

Judges offer ‘gift of laughter, a sense the world was mad’

By Val Van Brocklin

On Oct. 28, 1972, events at the Embers, a club at Fifth Avenue and B Street in Anchorage, would scorch pages of the Anchorage Daily News, launch protests, unfurl the Constitution, and ultimately be decided, as countless human conflicts are, in a court of law.

At 9:30 p.m. that Saturday night, a city policeman entered the club and saw 19-year-old Sheila Dane Bell dancing nude on stage (to the score from the musical *Hair*). He arrested Ms. Bell for violating a city ordinance that prohibited nude dancing in a licensed premise where alcohol was sold or consumed. A bartender and the owner of the Embers, Darion Powell, were also charged under a provision of the ordinance

that prohibited the licensee or an employee from permitting such dancing.

Powell told the ADN that the musical *Hair* had been performed in a local high school – including the nude scene. He added,

“This was not being done for nudity alone. It was done with talent and taste. If they can show this in a high school, I don’t see why we can’t show it in a night club.”

Powell noted that clubs in the borough outside city limits were able to have nude dancing. “If they can do it in the borough, the city has the same right.”

Sign-carrying protesters took to the street. Among the calls for justice were, “Nudes vs. Prudes,” “Eve was Nude,” and “Nudity is Natural

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Scholarship recipient seeks current scholarship support

By Darrel Gardner

I was first elected to the Bar’s Board of Governors in 2014. In May of 2017, I was president-elect and I started thinking about my upcoming year as president, and what I wanted to try to accomplish during my term. After much pondering, I sent the following email to (then) Executive Di-

rector Deborah O’Regan: “Thirty-six years ago I received a \$1,000 scholarship from the [Alaska] Bar Association. That’s about \$2,700 in today’s dollars. I remember how excited and grateful I was, and it really helped me out (San Francisco was a relatively expensive city to live in even back then). I have even kept, for all these years, a copy of the letter that I received from the Bar. One thing that’s clear from the bar leaders’ conferences I’ve attended is that law students today face a much larger financial burden than we did. Even if we only offered a few scholarships, I think it’d be money well spent. This program probably ended with the late 80’s oil crash, but I for one wonder if maybe we shouldn’t look at a possible resurrection.”

At the time I received the letter from the Bar, I was a first-year law student at Hastings College of the Law. San Francisco was a West Coast hotspot for New Wave music, with live performances by bands like U2, Simple Minds, and Talking Heads. The city’s culinary scene spanned everything from inexpensive Mission District taquerias and North Beach trattorias to world-class French and seafood fine-dining restaurants. As a struggling student putting myself through law school, however, I didn’t have the money for exploring much beyond the city’s inexpensive options such as lunch in a park or a student pass to a museum. The Bar’s scholarship gave me enough extra money that I was able to enjoy some of San Fran-



Hastings College of the Law in San Francisco.

cisco’s cultural and culinary offerings, which was just as valuable as learning about remedies for breach of contract.

I proposed my idea to the Board of Governors, and they approved my request to form a subcommittee to consider the creation of a new Alaska Bar Association scholarship program. Deborah conducted some research and determined that a number of other state bars offered law student scholarships, including Idaho, Virgin Islands, Rhode Island, South Carolina, Wisconsin, Kansas and Arizona, plus several local bars. The scholarship funds were typically handled through the bar association’s non-profit foundation, in order to allow 501(c)(3) tax deductions to be claimed by contributors. The scholarship subcommittee decided in favor of re-establishing a law stu-

dent scholarship program and, in 2018, the Board of Governors unanimously approved the creation of the Alaska Bar Association Law Student Scholarship Program. The first scholarships were awarded in 2019.

The scholarship program works as follows: The Bar Association solicits funds from donors, including current Bar members, who contribute to a special fund managed by the Alaska Bar Foundation. The Foundation maintains the funds until the Bar makes an annual award and distributes 100% of all of the funds collected during the preceding year. The awards are announced in the late spring, in time for the award winners to be named at the annual Bar Convention. The Bar does not use bar dues for the pay-

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Bar staff exemplary during the coronavirus pandemic

By Ben Hofmeister

Looking outside my home, I see snow. I am hopeful this round of snowfall will stick and that after a few starts and stops winter is finally here to stay for the season in Southeast Alaska. For those of us passionate about skiing, snowboarding, ice skating, or eating powder with a snow machine — it is time to rip it up and have some fun. For others, it means finding solace in a hot drink and a warm fireplace. Whatever you do to make it through the winter, we can all agree that Alaska winters are dark. And with the darkness comes the quiet and stillness of night.

This winter that stillness is compounded by the fact that most of us have been living in some form of solitude for nearly a year. Sure, our virtual world is filled with all sorts of events that have caused both chaos and joy. And words and events happening far away that we witness on screens often feel like they are happening in our homes right in front of us. But when we turn away from those same screens, the quietness of winter still surrounds us.

It would be easy to say that things are quiet with the Bar Association during these last few months compared to the year that was 2020. Our first Board of Governors general business meeting of 2021 was marked with a lot of agenda items that were ... well, routine. Sure, we took up important Bar Association matters. There was discussion on the beginnings of a diversity initiative. And there was also another round of farewells to our friend and colleague Bill Gordon who is leaving the Board of Governors as its public member from Fairbanks — a post he has held for nine years.

Last year brought many challenges related to COVID-19. The Bar Association was not immune from those challenges. The Board of Governors held multiple meetings to determine how the Bar Association would operate in the face of the pandemic. Would we have a bar exam? Should we have a convention? Can we safely engage in the activities that make up the ordi-

nary course of business of the Bar?

It took a lot of effort, but now we have answers to those questions. We know we can offer a safe bar exam for the future lawyers of Alaska. If we can't have a live convention, we know we can pivot to a virtual format for our members. And we have demonstrated that we know how to conduct what needs to be done to keep the Bar Association going in these times.

We have been able to find solutions to these problems because of the work of our amazing staff. Let me repeat that — OUR STAFF IS AMAZING!

Take Bar Counsel Phil Shanahan who, in his second year in that role, is really coming into his own as a leader. Phil has been able to become such a force in part because he works with some very gifted and experienced people in the discipline section. Louise Driscoll and Mark Woelber continually define professionalism in their roles as Assistant Bar Counsel. They are aided in their daily tasks by the extraordinary efforts of Gail Welt, Bea Hanson, Ingrid Varenbrink, and Annette Blair. And if you count all the years of service to the Bar Association of the people mentioned in the sentences above, and assuming I am doing my math right, you get over 100 years.

