor appoints Joel Bolger to Supreme Court

Gov. Sean Parnell appointed Alaska Court of Appeals Judge Joel Bolger as the 23rd justice of the Alaska Supreme Court on Jan. 25. His appointment follows the retirement of Justice Walter "Bud" Carpeneti.

Judge Bolger first moved to Alaska in 1978. He graduated from the University of Iowa with a bachelor's degree in economics and a juris doctorate. He began his Alaskan legal career in Dillingham as a VISTA volunteer attorney, and then supervised the Alaska Legal Services Corporation in Kodiak. Then, after serving as an assistant public defender in Barrow, he joined the private practice firm of Jamin Ebell Bolger & Gentry in Kodiak, where he litigated civil and criminal cases, advised the borough assembly, mediated disputes, and negotiated business transactions.

Joel Bolger

In 1997, Bolger was appointed as a district court judge in Valdez, followed by an appointment to the Kodiak Superior Court. Since 2008, he has served as a Court of Appeals judge in Anchorage, authoring in excess of 150 opinions. Bolger has been active in the formal education of judges, magistrates, and lawyers and has served on the Alaska Bar convention steering committee, the CLE Committee and as a judge in the statewide Mock Trial Competition. He has 2 grown children, and his wife is an accountant. His interests include biking, skiing, golf, and music.

"Judge Bolger's vast experience will be a tremendous asset for Alaska's highest court," said Governor Parnell. "His service at each level of the Alaska Court System has prepared him to serve Alaskans with humility, thoughtfulness, legal expertise, and discernment."

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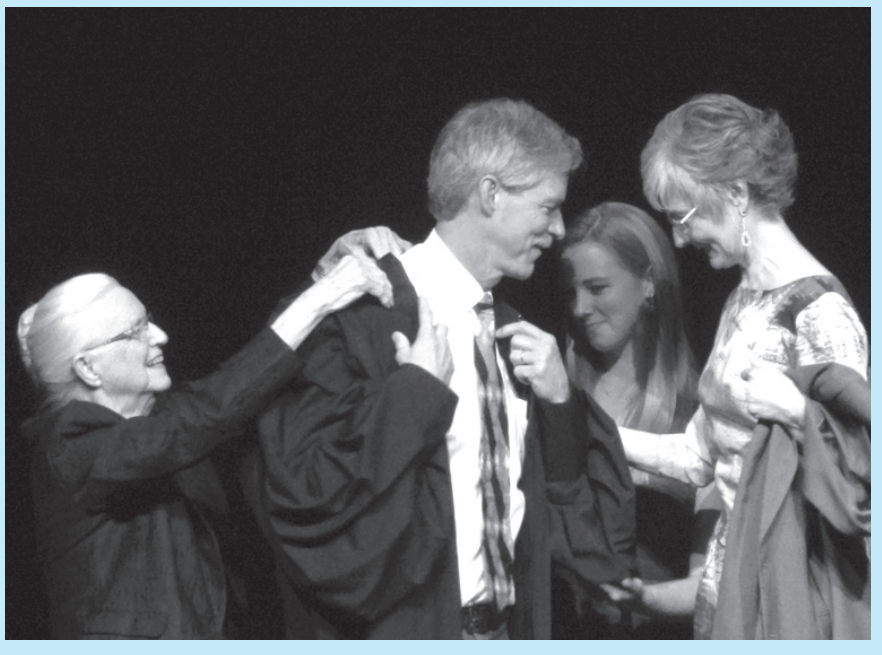
Maassen robed in November



Newly appointed Supreme Court Justice Peter Maassen was sworn into office the Monday after Thanksgiving in 2012. With him for the occasion were his mother, Edith Maassen, and his wife, Kay Maassen Gouwens, who had to stand on a footstool to help robe the tall justice. Looking on is their daughter Lillian.

PRESIDENT'S COLUMN

And the envelope, please

By Hanna Sebold

Sunday I hosted our annual Oscar Party: lots of food, fun and laughs. Everyone comes dressed to the nines and armed with our picks. Kate Sheehan would like you to know she picked the most winners.

As I watched the events unfold, I reflected on the past year and how the Bar has had its own noteworthy events. As we approach the convention, I hope I don't have a Jennifer Lawrence moment where I fall on my way to the stage. But for anyone who knows me, given the speed at which I move and the height of heels I do it in, the odds are not in my favor. If it happens, feel free to laugh along with me. That should be enough entice-ment for people who are on the fence about attending the convention.

Thank you all for the opportunity to serve as your president. I hope to see you all in Juneau this May at the 2013 Alaska Bar Convention.

In the Oscars milieu, I would offer some additional awards.

The award for best cinematography goes to the communities that hosted us on our travels over the year. As I've said before about travel throughout our state — it is beautiful.

The award for best lead actors/actress goes to the Meet the Board series. And you thought they were just lawyers.

"Do good work with thoughtful purpose. And have fun."

The award for best supporting actors/actresses — our staff. They are helpful, knowledgeable, and we couldn't do it without them.

For best directing — really, did you think it was anyone but Deborah O'Regan who manages to herd us all?

For best editing — Steve's Van Goor's departure (rewind). Enough said.

Best foreign language film goes to Bob Evans who has helped the Bar Association enormously by navigating us through the legislative process. I hope the Sunset bill will end up being best documentary short.

Best visual effects goes to the new office and the décor. Best writing goes to our law examiners who tirelessly work on drafting exam questions and to the graders for reading and grading a record number of essays (102!) for the July 2012 Bar Exam.

Best documentary is the reality of the hardships unrepresented people suffer when trying to navigate through our complex systems. Awards to all who provide pro bono assistance.

In memoriam — for those we have lost, it is a good reminder to take care of ourselves and cherish the time we have with one another. Do good work with thoughtful purpose. And have fun.

Like the recipients of the real Academy Awards, there are too many people to thank for all their hard work and these are just a few of the achievements that have been made over the past year. Thank you all for the opportunity to serve as your president. I hope to see you all in Juneau this May at the 2013 Alaska Bar Convention.

EDITOR'S COLUMN

Guns

By Gregory S. Fisher

A gun is a gun, yet somewhat more; a symbol of something we can't quite define. Is it freedom, independence, self-reliance, autonomy? Guns represent much of what is good and noble about America. Guns signify voluntary participation in our great national experiment. Unfortunately, guns also betray our worst flaws. They are an accelerant fueling our basest fears.

Mark Hummels was a partner at a firm in Phoenix. Mark was also the President of the Phoenix Chapter of the Federal Bar Association. Some of us had met or knew Mark through affiliations with Arizona or the federal circuit. I had only a remote passing acquaintance. On Wednesday January 30, 2013, Mark attended a mediation session with his client. It was a commercial case, some type of contract dispute. You know the type. In case you don't, it's just a business deal. It's about money. Except in this case it wasn't. The other party appeared pro se. He had a gun. He shot both Mark and Mark's client. The client died on the spot. Mark died a day or two later, leaving a wife and two young children. The shooter killed himself near a freeway ramp in Gilbert or Mesa. I did not know Mark well enough to grieve for him and his family on a personal level. His was a stranger's death. But his murder's random senselessness remains.

There is a lot, in other words, to cherish and protect within the Second Amendment. However, no right is beyond reasonable regulation.

I don't know how we got from Israel Putnam to Israel Keyes, but we got there fast and with our guns. Guns are how we solve problems. Each morning's news scroll invariably reports another shooting, another gunman on the loose. When President Obama spoke about people clinging to God and guns, he hit closer to the mark than even he or his advisers may have imagined. I think you could say we worship guns, not as "guns" of course but as a sacrament of a national myth.

The Second Amendment's historical context spoke to the necessity of having "a well regulated militia" for national security. Instructed by Heller, we now understand it protects an individual's right to possess firearms. There is solid scholarship and practical experience supporting Heller's conclusion. When I served in the army, those who had grown up with weapons naturally and quickly adapted to their use in a military setting. However, on an equally fundamental level the right to keep and bear arms speaks to collective action emphasizing the ultimate power of the people. We cede a measure of our autonomy to promote a republican form of government. But the bridle on the King's authority remains. Guns convey a message, not always so subtle: "do not ever tread on me." That sounds nutty, I know, but it's much of what we are and the better part by far.

"Unfortunately, guns also betray our worst flaws. They are an accelerant fueling our basest fears."

There is a lot, in other words, to cherish and protect within the Second Amendment. However, no right is beyond reasonable regulation. A constitutional right to travel is implied in the Fourteenth Amendment's Privileges or Immunities Clause. That does not prohibit states from requiring cars to be registered, drivers licensed, and owners insured. I think you could make the argument that cars, like guns, are an extension of our self-identity. Like guns, cars embody symbols; perhaps freedom, mobility, and independence. We accept restrictions on cars (licensing, registration, insurance). Why are guns different?

But the gun lobby is so strong that even otherwise sensible politicians will parrot complete nonsense or (worse) stand silent. Guns in schools seemed like the high water mark, but now bold souls are promising to arrest federal agents who enforce federal laws in Alaska. It's come to that? We're told we need automatic weapons and banana clips to defend our homes. Automatic weapons were actually designed for fire suppression. The concept was and is that a lot of rounds and noise will get heads to duck, leaving you a second here or there to move and maneuver. Automatic weapons are not particularly accurate. And they are not hunting weapons.

The argument against gun registration and background checks is internally inconsistent. Gun advocates argue that if weapons are registered it will be easier for the government to send out their black helicopters to round up everyone. But at the same time they contend they need their grenade launchers to protect against such a government. Isn't that when you would use them, and if not then, when?

The reality is this—we cannot legislate mental illness, anger, rage, jealousy or the thousand other passions of a disordered mind.

The reality is this—we cannot legislate mental illness, anger, rage, jealousy or the thousand other passions of a disordered mind. However, we could take steps to make it far less likely that some angry or afflicted person will destroy a life or lives, or dozens or even hundreds of lives. We can ban certain types of weapons, require training and licensing, mandate background checks, institute registration, and require insurance. Some of these steps we've taken. Some we may implement. Some we will never adopt. At some point, however, we need to have an intelligent discussion about rights and responsibility. We are better than what we tolerate in our present circumstances.

The Alaska BAR RAG

The Alaska Bar Rag is published quarterly by the Alaska Bar Association, 840 K St., Suite 100, Anchorage, Alaska 99501 (272-7469).

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Board of Governors meeting dates
September 6 & 7, 2012
(Thursday & Friday)
October 25 & 26, 2012
(Thursday & Friday: July Bar Exam results & budget)
January 24 & 25, 2013
(Thursday & Friday)
May 13 & 14, 2013
(Monday & Tuesday)
May 15 - 17, 2013
(Wed. - Friday: Annual Convention)

[Editor's Disclaimer: As with all *Bar Rag* articles, advertisements and letters, we do not vouch for, stand by, or support most of what we publish. Nor have we cleared any of this with either the FDA or the Department of Homeland Security (aka Interior Ministry). We sure as hell won't be responsible for your hurt feelings or misguided reliance on anything we publish].

NEWS FROM THE BAR

Comments invited on 3 proposed rule amendments

The Board of Governors invites member comments regarding the following proposed amendments to Alaska Bar Rule 5 and Alaska Bar Rule 12 as well as a proposed Alaska Rule of Professional Conduct 5.8. Additions have underscores while deletions have strikethroughs.

Alaska Bar Rule 5, Section 1(a)(2). This amendment proposal clarifies that an applicant for admission must take and pass the Multistate Professional Responsibility Examination at an examination taken not more than seven years prior to the applicant's application for admission.

Rule 5. Requirements for Admission to the Practice of Law.

Section 1. (a) To be admitted to the practice of law in Alaska, an applicant must:

(1) pass the bar examination prescribed pursuant to Rule 4 or be excused from taking the bar examination under Rule 2, Section 2;

(2) take and pass the Multistate Professional Responsibility Examination by obtaining a scaled score of 80 at an examination taken not more than seven years prior to the applicant's Alaska application for admission;

Alaska Bar Rule 12(a)(1). This amendment eliminates the office requirement for a member of a discipline Area Hearing Division and would permit any member in good standing to serve in a division.

Rule 12. Area Discipline Divisions and Hearing Committees.

(a) **Appointment of Area Division Members.** Members of Area Discipline Divisions (hereinafter "Area Divisions") will be appointed by the chief justice under the procedure set out in this rule. One Area Division will be established in each area defined in Rule 9(d). Each Area Division will consist of:

(1) not less than six members in good standing of the Bar, each of whom ~~maintains an office for the practice of law~~ resides within the area of area disciplinary jurisdiction for which he or she is appointed; and

…

Alaska Rule of Professional Conduct 5.8. This proposed addition to the Alaska Rules of Professional Conduct would impose a duty of lawyers in general to disclose new and credible evidence creating a reasonable likelihood that a defendant did not commit an office of which the defendant was convicted if the evidence is not protected by Alaska Rule of Professional Conduct 1.6 on client confidentiality.

Rule 5.8 Responsibility to Disclose Evidence of Innocence

When a lawyer knows of new and credible evidence, other than a secret or confidence as defined in Rule 1.6(a), creating a reasonable likelihood that a defendant did not commit an offense for which the defendant is charged or was convicted, the lawyer shall promptly disclose the evidence to the appropriate court, to the prosecuting authority, and to the defendant's lawyer, if known, unless a court authorizes delay or unless the lawyer reasonably believes that the evidence has been or will otherwise be promptly communicated to the court, the prosecuting authority, and the defendant's lawyer. For purposes of this rule: (1) the term "new" means unknown to the defendant and the defendant's lawyer; (2) the term "credible" means evidence a reasonable person would find believable; (3) the phrase "appropriate court" means the court presiding over the matter or which entered the conviction against the defendant and, in addition, if appellate proceedings related to the defendant's conviction are pending, the appellate court which is conducting those proceedings; and (4) the phrase "defendant's lawyer" means the lawyer, law firm, agency, or organization that is representing or represented the defendant in the trial court or on appeal.

COMMENT

[1] All lawyers have a responsibility to prevent and rectify convictions of innocent persons. This rule recognizes that prosecutors are not the only lawyers who have this obligation.

[2] As in Rule 3.8, the exception in the rule recognizes that an lawyer may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest.

[3 A lawyer does not violate this rule if the lawyer makes a good faith judgment that the new evidence is not of such a nature as to trigger the obligations of the rule, even though the lawyer's judgment is later determined to have been erroneous.

Please send comments to: Executive Director, Alaska Bar Association, PO Box 100279, Anchorage, AK 99510 or e-mail to info@alaskabar.org by May 1, 2013.

Kauver appointed to superior court

Gov. Sean Parnell appointed Judge Jane Kauvar to the Fairbanks Superior Court on March 5.

Judge Kauvar has served the District Court in Fairbanks since 1981. In that role, she has also served temporarily as a Superior Court Judge in Fairbanks, Kenai, and Bethel. She has served as a Fairbanks Juvenile Treatment Court Judge, and currently serves as a magistrate training judge. Prior to her appointment to the bench, Judge Kauvar served as a prosecutor and defense attorney.

"Judge Kauvar has been a strong servant in the Fairbanks courtroom," said Gov. Parnell. "Her experience and skills have prepared her well for this new assignment in the Superior Court."

Judge Kauvar was also a member of the Commission on Judicial Conduct and has volunteered with local and youth swimming, soccer, and running events and programs

Letter to the Editor

To my colleagues at the Bar,

As I think everyone knows by now, I'm staying on as bar counsel and I felt it was important to explain the change in plans. Linda and I had planned to move to Colorado to be closer to family and to enjoy somewhat warmer winters. We had always thought that we could get most of our investment out of our town home and delayed contacting real estate agents until we returned from a trip Outside in mid-January. Unfortunately, we discovered literally the day after the Board's Open House and recognition ceremony in late January that we would suffer a substantial financial loss if we were to sell our town home in today's market. Linda and I reevaluated our plans and decided to stay in Alaska. I truly appreciate your kind words of support and look forward to continuing a very interesting career with the Bar Association. And, as Paul Harvey used to say, "now you know the rest of the story."

— Steve Van Goor

Board of Governors action items January 24 & 25, 2013

- Voted to approve three reciprocity applicants for admission.
- Reviewed information about the Uniform Bar Exam (UBE) and decided to put the Law Examiners Committee position and the Young Lawyers Section positions in the March Bar Rag.
- Voted to publish a proposed amendment to Bar Rule 5 to limit the acceptance of MPRE scores to seven years from the taking of the exam to the date of application for admission.
- Voted to approve three Rule 43 (ALSC) waivers.
- Voted to deny a bar exam applicant's request for reconsideration of the Board's denial of his admission based on character and fitness in Admissions Matter 2012A001.
- Voted to publish a proposed amendment to Bar Rule 12 to change "maintain an office" to "reside" in the district. The Board indicated that they construe "maintain an office" to mean "reside" and include inactive and retired members until the rule is changed.
- Voted to adopt the stipulation for an 18 month suspension in Disciplinary Matter 2011D208, with conditions prior to reinstatement.
- Voted to adopt the recommendation of the Area Hearing Committee in the Disciplinary Matter involving Phillip Weidner, that the Petition for Formal Hearing be dismissed.
- Voted to create a new section called Federal Agency and Congressional Practice.
- Voted to publish a proposed amendment to ARPC 5.8 regarding a lawyer's duty to report information to prevent wrongful incarceration or execution.
- Voted to set the working capital reserve at an amount equal to seven months of expenses.
- Declined to make a contribution to the Juneau Success Inside & Out program.
- Voted to accept the recommendation of the Area Hearing Committee in the Matter involving Anthony Strong for disbarment with the modification requiring restitution.
- Voted to accept the Stipulation for Discipline in Disciplinary Matter 2009D201 & 2009D245 for a public censure by the Alaska Supreme Court.
- Discussed Casemaker's subscription service for citation checking and decided that the email to the membership should come from the Bar, not Casemaker; that no Bar member phone numbers will be given; and we should remind members that the basic Casemaker service is still free.
- Decided to survey Bar members on a long range plan for the Bar to look into the economic culture and investigate options for the future location of the Bar, including owning its own facility.
- Voted to adopt the Stipulation for Discipline in Disciplinary Matter 2011D262 & 2012D062 for a private reprimand.
- Voted to reimburse Trustee Counsel in Matter 2012T002 in the amount of $16,925.31 for fees and expenses.
- Requested that Bar Counsel draft an amendment to Bar Rule 31 regarding the limit on the Lawyers' Fund for Client Protection for compensation for Trustee Counsel.
- Approved the minutes of the October 2012 board meeting.

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YES: Alaska should adopt the UBE

By Leslie Need

Colleagues,

I am confident that after careful consideration of this important issue, the majority of Alaska Bar members will see the value to our profession in adopting the Uniform Bar Exam (UBE). The Conference of Chief Justices and every peer I have spoken with support the UBE. In this piece, I endeavor to explain some of the reasons for that support.

We can all agree that the task of giving a bar exam is no small feat. A bar association must ensure that it protects the public by requiring new lawyers to pass a test which determines whether they have the basic competency to practice law. Knowing that the purpose of the bar exam is to ensure that lawyers possess basic competencies for effective practice (thereby ensuring the safety of the public) and knowing that the UBE accomplishes this goal while still allowing states to set their own minimal scores and give state-specific tests on state law, it makes sense for the Alaska Bar to adopt the UBE and develop a UBE that meets the needs of our state.

Currently, Alaska administers almost all of the components of the UBE. We require attorneys taking the Alaska Bar Exam to pass the Multistate Bar Exam (MBE) and the Multistate Performance Test (MPT). Alaska sets the minimum acceptable passing scores and would continue to do so under the UBE. Alaska currently writes our own essays. Adoption of the UBE would require Alaska to administer a national essay component (the Multistate Essay Examination or MEE) but would not require Alaska to do away with our Alaska-specific essays. Again, even with the MEE, Alaska would continue to control the minimum passing score. Determinations about who may sit for the bar exam, education requirements and character and fitness issues would continue to be determined by the Alaska Bar Association.

In October of 2012, the Alaska Supreme Court, the Alaska Bar Association Board of Governors and the Law Examiners Committee hosted a forum on the UBE. The concern most frequently expressed by the Law Examiners Committee was that the UBE would prevent Alaska from testing attorneys for minimal understanding of Alaska law, thereby endangering the public. This is simply not the case. The UBE expressly allows for states to continue testing examinees on state law.