On the other side of the house, Danielle Bailey, our new executive director, is having a seriously strong rookie season fielding every issue hit her way. Jane Lovelace has quietly worked as one of the main pillars who makes the bar exam happen — a task that this year puts her in contention for Bar Association MVP. Before she gets that award, she has to compete with the tandem of Lori Brownlee and Lynn Coffee, who have used virtual platforms to transform our CLE programming while planning for a bar convention that could change formats at the last minute.

And then there is our Controller, Karen Schmidlkofer — the soul of



"Last year brought many challenges related to COVID-19."

the Bar Association. Every organization needs to keep its finances straight in order to succeed. With the able assistance of the wonderful Shelley Block, Karen has helped to keep our balance sheet spotless for over three decades. If Karen is the soul, then Krista Scully is the heart of our organization. The Pro Bono director who we all love, Krista — like her other teammates — faced the challenges of the pandemic by switching to a

phone bank system to make our MLK Day of Service a success once again this year.

And there are still others who make our Bar work every day. While they do not meet the public in the same manner as they did a year ago, Alexis Gresczuk and Charissa Feltman are still hard at work helping the Bar continue its day-to-day business. One other person who is also working hard to keep the Bar on track is Rachel Wright. Get this: Rachel moved to Alaska and started working for the Bar Association last year just as we started locking down at the beginning of the pandemic. Now she is our go-to person for all things Zoom.

I mention all of these incredible people because whether you are aware of them or not, each one of them puts in tremendous effort every day to make our Bar run smoothly. This last year really put their talents to the test. They all succeeded in maintaining the high level of service and competence we have all come to expect from the Alaska Bar Association. I am extremely thankful for all of their patience, willingness to adapt, and dedication to the Bar Association. It has made my transition as Bar president an easy endeavor during a time when nothing is easy. All of our members should be thankful as well — and if you get the chance, you should share that gratitude with our staff. It is well deserved.

So, yes, after a chaotic year, it is quiet this winter. But the dedicated staff at the Bar Association are con-

stantly working every to keep the organization moving forward. As we approach spring, I expect the Board of Governors agenda will fill up with a wide array of issues related to the inevitable reopening of the world. That, I am sure, will keep us busy. I am confident that we will meet every challenge we face due to the support we receive from our amazing staff ... did I mention they are AMAZING?

Until then, I will enjoy the quiet in the remaining winter months. Which is great, because the snow looks good and I want to go skiing.

Ben Hofmeister is president of the Alaska Bar Association. He has been a member of the Board since 2018. He graduated from the University of Notre Dame law school in 2001. He clerked for Mediator and Arbitrator John Reese after law school and then went on to the District Attorney's Office in Anchorage. Since then he has worked as a prosecutor in Dillingham, an assistant attorney general in Anchorage and Juneau and has been the district attorney in Ketchikan. He has litigated cases from Ketchikan to Nome.

The Alaska BAR RAG

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EDITOR'S COLUMN

Attempting to make sense of the past year and the coming one

By Ralph R. Beistline

When I saw my doctor last month, he had a joke for me. It seems that there were two rats talking about life's challenges. One rat mentioned that he had heard that there was now a COVID-19 vaccine and asked his friend if he would get one.

"Not right now," his friend responded. "I hear they are testing it on humans — I am going to wait and see how it works."

This rat, obviously and understandably, didn't want to chance losing any of his sense, which brings to mind my Granddaughter learning of the five senses years ago in her third-grade class. The teacher was adamant that there were only five senses — sight, sound, smell,

taste and touch — but my Granddaughter wouldn't buy it and kept shaking her head. Finally, the teacher asked, "What is wrong young lady? Don't you believe there are five senses?"

"No," my Granddaughter responded. "My Grandpa says that you have to have a sense of humor!"

And I still think that you do. Of all the senses we may have lost last year, hopefully our sense of humor is not one of them. So, with this in mind, we begin another year of the Bar Rag. We are continuing to look for new talent as we seek to educate, inform and entertain our members, and we can always use



"Of all the senses we may have lost last year, hopefully our sense of humor is not one of them."

poets to inspire us. But, above all, there is our creed established years ago by Editor Emeritus, Harry Branson, Dignitas, semper dignitas.

So, join us, and have a safe and productive new year.

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



Start where you are.
 Use what you have.
 Do what you can.
 -- Arthur Ashe

MLK Day of Service innovates during pandemic

By Savannah Fletcher

For the past 12 years in Alaska, every Martin Luther King Jr. Day has been a day on, not off, for lawyers across the state providing free legal help. To honor the legacy of Dr. Martin Luther King Jr., in-person clinics would normally be held across the state, providing access to free legal help for anyone who walked in the door.

Unfortunately the pandemic left doors closed and rendered in-person clinics unfeasible this year. Consequently, the Alaska Bar Association, Alaska Court System, and Alaska Legal Services Corporation, had to pivot and plan a new model for this year's day of service.

Like many in the past year, the planning committee turned to Zoom, a phone hotline, and Alaska Free Legal Answers — a year-round online free legal clinic — to host this year's MLK Day event. More than 60 people called in during the hotline hours, and many more received assistance both before and after the hotline through Alaska Free Legal Answers.

Connor Smith, an attorney on the planning committee, said "The virtual clinic went very well. The phone lines were busy, there were a lot of moving pieces, and overall I felt like it was a success and that we were able to reach a significant number of folks."

While the hotline served many people, there were some downsides to being virtual. The clinics lacked the in-person comradery that is often enjoyed by both the clients and volunteers. To make up for the ab-

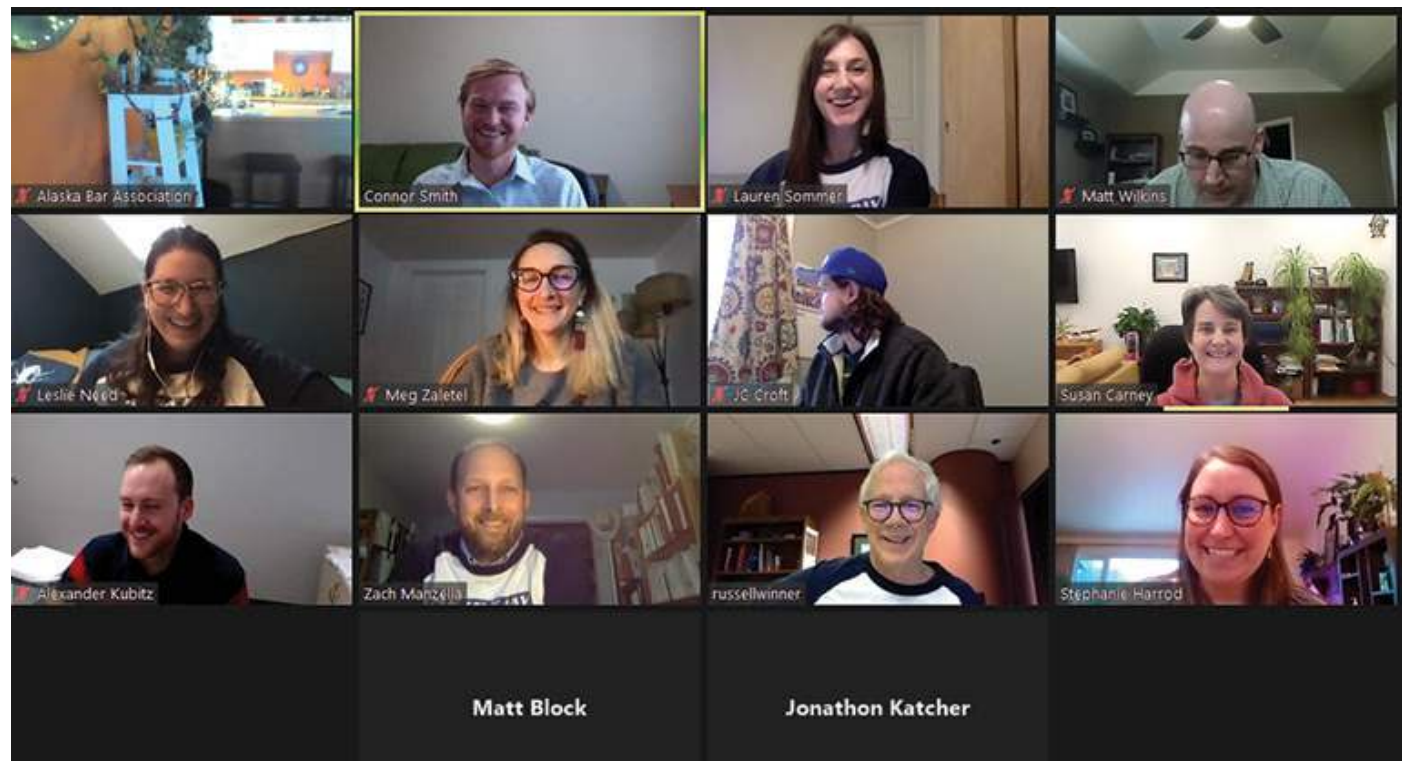


Photo by Connor Smith

sence of in-person mingling, a Zoom platform for volunteers did feature pop-in guests including Chief Justice Joel Bolger, Justice Sue Carney, and Mr. Dave Barney, director of the Mountain View Boys and Girls Club, the Anchorage in-person clinic site for the last 11 years.

"Our virtual Zoom break room for the volunteers was a great alternative to all getting to be together," said Smith. "We got to hear from Justice Carney during the break-out session that I co-hosted with Leslie Need. That was such a delight to have the justice join us."

Carney added, "On behalf of the Alaska Supreme Court I was happy

to have the opportunity to recognize the volunteers who gave their time and skills to help increase access to justice for our fellow Alaskans. I was glad to recognize the now 12 years of commitment by the Bar, ALSC and Court System to keep this valuable opportunity available for those in need."

And although the hotline did not see as many people the day-of, it did spur the use of Alaska Free Legal Answers to provide services for people both before and after MLK Day. The flexibility of virtual clinics has also resulted in plans to provide more regular clinics that pair family

law attorneys with other attorneys, so that they can volunteer together.

Accessing justice is as important now, in the midst of the pandemic, as ever. The Bar Association, Court System, and Alaska Legal Services Corporation are grateful for the volunteers that came together to find a way to provide important services this MLK Day and look forward to future years when we can again volunteer face-to-face.

Savannah Fletcher is a Native law attorney at Alaska Legal Services Corporation.

Alaska Legal Services Corporation correction and apology



The last issue of the Bar Rag included a list of contributors to Alaska Legal Services Corporation (ALSC) from our 2019-2020 Partners in Justice fundraising campaign, however we later learned that this list omitted several donors. We are so very sorry for this. We switched databases last December and somehow in that transfer some donations were overlooked. Because every donation is incredibly important to us, we wanted to make sure that we acknowledged those donors we inadvertently left out in the December issue. Towards that end, below is a list of additional contributors that should have previously been included. As always, we are grateful for the generous support that help us fulfill our mission.



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Judges offer ‘gift of laughter, a sense the world was mad’

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for Me,” — this last worn by a small dog.

“We plan to fight this arrest on a constitutional basis,” said Stan Cornelius, attorney for the three charged. The plaintiffs argued the ban violated their First Amendment right. Cornelius got a temporary restraining order blocking city police from enforcing the ordinance.

“Topless, bottomless, frontless, backless and sideless dancing returned to the stage of the Embers,” heralded the ADN. Powell took the occasion to announce he had six new “au naturel” dancers (French sounding artier) who would perform clad only in the cloak of immunity provided by the restraining order. The ADN reported the case had taken on a modest “cause celebre.” (French seemed to be catching.)

Into this fray came Superior Court Judge Edmond Burke. His Honor was perfectly suited for the case. He embodied a description by Rafael Sabatini, an Italian-English writer of romance and adventure novels, of one of his characters: “He was born with a gift of laughter and a sense that the world was mad.” Judge Burke applied those gifts and a legally honed mind to the task.

“Reduced to its simplest terms, the main question presented seems to be: whether the right to parade one’s genitals before a throng of willing barflies is an activity that is entitled to the protection of the First Amendment. One cannot help but suppose that had the Founding Fathers anticipated some of the questions that would ultimately confront the courts, they might have been a little more inclined to define their terms.”