Notably, over the past five (5) years, 37% of those admitted to the Alaska Bar were admitted by reciprocity, thereby becoming members of the Alaska Bar without any requirement to be tested on or complete a CLE concerning Alaska law.

Adoption of the UBE is in no way a statement that the Bar does not value the work of the Law Examiners Committee. In fact under the UBE, if Alaska elected to require either a CLE or an Alaska law section on the Bar, the work of the Committee would remain invaluable.

A concern frequently voiced about any new Bar policy is whether the new program will be more expensive than the status quo. Based on the information available, the cost for proctoring the UBE versus the Alaska Bar Exam is virtually the same.

While the cost is virtually equal, the benefits to the Bar, especially new lawyers and their employers, are great. Currently, lawyers must either take the Alaska Bar or be admitted through reciprocity after practicing in a reciprocal jurisdiction for at least five (5) years. Many legal practices now involve clients with multi-jurisdictional needs. Adoption of the UBE would mean that Alaskan attorneys would have the ability to be admitted in nearby jurisdictions without waiting five years or taking another bar exam. Additionally, for obvious reasons, the UBE is valuable to military families subject to relocation throughout their career.

Jurisdictions who have adopted the UBE include: Alabama, Arizona, Colorado, Idaho, Minnesota, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Utah, Washington, and Wyoming. A report from the National Conference of Bar Examiners (NCBE) in October indicated that New Mexico, Illinois and the District of Columbia are likely to adopt the UBE in the near future. The UBE geography shows a concentration of states in our corner of the map.

Anecdotally, new lawyers have overwhelmingly voiced their support for the UBE. And, not because they wish to take the Bar Exam in Alaska and flee. Rather, my peers have expressed that the job market in the United States is changing. Work is becoming multi-jurisdictional. And, the UBE embraces that trend.

While the UBE does not harm licensed attorneys or the public, it will do a great deal for our new practitioners giving them the ability to better serve clients and their employers through our changing practice of law.

In sum the reasons to adopt the UBE are numerous. Our neighboring jurisdictions have elected to adopt the UBE. We know the UBE protects the public by ensuring standards for licensure are met. Alaska would retain local control over admissions and an Alaska component could still be a part of the requirements for licensure.

As the only non-voting member of the Board, and, incidentally, one with a constituency widely in favor of the UBE, I was the only Board member availed of the opportunity to write a piece in support of the UBE for this publication. But, I am certain that the other members of the Board agree that this is an issue worthy of our attention. Now, it is up to you to tell the Board whether the Bar Association should adopt the UBE.

I invite you to speak with your colleagues and friends about the UBE; become an informed consumer on this issue. And, please contact your Board of Governors representatives with your questions and concerns. For more information about the UBE, visit the NCBE website at: www.ncbex.org/multistate-tests/ube/.

Respectfully,
Leslie Need
New Lawyer Liaison, Board of Governors

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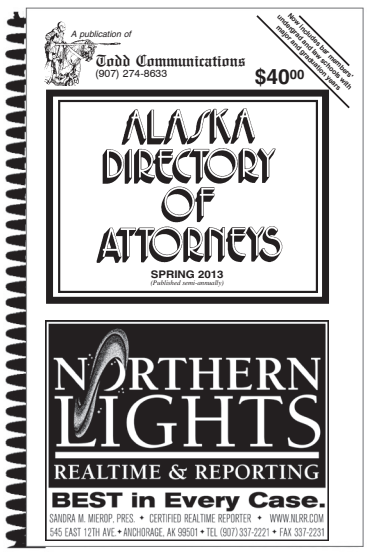

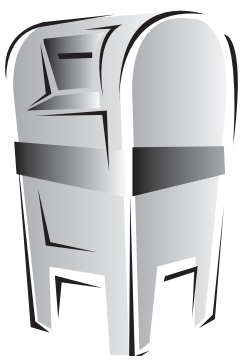

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RSD PROPERTIES

NO: The UBE should not be adopted

By the Alaska Law Examiners Committee

The Alaska Law Examiners Committee, made up of 31 local, practicing attorneys and judges, is charged with drafting and grading the essay portion of the Alaska bar exam. The Committee drafts, calibrates and grades nine essays based on Alaska law. For nearly 40 years, Alaskans have entrusted this Committee to administer the essay portion of the Alaska Bar Exam. After attending a presentation by the National Conference of Bar Examiners (NCBE), the company that administers the Uniform Bar Exam (UBE), the Law Examiners Committee met on multiple occasions to discuss the merits of adopting the UBE in Alaska. After considerable time weighing both sides of the issue, the Committee uniformly concluded that adopting the UBE is not in the best interest of Alaska.

After considerable time weighing both sides of the issue, the Committee uniformly concluded that adopting the UBE is not in the best interest of Alaska.

The purpose of the Alaska bar exam is to ensure that all lawyers licensed to practice in the state have demonstrated a satisfactory level of competency and knowledge to practice law in Alaska. The exam acts as a gatekeeper to protect Alaskans from sub-standard legal services and helps provide the general public with a level of confidence that Alaskan attorneys are competent to practice Alaska law. Familiarity with Alaska law should be required for new lawyers before being licensed to practice law in this state.

Alaska law is unique enough to require that applicants have some exposure to, and basic knowledge of, the areas of Alaska law that differ from other jurisdictions. For the vast majority of applicants to the Alaska Bar, their review of Alaska law while studying for the bar exam will be their first and only exposure to the study of Alaska law prior to practicing in the state. In this regard, Alaska is different from other jurisdictions, most of which have law schools that teach at least some state-specific law. By including Alaska law into the bar exam, applicants are not only exposed to the differences in Alaska law actually tested on their particular exam but the applicant will also retain a general knowledge of Alaska law accumulated while studying for the exam. This is especially important for a new lawyer who chooses to become a solo practitioner, or begin working without the oversight of a more experienced attorney.

The Committee discussed at length the option of adding an Alaskan component to the UBE (a "best of both worlds" solution), and concluded it was simply not feasible. According to representatives from the NCBE, a substantive, local law component that supplements the UBE must be administered at the same time as the UBE to be calibrated accurately. A calibration of the entire exam, and all its component parts, is an integral part of the exam in its current form. In other words, in order for the applicant's exam results to qualify for admission to the Alaska Bar, he or she would have to sit for the exam in Alaska. This may benefit an applicant sitting in Alaska who wishes to transfer a UBE score to another jurisdiction but it would not enable an applicant sitting for the UBE elsewhere to apply for admission here, severely limiting the benefits of "mobility".

Other options for a less substantive Alaska law component include: 1) administering a test that is not calibrated with the bar exam and, therefore, is unreliable; or 2) requiring a review course with no test, similar to attending CLE. Either option poses risks that outweigh any possible benefit. Without the ability to calibrate the exam the results would lack credibility and would undermine the reputation of the Alaska bar exam. An uncalibrated exam could lead to litigation or, at a minimum, lead to a loss of confidence regarding the impartiality and fairness of the exam. A mandatory review course, such as a day or afternoon-long CLE class, would likely prove to be superficial and relatively meaningless.

Nationwide, only six states have already administered the UBE, with seven additional states who intend to administer it in 2013 or 2014. Among these states, five have decided to eliminate any requirement of a jurisdiction-specific component to their exam. Arizona requires a six-hour online course or CLE, Missouri requires a 30-question "open book" stand-alone online test. Alabama requires an add-on three hour written exam prepared by their board of examiners. The Alabama board of examiners is currently considering a proposal to eliminate the add-on jurisdictional component of the exam. Washington and Montana are currently developing some form of add-on CLE course or stand-alone test. Ultimately, the UBE is simply not intended to be administered with a supplemental local law section; it was designed to entirely replace the local elements of state bar exams.

While applicants who waive in from other jurisdictions are admitted without first having to take the Alaska Bar Exam, there is a reason Alaska requires such an applicant to have had a minimum of five years of active practice, and membership in good standing, in another jurisdiction prior to eligibility for admission to the Alaska Bar. After five years, the waiver applicant has an established track record of competent legal practice in another jurisdiction, and presumably has had additional time to develop skills that will help the applicant become familiar with the law of the new jurisdiction. With reasonable certainty, the waiver applicant has proven through years of practice that he or she has the legal acumen sufficient to protect the legal interests of Alaskans.

An additional benefit of the Alaska Bar Exam in its current form is that it aids local employers in making hiring decisions. For example, the State of Alaska employs a large number of new attorneys as prosecutors and public defenders, in addition to attorneys who work in the various state civil departments. By requiring an applicant to the Alaska Bar to sit for the exam in Alaska, and study and test on Alaska law, that employer can be reasonably assured that the state's investment in the new employee will be reciprocated by the employee's commitment to the state. An apparent commitment to remain in the state helps determine whether the expense of hiring and training that individual is justified. While it may be a benefit to recent law graduates to be able to sit for one bar exam, and then qualify to be licensed in any number of different states, it does little to benefit the State of Alaska and its citizens.

In addition, larger firms have shown a willingness to help finance a new attorney's application for admission to the Alaska Bar, while smaller firms enjoy the applicant's commitment to the local community by taking the local bar exam. Members of the Law Examiners Committee, many of whom have been practicing in Alaska for decades and have passed multiple bar exams, agreed that taking an additional bar exam was not a deterrent to moving to Alaska to practice law. There is no evidence suggesting that requiring bar members either to pass the Alaska Bar Exam or waive in after practicing in another jurisdiction for five years, is preventing quality attorneys from choosing to practice law in Alaska. Aiding in the mobility of new, inexperienced attorneys is not an adequate justification for adopting the UBE.

In summary, the UBE was designed to add convenience – convenience for the applicant in the form of mobility, and convenience for the state's legal governing body so that it is relieved of the burden of producing its own bar exam. Added convenience for the applicants and for the Alaska Bar Association does not further the aim of the Alaska bar exam: to protect the public. The cost of this convenience is the risk that the UBE will fail to provide Alaskans the same level of protection they now enjoy. The Alaska Bar Exam has proven to be an effective and high-caliber bar exam, one that has been administered successfully in substantially its current form for over 40 years and is in no need of reform. There is no adequate justification at this time for Alaska to abandon its current bar exam, which tests applicants to the Alaska Bar on Alaska law, and to risk implementing a new and largely untested form of exam simply to accommodate new and inexperienced lawyers, and to relieve the Law Examiners Committee of a commitment it now gladly shoulders.

Alaska Bar Association MEMBERSHIP BENEFITS GUIDE

Bar staff has compiled a detailed guide to benefits & services for members.

Included in the guide are services, discounts, and special benefits that include:

- Alaska USA Federal Credit Union for financial services
- Alaska Communication wireless discounts
- Copper Services virtual conferencing
- OfficeMax partners discount
- Alaska Club health and fitness enrollment options
- Premera Blue Cross health and dental plans
- LifeWise group discounted term life insurance
- Hagen Insurance disability insurance discounts
- Avis and Hertz rental car discounts
- Professional Legal Copy ABA member pricing
- Kelly Services staffing services special pricing

Also included are Alaska Bar Association and partner services that include the Casemaker legal research platform, Lawyers Assistance, Lawyer Referral Service, Ethics Hotline resources, the ABA Retirement Funds program, American Bar Association publication discounts, and Alaska Bar publications (Bar Rag, CLE-At-A-Glance newsletter, and E-News).

For details on these benefits & services and how to access them, download the full Member Benefits Guide at www.alaskabar.org.

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AS 24.25.065, Aristotle's Rhetoric, and 'Never Having to Say You're Sorry'

By Peter J. Aschenbrenner

I'm in hot water again.

"If Aschenbrenner hadn't pushed that lever," The Whitecheese scowls, "we'd be slogging the battlefield at Bladensburg. That's Maryland, 1814," he adds.

"I'll pass on the memories," Jimmy sighs.

"Is this what you call 'warp speed'?" Dolley Madison surveys the passing landscape. "How far into the future are we going?"

"Thanks to the Professor's elbow, we'll be touring downtown Anchorage, Alaska. It'll be 2213. And here we are."

We enter an ornate palace.

"The Temple of Karnak? The Baths of Maxentius?" the Governor studies her 'architectural recognition' software.

"It's the Museum of Improbable Alaska Construction Projects. Only half completed, of course," Mr. Whitecheese responds. "Magnificent and vaulted corridors lead into bowels of this marble palace."

"How come," I ask, "both the legislature and the court system occupy the same building?"

"It's not a new idea," Whitecheese answers me. "In fact, this edifice dates to the year 1963."

"You rang?" Governor Egan appears. "I hope you like gubernatorial whites."

"You were our first Governor of apothecarial provenance," The Sarah confirms. "If anyone missed the last *Bar Rag* episode."

"In the first year of my second term," our first Governor guides our footsteps, "the legislature decided to take responsibility for the laws that it writes."

"We're speaking word-smithery?" our most recent, but one, Governor, asks.

"Allow me to introduce my companion on this tour," our first Governor poses the question.

"The neatly trimmed beard! The dandified elegance!" I gasp. "It's got to be Edouard Manet."

"Where'd you pick up this bumpkin?" Aristotle drawls.

"Time to turn to 'A Report to the Legislature … Examining Court Decisions … Construing Alaska Statutes'," our first Governor intones. "The January, 2013 edition," he adds.

"The 'purpose of the report is to advise members of the legislature on defects in the existing law'," Dolley flips through its twenty-nine pages. "This is fascinating. In a criminal case the accused, claiming good moral fiber, makes this argument: altho' he has been swept within the law's semantic embrace, he does not deserve to be so treated."

"The government," Jimmy picks up the thread, "will argue that the morally bad man deserves to be punished, despite the legislature's sloppy text-crafting, which apparently leaves him beyond the condemnation of its script."

"And civil cases?" I blurt. "What about – ?"

"Under inclusive, over inclusive," The Sarah sniffs. "It's not rocket science."

Jimmy leans over her shoulder. "*The Rhetoric to Alexander*," he reads the header. "Cue the Maestro."

"'Laws, properly ordained, should define the issue of all cases'," Aristotle recalls his pseudo-Aristotle from memory, "'and as far as possible leave the judges – ' "

"Hey!" I interrupt. "You didn't write that!"

"It's attributed to The Master," Dolley replies.

" 'Leave as little as possible to the discretion of the judges'," he recites from memory. "'Legislation is the result of long consideration, whereas judgments are delivered on the spur of the moment, so that it is difficult for the judges properly to decide questions of justice or expediency'."

"Ah," Governor Egan sighs his druggist's memories. "Ancient wisdom floats our way. Like a scoop of vanilla ice cream on a tall glass of root beer."

"The point is," our almost current Governor returns us to the point, "that the legislature is responsible for the conundrums of logical provenance which bedevil appellate litigation."

"Johnny Venn usually appears," I gasp. "About this time."

"You rang?" a gent of bespoke predicate minds his cue. "It's my duty to elucidate."

"The legislative council shall annually examine," our first Governor cites us to AS 24.20.065(a), "published opinions of state … courts .. that rely on state statutes … if … the opinions … indicate unclear or ambiguous statutes …. ."

"The year was 1828," Jimmy recollects. "I blamed everything Hamiltonian on the 'imperfections of language.' Speaking of English, that is."

"How did you like 'refudiate'?" Sarah winks at Dolley. "I love neologisms."

Aristotle reads the text of AS 24.25.065 with care.

"So you had to go for the Latin alphabet," he sniffs.

"Some of the words have Greek origins," I suggest.

"Name one," The Master challenges me. "You do know that Justinian's commission returned the Corpus Juris to Law Greek. The proper language for law-givers and other dispensers of *logos*. The year was 533 AD," he adds.

The Governors pore over the Introduction to the January 2013 Report.

" 'Defects in the existing law'," Egan points out the passage to Palin. "What a concession!"

"And here's *Trudell v. Hibbert*, 272 P. 3d 331 (Alaska 2012)," Palin goes to p. 13. "It's a clear case for Venn diagrams, with the Supreme Court 'clawing back' an object within the class drawn by the legislators."

"As opposed to a 'carve out'," Egan explains to the assembly.

"It has to be," Aristotle points out, "one or the other. Johnny agrees with me on this point."

"Alaskans got nothing on Johnny," The Venn picks Whitecheese's wallet and pockets the cash.

"But there is an advance here," Palin nods to Egan.

"Indubitably," Egan agrees. "And Aristotle didn't see this coming. The legislature is taking responsibility for its drafting. If an 'ambiguity' exists, then the laws are *not* doing what they should, which is to 'define the issue of all cases', " our first Governor adds.

"So what are you going to do about it?" Aristotle asks.

"We've already done it," our most recent former Governor explains. "And it happens right here in this building. About one hundred and fifty years ago, the legislature – or a select committee, if not in session – was invited to attend oral arguments and receive the court's proposed decision; on a 60% vote the legislators could ask the court for a brief stay of proceedings in which it might opine on whether a 'claw back' or 'carve out' was preferred."

"But the parties – ?" I gasp. "Don't they have a say?"

"The parties don't 'own' the result," Egan guffaws. "The court system uses litigation as an excuse to write laws for non-parties. Unless you've been living under a rock."

"He's stuck in the twentieth century," Palin makes my excuses for me.

"I am impressed," Aristotle agrees. "You've taken what could have been a tedious report of judicial 'hits, runs and errors' and made the legislature revisit its own scorecard in text-crafting. The only thing missing are the Venn diagrams."

"You can't have judges sit in with the legislators while the laws are being drafted," Jimmy nods. "But it's quite another thing to make the legislators go back to work when their lines are crossed."

"Let me see if I have this right," Bill Egan flips through the *Dummy's Guide to Popular Culture in the USA*. 'Sitting on the Supreme Court means never having to say you're sorry'."

"The legislature's doing all the apologizing," Johnny Venn snorts.

"If language is imperfect, then we're all off the hook," Jimmy exults.

"What would you have done at Bladensburg?" Aristotle asks Sarah Palin.

"Fight to the last man with Commodore Barney," she replies. "I always keep my firearms handy. Second Amendment compliant, of course. Take a gander at my smooth-bore musket and brace of dueling pistols."

"Now that's a lesson for all of us," Dolley enthuses. "As it was, I had to wait a quarter century to sell Jimmy's *Debates* to Congress."

"You're saying," Madison gasps, "*I* should have fought to the death at Bladensburg?"

"Your Vice-President Elbridge Gerry would have made a fine fifth President," Palin consults her handheld. "For the ninety-one days he had left to live!"

"Well," Jimmy shrugs. "We all have to go sometime."

"Or maybe not," his widow winks her 'goodbye' Dolley.

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SUBMITTING A PHOTO FOR THE ALASKA BAR RAG?

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FEDERAL PROBE

Some key players in the Justice Department's decision to indict Ted Stevens

By Cliff Groh

Of all the strange aspects of a highly unusual case, some observers point to two questions of timing as some of the strangest of all:

Why did the U.S. Department of Justice under the Republican administration of President George W. Bush bring the indictment 14 weeks before a hotly contested general election in which Ted Stevens, the longest-serving Republican U.S. Senator ever, faced a serious Democratic opponent for the first time in more than 20 years?

Why did such a high-profile white-collar criminal case heavy with witnesses and documents proceed to jury trial only 55 days after the indictment?

This installment of the series begins to give some answers to those questions, and starts by focusing on two of the key players in the decision to indict: Public Integrity Section Chief William Welch and Assistant Attorney General Matthew Friedrich.

The chain of command in the POLAR PEN federal probe into Alaska public corruption that generated the Ted Stevens case ran up from the Washington, D.C.-based Public Integrity Section to the Assistant Attorney General in charge of the Criminal Division to the Attorney General. The Assistant Attorney General in charge of the Criminal Division and his or her superiors within the Department are presidential appointees subject to the advice and consent of the Senate. On the other hand, the lawyers in the Public Integrity Section—including its Chief—are career attorneys.

The Public Integrity Section's leadership had been a revolving door for years when the Section led the investigation producing the Ted Stevens indictment in late July of 2008. As noted in a previous column, the *Washington Post* reported in April of 2009 that the Public Integrity Section had had five heads in the past six years.

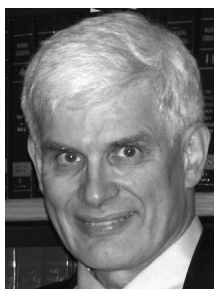
The *New York Times* in a 2009 article cited a decision early in the George W. Bush administration as laying the foundation for that instability in leadership. The newly appointed Assistant Attorney General in charge of the Criminal Division, Michael Chertoff, decided in 2001 to replace the Chief of the Public Integrity Section, Lee Radek, who had served in that post for seven years.