His Honor deemed “critical” the fact that the city did not curtail the plaintiffs’ “rehearsed form of art” universally, but only in connection with the sale of alcohol. He took judicial notice of both the woeful social problems of which alcohol was a

major cause and “an ever-increasing trend toward public performances involving nudity and sex in all its forms.”

“Films that once would have been shown only under conditions of strict secrecy ... are common fare today ... While the quality of photography has improved, and the male lead no longer performs wearing black silk socks or the once-mandatory moustache, the general content is the same.

“In night clubs and bars, the ‘go-go girl’ has, in a relatively short period of time, discarded what little apparel she started with until she now appears totally nude, while the old fashioned ‘stripper’ who once commanded the rapt attention of college boys, by her ability to do the impossible with a pair of tassels affixed to her breasts, has been reduced to the status of an endangered species.”

Judge Burke concluded bar owners employed nude dancing for the purpose of promoting liquor sales. His Honor noted the plaintiffs confessed as much when they asserted Powell would suffer if the ordinance were enforced by not being able to compete with clubs outside the city. As such, the nude dancing was as fit for government regulation as were closing hours. The city’s motion for summary judgment was granted and the plaintiffs’ complaint dismissed with prejudice in an Opinion and Order dated May 24, 1973. The Alaska Supreme Court would affirm two years later. The elevated Justice Burke would not participate in the decision.

Forty years later, and over 4,000 road miles away, in San Antonio, Texas, similar human events involving “entertainment, sex and money” came before federal district court Judge Fred Biery. Also of note, were the common innate gifts of the judges — and an uncanny tie to Alaska.

On April 29, 2013, Judge Biery issued an order titled,

THE CASE OF THE ITSY BITSY TEENY WEENY BIKINI TOP

V. THE (MORE) ITSY BITSY TEENY WEENY PASTIE.

At issue was a city ordinance requiring dancers to wear bikini tops for their employer to avoid classification as a sexually oriented business (an SOB per Judge Biery) with its more onerous licensing, building, and location requirements. Plaintiffs argued the ordinance unconstitutionally restricted the dancers’ protected expression. The city contended that requiring plaintiffs to choose between being licensed and offering topless dancing or being free of the regulations by having dancers wear bikini tops did not violate the First Amendment. The city provided mountains of evidence that SOB’s adversely impacted communities and it was in the public interest to regulate them.

Like Justice Burke, his Texas colleague summed up the issue, “Thus, the age-old question before the Court now, with constitutional implications, is: Does size matter?”

In dicta that grabbed this Alaskan’s heart, Judge Biery wistfully recalled a dancer who had “performed fully clothed in the 1960s at San Antonio’s Eastwood Country Club.” “Miss Wiggles, truly an exotic artist of physical self-expression even into her eighties.” The opinion included a full body photo. If you don’t know about Miss Wiggles and you live in Anchorage, you better bone up or be prepared to have your credentials questioned. [Mike Dunham, *Mourners Recall the Humanitarian Side of Miss Wiggles*, Anchorage Daily News, Oct. 22, 2012]

Like Judge Burke, Judge Biery found for the city. But he also gave voice to “his sense that the world was mad” — and the law could only do so much about that.

“While the Court finds these business to be nefarious magnets of mischief, the Court doubts several square inches of fabric will staunch the flow of violence and other secondary effects emanating from



Miss Wiggles in her prime. (“Our Texas Magazine, Winter 1995, at 9.)

these businesses. Indeed, this case exposes the underbelly of America’s Romanesque passion for entertainment, sex and money, sought to be covered with constitutional prophylaxis. Alcohol, drugs, testosterone, guns and knives are more likely the causative agents than the female breast, proving once again humans are a peculiar lot. But case law does not require causation between nudity and naughtiness.” [footnotes and citation omitted]

Thank you, Justice Burke and Judge Biery, for bringing your unique gifts and sensibilities to what is, by protocol, a usually bloodless, humorless application of the law to the most peculiar inhabitants of a mad world.

Special thanks to David Reamer, a historian who

writes about Anchorage. He’s regularly featured in the ADN and posts Alaska history daily on Twitter (@ANC_Historian). I reached out to David for background on the Embers. His research acumen and generosity are laudable.

Val Van Brocklin is a former Alaska state and federal prosecutor. She trains and writes on criminal justice, leadership, ethics, constitutional, and other topics. She’s bent on attaining a full-time vocation of flying, fishing, hunting, kayaking, traveling, and writing whatever she wants.

Into this fray came Superior Court Judge Edmond Burke. His Honor was perfectly suited for the case.

Thank you, Justice Burke and Judge Biery, for bringing your unique gifts and sensibilities to what is, by protocol, a usually bloodless, humorless application of the law to the most peculiar inhabitants of a mad world.

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Seattle U Law’s education options evolve to serve Alaskans

By Annette E. Clark

Seattle University has enjoyed a deep and meaningful connection to Alaska over the years. In particular, we’ve endeavored to be a strong partner in delivering quality legal education to its residents. Dating back two decades, our presence in the state eventually grew to become the Alaska Law Campus, housed at Alaska Pacific University (APU), offering a robust summer program and an innovative 3L program that enabled any law student to spend the third year in Anchorage.

More recently, as part of a larger reorganization of the law school’s educational programs —due in part to the effects of the pandemic and to budgetary challenges that we, along with many other law schools, are facing — we made the decision to discontinue live, in-person classes at the Alaska Law Campus going forward. Although we regret that the law school will no longer maintain a physical presence on the APU campus, I am happy to report that we now have an even better option for Alaska residents who wish to earn a JD degree.

This fall, we are welcoming the inaugural class of Flex JD, an evolution of our highly ranked part-time JD program. It will utilize a hybrid-online format that allows students to complete most coursework online, with just a few required weekend visits to our Seattle campus during fall and spring semesters over the course of the 3.5-year program. We believe this is an even more attractive option than the 3L year in Alaska program because it provides maximum flexibility for Alaska residents with jobs and families who are unable to uproot their lives to attend law school in the lower 48. I hope you’ll spread the word about this exciting opportunity to aspiring lawyers in your respective communities. You can learn more by visiting law.seattleu.edu/flex-jd.