As with many things in life, a number of explanations have been put forth to explain why Radek was relieved of his post. The *Times* noted that "Under Mr. Radek, some law-enforcement officials had complained that the section moved too slowly and declined to prosecute many cases." The newspaper also pointed out that Radek had recommended against appointing an independent counsel to investigate allegations of illegal campaign fund-raising by Vice President Al Gore, a call criticized by Republican Members of Congress.

The change was officially made to bring "fresh energy" to the Section, as Chertoff told Charlie Savage of the *New York Times*. Several former career prosecutors told the newspaper, however, that the removal of Radek was "interpreted internally as retribution for a politically unpopular decision."

Another significant departure followed four years later, when Stuart Goldberg left his position in 2005 as the section's Principal Deputy Chief. The *New York Times* reported that Goldberg was "a cautious and stringent quality-control enforcer" as the Section's No.2. Goldberg's successor was a lawyer with a substantially different profile, the flashy and funny Brenda Morris, who rose to national prominence as the first-chair prosecutor in the Ted Stevens trial.

The lawyer who ended up running the Section through the indictment and trial of Ted Stevens arrived at Public Integrity the year after Brenda Morris became the Section's No. 2. William Welch became a Deputy Chief in 2006, and according to *Washingtonian* magazine served as one of a number of acting heads the Section had in the 2000s. Welch was named the Chief in March of 2007.



A stocky man who had played offensive lineman on his college football team, Welch had spent his entire career in the Justice Department. Although he had served as a trial lawyer for the Tax Division and had prosecuted drug and money-laundering cases as an Assistant U.S. Attorney in Reno, Welch had made his name in the U.S. Attorney's office in Springfield, Massachusetts. A native of western Massachusetts, Welch secured convictions at trial of a nurse for murdering four of her patients in a Veterans Affairs hospital.

Welch also spearheaded a federal probe of public corruption in Springfield that produced more than 30 convictions over a six-year period ending in 2006. Those caught up in the probe included members of the Mayor's administration, executives of the Springfield Housing Authority, and some of their family members. The housing agency's former director was sentenced to 10 years in prison.

"Political corruption was endemic," a local defense attorney told *Washingtonian* magazine in a 2011 article. "Springfield was one of these sleepy little backwaters that needed shaking up."

Although he was highly involved in the Ted Stevens case, it wasn't Welch who spoke at the two Justice Department press conferences about the prosecution. That was Matthew Friedrich, named Acting Assistant Attorney General heading up the Criminal Division in late May of 2008, only two months before Ted Stevens was indicted. Friedrich was the highest-ranking Justice Department official who had some day-to-day involvement in the case.

Friedrich's most recent position before being appointed Assistant Attorney General was counselor to Attorney General Michael Mukasey, but Friedrich had had a substantial career in the Justice Department before that. Unlike his immediate predecessor Alice Fisher—who had never been a prosecutor—Friedrich was an experienced federal prosecutor. A graduate of the law school at the University of Texas, he had worked as a front-line federal prosecutor in Texas and Virginia for 10 years before coming to Washington, D.C.

Friedrich's time in the trenches had included service on the task force investigating the collapse of the energy giant Enron. In that capacity, he had an experience that might have shaped his thinking about a lawyer's ability to handle a high-profile trial on short notice. This experience foreshadowed Friedrich's decision to arrange to bring in Brenda Morris to the Ted Stevens prosecution team less than two days before the indictment and simultaneously make her first chair.

Just two weeks before trial was to start in Houston in the obstruction of justice case against Enron's accounting firm Arthur Andersen LLP, Friedrich was brought onto the prosecution team based—according to *Legal Times*—on his ability to talk to a Texas jury. He was handed responsibilities for jury selection and the opening statement one week after that. As Siobhan Roth of *Legal Times* pointed out in a 2003 article, Friedrich spent almost as much time playing cards during the 10 days of jury deliberation as he did preparing for the six-week trial. (The guilty verdict effectively destroyed the company, although the U.S. Supreme Court reversed the conviction in 2005 based on faulty jury instructions regarding the appropriate mental state required to convict.)

Before serving as an aide to former Attorney General Alberto Gonzales, chief of staff to the head of the Criminal Division, and Principal Deputy Chief in the Criminal Division, Friedrich had other experience prosecuting white-collar crime. He investigated fund-raising improprieties in the 1996 campaign of U.S. Sen. Robert "The Torch" Torricelli, D.-N.J., a probe that led to the decision of Torricelli not to seek re-election (and a matter that showed up in the Stevens trial in the famous "Torricelli note" that Stevens sent to Bill Allen).

By the time that Friedrich gave the go-ahead on the indictment of Ted Stevens in July of 2008, he had had other experience in the public eye he probably remembered less fondly. Friedrich's time in Washington, D.C. had left him a politically connected insider, and his wife served as Associate White House counsel from 2003-2006. As Marisa Taylor of McClatchy Newspapers reported, Friedrich became ensnarled in the probe of allegations that nine U.S. Attorneys had been removed for political reasons in the middle of President Bush's tenure. In 2007, Friedrich had to testify before Congress about his role in that alleged politicization by the Bush White House. Friedrich testified about his discussions regarding the complaints of GOP activists in swing states that prosecutors were not targeting allegations of voter fraud by Democrats. According to Taylor's article, Friedrich said that "he decided it would be wrong to open a formal inquiry into the allegations so close to the election" in 2004.

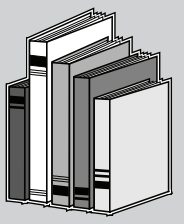
When Friedrich was named head of the Criminal Division, McClatchy Newspapers reported that "several Justice Department career attorneys, who wouldn't speak publicly because of Friedrich's position at the department, expressed concern about the appointment because of Friedrich's political ties and the sensitive nature of some of the ongoing criminal cases."

Next: The countdown to the indictment

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

INTELLICONNECT: An Online Tax Resource at the Alaska State Court Law Library

By Susan Falk



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Collective bargaining rights and public employees

By Willaim A. Earnhart

Last year the Superior Court confirmed the Municipality of Anchorage Assembly's right to enjoin its plumber's Union from striking despite the Assembly's rejection of an arbitrator's decision favorable to the Union. (Municipality of Anchorage v. UA 367, 3AN-11-10463 CI) This matter is currently on appeal. At the same time, the states of Wisconsin and Michigan have been going through a very public fight to determine the future of it public employee Unions. Many times I have been asked: "How can management do that? Aren't rights involved?" The answer is yes, but not constitutional rights.

For those not familiar with labor law, a few paragraphs of background: The "rights" and powers of public employee unions are only as created by the legislature or by contract. Individual employees do not lose their constitutional rights by joining a union. In fact, public employee due process rights, (Loudermill,) and right against self incrimination, (Gerrity), are broader than those in the private sector. However, unions, like corporations, are a legal creation of the legislature and have no rights beyond what has been granted to them either by statute or contract. [1]

Labor relations in the private sector are governed by The National Labor Relations Act (NLRA or the "Wagner Act"), [2] which established the National Labor Relations Board (NLRB) in 1935 to regulate labor relations and collective bargaining in accordance with the act. The Taft-Hartley Act (also the "Labor-Management Relations Act"), passed in 1947, adds to the NLRA and largely governs strike activities. The Norris-LaGuardia Act of 1932 outlawed the issuance of injunctions in labor disputes by federal courts. Railroads and Airlines are governed by the Railway Labor Act (RLA)[3] and some groups of federal employees have their own set of laws and regulations regarding organizing and bargaining, but no right to strike.

Federal law does not provide employees of state and local governments with the right to organize or engage in union activities, except to the extent that the United States Constitution protects their rights to freedom of speech and freedom of association.

Federal law does not provide employees of state and local governments with the right to organize or engage in union activities, except to the extent that the United States Constitution protects their rights to freedom of speech and freedom of association. Thus, there is no protection for governmental employees' right to engage in collective bargaining. While state and local governments cannot retaliate against employees for forming a union, there is no requirement to recognize that union, much less bargain with it. States are, however, free to develop labor relations acts for themselves and their political subdivisions. The state courts will often look to federal law and NLRB guidance to interpret contract terms. See e.g. *University of Alaska v. University of Alaska Classified Employees Ass'n* [4]

Until 1958, public employees were not unionized. The general opinion, expressed by Calvin Coolidge, as governor of Massachusetts was "There is no right to strike against the public safety by anyone, anywhere, any time." In 1958 the Mayor of New York, Robert Wagner Jr., seeking votes for re-election, authorized city workers to organize. Within five years president Kennedy signed Executive Order 10988 allowing federal workers to unionize. Interestingly enough, although a small majority of states have public sector collective bargaining, only eleven allow any form of strike by public employees.

In Alaska, the Public Employees Relations Act, (PERA) [5], governs labor relations for state workers and employees of local governments that have not adopted their own labor ordinance. And although a number of states continue to forbid all public employees from striking, PERA follows a general trend to forbid specific classes of employees form the right to strike, generally public safety employees, and limiting the strike rights of other classes. The Municipality of Anchorage has adopted its own labor ordinance, AMC 3.70 et seq., which was upheld in *Anchorage Municipal Employees Ass'n v. Municipality of Anchorage*, [6] (the Municipality "is free to develop [its own] local scheme of collective bargaining"). The Municipality's code similarly provisions similarly breaks represented employees into three classes. Class A1 employees may never strike, but are granted binding arbitration at labor impasse; a strike of class A2 employees may be enjoined if it threatens public health safety or welfare (generally utility and port employees.); and Class A3 employee Unions may strike at anytime. [7]

Which brings us to the current dispute with the Plumbers Union, UA 367. After long negotiations beginning in 2010, mediation, and a fact-finding hearing, no contract had been reached by July 2011 and the last best offers, (LBOs) of the parties were presented in interest arbitration.[8] The arbitrator's decision awarded an approximately 12% wage increase to the plumbers, a difference of 2.4 million dollars over the Municipality's offer. The arbitrator's decision was not accepted by the Municipal Assembly after a public hearing on August 30, 2011. The Union then threatened to strike, but was enjoined from doing so by the Superior Court for the protection of public health. The position of UA 367 was that because the strike was enjoined, the union was entitled to have the arbitrator's decision be binding.

Based in part on *Anchorage Educ. Ass'n,* [9] UA 367 argued that interest arbitration must be provided as a *quid pro quo* to an enjoining the strike. However, the Anchorage Municipal Code contains no provision similar to AS 23.40.200(c). This creates a presumption that the Assembly considered and rejected the notion that interest arbitration must be provided as a *quid pro quo* to an injunction. In fact the 1989 legislative history states that all arbitration, except in regard to Police and Fire, is "advisory." The Trial Court expressly recognized at page twelve of the order that public employees have no inherent right to strike or to binding arbitration. The court recognized the inherent between public and private employers: private employers can be bound by collective bargaining agreements, while legislative discretion cannot be bargained away. [10]

It is well established under Alaska law that local governments have a responsibly control their budget.[11] The Massachusetts Supreme Court was particularly eloquent in *Labor Relations Commission v. Board of Selectmen of Dracut,* [12], noting that taxpayers: "are entitled to the unfettered exercise of their (elected representative's) judgment on matters of policy. A determination concerning whether to support publicly a municipal collective bargaining contract constitutes such a policy decision."[13]

The Alaska Supreme Court has emphasized the lack of constitutionally protected property interest in collective bargaining: *Alaska Public Employees Ass'n v. State*, [14] (no property interest in being paid at a particular level) Thus, the Alaska Supreme Court repeatedly has recognized that interest arbitration awards affecting public employees may be conditioned on subsequent legislative action. In *Public Safety Employees Ass 'n v. State,* [15] the Court acknowledged that the Legislature's appropriation power was paramount, and overruled an arbitrator's decision penalizing the State for late pay increases due to late funding. Similarly, in *University of Alaska Classified Employees Ass'n v. University of Alaska,*[16] the Court held that an interest arbitrator's award of a three percent pay raise was subject to a subsequent decision by the Legislature to fully fund that award. See also *Public Employees Local 71 v. State,* [17] In contrast, the Assembly is free to properly delegate its authority to an arbitrator, see *Municipality of Anchorage v. Anchorage Police Dept. Employees Ass'n* ("APDEA "), [18] Absent a clear delegation, the arbitrator's decision however is only advisory.

Some would argue that public employees should have there right to strike, or at least binding arbitration based on what happens in the private sector. This argument ignores that there is a fundamental difference between private and public sector employment and the bargaining relationship.

AMC 3.70.110(C)(10)(b) states the decision of a interest arbitrator in regard to class A2 and A3 unions only becomes final upon approval of a supermajority of the Assembly. This is in stark contrast to a nearly identical provision of the Public Employee Relations Act (PERA), AS 23.40.200(c), which expressly mandates that the parties must engage in interest arbitration where a strike by Class A2 employees has been enjoined. "[i]f an impasse or deadlock still exists after the issuance of an injunction, the parties shall submit to arbitration." *Anchorage Educ. Ass'n v. Anchorage School Dist., supra*, [19], "a legisla-

Continued on page 9

Spraker appointed to federal court

Chief Judge Alex Kozinski of the United States Court of Appeals for the Ninth Circuit announced on Oct. 2 the appointment of Anchorage attorney Gary Allan Spraker, to serve as a judge of the U.S. Bankruptcy Court for the District of Alaska.

Spraker, 49, will fill a judgeship that has been vacant since Judge Herbert Ross retired and was recalled in 2000. Spraker will be sworn in on October 4 and maintain chambers in Anchorage. "Mr. Spraker is very well qualified to preside over bankruptcy matters and will be an asset to the federal bench in Alaska," Judge Kozinski said in announcing the appointment.

Spraker has been a partner since 2002 at Christianson & Spraker (formerly Christianson, Boutin & Spraker), where his practice focuses on all phases of bankruptcy and commercial matters including litigation. He represents trustees, debtors and creditors in Chapters 7, 11 and 13 matters. Before that, Spraker was an associate at the same law office from 1994 to 2002, when it was known as Bundy & Christianson, where his practice largely involved representing Chapter 7 trustees. Spraker began his legal career in 1988 as an associate at the Denver, Colorado, law firm of Morrison & Foerster.

A native of Baltimore, Maryland, Spraker received his B.A., Phi Beta Kappa, from Stetson University in 1985, and his J.D. in 1988 from the University of Denver, Sturm College of Law, where he graduated third in the class. He was awarded the Order of St. Ives for being in the top 10 percent of his law school class and received American Jurisprudence awards in contracts, constitutional law, Uniform Commercial Code (UCC) 1, UCC 2, trusts and estates, government contracts, and antitrust. While in law school, he was a quarter-finalist in the New York National Moot Court Competition and received the American Municipal Government Law Award. Spraker clerked for the Honorable John W. Sedwick of the U.S. District Court for the District of Alaska from 1992 to 1994.

Spraker is the first and currently only American College of Bankruptcy fellow in Alaska inducted in 2012. He has been a contributing author of the Alaska Bankruptcy Exemption Manual since 2008 and has served as chair of the Alaska State Bar Association's Bankruptcy Section since 2002. From 2008 to 2010, Spraker served as a volunteer teacher for the Anchorage Youth Court, instructing students how to read financial statements and has taught Catholic Sunday school since 2006. The U.S. Bankruptcy Court for the District of Alaska received 999 filings in calendar year 2011.

The court is authorized two bankruptcy judges. Judges of the U.S. Court of Appeals for the Ninth Circuit have statutory responsibility for selecting and appointing bankruptcy judges in the nine western states that comprise the Ninth Circuit. The court uses a comprehensive merit selection process for the initial appointment and for reappointments. Bankruptcy judges serve a 14-year, renewable term, at a salary of $160,080, and handle all bankruptcy-related matters under the Bankruptcy Code.

THE KIRK FILES

Get out there and be civil

By Kenneth Kirk

MEMORANDUM

From: Clerk of Court

To: All attorneys, this Judicial District

Re: Professionalism and Civility

The presiding judge has asked to send out a memo to all counsel, asking everyone to please try to improve the level of professionalism and civility this next year. We all know that "professionalism" and "civility" are ambiguous terms and that, all too often, judges bemoan the lack of those qualities without actually explaining, specifically, what attorneys might do to meet those objectives. In fact, the last several years I have sent out a memorandum doing precisely that, and it does not seem to have helped. Therefore in order to be more helpful, the presiding judge has asked me to suggest specific examples and practices which might improve things in and around this courthouse. His specific suggestions are as follows:

1. It is not really necessary to argue over minor errors or mistakes in opposing pleadings. For example, this year we had a case in which a party filed a motion, and in response the opposing party filed a motion to strike that motion as ambiguous based on the use of the word "it's" in a plural context rather than as a contraction. In response the movant filed a motion to strike that pleading as frivolous, and by the time all of the issues were resolved, half an inch of pleading paper had been filed without ever getting to the underlying issue.

"While the presiding judge certainly appreciates zealous advocacy, calling opposing counsel names is rarely helpful to your client."

2. While the presiding judge certainly appreciates zealous advocacy, calling opposing counsel names is rarely helpful to your client. This year's pleadings have included the words Nazi, Bozo, ratfink, weasel and (our favorite) "barnacle on the buttocks of the legal community". Such terms reduce respect for the legal system.

3. With the advent of the Courtview system it is now quite easy to print out a list of all cases involving an opposing party. It appears to have become standard practice now to append such a list to pleadings, showing all cases involving opposing parties. First of all, please make sure it is relevant. There was a list attached to a pleading last year showing a number of traffic tickets for a witness whose sole purpose at trial was to testify as to the date a receipt was signed. Second, please don't do this with regard to opposing counsel, whose past personal litigation history is rarely relevant.

4. Please also avoid using popular slang. While the judges do have access to the Urban Dictionary online, meanings can change rapidly which can cause confusion. We had an issue last year because a judge misinterpreted "shawty" as referring to the defendant's child, rather than his girlfriend.

5. We had a number of political cases in the courthouse this year, including election challenges and campaign finance issues. In that regard, it is not appropriate for counsel to refer to Assistant U.S. Attorneys as "Barry Hussein's minions" any more than it is appropriate to refer to conservative constitutional lawyers as "teabagging gun nuts". At least not in front of the jury.

6. Granted it is not appropriate to use terms which are racially, sexually, or culturally offensive. On the other hand the bench will not insist that attorneys use the latest preferred terms in all cases. A great deal of paper was wasted last year because an attorney declared herself offended when the opposing counsel would not use the word "herm" as a gender-neutral version to replace "him or her".

7. Finally, and the presiding judge is very firm about this and may hand out contempt sanctions: the courtroom is expected to be a solemn place, where important matters are decided, and thus it is not appropriate for counsel to enter the courtroom "Gangnam Style". Even if the jury is not present.

Now let's get out there and show some civility and professionalism. Or I may have to send out another memorandum next year.

—Your Clerk of Court

Collective bargaining rights and public employees

Continued from page 8

tive body may decide to forbid some from striking while providing interest arbitration."

Some would argue that public employees should have there right to strike, or at least binding arbitration based on what happens in the private sector. This argument ignores that there is a fundamental difference between private and public sector employment and the bargaining relationship. Private sector employees are generally considered "at will" and have limited job security or protections in discipline. Wages in the private sector are governed almost exclusively by the market. In contrast, public sector employees have a number of constitutional and statutory protections assuring due process and some job security. Public employees and their representatives help elect both the executive (negotiator) and the legislative (final contract approval) branches of government. The Alaska Supreme Court has recognized this distinction, quoting extensively from the *US Supreme Court decision in Abood v. Detroit Board of Education:* [20]

"A public employer, unlike his private counterpart, is not guided by the profit motive and constrained by the normal operation of the market. Municipal services are typically not priced, and where they are they tend to be regarded as in some sense 'essential' and therefore are often price inelastic. Although a public employer, like a private one, will wish to keep costs down, he lacks an important discipline against agreeing to increases in labor costs that in a market system would require price increases. A public-sector union is correspondently less concerned that high prices due to costly wage demands will decrease output and hence employment.

The government officials making decisions as the public 'employer' are less likely to act as a cohesive unit than are managers in private industry, in part because different levels of public authority department managers, budgetary officials, and legislative bodies are involved, and in part because each official may respond to a distinctive political constituency. And the ease of negotiating a final agreement with the union may be severely limited by statutory restrictions, by the need for the approval of a higher executive authority or a legislative body, or by the commitment of budgetary decisions of critical importance to others.