Please know that we remain steadfastly committed to connecting our talented law students with opportunities to serve the Alaska legal community. To that end, we will continue to offer an array of experiential learning opportunities through internship and externship placements, allowing students to obtain practical experience within Alaska’s legal system while earning course credit. Our students who are interested in spending summers or some or all of their 3L year in Alaska, whether they’re in the Flex JD or our full-time, in-person program, will have the option of pursuing full-time externships in Alaska, or part-time externships in conjunction with one or more online classes.

Seattle U Law will also continue awarding Alaska Scholarships to law students from the state who demonstrate exceptional aptitude for the study of law, coupled with a strong history of service and commitment to issues relevant to the Alaskan community.

What’s more, we are in conversation with APU on possible joint degree programs that will allow their students to earn a law degree from Seattle U Law and a master’s degree from APU. We deeply value our years-long partnership with APU, and we continue to look for creative ways to collaborate with the uni-

versity’s leadership team to benefit Alaska’s students.

We are immensely grateful for the rich contributions and integral support provided by the Alaska legal community to Seattle U Law’s programs and students over the years. In particular, we sincerely thank the many Alaska lawyers and judges who have served and are serving as externship supervisors, and our Alaska Law Campus adjunct faculty members, who enriched our students’ legal education and contributed greatly to their success. In particular, I would like to acknowledge the hard work and dedication of alumna Stephanie Nichols, a 2006 Seattle U Law alumna and the founding staff director of the Alaska Law Campus; Professor Christian Halliburton, the former faculty director; and Holly Johanknecht, the former assistant director.

While these programmatic changes will alter the path that some students travel as they enter the noble profession of law, we are confident that the innovative Flex

JD program will open the door for many more to pursue their dreams of becoming a lawyer and serving the great state of Alaska. We look forward to identifying ways to build on our strong relationships with the state’s legal professionals and connect with our many Seattle U Law alumni who are living and practicing there, and we commit to keeping Alaska centered among the law school’s strategic and programmatic plans.

Please reach out to me at annclark@seattleu.edu if you have questions or would like to be in conversation about Seattle U Law’s continuing efforts to collaborate with and serve the legal profession in Alaska.

A graduate of, and long-time faculty member and administrator with Seattle University School of Law, Annette Clark has served as dean since 2013. Her areas of expertise include civil procedure, medical liability, bioethics and legal education, and she is a frequent regional and national lecturer on these topics.



Dean Annette E. Clark

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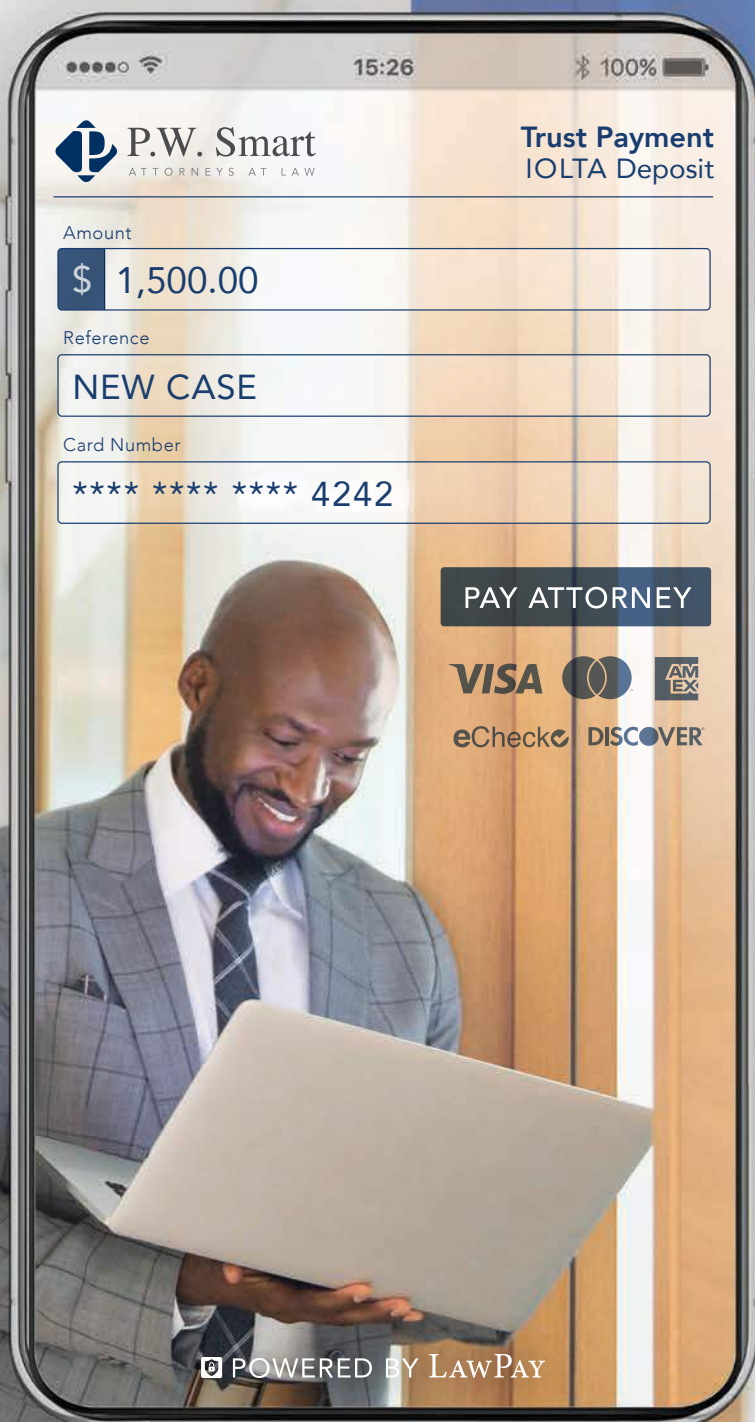
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Why a lawyer should never shoot from the hip

By Mark Bassingthwaighte, Esq.

As a kid, I always thought any Hollywood cowboy who could shoot from the hip and kill the villain was one tough hombre that no one in their right mind would ever want to mess with. I viewed those cowboys as heroes and would often pretend I was one of them when playing in the woods behind my childhood home. That was short-lived, however. As I got older, I came to realize there was a little movie magic behind those epic shootouts and my adulation of such heroes eventually waned.