Finally, decisionmaking by a public employer is above all a political process. The officials who represent the public employer are ultimately responsible to the electorate, which for this purpose can be viewed as comprising three overlapping classes of voters taxpayers, users of particular government services, and government employees. Through exercise of their political influence as part of the electorate, the employees have the opportunity to affect the decisions of government representatives who sit on the other side of the bargaining table. Whether these representatives accede to a union's demands will depend upon a blend of political ingredients, including community sentiment about unionism generally and the involved union in particular, the degree of taxpayer resistance, and the views of voters as to the importance of the service involved and the relation between the demands and the quality of service."

***

"The ultimate objective of a union in the public sector, like that of a political party, is to influence public decisionmaking in accordance with the views and perceived interests of its membership. Whether a teachers' union is concerned with salaries and fringe benefits, teacher qualifications and in-service training, pupil-teacher ratios, length of the school day, student discipline, or the content of the high school curriculum, its objective is to bring school board policy and decisions into harmony with its own views. Similarly, to the extent that school board expenditures and policy are guided by decisions made by the municipal, state and federal governments, the union's objective is to obtain favorable decisions and to place persons in positions of power who will be receptive to the union's viewpoint. In these respects, the public sector union is indistinguishable from the traditional political party in this country."

During the entire negotiation process, public officials are subject to lobbying by Union representatives. As noted above, the unionization of public employees was largely a vote getting measure. Private sector employees, in contrast, are not company shareholders and have little influence beyond organizational power. Further, public employees, of all bargaining units, provide necessary public services that are not provided by the market. Unlike a private company, the Municipality cannot simply move its operations to another town or state where the labor conditions are more favorable.[21]

Where has this left the City?- back at the bargaining table. The fact of impasse "does not permanently relieve a party of its duty to bargain." [22] Rather, as noted in *Alaska Public Employees Ass'n v. State*, [23] that duty is only suspended in what has been referred to as a "temporary hiatus." The underlying assumption is that eventually, most deadlocks are capable of being broken. [24] "Almost any changed condition or circumstance that renews the possibility of fruitful discussion will terminate the suspension of the duty to bargain." [25]

Further, public employees, of all bargaining units, provide necessary public services that are not provided by the market.

Footnotes

[1] The sole exception has been the right to association, and free speech rights recently expanded in the *Citizens United*, 130 S. Ct. 876, (2010) case by the US Supreme court.

[2] 29 USC 151

[3] 45 USC 151

[4] 952 P.2d 1182 952 P.2d 1182, 157 L.R.R.M. (BNA) 2887, 124 Ed. Law Rep. 1068 (Alaska 1998)

[5] AS 23.40.010 et seq.

[6] 618 P.2d 575, 581 (Alaska 1980)

[7] AMC 3.70.110

[8] Most labor arbitrations are "grievance" arbitrations involving employee discipline or interpretation of specific contract terms. Grievance arbitrations are governed by the existing Bargaining Agreement and are generally binding without legislative approval. "Interest" arbitration, in contrast, allows an arbitrator to determine the final terms of the labor agreement when the parties cannot agree to terms, (reached impasse). An interest arbitrator commonly must decide between last best offers (LBOs) of the parties in regard to predetermined subjects.

[9] 648 P.2d 993, 114 L.R.R.M. (BNA) 3377, 5 Ed. Law Rep. 1010, (Alaska 1982)

[10] For a good discussion see *City of Springfield v. Clouse,* 206 S.W.2d 539, 545 (Mo.1947) and *State v. Florida Police Benev. Ass'n, Inc.*, 613 So. 2d 415, 418 (Fla. 1992)

[11] *Fairbanks Police Dept. Chapter, Alaska Public Employees Ass'n v. City of Fairbanks,* 920 P.2d 273, 275 (Alaska 1996) (affirming a city council's power to refuse to appropriate money for an arbitrator's award of an increase for meal and clothing allowances as part of his decision on the labor agreement).

[12] 74 Mass. 619, 373 N.E.2d 1165 (1978)

[13] 374 Mass. at 625-26

[14] 776 P.2d 1030 (Alaska 1989)

[15] 895 P.2d 980 (Alaska 1995)

[16] 988 P.2d 105 (Alaska 1999)

[17] 775 P.2d 1062 (Alaska 1989)

[18] 839 P.2d 1080 (Alaska 1992)

[19] 648 P.2d at 997

[20] 431 U.S. 209, 97 S.Ct. 1782, 52 L.Ed.2d 261, (1977)

[21] *Kenai Peninsula Borough School Dist. v. Kenai Peninsula Ed. Ass'n,* 572 P.2d 416, 97 L.R.R.M. (BNA) 2153, (Alaska 1977); *City and Borough of Sitka v. International Broth. of Elec. Workers, Local Union* 1547, 653 P.2d 332, 114 L.R.R.M. (BNA) 2858, (Alaska, 1982)

[22] *The Developing Labor Law*, (BNA) 13.V.B, p. 931

[23] 776 P.2d 1030 (Alaska 1989)

[24] *Taft Broadcasting Co.,* 163 NLRB 475 (1967), *offd sub. nom. Television & Radio Artist v. NLRB,* 395 F.2d 622 (D.C. Cir. 1968)

[25] *The Developing Labor Law, supra,* 13.V.B, p. 931

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Presidential recess powers called into question

By Gregory S. Fisher

Introduction

In a game-changing opinion issued on January 25, 2013, the United States Court of Appeals for the District of Columbia held that President Obama's January 4, 2012 recess appointments to the National Labor Relations Board were unconstitutional. The court determined that the President's recess powers were limited to filling vacancies that occurred during an inter-session recess when the Senate could not give its advice and consent. The appointments in question failed this test, calling into question dozens of decisions made by the Board over the past year along with the meaning of the recess appointments clause itself. The case is *Noel Canning v. NLRB*. This article briefly addresses the opinion's background and significance.

Recess Powers

Article II, sec. 2, cl. 2 of the United States Constitution grants authority to the President to nominate officers of the United States with the Senate's advice and consent. But the Senate is not always in session and, when the Constitution was ratified, it could take weeks for the Senate to convene. The drafters foresaw this problem and provided a procedural remedy in Article II, sec. 2, cl. 3: "The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session." These interim appointments expired at the end of the Senate's next session, but at least allowed government to function.

There are inter-session breaks and intra-session breaks. Inter-session breaks are traditional breaks between different Congressional sessions. Each Congressional term is two years with new sessions commencing on January 3rd of the year. Intra-session breaks are long breaks when the Senate is not meeting, for example during the Thanksgiving Holiday. Presidents have long-exercised recess powers in both session breaks. However, in recent years the Senate began conducting pro forma sessions by which a member would gavel the Senate to order every second or third day (mostly speaking to an empty Chamber) as a means of curbing the President's ability to make any recess appointments. This practice began in 2007 when the Democrat-controlled Senate sought to prevent President Bush from making recess appointments with which it disagreed.

The Board

The National Labor Relations Board is an independent agency responsible for conducting union elections and investigating and remedying unfair labor practices for a broad range of private sector employers. The Board itself is governed by five members appointed by the President for five year terms and confirmed by the Senate. The Board's General Counsel investigates and prosecutes unfair labor practice charges. The Board functions as an adjudicative body reviewing decisions from administrative law judges. Three members are required for a quorum. The Board issues decisions that, in concept, are analogous to court precedent. However, the Board must petition the Court of Appeals for enforcement of its decisions. Those petitions are filed in the Circuit Court of Appeal in which the dispute arose. But a party aggrieved by a Board decision may also petition for review with the Court of Appeals for the District of Columbia. By virtue of the powers it exercises, the Board effectively sets labor and employment policies affecting almost all private employers in the United States.

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Recent Quorum Dispute

In December 2007, the terms of three members expired and the Board dropped to two members. President Bush and Congress were unable to agree on new appointments. Before the terms expired, the five Board members delegated their authority to a three member panel (a procedural maneuver authorized by law). The Board believed that with the remaining two members serving on a three member panel, a quorum would exist enabling the Board to carry on its business. However, Circuit Courts of Appeals disagreed on whether or not the two member panel constituted a quorum. The United States Supreme Court issued certiorari to resolve the circuit split, and in 2010 held in *New Process Steel, LP vs. NLRB* that the two member board did not constitute a quorum and lacked authority to issue decisions. In late June 2010 after the Court's Term ended, the Senate confirmed two nominees to the Board. However, by December 2011 the Board was again down to two members. On January 4, 2012 President Obama made three recess appointments to fill these vacancies.

The Case

Noel Canning is a Washington state bottler and distributor of soft drinks. Several of its employees were represented by the International Brotherhood of Teamsters Local 760. Noel Canning and Local 760 enjoyed a fairly lengthy collective bargaining relationship. However, they reached impasse in 2010 during the course of negotiations for a new agreement. Local 760 contended that an agreement had been reached and filed an unfair labor practice charge. The administrative law judge agreed with Local 760. The Board upheld the ALJ's decision in a decision dated February 8, 2012. Noel Canning petitioned for review and the Board cross-petitioned for enforcement of its order.

The Opinion

The court granted Noel Canning's petition and denied the Board's cross-petition because the Board lacked a quorum. The court held that the three recess appointments made in January 2012 were constitutionally invalid because the Senate, by unanimous consent agreement, was meeting in pro forma sessions every three business days between December 20, 2011 through January 23, 2012. The consent agreement provided that the Senate would conduct no business. But, nevertheless, the Senate was not in recess. The court reasoned that allowing a President the right to make recess appointments during short two or three day periods of time would vitiate the Senate's advice and consent role.

The court interpreted "recess" as meaning only an intersession recess. The court observed that extremely few intra-session recess appointments were made prior to 1947. The infrequency of such appointments suggested the lack of power to make them. And allowing intra-session recess appointments would enable Presidents to simply wait until the Senate took its next break before making appointments, thereby circumventing the advice and consent clause.

The court went further and concluded that the phrase "all Vacancies that may happen during the Recess" meant that the President's recess powers were limited to filling vacancies that occurred during the intersession recess itself.

Significance

Presidents have used recess appointments since the earliest years of the Republic. The practice has grown, not diminished, in the years after WW II. Most recently, President Bush (George W.) made 171 recess appointments and President Clinton 139.[1] If *Noel Canning* is correct, the balance of power between the Executive and Legislative Branches will be reshaped.

Beyond its sweeping impact on governmental powers, the opinion carries real world relevance for business and labor. With Congress deadlocked, the Board has been the Administration's primary vehicle for advancing policy initiatives. To that end, the Board has been extremely busy over the past eighteen months issuing several decisions affecting labor and employment practices in the nation. In the past year alone the Board has issued several controversial decisions affecting employers' social media policies, prohibiting class action waivers in arbitration agreements with employees, limiting when and whether employers may discipline union members without bargaining with the union, restricting the ability of employers to secure confidential witness statements during workplace investigations, curtailing policies routinely found in employment manuals, and overruling long-standing Board precedent in several cases. All of these decisions are now effectively called into question because if the Board lacked a quorum it had no authority to act.

The court's decision affects other recess appointments, probably most significantly the recess appointment of Richard Cordray as Director of the recently formed Consumer Financial Protection Bureau. Mr. Cordray was appointed on the same day that the three Board members were appointed.

What's next?

Initially, the Administration and Board professed no concern over the court's decision, viewing it as being limited to the case itself. However, most commentators thought and think differently. Employers aggrieved by Board decisions will certainly seek review with the D.C. Circuit. The Board may seek en banc review before the D.C. Circuit or petition for certiorari with the United States Supreme Court.

Meanwhile oral argument was held before the Fifth Circuit on February 5, 2013 addressing another controversial Board decision that prohibited an employer from including a class action waiver in an arbitration agreement with its employees. We will likely see this issue reach the Court both because of its over-arching significance and because the court's opinion conflicts with a prior decision from the Eleventh Circuit.

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Footnote

See Henry Hogue, Recess Appointments: Frequently Asked Questions, Congressional Research Service (January 9, 2012).

Alaska lawyer selected to serve on CAP's Board of Governors

Anchorage, Alaska, lawyer Timothy C. Verrett's involvement in Civil Air Patrol is reaching new heights, with or without an airplane. He was selected to serve on the CAP board of governors in late January.

Verrett was already vice commander and legal officer of the organization's six-state Pacific Region when the CAP Senior Advisory Group recently selected him as one of two at-large members of the Board of Governors, CAP's 11-member governing body, after reviewing 41 member applications.

He has been a member of CAP since 1987, when the idea of "flying some really neat planes" lured him in, he said. "The woman who ran the flight school where I was getting my license was chief of staff of the Alaska Wing, and they needed a new legal officer," he said. "She kept mentioning how many neat planes I'd get to fly, and I was hooked."

Eight years later, a personal experience brought deep-felt awareness of the services CAP provides when Verrett's law partner disappeared in an airplane that went down.

"CAP was instrumental in looking for him, and at the time it was one of the largest searches the organization had ever been involved in," he said. "I saw the great effort a number of volunteers put in, and even though we never found him or the aircraft, that cemented my commitment to CAP."

He's now solidifying that commitment with his service on the Board of Governors. He sees the position as an honor and a privilege, as well as a natural progression of his role in CAP thus far.

"When the Board of Governors was first initiated in 2001, I was involved in drafting CAP's Constitution and Bylaws," he said. "Then, about 2½ years ago, I was appointed by the national commander to chair the CAP internal governance committee, which was formed to assess how well CAP manages itself and to make any needed recommendations for changes." A new government structure was fully implemented by the Board of Governors on Jan. 1 after they carefully considered inputs from CAP's internal governance committee and recommendations from an external governance study.

Verrett's primary goal in his board position is to make CAP better at fulfilling its statutory missions. "In these times of changing technology and budget constraints, I want to assist the BOG in doing the best job possible and to ensure CAP is governed in a manner that is consistent with our history and charter," he said.

He has served on various national-level committees. He has completed Level IV of CAP's professional development program and holds the rank of colonel, and he has earned a master rating in the legal officer specialty track. He's also received six Exceptional Service Awards and two National Commander Commendations for Outstanding Duty Performance.

After joining the Alaska Wing, Verrett became interested and involved in the wing's search and rescue and emergency services missions. "There's a big need for both in Alaska," he said.

CAP has also benefited from Verrett's legal expertise. He's served as not only the Pacific Region's legal officer but also as legal officer for the Alaska Wing and for CAP at the national level.

"As lawyers, we are expected to give back to our communities," Verrett said. "It is part of our professional standards, and it is something I believe is right. Working with CAP has been a great way for me to do that."

CAP has also provided him the opportunity to give back in other ways as well.

"I've gained much from my CAP membership," he said. "It has exposed me to a number of individuals across the nation who have common goals, and I've developed some very close friendships. It has also allowed me to get involved in the nonprofit arena, and that's been a springboard to help me do work for other nonprofits."

Away from CAP, Verrett also serves on the Alaska Bar Association Mediation Panel.

Civil Air Patrol, the official auxiliary of the U.S. Air Force, is a nonprofit organization with more than 61,000 members nationwide, operating a fleet of 550 aircraft. CAP, in its Air Force auxiliary role, performs 90 percent of continental U.S. inland search and rescue missions as tasked by the Air Force Rescue Coordination Center and is credited by the AFRCC with saving an average of 80 lives annually. Its volunteers also perform homeland security, disaster relief and drug interdiction missions at the request of federal, state and local agencies. The members play a leading role in aerospace education and serve as mentors to nearly 27,000 young people currently participating in the CAP cadet programs. CAP received the World Peace Prize in 2011 and has been performing missions for America for 71 years. CAP also participates in Wreaths Across America, an initiative to remember, honor and teach about the sacrifices of U.S. military veterans.

— CAP press release, Maxwell AFB, Ala.

American Bar delegates act on 29 resolutions

Policy resolutions relating to foreign lawyers, human trafficking victims and the unbundling of legal services were adopted when the American Bar Association's House of Delegates met as part of the association's February Midyear Meeting in Dallas.

The ABA's Commission on Ethics 20/20 brought four resolutions to the House of Delegates as a result of increased globalization and technological advancements. Resolution 107A, as revised, amends Rule 5.5(d) of the ABA Model Rules of Professional Conduct (Unauthorized Practice of Law; Multijurisdictional Practice of Law) to permit limited practice authority for foreign lawyers to serve as in-house counsel in the United States, but not advise on the law of a U.S. jurisdiction except in consultation with a U.S.-licensed lawyer. A complementing resolution, 107B, as revised, provides a mechanism to implement the limited practice authority in Resolution 107A through amendments to the 2008 Model Rule for Registration of In-House Counsel. Resolution 107B contains additional restrictions on the foreign in-house lawyer's scope of practice as well as added requirements, including payment of bar dues, payment into the client protection fund, fulfillment of continuing legal education requirements and notification to disciplinary counsel.

Resolution 107C, as amended, amends the Model Rule on Pro Hac Vice Admission to provide judges with guidance about whether to grant limited, temporary and supervised practice authority to foreign lawyers to appear in U.S. courts, consistent with the rules of the U.S. Supreme Court, numerous federal courts and at least 15 U.S. states. Finally, resolution 107D adds language to Model Rule 8.5 of the Model Rules of Professional Conduct concerning choice of law, to allow lawyers and clients to specify a particular jurisdiction's conflict of interest rules for purposes of determining the "predominant effect" of a lawyer's conduct.

"New ABA policy to broaden disclosure about the source of money for political spending increases transparency and gives voters the information they need to make informed decisions. Making the amount spent on political communications widely available is in the public interest and will instill greater confidence in our electoral system,"

Speaking about the passage of the resolutions, Bellows said, "The ABA is responding to the globalization of our profession. Across the country — from Main Street lawyers to global firms — the legal profession increasingly requires the expertise of foreign lawyers to advise their clients on the appropriate country laws."

Across America, there are hundreds of thousands of human trafficking victims, suffering from unspeakable atrocities, unable or unwilling to seek out help due to fear of abuse, threats to their loved ones or financial obligations. A series of resolutions — 104F, G, H and I, as revised — encourages the creation of policies so that victims of human trafficking are not prosecuted for nonviolent offenses committed in conjunction with the trafficking; allows victims to assert an affirmative defense of being a human trafficking victim; allows trafficking victims to seek to vacate criminal convictions involving prostitution and other nonviolent offenses that are a direct result of the trafficking; and urges bar associations to develop more training programs to help identify trafficking victims.

"As a result of these resolutions, I am proud to say that it is the new policy of the ABA to fight human trafficking and protect victims by mobilizing lawyers, judges, bar associations and law enforcement," Bellows said. "We now have policies and a specific action plan to combat one of our country's most significant crises that threatens the most vulnerable in our society."

Resolution 110B, also adopted by the House of Delegates, supports disclosure of political and campaign spending, and urges Congress to require organizations not required by current law to disclose the source of their funds used for electioneering communications and independent expenditures.

"New ABA policy to broaden disclosure about the source of money for political spending increases transparency and gives voters the information they need to make informed decisions. Making the amount spent on political communications widely available is in the public interest and will instill greater confidence in our electoral system," Bellows said upon passage of resolution 110B.

A growing number of people are forgoing the assistance of a lawyer when confronted with civil issues and are addressing their matters through self-representation. Lawyers who provide some of their services in a limited scope facilitate greater access to competent legal services. Resolution 108, as amended, encourages practitioners, when appropriate, to consider limiting the scope of their representation, as a means of increasing access to legal services.

Additional resolutions that were adopted include:

104E, as revised, which urges jurisdictions to ensure that defense counsel investigate a juvenile defendant's immigration status and inform the defendant of possible collateral consequences;

104A, as revised, which urges Congress to establish an independent Center for Indigent Defense Services to assist states and other governments with their constitutional obligation to provide effective assistance of counsel for the defense of accused indigents;

10A, which urges federal elected officials to adequately fund the federal courts and the Legal Services Corporation as they negotiate deficit reduction; and

102B, which approves the Uniform Deployed Parents Custody and Visitation Act, promulgated by the National Conference of Commissioners on Uniform State Laws.

Resolutions and action can be found at http://www.abanow.org/issue/page/1/?midyear-meeting-2013&view=hod

Bar People

Wally Tetlow was elected for inclusion in The Best Lawyers in America, in criminal defense.