As an adult, I still admire someone who has worked hard to learn to shoot accurately from the hip. I have no idea why, but it's a skill I find impressive. Perhaps this is why I've been wondering about the origin of the idiom "shoot from the hip" of late. I've come to learn that the phrase originated during the heydays of the American cowboy of the old West. Obviously, it alludes to shooting a gun from the hip; but what I wasn't aware of is this. The shot also occurs without ever taking the gun out of the holster. Of course, while this made firing quicker, the shot was not as accurate. It is with this context in mind that the current use of the idiom to refer to a decision that is reached and implemented without stopping to consider the possible consequences of the decision makes sense.

I wanted to share this because I have been cautioning lawyers to never shoot from the hip for years, and yet many still do. Some almost on a daily basis. I think one of the reasons why is due to the time demands of the legal profession. It is just too easy for lawyers to find themselves in situations where they feel com-

pelled to take that quick shot, if you will. Take the shot, problem solved, move on to the next task. The problem is that taking that quick shot without regard to the accuracy of the shot is asking for trouble.

Perhaps a few examples are in order. Consider dabbling. It's a malpractice problem we continue to see. Time and again, lawyers will take on a matter that is outside of the areas of practice they routinely practice in and they may decide to do so for any number of reasons. It might be an inability to say no to a good client. It might be the legal ask is viewed as a simple matter. Heck, it could even be out of a desire to make sure that revenue keeps coming in. Regardless, a decision to take a quick shot is made without stopping to think through the potential consequences. At a minimum, these lawyers often don't know what they don't know and therein lies one problem. Look at it this way. Even if that shot from the hip by happenstance ends up being close to the target, that is often still not good enough. Close doesn't cut it in the world of legal malpractice.

Blown deadlines can be another example of where unintended consequences arise when lawyers decide to take that quick shot. In follow-up to a remark I made during a recent CLE, a lawyer shared that his partner always used to say the following. If you think you know a filing deadline that is written in a statute or rule and rely on your recollection instead of looking it up, you have committed malpractice even if you were right. I couldn't agree more. Again, even if it was a close call, it's still a miss.

Other examples might include responding to an email too quickly



Choose the right path.

or agreeing to take a matter on before giving any thought to whether you can actually meet the client's needs or work effectively with this new client. It could be giving legal advice in a vacuum because you didn't take the time to gather all the information you would need to know if your advice would actually be accurate. Regardless, I do understand why sometimes we all feel like it might be worth shooting from the hip, be it in our personal or professional lives. I will readily admit that I've done it more than a few times in my life. Time crunches happen; and when they do, I try to stop, take a breath, and ask myself this: If I take that quick shot from the hip, is close enough an acceptable outcome or will I have only solved the problem for the short term and potentially created a bigger problem in the end? It's a question all of us legal hom-

bres need to keep in mind because, particularly in the practice of law, accuracy matters, big-time.

Since 1998, Mark Bassingthwaighte, has been a risk manager with ALPS, an attorney's professional liability insurance carrier. In his tenure with the company, Bassingthwaighte has conducted more than 1,200 law firm risk management assessment visits, presented more than 400 continuing legal education seminars throughout the United States, and written extensively on risk management, ethics and technology. He is a member of the State Bar of Montana as well as the American Bar Association where he currently sits on the ABA Center for Professional Responsibility's Conference Planning Committee. He received his J.D. from Drake University Law School. He can be reached at mbass@alpsnet.com

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Judicial profile: Joshua Kindred, U.S. District Court judge

By Darrel J. Gardner

PART II OF II

There are eight regional solicitors in the country for the DOI, and Alaska is the only state that is a region in and of itself. It was somewhat of a dual position because he worked not only with the DOI solicitors in Alaska, but also with many of the solicitors for D.C. and the various department heads in D.C. Joshua recalls that “It was the best group of lawyers that I’d ever worked with.”

His biggest reservation about taking the job was that he didn’t know enough about “the regulatory rubric.” Fortunately, everyone at DOI was talented and knowledgeable, and he “really got to dig deep into the law. It was like being a mini Attorney General, where you’re working for the department at a top-of-career position.”

At the DOI, Joshua was involved in a great deal of federal litigation — primarily through drafting briefs. He felt himself “essentially on the periphery of all the litigation,” just prepping the Department of Justice attorney and dealing with the briefs. One aspect he particularly enjoyed was being able to provide ideas about options, express his opinions on the law, and be the person who was there to tell them not what they wanted to hear — but what they *needed* to hear. “Having those battles on a weekly basis, trying to get someone to pivot, I really enjoyed that. I learned something new every day.” He found himself thinking for the first time, “This is what I want to do for the rest of my career. I liked what I was doing, and enjoyed the fact that every four years, everything would change. It would never stagnate.”

Loving that job so much, however, made his nomination to the bench a bit difficult in that he really didn’t want to leave the DOI. He had never considered a judicial career.

When Senior Judge Beistline’s seat came open, Joshua didn’t think about applying until people began reaching out and encouraging him to do so. “It’s a very humbling process,”

he said, and although he knew he was a good attorney and was flattered, he didn’t feel that he “was deserving of such an opportunity.” On the last day that the posting was open, Tali told him she thought he should go ahead and give it a shot. So at the last minute,

he decided to throw his name in the hat. He didn’t really think he had a chance, primarily because he wasn’t really well known in Alaska.

“It was humbling, but I realized I was one of the youngest people in the applicant pool, and I made peace with it. I felt that they had a lot of good candidates, and that I definitely wouldn’t be the one chosen. So I just let it go and forgot about it.”

Jon Katchen was initially selected as the candidate, but eventually he withdrew his name from consideration. At that point, Joshua had put the matter in the back of his mind. He was in D.C. for work when

staff members from Sen. Dan Sullivan’s office contacted him to assess his interest. “I’d be honored if you called my name,” he responded.

In May 2019, he and Sullivan had a conversation about judicial philosophy. He wasn’t sure how things stood after that conversation, and he wasn’t sure if he’d hear anything else.

“The next thing I knew, they wanted to do an interview. They asked questions about judicial philosophy and my thoughts on statutory interpretation,” he said. He still felt left in the dark, not knowing if that was the end of it. In July 2019, the DOJ reached out and said, “This is happening.”

That process played out over many months. Joshua said that he and essentially every lawyer he’d ever dealt with was interviewed a number of times. The process culminated with his nomination. “I braced for a media onslaught,” he said, “but it never really came. I was fortunate enough that there were attorneys in Alaska who think highly of me and who vouched for me, for that large segment of the Bar who saw me as an unknown. I kept waiting for the moment when it became this naked political thing, but that never really happened. It was both surprising and reassuring that no one ever asked anything that was purely political.”