Farley & Graves, P.C. is pleased to announce **Patrick J. McKay, Jr.** and **Jim Wilkson** have joined the firm as associate attorneys. Mr. McKay's practice focuses on insurance defense litigation. He previously tried misdemeanor cases as an intern for the Palmer District Attorney's Office and was recently the law clerk to Deputy Presiding Judge Vanessa H. White of the Palmer Superior Court. Mr. Wilkson's practice focuses on insurance defense litigation. Mr. Wilkson's prior experience consists of commercial litigation, insurance defense, and criminal defense. He also served as a law clerk for the Honorable Robert G. Coats of the Alaska Court of Appeals.

Sonosky, Sachse, Chambers, Miller and Munson LLP is pleased to announce that three of its Alaska partners have been selected by their peers for inclusion in the 2012 edition of Alaska Super Lawyers. The "Super Lawyers" list, published by Thompson Reuters Legal, is identified through an extensive research and survey process, starting with peer nominations. Only five percent of the lawyers in Alaska are named to this list. Sonosky Chambers lawyers named to the 2012 Super Lawyers list are:

Myra M. Munson (Juneau), in Health Care, Non-Profit, and Native American Law

Richard D. Monkman (Juneau), in Health Care, Appellate, and Native American Law

Lloyd B. Miller (Anchorage), in Native American, Appellate, and Government Relations Law

Sonosky Chambers is a national law firm with offices in Juneau, Anchorage, Albuquerque, Los Angeles, San Diego and Washington, D.C.

Parnell appoints Groseclose, Parker

Gov. Sean Parnell appointed Robert Groseclose to the Commission on Judicial Conduct on Mar. 4.

Groseclose, of Fairbanks, is a partner at Cook Schuhmann and Groseclose, Inc., where he has practiced since 1977. He formerly served on the Alaska Judicial Council, and has served on numerous Alaska Bar Association committees. He recently co-chaired the United Way Tanana Valley campaign, and has previously served as a scoutmaster and as a member of the Catholic Schools of Fairbanks School Board. He is appointed as a representative of the second and fourth judicial districts.

The commission reviews allegations against judges and justices, and promotes compliance with codes of conduct for judges.

The governor also appointed Dave Parker to the Alaska Judicial Council. The council reviews candidates for judicial vacancies and nominates two or more individuals for the governor's review.

Parker, of Anchorage, is a retired Anchorage :Police Department lieutenant and served for 17 years as a detective and public information officer, retiring on Dec. 31, 2012. He is a former teacher and ordained pastor. Parker has served as a board member for Standing Together Against Rape and for the Anchorage chapter of the Alaska Peace Officers Association. He has also volunteered at the McLaughlin Youth Center. Parker is a trainer in justice-related topics, including sexual assault, crimes against children and child homicide investigations. He holds a Bachelor of Science and Master of Divinity. Parker is appointed to a

ATTORNEY DISCIPLINE

Alaska Supreme Court disbars attorney

The Alaska Supreme Court disbarred attorney Warren G. Kellicut from the practice of law effective December 26, 2012, for deceptive acts committed during his divorce from his wife. Prior to the marriage the couple had signed a prenuptial agreement and list of assets. Mr. Kellicut later prepared an addendum and affixed his wife's signature to it without her knowledge. When he filed for divorce he prepared a property settlement agreement supported by the prenuptial agreement and the falsely signed addendum. The property settlement agreement favored Mr. Kellicut's economic interests. His wife signed the property settlement agreement but later questioned the authenticity of her signature on the addendum which she couldn't remember signing before the wedding. A forensic document examiner opined that the signature on the addendum was a copy of an original.

During the divorce proceedings, Mr. Kellicut filed a motion to enforce the property settlement agreement and allowed the falsely signed addendum to be used as an exhibit in support of his motion to enforce. Mr. Kellicut denied requests for admission that asked him to admit that his wife hadn't signed the addendum and that he or someone at his direction caused his wife's signature to be placed on the document. Litigation over the authenticity of the signature continued until Mr. Kellicut testified under oath at his deposition that he placed his wife's signature on the addendum.

An Area Hearing Committee found that Mr. Kellicut violated Alaska Rule of Professional Conduct 8.4(c) that states it is professional misconduct for a lawyer to "engage in conduct involving dishonesty, fraud, deceit, or misrepresentation" and Rule 3.3(a)(3) that states a lawyer shall not knowingly offer evidence that the lawyer knows to be false. The Committee concluded that his creation of a forged document, his reliance on the forged document in his motion to enforce settlement agreement, and his denial of the requests for admission, conclusively demonstrated that Mr. Kellicut was not being truthful to the court. The Committee concluded that the misconduct merited a five year suspension.

When recommending that Mr. Kellicut be suspended from the practice of law for five years, the Committee considered an unreported disciplinary case which resulted in a five year suspension for misdemeanor forgery for falsifying a car transfer document.

On September 7, 2012, the Disciplinary Board considered the hearing committee's report. The Board adopted the Committee's findings of fact and conclusions of law; however, the Board disagreed with the recommended discipline. The Board modified the discipline and recommended to the court the discipline of disbarment as more consistent with disciplinary sanctions in other cases.

The Supreme Court approved the Disciplinary Board's findings, conclusions, and recommendation for discipline.

Disciplinary Board issues private reprimand

A divided Disciplinary Board approved a stipulation for discipline by consent, imposing a private reprimand on Attorney X for contacting a minor without consent of a guardian ad litem or the court in contravention of court rules governing Child In Need of Aid proceedings. Dissenting board members objected that the discipline was too lenient and the misconduct warranted a more severe sanction.

Attorney X represented the father in a contentious proceeding filed in 2009 to terminate a father's parental rights. The father and other family members insisted that statements attributed to the 12-year-old daughter about adoption were distorted and untrue. After the guardian ad litem denied him permission to talk to the daughter, Attorney X researched and found no statutory authority for a non-lawyer to control access to an unrepresented party. Failing to find statutory authority, he e-mailed an experienced CINA lawyer who advised him that such a prohibition existed and advised him to look for it in the CINA rules. When he failed to find the rule, Attorney X called the daughter rather than follow up with the lawyer he had contacted for help.

Attorney X then filed a motion to appoint an attorney for the children and an order to talk to the child. Attorney X stated that he would like to call the child to testify at future hearings and requested a court order to allow him to talk to the child in the advance of her testifying. He did not tell the court that he had already talked to the child.

CINA Rule 11(g)(1) prohibits communication with a child without reasonable notice and consent by the GAL. The GAL learned of the prohibited contact and requested the court to remove Attorney X from the case. The court allowed Attorney X to continue to represent the father, but notified Bar Counsel of the violation.

A knowing violation of a court rule supports a suspension of a lawyer's license to practice law. Bar counsel concluded that a hearing committee could find that Attorney X acted negligently, rather than knowingly, when he failed to locate CINA Rule 11(g)(1) and chose to proceed without confirming his right to do so. Under ABA standards, a reprimand is appropriate when a lawyer negligently fails to comply with a court rule. Although the potential for injury existed, no injury occurred based on the prohibited contact.

Disciplinary Board members focused both on the violation of the rule and the lack of candor with the court arising from Attorney X's failure to inform the court that he had conversed with the child prior to filing his motion for an order to talk to the child. Several Board members believed that Attorney X's conduct warranted suspension. Attorney X acknowledged that he had gotten overly invested in the case of his client whose parental rights were unnecessarily threatened and who was confronted with a seemingly uncooperative GAL. Dissenting members noted that lawyers must continuously guard against the loss of professional detachment and his emotional investment in his client's cause didn't excuse what occurred.

Several factors served to mitigate the misconduct. Attorney X had no prior disciplinary record, he was cooperative with Bar proceedings and he was remorseful. The trial judge stated that he was surprised by the conduct based on many years' experience with Attorney X. An experienced CINA attorney familiar with Attorney X's practice strongly endorsed his professionalism and expressed concerns that the professional harm from a public discipline was too severe in the circumstances. Bar Counsel also took into account that Attorney X's client complied with the reunification plan, the children were reunited with the father, and that the State Department of Health and Social Services was relieved of all responsibility for the children.

Disciplinary Board members individually reprimanded Attorney X, expressing strong views about the wrongful nature of the conduct and voicing concerns whether a private discipline would satisfactorily serve the purpose of deterrence, educating the public, and maintaining the integrity of the profession. A majority of Disciplinary Board members concluded, among other factors, that the unlikelihood of repetition by Attorney X supported the imposition of private discipline.

2013 Alaska Bar Convention

May 15-17 • Centennial Hall, Juneau, Alaska

Wednesday, May 15 agenda

7:30 a.m. **Registration and Exhibits Open** – Breakfast provided

8:30 a.m. **The Good, The Bad, and The Ugly** – *3.0 Ethics CLE*


Teicher

Nationally recognized legal educator *Stuart Teicher, Esq.,* uses his entertaining style to show how concepts of professionalism are placing a renewed importance on civility.

12:15 p.m. **Luncheon** – Alaska's First Law Granted Women the Vote: But Women Didn't Become Unsexed Nor Neglect Wifely Duties Keynote by: *Beverly Beeton, Ph. D.*


Beeton

Awards: *Second Annual Human Rights Award; 2013 Benjamin Walters Distinguished Service Award; Judge Nora Guinn Award*

1:45 p.m. **Evidence Cranium** – 2.0 General and 0.5 Ethics CLE Credits

4:30 p.m. **CLE Programs Adjourn**

6:00 p.m. **Retirement Celebration for Justice Carpeneti** – Juneau Arts and Culture Center

8:00 p.m. **Hospitality and Networking** – Rockwell, sponsored by the Juneau Bar Association

Register

by March 29 to take advantage of Early Bird Savings
www.alaskabar.org

QUESTIONS?

Call the Alaska Bar office at
907-272-7469/fax 907-272-2932
or e-mail
info@alaskabar.org
for more information.
Check the Bar website at
www.alaskabar.org.

Thursday, May 16 agenda

7:30 a.m. **Registration and Exhibits Open** – Breakfast provided

8:30 a.m. **U.S. Supreme Court Opinions Update** – 3.0 General CLE Credits


Levenson


Chemerinsky

Dean Erwin Chemerinsky and *Professor Laurie Levenson* will once again provide you with a review of the decisions of the highest court in the land. This is one session you should not miss!

12:15 p.m. **Law Day Luncheon** – You've Got a Long Way to Go, Baby Keynote by: *Representative Beth Kerttula*


Kerttula

Awards: *Robert Hickerson Partners in Justice Campaign; Rabinowitz Public Service Award; Alaska Layperson Service Award; Alaska Bar Professionalism Award; Robert Hickerson Public Service Award*

3:30 p.m. **Concurrent Programs – choose one**

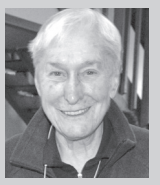
Well Behaved Lawyers DO Make History – 1.5 Ethics CLE Credits

Make history with your good works. Learn how to take cases outside your practice area and not commit malpractice; perform pro bono board service, and develop good client boundaries. Trust us—this will be a good time.

Raising the Bar: The Fairer Sex Practices Law in Early Alaska – 1.5 General CLE Credits


Beeton


Schaible


Kohls

Historian *Beverly Beeton* will discuss the pioneering women lawyers in Alaska, followed by a panel discussion with *Grace Schaible*, Alaska's first woman attorney general (Alaska Bar member since 1960), and *Shirley Kohls*, long-time Juneau attorney (Alaska Bar member since 1962).

5:00 p.m. **CLE Programs Adjourn**

6:00 p.m. **Reception, Dinner, Dance** – Centennial Hall

Music by: *Kari and the Wristrockets*
Awards Banquet – Community Outreach Award; Pro Bono and Distinguished Service Awards; 25, 50, 60 Yr Membership Recognition

The Reinvention of America: How Those in the Legal Profession Should Prepare for the Transformation to Come
Keynote: *Peter Leyden*


Leyden

8:00 p.m. **Hospitality and Networking**, Rockwell

8:30 p.m. **Doors Open to All for Dance**

11:00 p.m. **Evening event ends**

Friday, May 17 agenda

7:30 a.m. **Registration and Exhibits Open** – Breakfast provided

7:30 a.m. **Local Bar Presidents Breakfast**

8:30 a.m. **Psychopathy, Neuroscience and the Law** – 3.0 General CLE Credits


Kiehl

Join a pioneer in the study of psychopathy, *Dr. Kent Kiehl* from the University of New Mexico, and a panel of criminal law practitioners.

12:15 p.m. **Annual Meeting Luncheon** – Outgoing Board Members; Passing the Gavel

5:00 p.m. **Buses depart for Allen Marine Tour from Westmark Baranof**

5:30 p.m. **Tour departs Don Statter Harbor in Auke Bay**

8:30 p.m. **Tour ends and buses depart for Westmark Baranof**

9:00 p.m. **Hospitality and Networking** – Rockwell, provided by the Juneau Bar Association

Wednesday, May 15

6:00 p.m. - 8:00 p.m.

Retirement Reception for Justice Carpeneti
Juneau Arts and Culture Center

Susu and the Prophets


Shona Strauser, Simon Taylor and Mike Maas; Not pictured: Riley Woodford and drummer Austin Osterhaut.

Thursday, May 16

6:00 p.m. - 11:00 p.m.

Dinner, Dance, and Awards Banquet

Music by: Kari Groven and the Wristrockets

Keynote Speaker: Peter Leyden is a leading expert on new technologies and trends shaping the future who constantly looks for what's next.

Leyden is an innovator and entrepreneur who worked for a series of pioneering organizations that tracked the disruption of the digital revolution and helped reinvent the fields of media, business, and politics.

Friday, May 17

5:00 - 9:00 p.m.

Allen Marine Tours

The nutrient-rich waters of the Inside Passage near Juneau offer some of the best whale and wildlife habitat in all of Alaska. The custom-designed, luxuriously-comfortable catamarans provide the perfect stable platform for viewing, photography and learning about the area's wildlife. And, the high cruising speed and exceptional maneuverability of their vessels ensure you'll spend more time at the best sights.

Lawyers Assistance Committee offers help

Denial can be a death sentence. We offer a reprieve.

Lawyers know, perhaps better than anyone, that truth is almost never absolute. Lawsuits rarely are contests between one truthful position and an opposing false position; usually disputes are a function of differing perspectives, often influenced by self-interest. Parties fight about the meaning of a contract term because they had different, previously unexpressed, expectations. When a property condition injures someone for the first time, the property owner likely will view the cause of the accident differently than will the injured party. People are even less likely to view matters neutrally when the stakes are high or more deeply personal, such as in child custody disputes and marriage dissolutions.

Nothing is more deeply personal than one's own problems, including addiction. People with alcohol or drug addictions generally have a low level of objectivity about themselves. While generally the price of misconceiving relevant truths in litigation is not life threatening, abuse of alcohol or drugs without self-awareness can cost you everything worthwhile, including your self-respect, and ultimately your life. The Alaska Bar Association has resources available to attorneys without charge to help prevent the toll that addiction will take.

Laymen in the recovery community refer to the moment substance use becomes substance dependence as "crossing the invisible line." You might think that people with substance abuse problems can easily recognize that they have crossed this line, even if they lack the ability to do much about it. This is not so. No one who drinks socially or uses drugs for a recreational purpose foresees becoming an alcoholic or an addict. Although the vast majority of adults use alcohol to some extent, and recreational drug use is widespread, few have the slightest expectation of ever becoming so attached to their drug that they eventually will freely forfeit personal relationships, professional and material success, self-esteem, and ultimately life itself before giving up drinking or using. People who have come to rely on the comforting or exhilarating release provided by intoxicating substances rarely can recognize the nature and magnitude of this process. And this phenomenon is not limited to the unwise or the weak-willed. The truth is that most people fail to see the warning signs. Even where the price of intoxication has become high—including lost workdays and entire weekends, estrangement from friends and family, diminishment of professional standing, and legal difficulties—the affected person typically remains resistant to a realistic self-analysis. To continue drinking or using while maintaining a reasonable measure of self-respect requires denial. Consider whether you might be touched by denial or whether you have a friend or colleague accustomed to quieting life's nagging stresses with drugs or alcohol, whose use has progressed to a point where the costs outweigh the benefits. There may be no red flags. Sometimes the costs are subtle, such as loss of interest in activities or people, or the need to work through hangovers. Consider also that your evaluation may be less than objective for reasons stated above.

Current scientific evidence indicates that a variety of factors contribute to addiction to mind altering substances. Research shows that after a period of continued misuse, the brain's chemical reaction to mood-altering substances changes. This can seriously impact a person's ability to make rational decisions about substance use. Just as a person who hasn't slept for three days cannot, through will alone, determine to not be tired, most people who currently use alcohol or drugs in an addictive fashion cannot overcome the craving by rational evaluation of the costs and benefits of continued use. Substance abuse problems strike all segments of society more or less equally, affecting the successful and the unsuccessful, the bright and the foolish, the good and the bad. Likewise, the challenges faced by addicts are as daunting for the strong-willed and high-minded as it is for the weak and corrupt. The problem is chemistry, not morality.

Sadly, many people remain unable to appreciate how much their addictions have impacted their lives until the consequences reach a devastating magnitude. Others, although fully aware of the growing difficulties they face, are too ashamed to admit that they have lost the power to control a habit that evolved so innocently. Believing that they lack self-control, they simply continue to drift down the path of self-destruction. Many of these people will lose much of what they have worked to achieve. Some will die in denial or despair.

None of this has to happen. The adverse consequences of drug and alcohol abuse are almost completely avoidable, and past adverse consequences can become a foundation for a life of great enrichment and compassion. While alcoholism is a progressive, incurable and fatal disease, people with other progressive, incurable and fatal diseases would gladly trade. Unlike diseases such as advanced cancer, alcoholism and drug addiction can be completely arrested. The solution is extremely simple. An afflicted person need only do a single thing to halt progression of the disease: stop drinking or using. The solution is simplicity itself, but it is also hard. That's where the Lawyers' Assistance Committee can help. The help available comes with a promise of complete anonymity.

"Hi! My Name Is . . ."

Who we are (and are not) and what we do (and don't do):

The Lawyers' Assistance Committee is a standing committee of Alaska Bar members. Each committee member applied using the standard application available on the Bar Association website and was appointed to serve for a period of three years. Any Alaska Bar member can apply to serve on the committee. The current committee members likely were interested based on the nature of the work; each of us has been affected by substance abuse, either personally or through clients or others whom we care about. Our personal experiences include recovery from alcoholism and addiction, and finding peace and security as the children, spouses, partners, parents, family and colleagues of those impaired by addiction. Our experiences with others suffering from substance abuse have given us direct exposure to the devastating consequences and seeming hopelessness of these problems. We have participated in, or been the subjects or beneficiaries of, interventions. Each of us has chosen to use our personal experience to offer assistance to our professional peers.

The committee was created in 1985. Serving initially as a point of contact for lawyers and their families, committee members drew upon their own experiences to offer hope and make referrals to professional intervention services and treatment programs. Although the role of the committee has since expanded, the core purpose of our committee remains to make the experience of attorneys who have been affected by substance abuse available to those who are suffering.

People in the legal community can call any committee member and be assured of a supportive response, even if we have been adversaries in our professional capacities. Our names and contact information are listed at the Alaska Bar Association's website and in every issue of Bar Rag. Callers can choose to remain completely anonymous and those that choose to reveal their identity are assured that information will not be disclosed to any third party, unless otherwise required by law.

The Lawyers' Assistance Committee has two additional defined functions. First, in the late 1980's, the Committee was asked to serve the Alaska Bar Association by interviewing candidates referred by the Executive Director who were identified as having a history of substance-related criminal convictions or substance abuse.[1] When such referrals are made, a subcommittee of three Lawyers' Assistance Committee members reviews the candidate's relevant background, conducts an in-person interview and submits a written report to the Executive Director that may include recommendations for additional evaluation. We are not substance abuse counselors. In some instances we refer candidates to professional evaluations or services, but sometimes our assistance is limited to ensuring that the candidate is aware of available support services, including the services of our committee should past problems recur. The Lawyers' Assistance Committee does not decide whether a candidate will be issued a Bar license.

Second, with the adoption of Bar Rule 26(i) in the 1990's, the committee was asked to serve the Alaska Supreme Court and Alaska Bar Disciplinary Committee by interviewing attorneys convicted of a substance-related crime or subject to disciplinary action related to substance use. Upon receiving a referral from the Supreme Court, a subcommittee of three Committee members is appointed to review the matter. Committee members who have a professional or personal conflict with the referred attorney do not serve. The subcommittee reviews the attorney's relevant background, including criminal history and previous evaluations for treatment; conducts an in-person interview; and either recommends further evaluation and compliance with the evaluator's professional recommendations or informs the attorney that it does not recommend further action. If the attorney accepts and acts on our recommendation, the matter ends and we advise the Supreme Court only that the referred attorney has complied with our recommendation. If the referred attorney does not accept our recommendation, he or she may appeal to the Board of Governors, which will accept or reject our recommendations. If there is no appeal or if the Board of Governors adopts our recommendations and the

Continued on page 15

Introducing the Lawyers Assistance Committee

Continued from page 14

lawyer does not comply, our recommendation and the attorney's decision not to comply are reported to the Supreme Court. Any decision to take disciplinary action is entirely at the discretion of the Court. The Lawyers' Assistance Committee does not decide whether an attorney's bar license will be subject to conditions, suspended, revoked or reinstated.

". . . and I hate giving good people bad news." – The Matrix

The Problem:

Alcoholism remains the most significant substance issue for members of the Alaska Bar. It is important not to mistake the symptoms for the problem itself. For the alcoholic attorney and his or her family, problematic drinking behavior is only a symptom of an underlying problem—the disease of addiction. The consequences of alcohol abuse—which can include missing hearings, failing to contact clients, shoddy filings, missed deadlines, distraction, isolation, and even dipping into client trust accounts—will not end until the underlying problem is addressed. Because alcoholism is a progressive disease, the consequences typically will multiply as the affected attorney's addiction increasingly becomes the driving force in his or her life.

The American Medical Association first identified alcoholism as a disease in 1956. While it is somewhat more frequent in arctic latitudes like Alaska, the disease occurs in all populations; chemical dependence in Ketchikan is identical to chemical dependence in Kansas City or Kiev. Long seen as a social ill and personal affliction, addiction in fact has a biologic component that must be addressed in treatment.[2]

Alcoholism/addiction is primary. It is not a symptom of other physical, mental or emotional problems. Some scientific studies support the theory of a genetic predisposition toward it.[3] Other research suggests that certain life experiences, such as chronic stress or adverse childhood experiences, increase the likelihood of becoming chemically dependent.[4] For those suffering from the disease, however, viewing their case as comparable or distinguishable from either hypothesis does not affect the solution. Whatever the cause, the first step is to stop drinking. The next is to determine how to remain sober. While some people can simply decide to stop drinking and remain sober for the rest of their lives, the number is few, and without assistance from others who have lived through the problem and learned how to thrive, the risk of failure is great. As mentioned above, the cost of failure can be your life. According to the World Health Organization, about 2.5 million people die each year of alcohol-related causes, which amounts to about four percent of all deaths. Another risk for people who stop drinking entirely on their own is that they may remain a "dry drunk," that is, they may spend the rest of their lives desperately wishing for a drink and resentful that they can't have it. This is completely unnecessary.

The disease of addiction is multiphasic, compromising the physical, mental and emotional aspects of its subject. One reason that recovery is difficult for most people is that addiction creates a physiological change. Changes can occur to the prefrontal cortex, limbic system, hippocampus and amygdala. It is worthwhile to review the science of this disease; there are some very readable studies and a few graphic PowerPoint presentations on the internet.[5] Bottom line: the disease of alcoholism/addiction is permanent and chronic. *Once it's there, it can never be not there.*

Further, the disease follows a predictable and progressive course. It always gets worse. Individuals may hit plateaus in their drinking/using behavior; they may change brands, change substances, abstain, change amounts or time spent using, yet the disease still progresses. Periods of sobriety do not reset the clock and those who resume the use of intoxicants find they pick up where they left off or sometimes even at a point further down the road. Without treatment, the disease of alcoholism/addiction is fatal.

Addiction is often called a "family disease." This is not because it tends to run in families—although this is true—but because it typically equally affects those closest to the addict in emotional, mental, spiritual, and sometimes physical ways. Those closest to the addict typically believe that somehow they did something to cause the illness, or that by changing their own behavior they can somehow control someone else's addiction. But others are no more responsible for another's addiction than they are responsible for another's diabetes or cancer. We cannot control or cure someone else's disease, and believing otherwise will make us upset, discontented, and neglectful of ourselves as we struggle to deal with what seems an impossible situation.

"Always look on the bright side of life." – Monty Python's Life of Brian

The Solution:

While addiction cannot be reversed or cured, it can be treated and arrested. For those who cannot imagine a life without alcohol or drugs and cannot continue a life with them, there is hope. For those who have broken backs and hearts to hold onto a loved one only to watch them slip further away, there is hope.

The Lawyers' Assistance Committee is available to help in leading members of the Alaska Bar to proven solutions. There are many recovery programs, both in-state and outside Alaska. Because addiction is permanent and chronic, most treatment regimens include continuing and consistent care. The most well-known is Alcoholics Anonymous, with meetings available to the community every day. A professional evaluation can determine what level of treatment is therapeutically recommended. All treatment milieus involve others, possibly including a professional counselor, family, friends, spiritual advisor, and others in recovery. In addition, the Lawyers' Assistance Committee has given continuing legal education presentations that are available through the Alaska Bar Association on DVD. These presentations discuss the nature of the disease, the Alaska Bar's formal and informal responses, how to access treatment services, and why it is important to plan any intervention.[6] Attorney panelists share their personal stories of recovery from alcoholism/addiction and codependency.[7]

The Lawyers' Assistance Committee is privileged to serve our Alaska legal community. We are honored by the opportunity to contribute our experience, strength and hope to our fellows so that we can thoughtfully respond and recover together.

Footnotes

[1]Alaska Bar Rule 2(d).

[2]Throughout the article, alcoholism and addiction are used interchangeably.

[3]National Institute on Alcohol Abuse and Alcoholism No. 18 PH 357 July 1992, found at http://pubs.niaaa.nih.gov/publications/aa18.htm

[4]http://www.acestudy.org

[5]American Medical Association, American Psychological Association and American Society of Addiction Medicine just to name a few.

[6] Johnson, Vernon. Intervention, how to help someone who doesn't want help: a step-by-step guide for families and friends of chemically dependent persons. Minneapolis: Johnson Institute Books, 1986.

[7] One LAC member's introduction included a reading from Melody Beattie's classic, *Codependent No More*. Incorrectly dubbed 'collateral damage', those close to an addict suffer direct harm and are at risk of becoming codependent. Beattie, Melody. Codependent no more: how to stop controlling others and start caring for yourself. Center City, MN: Hazelden, 1992.

Substance Abuse Help

We will
- Provide advice and support;
- Discuss treatment options, if appropriate; and
- Protect the confidentiality of your communications.

In fact, you need not even identify yourself when you call. Contact any member of the Lawyers Assistance Committee for confidential, one-on-one help with any substance use or abuse problem. We will not identify the caller, or the person about whom the caller has concerns, to anyone else.

Anchorage

Michaela Kelley Canterbury
276-8185

Megyn A. Greider
543-1143

Dale House
269-5044

David S. Houston
278-1015

Mike Lindeman
245-5580

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Allard installed as Court of Appeals judge

Friends & family gather around newly installed Judge Marjorie K. Allard on Feb. 1 (from left): Ryan Fortsen (Anchorage Bar); mother, Vicky Allard; Ruth Botstein (an Assistant AG in Department of Law, Appeals); Chief Judge David Mannheimer; son, William Findley; husband, Matt Findley; Judge Allard; Chief Justice Dana Fabe; Presiding Judge Sen Tan; Susie Dosik (attorney at the Alaska Judicial Council); Don McClintock (Alaska Bar); and father, Jim Allard.

Pausing for a photo after robing are the new Judge's Mother, Vicky Allard; Judge Marjorie Allard; and her husband, Matt Findley, a partner at Ashburn & Mason.

By David Mannheimer

I am honored to represent the Court of Appeals on this important and happy occasion, to greet my new colleague, Judge Marjorie Allard, as she publicly takes her place on the Court.

The installation of a judge is always an emotional time. For Marjorie's family and her friends, it is a time for expressing their joy and their pride at the achievements of someone they love. For Marjorie's colleagues in the legal community, it is a time for expressing their hope and their confidence in the woman who now assumes this high office.

Judge Allard is an experienced advocate, and anyone who meets her will soon recognize her intellect. But, as Dostoyevsky wrote, intellect must be judged by the qualities that guide it. Marjorie's guiding qualities are her strong character, her understanding of people, her dedication to the public welfare, her generosity, and her down-to-earth good sense.

Judge Allard is a member of new generation of lawyers that is reaching maturity in the Alaska legal community. She was born in the same year that I entered law school, and she reached adulthood in the 1980s and 90s. This is significant because the profession of judging is quite different from engineering, mathematics, or the physical sciences.

In our society, the law is a toolkit that must serve many purposes. One purpose is to achieve fairness and uniformity of results in individual court decisions. Another purpose is to develop procedures and rules that embody the best of our society's ethical principles. Courts must protect the autonomy of the individual citizen, while at the same time allowing society as a whole to employ reasonable means to ensure the public health, prosperity, safety, and tranquility.

In applying the law, a judge must heed several imperatives, and these imperatives may often conflict. A judge must endeavor to find the just result in the particular case before the court. But the judge must also endeavor to find a result that is consistent with the result reached in previous analogous cases. And a judge must endeavor to find a result that, when applied in future cases, will lead to a beneficial and workable solution when the same problem occurs again.

Because of these several purposes, and these several imperatives, there is often no single identifiably "right" answer to a legal case. Instead, there is a range of answers. A judge's task is to weigh these potential answers, and then select the one that best preserves the ethics of our society and produces a predictable and workable rule of law.

A judge's assessment of the best answer will often hinge, not just on the judge's legal training, but also on the judge's life experience and the judge's knowledge of the world. This is why appellate courts are groups of judges — so that the decisions of the court reflect the life experiences and knowledge of several different people. As a woman, and as a member of a younger generation, Judge Allard will add an important voice to the deliberations of the Court of Appeals.

Marjorie's legal skills, her years as an advocate and as a counselor, her experience in life, and her personal qualities — all of these give the people of this state good reason to place their confidence in her. I am pleased and honored to call Marjorie my colleague, and to welcome her to the Court of Appeals.

NOTICE TO THE PUBLIC

By order of the
Alaska Supreme Court,
entered January 4, 2013

HUGH W. FLEISCHER
Member No. 7106012
Anchorage, Alaska

is transferred to
disability inactive status
effective January 4, 2013

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

Marjorie Allard's comments at installation

I want to thank everybody who's here and some of the people who aren't here. I know that Marjorie Mock is not here and that it one of the people I specifically wanted to thank and Bob Coats was supposed to not be here and skiing but apparently he came directly from the ski hill so he is here. And I just feel so honored and privileged to have been given this opportunity.

One of the things that I think has been unique about this transition is that because I was a central staff attorney, I got to actually overlap with Judge Coats and got to learn from him how he has had this job for 32 years and how he continues to love it and continues to act in such a gracious and humble way. And one of the things about being a lawyer in Alaska and particularly being an appellate criminal lawyer is that really Alaska is the best. And this court has always been an extremely fun and interesting and engaging and intellectually challenging court to appear before.

And so in asking Bob Coats how he managed to make the court that way, he talked about how he views the position of judge as something that he always held very carefully as though it was somebody else's possession. And that there was always a sense of stewardship; that when he would come in and they would say "All rise, for the Court of Appeals," that people were rising for the court, the position of the court, for what the court represents. And that he himself would be rising for the court. And when he would tell people to now sit down, he himself would be sitting down for the court. And that he was participating in the same reverence towards the court that the litigants were.

And the fact that 32 years later, Bob Coats can speak with such humility and graciousness about his job and with such an understanding of how important that way of thinking is, really inspires me and I am so privileged not only to be on a court that I respect so much and that has been such an amazing court to appear before but also to be replacing somebody who I think has really helped create the spirit of this court and made it such a real pleasure to appear before.

So again, I feel so incredibly honored and so incredibly grateful to have this privilege and will absolutely do it to the best of my ability and thank you all very much.

Judge Coats retires

By Gregory S. Fisher

Judge Robert G. Coats retired from the Alaska State Court of Appeals on December 31, 2012. He served over 32 years on the Court of Appeals issuing countless opinions that shaped criminal law and procedure in Alaska. It is believed that Judge Coats was the longest tenured state appellate judge in the United States.

Judge Coats earned his undergraduate degree from the University of Washington and his law degree from Harvard. He clerked for Justice Rabinowitz on the Alaska Supreme Court before working for the Public Defender's and Attorney General's Offices in Kenai and Fairbanks.

Gov. Jay S. Hammond appointed Judge Coats to the Court of Appeals on July 30, 1980. He served with distinction and was well-regarded by the Bench and Bar for his legal ability, civility, diligence, and scholarship. The Judge mentored hundreds of lawyers over his three decades on the bench. Many of his law clerks have gone on to become judges or leading members of the Bar.

Although Judge Coats officially retired it is likely he will be sitting on the court pro tem until a replacement for Judge Bolger is found. A more comprehensive article commemorating Judge Coats' career will be published in the near future, hopefully in the June issue. However, until then, the Editor thought this brief notice would be appropriate to mark the occasion.

Chief Judge Robert Coats of the Alaska Court of Appeals was honored by the legal community on January 9, 2013, at a retirement reception at Snow City Café in Anchorage. New Chief Judge David Mannheimer, R, presents Judge Coats, L, with a special gift from his colleagues on the court: an office chair that was used by both Judge Coats and his long-time friend, Chief Justice Jay Rabinowitz, and was a familiar chambers fixture to several generations of law clerks and court staff. Plaques mounted on the back of the chair indicate both of its users' exceptionally long terms of service to the State of Alaska. Chief Justice Rabinowitz served 32 years on the Alaska Supreme Court, from 1965-1997; and Chief Judge Coats served 32 years on the Alaska Court of Appeals, from its establishment in 1980 until his retirement in 2012. Both Justice Rabinowitz and Judge Coats retired at age 70, the mandatory retirement age set by the Alaska Constitution's Judiciary Article.

Past and present judges of the Alaska Court of Appeals gathered to honor Judge Coats during his retirement reception, L-R: Chief Judge David Mannheimer, Judge Joel Bolger (appointed January 25 to the Alaska Supreme Court), Judge Coats, Alex Bryner (former Court of Appeals Judge and Alaska Supreme Court Justice), and Judge Marjorie Allard, newly appointed to the Court of Appeals to fill the vacancy created by Judge Coats' retirement.

Human trafficking gains national focus

The American Bar Association has formed a task force on human trafficking, an initiative of current President Laurel Bellows and the Polaris Project.

"When more than half of states act within a single year to pass anti-trafficking laws, we know we are making progress," Bellows said. The 2012 Polaris Project annual report rated the 50 states on their progress in preventing trafficking.

"The ABA is looking forward to working closely with Polaris to make certain that Americans understand the depth of the human trafficking crisis in the United States," she added. "It is only through strong partnerships that we will eradicate this scourge."

Polaris Project, a nonprofit organization dedicated to ending human trafficking and modern-day slavery, reported that 28 states passed new trafficking laws from 2011-2012.

The most improved included Massachusetts, South Carolina, West Virginia and Ohio. The "faltering four," states that have not made even minimal efforts to combat human trafficking, are Wyoming, Arkansas, Montana and South Dakota (Tier 4). The ratings are based on 10 categories of laws that combat trafficking, punish traffickers and support survivors.

"The victims are unfree in the land of the free — 100,000 U.S. citizens forced into sex or labor for the profit of their captors. "

Alaska ranked in the second tier; the Polaris rankings noted improvement, and identified areas that need improvement, including: investigative tools, law enforcement training, national hotline participation, safe harbor for minors, victim assistance, civil remedy and vacating convictions poklicy.

"The victims are unfree in the land of the free — 100,000 U.S. citizens forced into sex or labor for the profit of their captors. Hundreds of thousands more men, women and children are trafficked into our country every year." One of Bellows' top presidential initiatives is human trafficking.

The ABA's Task Force on Human Trafficking is working with the Uniform Law Commission to write a consistent statutory law for all states to adopt. The Task Force is also developing best practices for businesses to follow and training for lawyers and law-enforcement officials who are often the first to respond to trafficking situations. In addition, the Task Force will strengthen pro bono networks to ensure that all the civil legal needs of trafficking victims are addressed.

Polaris Project 2012 annual ratings on state human trafficking laws can be found at polarisproject.org.

Judge Esch retires, but not for the dogs

Ben Esch on Front St. in Nome, 2012. Photo by Neisje Steinkruger

Judge Ben Esch was honored recently with a community reception on the occasion of his retirement from the Alaska Superior Court in Nome. Judge Esch was appointed to the bench on Feb. 16, 1996, and retired effective Feb. 1, 2013.

The judge loved his retirement cake. Photo by Roger Brunner

During his tenure on the bench, he served as Presiding Judge for the Second Judicial District for several years, and also served for many years on the Alaska Commission on Judicial Conduct, including a term as chair. His 17 years on the bench mark the longest superior court tenure in Nome since Statehood. After retirement, Judge Esch and his wife Jana will continue to reside in Nome, where he plans to serve the court system in a pro tem capacity.

Judge Esch's familiar face around town becomes even more familiar each year during the 1049-mile Iditarod race. In his fur hat, he's on Front Street serving as the official timer at the race finish-line, greeting mushers as they arrive. It's a 24-hours-a-day job. He gets phone calls at all hours from Safety--the last checkpoint before Nome—to alert him who will be arriving next at the arch over the finish-line.

At his retirement reception, he enjoyed a cake baked by Leslie Banning, who served as his Judicial Assistant during his entire 17 years at the Nome court.

Alaskans spending 2 years exploring the Pacific

Laurence Blakely & Mark Ward get ready to cross the Pacific on board *Radiance* in May 2012.

By Laurence Blakely

My husband Mark and I left Seward last May, in our 45-foot sailboat *Radiance*, planning to take two years to circumnavigate the Pacific Ocean. I had moved to Alaska just a few years earlier to clerk for the court of appeals, met Mark, and stayed on past my clerkship, doing appellate work for a very small firm in Anchorage. Mark and I began discussing a sailing trip almost immediately, and got to work outfitting *Radiance*, researching possible landfalls, and studying weather patterns and ocean currents.

Radiance is a German Frers designed Beneteau First 456 sloop. She has the deep lead fin keel and tall rig. She competes in the local sailing regattas and has taken top honors in all events on multiple occasions. At a length of 45 feet and beam of 14 feet, the 456 performance cruiser was manufactured from 1983-1986.

Laurence Blakely and Mark Ward are currently sailing her on a 2-year blue water cruise that will essentially circumnavigate the Pacific Ocean.

After moving onto the boat in April, we waited for a weather window to sail across the Gulf of Alaska and down the inside passage to Victoria, B.C. From Victoria, we raced a fleet of about a dozen other boats over 2,600 nautical miles to Lahaina, Maui, in the Vic-Maui International Yacht Race. The idea was for the race to slingshot us into our adventure while giving us some extra crew and support for what was to be our longest passage for the first half of our trip. It worked. Just a couple of months after leaving a still-snowy Seward, we found ourselves in tropical Maui. There was no turning back—it was 3,000 miles upwind back to Seward. We took a couple of weeks to repair, recuperate, and re-provision, then took off for Palmyra, an atoll about 1,000 miles south of the Hawaiian chain and co-owned by the Nature Conservancy and the U.S. Fish and Wildlife Service.

Many traveling this route choose to forego a stop on Palmyra because of the administrative hurdles it presents, (namely, getting a special-use permit and a "de-rat certificate" for one's vessel), but we were glad we took the trouble. Due to its location at the confluence of the Pacific Ocean currents, Palmyra is exceptionally rich in wildlife. Amanda from Fish and Wildlife greeted us and guided us through the reef into the lagoon.

After warning us not to harass the wildlife (dozens of species of land crabs including coconut crabs, nesting terns and boobies, baby black tip reef sharks, and manta rays, to name a few), not to go to the east lagoon, (a designated sensitive wildlife habitat which is also full of unexploded ordnance and land mines from World War II), and to radio before going outside the lagoon to snorkel on the reef (yeah!), Amanda went on to say that Palmyra has been talking to the Coast Guard about making the atoll a refueling station. This may sound odd for a wildlife refuge, but Palmyra has deep-water capacity and other facilities from when it was a World War II base, and it turns out refueling may be a compatible use.