During the confirmation hearing, however, Joshua was surprised at the level of animus that suddenly surfaced. “Once again, I chalk this up to my naivete about how this works in the political arena.”

If you grow up in Alaska or work in Alaska for any period of time, you know that working for the oil and gas industry isn’t an ideological statement. But Joshua was caught off guard by how often the narrative turned to the idea that “he doesn’t care about the environment.” He found it to be the most unsettling part of the process.

“I think of myself as an Alaskan who cares a great deal about the environment,” he said. “I had to come to peace with the fact that if you didn’t grow up in a resource state, it probably does feel like a statement of belief.”

It was an arduous process for a lawyer who was never deeply engaged in politics. During it all, however, he was bolstered by the tremendous support of his family.

Judge Kindred knew he had a formidable responsibility ahead. “I had been in [Judge] Sharon Gleason’s courtroom and watched her in oral argument, and she’s just this huge mental presence. I remember wondering for the first time if I was up to the task. That feeling was immediately washed away by the kindness and support of the senior and active judges and how quickly they took me under their wing.

“You spend your whole career after law school thinking of the law as a malleable tool that can be a sword or a shield for your client, and then all of a sudden you’re in a job where none of that matters. All legal jobs are inherently cerebral, but being



U.S. District Court Judge Joshua Kindred

a judge is detached in a way that is jarring when you first start. And getting sworn in 15 minutes before a global pandemic probably wasn’t ideal.”

The result, however, has been incredible, he says — due in large part to the clerks, the staff, and his colleagues whose doors — or Zoom calls — are always open. “As a judge,” he said, “you’re always on an island to a certain extent, but being able to call Ralph or Sharon or Tim [Burgess] and get their counsel has helped me approach this transition in a calm and healthy way.

“One of my strengths throughout my career is that I’ve always been very objective and — probably starting with my parents and when I was clerking for the Chief Justice as well — I always saw things in terms of right and wrong. Now, being able to sit here, I feel those traits will serve me well in this capacity, despite how steep the learning curve is. I believe that having that as a foundation helps make me well-suited for this position.”

Judge Kindred started on the first Monday in March 2020, and by the end of the following week he had been assigned nearly 100 cases. Now, on the bench during a hearing, he feels much more at ease. He says that what he enjoys the most is that every new case is a reason to learn. While he feels at home on the criminal side, he’s noticed that the biggest difference federally is in sentencing, and realized quickly that he had to come to grip with the different guidelines.

On the civil side, Judge Kindred finds it very interesting to navigate employment cases. “I’d also love to have some civil environmental cases,” he said, “because I’m comfortable with that, although I’m going to be conflicted out of those types of cases for quite some time. It may sound cliché, but the fact that I can take the time to really invest in research and to understand the nuances and the context of a case is really great.”

He notes that, based on his positive experience with the Oregon Chief Justice, he feels a special kinship to the clerks, and is compelled to be a similar mentor for the clerks in his chambers.

“When I look at my life, I’ve always been sort of lucky,” Judge Kindred recalled. “I was fortunate to

have the parents I had, the friends growing up, both in high school and in college. I feel fortunate to have gone to Willamette and learned from the faculty there, and I couldn’t have been more fortunate than to have fallen into my clerkship with the Chief. All along the way, I’ve found colleagues who made my life better, who made me a better lawyer.”

In retrospect, he says, “My life has basically been good fortune followed by good fortune, followed by good fortune — all due in large part to the people in my life. I often question what I did to deserve all this — and no one represents actuality that more than my wife does. We got married in October 2013, and she is an incredible lawyer. She’s always been there by my side and has made me a better person and a better lawyer. I don’t know that young Joshua ever appreciated what it would mean to have someone in your life who’s not only your cheerleader, but who will also let you know when you get something wrong. Having access to someone like that on a daily basis — having that foundation, that anchor — it’s made everything about my life and my career better.

“We have two wonderful kids. I have to admit that it’s been tough —

for anyone who has kids — during the global pandemic to navigate personal and professional aspects of life. I feel lucky that I’ve gotten to spend much more time with the kids than I would have otherwise. We’re all trying

to figure out what this looks like and when it will end, but it’s wonderful to come home to such a great family and to be there for them and try to get through this together.”

Judge Kindred said that his daughter would want him to mention the new presence in their household, a Bernedoodle puppy. As he noted, “We aren’t getting a lot of sleep at the moment, but honestly, it just adds to my feeling of good fortune.”

Growing up in Alaska, he did a lot of backpacking, rock climbing, and bike riding. Soccer was his sport in high school and college. He still does some hiking, and his wife is “very much into the outdoors.” In the past few years he’s taken up golf, and is admittedly “pretty bad at it,” but enjoys it thoroughly. Both his and his wife’s extended families live in Alaska, as well as many cousins and other relatives. They spend a lot of time camping together. “It feels very ‘70s sitcom-ish,” he said, “but that’s my life.”

As far as the progress of his career, he concluded, “I’ve been rich in finding those people who are very good at the core, as well as being exceptional lawyers. And with the colleagues I have now, my good fortune just goes on and on.”

Darrel J. Gardner is currently Ninth Circuit vice president of the Federal Bar Association and, having recently relocated from Alaska to Spokane, he is the CJA supervising attorney for the Eastern District of Washington. He is a past-president of the Alaska Bar Association.

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Persecution of Bahá'ís in Iran persists during pandemic

By Daniel B. Lord

Iran, a country that had been described as the epicenter of the COVID-19 pandemic in the Middle East, remains the focal point of another peril: escalation of State-sponsored persecution of the followers of the Bahá'í Faith.¹ All who adhere to and support human rights and the freedom of religion should be informed of this escalation. It cannot escape notice or condemnation.