Amanda explained that they hoped this would help cut down on the illegal, unregulated, and unreported fishing that goes on around the Line Islands, of which Palmyra is a part. Currently, the Coast Guard deploys from Hawaii and sets up a station on neighboring Kiritimati Island, a few hundred miles to the southeast. But by the time the Coast Guard gets there, Amanda said, the illegal fishers have already seen them coming have left. She said she and the other researchers see "mystery boats" all the time off the

Palmyra is a wildlife sanctuary, protecting species such as this exotic red-footed booby bird.

reef on Palmyra, which she suspects are fishing illegally, but they can't do anything about it. This was to be a recurring theme throughout our travels.

Amanda also told us a gruesome detail of Palmyra's history as recounted in *And the Sea Will Tell*, written by defense attorney Vincent Bugliosi. In the 1970s, a couple named Mac and Muff sailed to Palmyra aboard their sailboat *Sea Wind*. Several months later a friend of Mac's saw a boat arrive in Hawaii that looked just like the *Sea Wind,* but painted purple and sailed by a guy named Buck and his girlfriend Stephanie. Meanwhile, Mac and Muff had disappeared. Although the police suspected foul play, they didn't have enough evidence to charge Buck and Stephanie with anything but boat theft. Several years later, a tourist walking along the beach in Palmyra came across

The adventurers snorkle the reefs in Fanning

an old ammunitions box. In it were Muff's remains—she had been shot, and her body stuffed into the box. Buck was convicted of the murder, but Stephanie was acquitted.

Near the airstrip is a sign welcoming newcomers to Palmyra and displaying the current resident population. While we were there, the population was 19: scientists, researchers, boat handlers, and a cook. I don't think yachties are included in the census, so our departure left the sign unchanged.

Two sailing days later, we arrived at Fanning Island. Also called Tabuaeran, Fanning lies about 200 nautical miles east-southeast of Palmyra and belongs to the Republic of Kiribati. Kiribati is comprised of over thirty islands stretched over some 2,400 miles east to west, close to the equator. The government center of the Republic is on Tarawa Atoll, approximately 2,000 miles to the west of Fanning. Apart from a few solar panels, there is no electric-

A staple of the local Fanning diet: myriad species of fish.

ity on Fanning: no refrigeration, no television, no Internet. There are no telephones and there is no air service. The government runs a supply ship between the far-flung islands of the Republic, but there is no schedule, and it is often close to a year before the ship shows up on Fanning. Nevertheless, about 2,500 people live there, subsisting mainly on fish, coconut, papaya, bananas, and breadfruit as well as imported rice and tinned meats (spam *et al*).

Although it was a short sail from Palmyra, we faced headwinds, thunderstorms, and squalls all the way, so we were grateful to sail through the pass, out of the ocean swells and into the flat light blue water of the lagoon, where we dropped our anchor in front of what looked to be the main settlement. Once ashore we managed to find the police station, which was where we'd heard we might find customs and immigration. Seeing a pile of sandals at the doorway, we removed our shoes and went inside, to find a couple of guys sitting around,

Continued on page 19

Seaweed dries onshore in Fanning. Seaweed farming is a recent development on the island; Fanning used to cultivate copra (dried coconut) the market has declined, and the Chinese buy all the seaweed Fanning can produce, using it mostly in cosmetics.

Visiting the home of newly found friends Bruno & Tabata (and their son Paul in the photo) Laurence and Mark learn it took the couple 15 years to build their distinctive home from coral stones collected around the island.

Alaskans spending 2 years exploring the Pacific

Continued from page 18

smoking and playing cards. Obligingly, one of them stepped outside to find the policeman. Later it dawned on us that these men were, in fact, "in jail."

Several days later we went ashore to find a large crowd gathered. It was "court day" on Fanning, and most of the village was there to watch. That day most of the cases involved men who had drunk too much "bush beer" over the weekend resulting in domestic abuse. Sound familiar? Given the prison situation, I was curious about what sort of sentences were being issued; it turns out most men were issued a fine, which they probably couldn't pay anyway. For more serious crimes, people would likely be shipped to Tarawa, thousands of miles away, whenever the ship showed up.

The day we left, Mark went for our clearance papers and found a woman sweeping the area in front of the police station. She conveyed to him that she was also doing time—for embezzling money from the community (she claimed she was framed). She was to be sent to Tarawa, but she didn't know when. In the meantime, there was no risk of her running away—we and a few other sailboats probably being her only means of escape!

On September 3 we left Fanning, without stowaways, and headed for Manihiki, some 860 nautical miles away at a bearing of 186 degrees magnetic. It was a fairly typical trade wind passage through the inter-tropical convergence zone, with the wind still out of the east-southeast—but this time, thankfully, mostly on our beam. In this zone, the southern hemisphere southeasterly trade winds meet the northern hemisphere northeasterly trade winds, often creating turbulence, convection, and squally thunderstorms.

We arrived in Manihiki early on the morning of September 9, thoroughly salted, exhausted, and relieved to anchor in the lea of what seemed to us a very small atoll in a very large ocean. Unlike Fanning, the pass into the Manihiki lagoon was too shallow for Radiance, so we'd be subject to the ocean swell and have to be ready to leave any time the wind direction changed. For this reason, many boats choose not to stop there. We managed to stay about one week.

Laurence has the opportunity to select precious black pearls as a memento of the stop in Manihiki

Mark captures an apparition of Laurence among the corals at Manihiki.

"Lady Pearl" Laurentia Williams carries on the family tradition of black pearl farming in Manikiki.

A celebration one night in Manihiki draws the couple into the town.

Manihiki is one of 15 Cook Islands, which are scattered throughout 850,000 square miles of ocean and total less than 100 square miles of land. Although the Cook Islands are an independent nation, Cook Islanders are also New Zealand citizens. People say there are more Cook Islanders in New Zealand than there are in the Cook Islands. The Manihikians are concerned about a dwindling population as more young people leave for school or work and don't return—a concern familiar to many of Alaska's native villages.

We came ashore to a lovely little village of neatly painted houses with colorful trim and tidy seashell-gravel roads—signs of wealth that were not visible in Fanning. The main source of wealth in Manihiki, aside from money sent back from family in New Zealand and Australia, is black pearl farming. I inquired about this trade of the personable health inspector who had cleared us into the country, Jean Marie Williams.

It turns out that Jean Marie had extensive personal history in the pearl farming industry and was happy to share his knowledge. He explained that pearl farming began in the 1970s, when the Cook Islands central government gave an Australian named Peter Cummings exclusive rights to farm black pearls in the Manihiki lagoon. Undeterred, Jean Marie and his father began pearl farming as well. Cummings sued the Williamses for an injunction. The Williamses had the support of the Manihiki Island Council, which from the beginning had opposed the central government's assertion of power in granting exclusive rights to Cummings.

Jean Marie told me he won the case by making a constitutional indigenous rights argument. For several years, Jean Marie's father, Tekake Williams, also happened to hold the world free diving record. Jean Marie no longer farms black pearls, but his sister Laurencia—a former nun—has taken up the family farm. As for Peter Cummings, he left Manihiki in 1982, and last I heard had taken up residency just a few miles from where I sit right now, in Russell township, New Zealand.

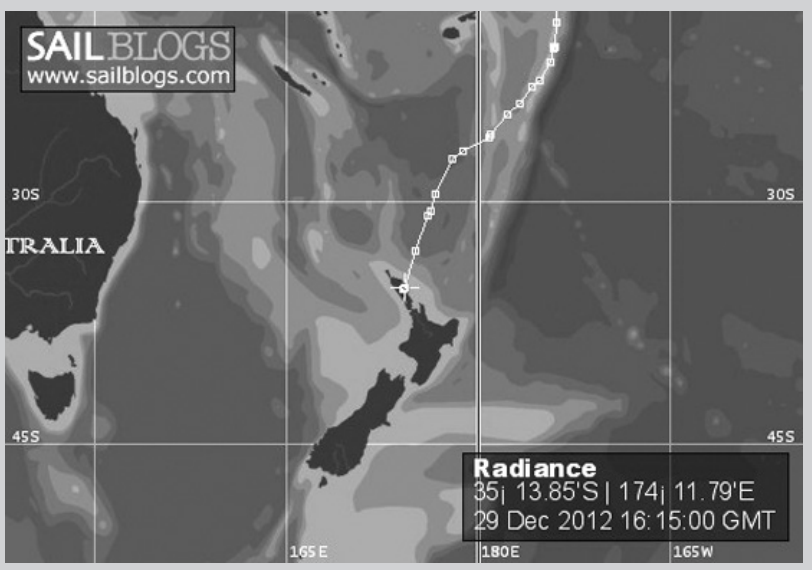
Today, only people of Manihiki descent are granted licenses to farm in the lagoon. Pearls appear to be the only resource on Manihiki, making the island vulnerable to outside market forces, such as the Tahitian black pearl, which, according to Manihikians, is cheaper and has flooded the market.

While we were in Manihiki, many people there were discussing the Prime Minister's pending visit to China, worried that he would sell fishing rights to the Chinese. I don't know whether these concerns were legitimate, but residents described seeing vessels fishing off the Manihikian reef, and like the researchers on Palmyra, the Manihikians couldn't do much more than watch.

By September 17, significant swells were rolling into our anchorage and it was time to go. We bade goodbye and set sail for our next destination: Suwarrow, a bird and wildlife sanctuary.

The Big Blue

Laurence and Mark are documenting their Pacific Ocean journey on an extensive blog at http://www.sailblogs.com/member/thebigblue/.
There, you can explore their preparation for the trip, sail logs, photos, satellite map of their current location, and a Google map of the expedition they planned.



It's not all bad news

By Dan Branch

In the fall of 2011 I was diagnosed with prostate cancer. Today it is gone, not as the result of surgery or medical intervention but from lifestyle changes. I share the story since so many men of my generation have or will develop prostate cancer.

A prostate cancer diagnosis expresses you into a scary world of medical terms and options. Your doctor, if a cancer specialist, cues up the tape in his mind of the speech he gives to those first confronted with negative biopsy results. You try to listen, struggling to ignore the "Oh my God!, Oh my God!" chant that only you can hear. Some of the doctor's words sink in as he tells you your treatment options — radical prostate surgery, radioactive bead implants, cryro therapy, and something called active surveillance.

During that first post biopsy meeting you learn about sometime thing called a Gleason Scale. The number assigned to your cancer on this scale by the pathologist determines your treatment options. Scores of 6 or less (mine was a 6) indicate you have a non-aggressive form of the disease. Cancers scored 7 are moderately aggressive while those with a 8 or higher number are considered aggressive and need immediate attention.

The good news about prostate cancer is that it is imminently treatable as long as it is contained in the prostate itself. The cancer produces no symptoms until it escapes. Without that most unpleasant feature of the annual checkup or a high PSA blood test result you'd never know cancer was lurking in your prostate until it breaks out to invade other organs. Then it is tough to treat. This may be why many men with the non-aggressive form of the disease opt for surgery — so they can catch it early — so they don't have to live with the little lurker.

"If you are diagnosed with prostate cancer educate yourself. Learn your Gleason score and what options it gives you. Pray if you have faith."

Not wanting to risk the side effects of surgery (possible incontinence and or impotence/infection/blood clots) I opted for active surveillance. This involves quarterly PSA blood tests and a yearly biopsy (not a pleasant procedure). Without any encouragement from my urologist I also decided to make some lifestyle changes in hopes of slowing the cancer's growth. There is some developing science behind this idea which is supported by docs like Aaron Katz who wrote a guide to prostate health. Dr. Katz runs the Center for Holistic Urology at Columbia University.

When diagnosed I was not drawn to herbal treatments and thought holistic institutes were places where cultists danced to atonal music. I bought Dr. Katz's book because it was the newest one on the subject carried by Amazon from which I hoped to learn about the latest invasive treatment options.

In his book Dr. Katz does a good job setting out the treatment options. He also provided a good argument for using diet and lifestyle changes to reduce the growth of non-aggressive prostate cancer.

In his book Dr. Katz does a good job setting out the treatment options. He also provided a good argument for using diet and lifestyle changes to reduce the growth of non-aggressive prostate cancer. That I could understand. Eliminating sugar and most kinds of fat from your diet as he recommends made sense. Such a diet promised other health benefits. Katz also recommends stress relief techniques like yoga and meditation — a bridge too far for me, and supplement capsules filled with wild mushrooms, cooking spices, and salmon oil. After reading about positive results from small studies conducted by his Institute I decided to take some of the recommended supplements.

During the year between biopsies I didn't change my usual bike and ski based exercise routine but thanks to the new diet lost 30 pounds, dropping down to my old high school tennis team (Junior Varsity) weight. Guess I once ate a lot of sugar. Holding at about 154 pounds I showed up for my second biopsy in mid-January to find it just as unpleasant experience as the first time. Two weeks later my urologist is staring at his computer screen which reports a total absence of cancer or pre-cancerous tissue (PIN) in my biopsy samples. After a minute he smiles and says that I am the second person he has cured with a biopsy.

If my first biopsy hadn't reported the presence of PIN along with a tumor I might have accepted his assertion. He did take 12 tiny chunks of my prostate during the biopsy. It's possible that the process removed all of a tiny tumor. That doesn't explain the absence of the previously discovered precancerous tissue (PIN). Apparently a man of hard science, the urologist didn't consider the other possibility — that diet, control of stress through exercise, and an increased intake of antioxidants eliminated the cancer.

If you are diagnosed with prostate cancer educate yourself. Learn your Gleason score and what options it gives you. Pray if you have faith. If you have a slow growing form of the disease consider active surveillance. According to the latest science it is a safe way to avoid the cost and risk of side effects that comes with more aggressive treatment. If you try active surveillance consider making the lifestyle changes recommended by Dr. Katz and others to help your body slow the cancer's growth. You may end up having to undergo more aggressive treatment in the future but according to one study report, active surveillance permitted two thirds of the study participants to avoid it. (Carter, H.B., Walsh, P.C., Landis, P., et al., Expectant management of nonpalpable prostate cancer with curative intent: preliminary results. J Urol, 2002. 167(3): p. 1231-4.)

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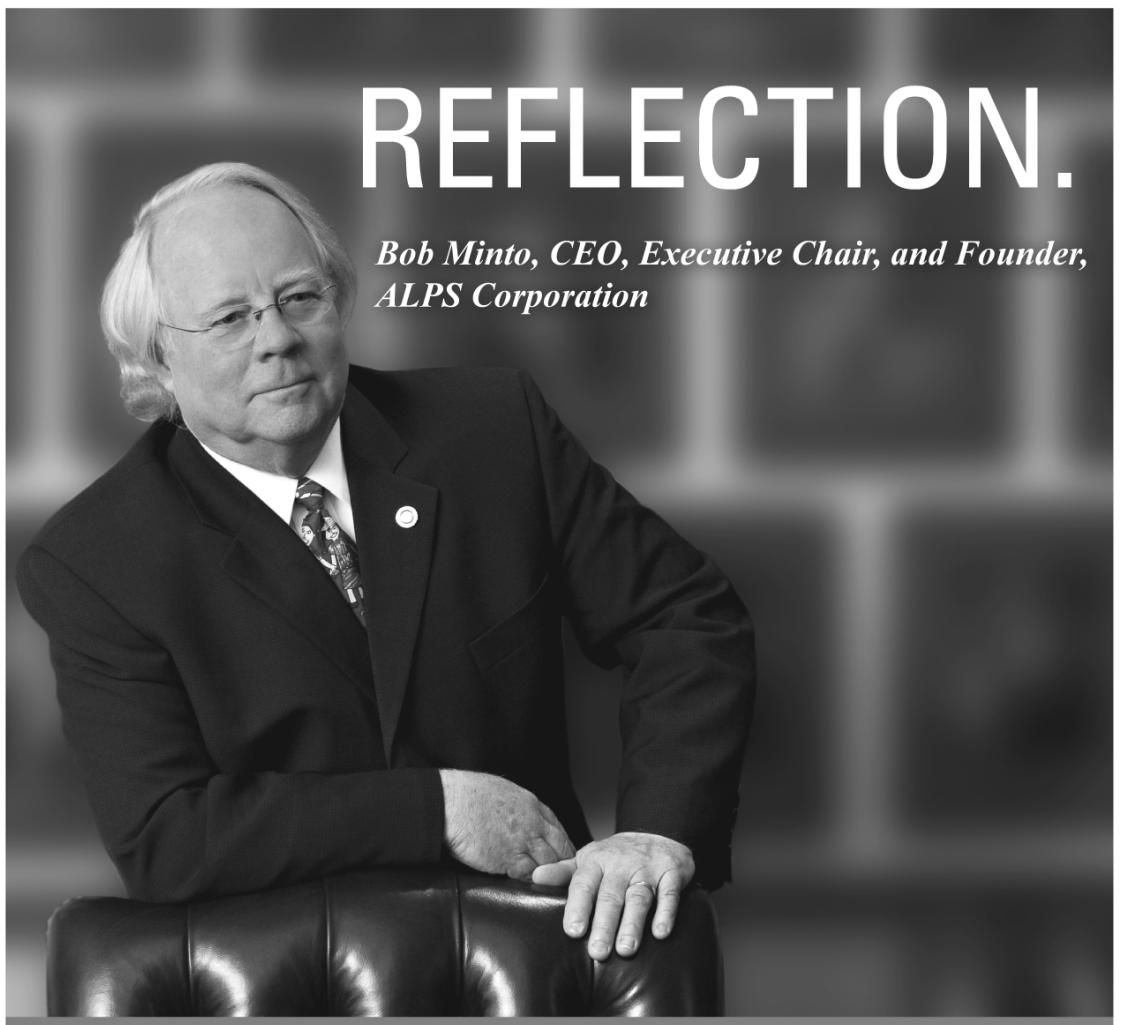

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ESTATE PLANNING CORNER

Transfer tax law comes to rest

By Steven T. O'Hara

What do the 2001 Tax Act and the 2010 Tax Act have in common besides years with the same numerals? They both — *on only a temporary basis* — made remarkable changes to the U.S. wealth transfer tax system.

The 2001 Tax Act is known as the *Economic Growth and Tax Relief Reconciliation Act of 2001*. The 2010 Tax Act is known as the *Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010*. These acts significantly reduced estate, gift and generation-skipping taxes.

Unfortunately, as mentioned, the tax reduction was made temporary, to the fits of many an estate planner. It was hard to draft durable instruments when the law was in flux for over 11 years (2001-2013).

Better late than never, the 2012 Tax Act has brought the matter to rest for now. Known as the *American Taxpayer Relief Act of 2012*, the Act puts certain estate, gift and generation-skipping tax reductions on "Permanent Extension." (Title I, Section 101(a), of the 2012 Tax Act.)

Whatever the term "Permanent Extension" means, two things are clear: First, to a large extent federal wealth transfer tax breaks have been extended. Second, if there is to be optimism, it needs to be cautious optimism. What the U.S. government has given, the U.S. government can take away.

Noteworthy, the 2012 Tax Act increased the top estate and gift tax rate from 35% to 40%. (IRC Section 2001(c).) The Act also increased the top income tax rate on ordinary income from 35% to 39.6%, as well as increased the maximum rate on long-term capital gains and dividends from 15% to 20% (IRC Section 1).

The 2012 Tax Act allowed to stand the 3.8% tax, as of 2013, on so-called unearned income of estates and trusts and certain individuals. The net investment income to which this 3.8% tax applies includes, in general, interest, dividends and rents. (IRC Section 1411.) Known as the Medicare surtax, this extra tax was part of the 2010 Tax Act but not effective until 2013.

"It was hard to draft durable instruments when the law was in flux for over 11 years (2001-2013)."

Some advisors may urge clients to avoid trusts, noting that trusts could be subject to a combined federal income tax rate of nearly 44% (i.e., 39.6% plus 3.8%) on ordinary income over roughly $12,000 (IRC Sections 1(e) and 1411(a)(2)). Trust income tax rates are a valid concern and are one reason why this writer advises clients to consider providing that all trust net income must be distributed annually. With this provision, the trust's ordinary income will generally be taxed at the beneficiary's income tax rates (IRC Sections 651 and 652). In 2013, an unmarried individual is not subject to the 3.8% Medicare surtax until the taxpayer reaches, in general, $200,000 of income and is not subject to the 39.6% top bracket until the taxpayer reaches, in general, $400,000 of income (IRC Sections 1(c) and (i)(3) and 1411(b)).

Recall that the amount that may pass free of federal estate tax is generally known as the unified credit equivalent amount or, more recently, the applicable exclusion amount. (IRC Section 2010.) Here we call it the "exclusion amount." From 1987 through 1998, this amount was $600,000. Beginning January 1, 2000, the exclusion amount was scheduled to increase over time to a high of $1,000,000 in 2006.

With the 2001 Tax Act, the exclusion amount increased over time to a high of $3,500,000 in 2009. In addition, the 2001 Tax Act reduced the top estate and gift tax rate from 55% over time to a low of 45% beginning in 2007.

Under the 2010 Tax Act, the exclusion amount increased to $5,000,000 for both estate and gift taxes. In addition, the $5,000,000 exclusion amount would henceforth be increased annually, in general, to keep up with inflation. (IRC Section 2010 and 2505.) The 2010 Tax Act also reduced the top estate and gift tax rate to 35%. (IRC Section 2001(c).)

At the time the 2010 Tax Act was a surprise, and one of the surprises is known as "portability." The Act created a new acronym: DSUE. This acronym stands for Deceased Spousal Unused Exclusion. (IRC Sec. 2010(c)(4).) Current and future estate planning includes helping clients plan with any amount of DSUE they may have.

Specifically, if a client is a citizen or resident of the United States and his or her spouse dies after 2010, the client may be eligible to use the DSUE amount received from his or her last deceased spouse. The last deceased spouse is the most recently deceased person who at the time of death was married to the surviving spouse. Where a widow or widower remarries, there is a significant limitation on the use of DSUE, namely: DSUE received from a deceased spouse may not be used after the death of a subsequent spouse. (IRC Section 2010(c)(4)(B)(i).)

Unfortunately, the transfer or "portability" of DSUE occurs only by election. It does not occur automatically. The personal representative of the deceased spouse's estate must elect on a timely-filed and complete federal estate tax return to allow use of any unused exclusion amount. (IRC Section 2010(c)(5)(A).) Also unfortunately, there is no portability of the exemption from the generation-skipping transfer tax, known as the GST Exemption.

As mentioned, under the 2010 Tax Act the exclusion amount is adjusted for inflation, as is the GST Exemption. (IRC Sections 2010, 2505, and 2631.) Thus while both the exclusion amount and the GST Exemption were $5,000,000 in 2011, they became $5,120,000 in 2012 and $5,250,000 in 2013. (See Revenue Procedure 2013-15.)

For purposes of illustration, suppose the annual adjustment for the next 18 years is four percent. Here the exclusion amount and GST Exemption could double. In other words, in 18 years they could be $10,500,000 each.

Consider a client, an Alaska domiciliary, who has never married. She is a U.S. citizen. She has never made a taxable gift, and all her assets are located within Alaska. Her assets consist of her home, various bank accounts, and marketable securities. She has no debt. The total value of her assets is $5,250,000. Suppose under her Will she gives all to her nieces and nephews, all of whom reside in Alaska. At this time federal and state estate taxes can be estimated at zero.

Now suppose the total value of her assets is $6,250,000. At this time federal and state estate taxes can be estimated at $400,000. (IRC Sections 2001(c) and 2010.)

Suppose the total value of her assets is $10,250,000. At this time federal and state estate taxes can be estimated at $2,000,000. (Id.)

Consider another client, an Alaska domiciliary, who recently suffered the loss of her U.S. citizen spouse. Also a U.S. citizen, she has never made a taxable gift, and all her assets are located within Alaska. Her assets consist of her home, various bank accounts, and marketable securities. She has no debt. The total value of her assets is $10,500,000. By jumping through the federal-estate-tax-return hoops, she has $5,250,000 of DSUE amount. Suppose under her Will she gives all to her children, all of whom reside in Alaska. At this time federal and state estate taxes can be estimated at zero.

Now suppose this client remarries and her new husband had already used his exclusion amount through lifetime gifting. Suppose further that the new husband has now died before the client was able to use her first spouse's DSUE amount. Again, suppose the total value of the client's assets is $10,500,000. At this time federal and state estate taxes can be estimated at $2,000,000. (Id.)

As always, estate planning will come down to the particular circumstances of the client as well as responding to and anticipating changes in tax law, including whether Congress decides to remove the word "Permanent" from the term "Permanent Extension."

Nothing in this article is legal or tax advice. Non-lawyers must seek the counsel of a licensed attorney in all legal matters, including tax matters. Lawyers must research the law touched upon in this article.

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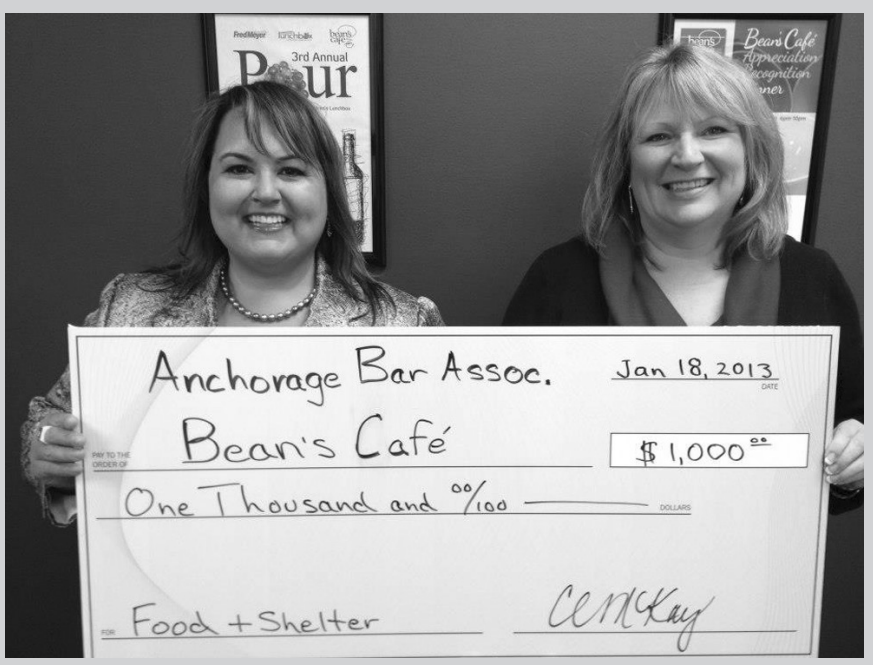

Jolene Hotho (R), joined by Cheryl McKay of the Anchorage Bar Assn.

The Anchorage Bar presented Ken Miller, Director of Development, of Beans Café with a check for $1,000 in memory of the attorneys who have passed on in 2012:

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Annual Committee Solicitation

Each year the terms of several members on each of the committees expire and the incoming President must appoint replacements to fill the vacancies. Below is a list of the committees of the Bar seeking volunteers. Please take a minute to review the list and consider seeking an appointment.

- Alaska Bar Rag
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The solicitation form can be found at www.alaskabar.org
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840 K Street, Suite 100, Anchorage, AK 99501
Forms must be returned by March 31.

Federal Bar Association Update

With the addition of eight new members since the end of 2012, the Alaska Chapter of the Federal Bar Association (FBA) has grown substantially. Five of the new members are also newly admitted to the Alaska Bar.

At the swearing-in ceremony in November, FBA-Alaska President Darrel Gardner announced a drawing for a new iPad that he had donated on behalf of the Chapter; the recipient would be chosen from among those who applied for new membership to the FBA. The drawing was held on January 22, 2013, at the association's first meeting of 2013: "A Year on the Federal Bench" with District Judge Sharon Gleason. In attendance was the lucky winner, Brittany Goodnight. Three of the five new members were present, and Judge Gleason drew the winning name. Brittany said she grew up in Chugiak, attended UCLA, clerked for Judge Volland in Alaska Superior Court, and is applying to work as a public defender.

At the meeting, Chief Judge Beistline called for self-introductions among some 25 judges, attorneys, and federal law clerks present. The other judges attending were Judge Morgan Christen of the Ninth Circuit, Senior Judge H. Russel Holland, and Magistrate Judge Deborah Smith. The meeting generated full-house attendance, likely due in no small part to the free pizza and soft drinks that were generously donated by District Judges Ralph Beistline, Timothy Burgess, and Sharon Gleason.

Judge Gleason is the newest judicial member of the U.S. District Court for the District of Alaska. During her presentation, she recalled her years of practice in family law and her 11 years on the bench in Alaska State Superior Court, where she had almost no criminal case experience. Judge Gleason described the rigors of going through the application and background-check process for her federal judgeship. This required her trying to identify every speech she had ever given, every opinion that had been reversed, and every time she was mentioned in the news. She was required to undergo a complete physical examination, including a hearing test, and the FBI's background investigation even involved contacting people who knew her from her college days.

In her first year on the federal bench, Judge Gleason has grown to embrace the electronic filing system. Initially she was assigned only civil cases, but she is now handling many criminal cases as well. Judge Gleason is also overseeing some cases in Arizona, and has sat with one panel on the Ninth Circuit. While attending a week-long "judge school" with some 15 other new federal judges, she visited the Terminal Island federal prison in Southern California. Judge Gleason wondered aloud about whether that particular name was a good idea.

The second meeting of the year took place on February 12, 2013, with a CLE credit approved presentation: "New Molecules and the Law - The Changing World of Designer Drugs," by Anchorage attorney Jennifer Messick. Jenn is a former prosecutor and a Certified Instructor by the Alaska Police Standards Council. She completed Drug Recognition Expert training at the ICAP Training Conference in Montreal. This presentation

U.S. District Court Chief Judge Ralph Beistline, Judge Sharon Gleason, Judge Timothy Burgess, iPad winner Brittany Goodnight, and FBA Chapter President Darrel Gardner at the FBA January meeting.

was a terrific one-hour version of Jenn's 5-hour course on designer drugs such as "Spice" and "Bath Salts." These synthetic chemicals can cause severe, unpredictable intoxication including hallucinations, unconsciousness, and death, even among experienced users. The active ingredients are not listed on the packaging and manufacturing is unregulated because the products are expressly marketed as "not for human consumption."

The following FBA meetings are planned for this year, and there will likely be several more added as the year progresses, such as a bankruptcy practice meeting and an appellate practice meeting with Judge Christen. All of the meetings currently scheduled will include some sort of presentation. The meetings take place from 12:00 – 1:00 PM at the Executive Dining Room located on the east side of the cafeteria at the Federal Building, 222 West 7th Avenue, Anchorage. Membership applications are available at every meeting.

March 12, 2013: "Federal Court Practice: Do's and Don'ts." Judges Beistline, Burgess, Gleason, and Holland will discuss their views on preferred federal court practices and procedures.

June 11, 2013: "Technology in the Federal Courtroom." Judge Burgess will present the latest technology-related topics and their impacts on practice and trials in federal court.

August 13, 2013: "Effective Motion Practice in Federal Court." Presenter(s) TBA

October 8, 2013: "An Informal Discussion with the Judges." A Bench-Bar meeting with a panel of federal District and Magistrate Judges. Bring your questions, comments, and suggestions.

Finally, the current officers of the FBA Alaska Chapter now include Secretary Joyce Johnson and Treasurer Jamie McGrady. For more information, or to join the Federal Bar Association, please contact Darrel Gardner or visit the Chapter website at www.fedbar.org/chapters/alaska-chapter.aspx.

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Because justice has a price.

Please accept our sincere apology for some errors in our donors list that was published in the last issue. Below is a corrected version. Thanks for your understanding as we experience a staffing change. Alaska Legal Services is grateful for all who support us financially.

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TALESFROMTHEINTERIOR

Some rumors never die

By William Satterberg

Ever since 9/11, Americans have become increasingly security-conscious. Not only have we found a vast amount of people employed by the TSA (Thousands Standing Around), but virtually everyone in this day and age becomes obsessed with the concept of security. Locally, the Alaska Court System leads the charge in that regard.

Several years ago, it was actually a delight to practice law in Fairbanks. The doors to the offices of the judges on both the third and fourth floors were always open, Judge Crutchfield's popcorn was popping, Judge Connelly's coffee was on, and kindly, wise chats could usually be had. But, eventually, a new wave took over and the watchword became "security."

The fallacy of the court system security is that, although physical attacks have been known to occasionally occur, the fact of the matter is that any person truly intent upon harming a judge, attorney, or anyone else can easily accomplish the same goal much more safely with a standoff weapon such as a Whamo slingshot. But there have been incidents.

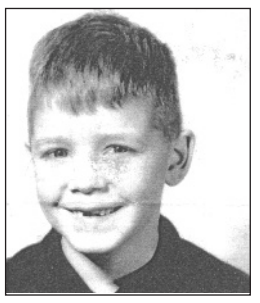
I remember one time in the mid-1970s when the elevator opened on the fourth floor of the old State Court Building. A handcuffed prisoner quickly scooted out followed by a female Judicial Services officer trying desperately to apprehend him. Clearly, he was on a mission and would have nothing of it. At the time, I was employed by the State of Alaska Attorney General's Office in the much feared construction/eminent domain section. Realizing that I had an ethical, legal, and employment obligation to provide assistance to this panicked guard, I bravely tackled the man. My bulk hit him and we both fell to the floor in front of the elevator, wrestling as I vainly tried to gain control. Fortunately, I definitely had the weight advantage and had also watched Sumo wrestling. The officer, meanwhile, was now calmly calling for assistance on her radio before jumping into the fray, apparently enjoying the show.

The tussle continued for what seemed like an eternity, until the door of the elevator again opened. This time, out stepped Trooper Manumik. Trooper Manumik looked like a clone of the famous "Odd Job" from the James Bond movie, Goldfinger. He was so big that his arms blossomed out from his side. His size was not attributable to fat, but to a tremendous bulk of muscle, most likely gained from years of pulling in nets heavily laden with Alaska salmon. Rather than join the fight, Trooper Manumik simply looked down at the prisoner through slitted eyes and grunted to get his attention. The prisoner looked up. Immediately, the breath went out of him and he submitted, saying "I'm okay now, honest!" The fight was over.

Several years later, I was at another hearing in the Superior Court when a party pulled out a pocket knife and stabbed his opponent in the shoulder. No serious damage was done and the individual was quickly disarmed. Until then, I had never realized that Swiss Army knives could be so deadly. But other, more ominous threats were to come, apparently including me.

In April of 2002, I was arrested for allegedly carrying a weapon into the courtroom. At the time, I had been representing a Hells Angel who had been accused of carrying a pair of "prohibited metal knuckles." To use as an exhibit, one of my staff had purchased a copy of the alleged item at a local kiosk. It was actually a karate fighting device known as a kubotan.

Following a hearing before Judge Funk where the Court ruled that the ultimate brass knuckles question would be reserved for the jury, Trooper Brian Wassman (later to be promoted to Sergeant shortly thereafter) and some other Troopers bravely arrested me for bringing a weapon into the courtroom. Ironically, by the time I arrived at the jail, rumor had already spread that I had pulled a gun on the judge. Not that I perhaps would not have wanted to do so at certain times. The truth was, however, that the item that I had in the courthouse was about five inches long, pink in color, and did not even come close to resembling a gun, let alone brass knuckles.



"Several years ago, it was actually a delight to practice law in Fairbanks."

The doors to the offices of the judges on both the third and fourth floors were always open, Judge Crutchfield's popcorn was popping, Judge Connelly's coffee was on, and kindly, wise chats could usually be had. But, eventually, a new wave took over and the watchword became "security."

Later, after the case against me was dismissed, I figured that the furor was over. We all had a good laugh out of the fact that I had been arrested in Judge Funk's courtroom. Several State Troopers, as well as Judge Beistline, later commented that I had an excellent public relations firm when the "Free Willy" campaign emerged. The incident is talked about to this day, even if mainly by myself.

In December of 2011, I underwent shoulder surgery to have my right shoulder replaced by a metal prosthesis. Following surgery, I continually tripped the courthouse security alarm. Each time, the security guards would pat me down, only to acknowledge that my metallic right shoulder was the object of their attention.

Recognizing that I was unique in this regard, I requested an exemption for access into the building. Following a full disclosure of my medical condition and agreeing to random searches and not to smuggle weapons into the courtroom, my exemption was approved.

Since December of 2011, I have bypassed the metal detector except for the occasional search. I certainly have no problem submitting to the random searches and recognize the reasonableness of such, even though I still maintain that the best way to get rid of a judge or an attorney is via long range sniping by preschoolers with dirt clods.

Recently, however, I was confronted not by a security guard at the entrance of the building, but, instead, by what could be termed at the time "a concerned but perhaps a bit overzealous Assistant District Attorney." I was heading in to a change of plea. As usual, I put my belongings in the bin, and skirted the metal detector.

Unbeknownst to me, the attorney assigned for my hearing was following me and saw me walk around the device. After I had entered the elevator, he protested to the security guards, wanting to know why I was so special when he was not.

In response, the security personnel explained that I did not have to walk through the metal detector but only left it at that. This answer was understandable given the fact that my medical condition, although having been the subject of a Bar Rag article, "Sixty-Year Old Virgin," is something which some people think that I like to keep secret. Go figure.

When the attorney walked into the courtroom, he promptly told me that I had "better stop walking around the metal detector immediately" or that I would be "reported." I was then interrogated as to why I had slipped around the unit. Perhaps I was a little bit contrary when I simply responded like the Saturday Night Live Church Lady that I was "special." In retrospect, this likely did not help matters. Obviously, he actually was serious.

I was confronted again with the same question. I then politely responded that it was not his concern. Still, I figured the best thing for me to do would be to show him my wallet prosthesis card which certified that I did, in fact, have parts of me made out of space age alloys. I passed the card over to the attorney, who next told me that he was now "seizing it" until he had received a satisfactory explanation. I pointed out that the seizure of my medical card was probably not a wise idea and could have repercussions. Reluctantly, the card was returned, along with an admonition that he was "still going to report" me, regardless.

At about that time, a crusty Judicial Services trooper entered the courtroom. The attorney quickly jumped up from his desk and went to the trooper, vigorously pointing at me, and clearly reporting me for my sin. In response, the trooper merely shrugged his shoulders and looked patiently off into the distance. Presumably, this is because he knew, as well did as every other officer in the courtroom, that I was, indeed, "special." Clearly, the attorney was not getting anywhere. Fortunately, no further exchanges occurred at the hearing.

Thirty minutes later, after I had returned to my office, I received a message from my receptionist. The attorney who had been in the courtroom was now at my office and wanted to visit with me. At the time, I did not know if we were heading for an additional confrontation or a reconciliation. Having known the individual for several years, however, I actually have a high degree of respect for his integrity and professionalism. As such, I figured that he must have just been having a bad hair day, figuratively speaking – especially in his case.

The gentleman entered my office and thrust out his hand, not in a fist, but for a professional handshake, apologizing profusely for having "embarrassed" me in the courtroom. Not that I was particularly embarrassed, of course. Then again, as a defense attorney, I have learned to cry on command like a punter on a football team when it suits my purpose.

More profound apologies were exchanged, but no hugs. As penance, I explained to the man that he now had to hear about three of my Bar Rag articles, consisting of "Sixty Year Old Virgin," which covered my 2011 shoulder replacement, and "Busted, Part 1 and Part 2," about my courtroom arrest of April of 2002. To his credit, he patiently submitted to the torture.

Holding back tears, I confessed that I was a particularly sensitive person. Anyone could easily see that his challenge over my disability had cut me clear to my core. Fortunately, because I was not litigious in nature, I would not pursue it.

As we were about to part company, I volunteered that I also had a false leg. He immediately responded, incredulously saying "No way! You don't have a false leg!"

Adapting a line from my hero, President Ronald Reagan, I stated "There you go again!" He immediately began to backpedal, obviously unsure of his position and not wanting to risk having to listen to further Bar Rag articles. I then reached to the floor and picked up a false leg prosthesis which a client had given to me years earlier upon the successful conclusion of a case. This time, I definitely had a leg up on him.

"See? I have a false leg. Right here in my hand!" The humor was not lost.

In the end, we parted on friendly terms. As we were closing our conversation, I asked why he had reacted so emotionally to the fact that I had walked around the metal detector. It was then that it became clear to me that his concerns were actually understandable. Apparently, someone in his office had told him less than two months previously that I had once "smuggled a gun into Judge Funk's courtroom" and had been arrested for it.

I remembered then that some rumors do not die easily in Interior Alaska. But, then again, that is what makes practicing in small town Fairbanks so much fun.

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