During the first six months of the pandemic, the Iranian government imprisoned at least 77 Bahá'ís, many of advanced age with health issues.² That the incarcerations are part of a general campaign to oppress is reflected in incidences of large bails having to be paid, arbitrary detentions occurring without access to counsel, and psychological harms resulting from indeterminate periods between arrest and trial.³ Recently, Iranian security forces in a coordinated action raided the homes of dozens of Bahá'ís, confiscating their property, including cell phones, laptops, and religious books.⁴

This ramping up in the oppression of the Bahá'ís — who are being persecuted and discriminated against because of the belief (considered heretical by most Muslims) in a prophet appearing after Muhammad — contrasts with a period of cautious hope prior to the pandemic. In the year before the pandemic, an Alborz province court of appeal acquitted a Bahá'í who had been sentenced to seven months in prison for “propaganda against the state,” with the court reasoning that “merely proselytizing for the Bahá'í faith cannot be considered as propaganda against the state and, fundamentally, the law does not criminalize the belief in the Bahá'í faith to justify the prosecuting and punishing individuals with such a charge.”⁵ A court of appeals in Kurdistan similarly nullified the sentence of a Bahá'í woman under substantially the same charges.⁶

A series of court rulings in Fars province reveal how the oppression has intensified. In the months before the pandemic, a court of first instance in the province acquitted 13 Bahá'ís who were charged with “propaganda against the state” for having closed their shops on a Bahá'í holy day.⁷ In July 2020, however, an appeals court in Fars province sentenced 12 followers of the Bahá'í Faith to a total of 31 years in prison, and a court of first instance in Shiraz sentenced four Bahá'ís to a total of eight years in prison on charges of “spreading propaganda against the state and membership in opposition groups.”⁸

Moreover, in a move that seemed unprecedented, a court in Shiraz summoned 40 Bahá'ís to hear a judicial officer openly threaten to “uproot” the Bahá'í community in the city.⁹

It should be noted that resurgences in the systematic persecution of the Bahá'ís in Iran are not new. It has been a consistent aim of the Iranian authorities to eliminate the Bahá'í community, but how to

accomplish this changes, often in response to international pressures.¹⁰ During this pandemic, though, the strategy of attacking the Bahá'ís has taken an especially dark turn, one involving the condition of Iran's prison system.

The Iranian government reportedly furloughed thousands of prisoners to help stop the spread of the coronavirus, and while some of those who were released were “Bahá'í prisoners of conscience,”¹¹ it appears that most of them were not part of the release. Iranian prisons are notorious for being overcrowded and unsanitary, placing inmates in danger of contracting COVID-19.¹² That such a risk is being ignored is indicated in the denial of an appeal to delay incarceration by group of Bahá'ís sentenced for practicing their faith.¹³

Thankfully, despite the challenges of the pandemic being en-

Thankfully, despite the challenges of the pandemic being encountered worldwide, numerous governments continue to uphold foundational human rights and focus a light on injustice.

countered worldwide, numerous governments continue to uphold foundational human rights and focus a light on injustice. For instance, Canadian parliamentarians across the political spectrum

addressed an open letter to the Islamic Republic of Iran, demanding an end to the upsurge of arrests and imprisonments.¹⁴ Alarm over the violations of human rights of the Bahá'ís have been voiced by other governments and state officials, notably European.¹⁵ Days before the aforementioned coordinated raids of Bahá'í homes, a committee of the United Nations passed a resolution calling on the Islamic Republic of Iran to observe the human rights of all its citizens, including members of the Bahá'í Faith.¹⁶

Subjecting the Bahá'ís to incarceration with the risk of contracting COVID-19 is particularly denounced. A professor emeritus of law at the University of Florida stated the situation thusly: “Imprisoning people for their religious convictions is bad enough, but persisting with this policy in the face of a public health crisis crosses into new territory of immorality.”¹⁷ “This is an hour at which people of faith should be rising to new levels cooperation, service to humanity and compassion,” he wrote, — and he pleaded the Islamic Republic of Iran “to release the Bahá'ís and all other prisoners of conscience.”¹⁸

It cannot be but hoped that the persecution of the Iranian Bahá'ís will soon end, thereby bringing us closer to that bright day when freedom of religion becomes a possibility for humanity throughout the world.

Daniel B. Lord was Of Counsel with the law firm of Tindall Bennett & Shoup, as well as an assistant public defender and public advocate. He is a member of the International Law Section.

Footnotes

¹Natalie Mobin, *Persecution in Pandemic*, Australian Institute of International Affairs, Australian Outlook (June 25, 2020), available at <http://www.internationalaffairs.org.au/australianoutlook/persecution-in-pandemic/>.

²Bahá'í World News Service, *Escalation in persecution of Bahá'ís in Iran: tried in court and imprisonment for their beliefs* (June 11, 2020), available at <https://news.bahai.org/story/1433/>.



³Id.

⁴RadioFreeEurope, RadioLiberty, *Bahá'í Homes Reportedly Raided in Cities Across Iran* (November 23, 2020), available at <https://www.rferl.org/a/30964552.html>. The widespread nature of the campaign was brought home to this writer when he taught an online college course last fall for the Bahá'ís in Iran. Of the 15 students enrolled, one was detained for 16 days without apparent charges, and another student's father, suffering a worrisome physical ailment, was pending sentencing. Such intimidations and other evidences of a scheme to deny Bahá'ís access to higher education are matters of concern to many other governments. Bahá'í International Community News, *European government ministers condemn denial of higher education to Bahá'ís in Iran* (December 18, 2020), available at <https://www.bic.org/news/european-government-ministers-and-parliamentarians-condemn-denial-higher-education-bahais-iran>.

⁵See Tara Sepehri Far, *Glimmer of Hope in Iran for Long-Persecuted Bahá'ís?*, Human Rights Watch, (January, 19, 2019) available at <https://www.hrw.org/news/2019/01/29/translating-court-decision-from-farsi>, as retrieved from <https://www.hra-news.org/2019/hranews/a-18684/>; Klan Sabeti, *Iranian court rules that being a Bahai is not a crime*, TrackPersia: Rebuilding Empire (January 25, 2019), available at <https://www.trackpersia.com/iranian-court-rules-bahai-not-crime>.

⁶Far, *op. cit.*

⁷Id.

⁸International Liberty Association, *Iran: 31-Year Total Sentence for Bahá'ís* (July 25, 2020), available at <https://ilibrerty.org.uk/iran-31-year-total-sentence-for-bahais/>.

⁹Mobin, *op. cit.*; Intrado: Global News Service, *Persecution of Iran's Bahá'ís ramped up: threats to “uproot”, prison sentences and psychological pressures* (June 10, 2020), available at <https://www.globenewswire.com/news-release/2020/06/10/2046440/0/en/>.

¹⁰See Diane Ala'i, *Religious Minorities and the Death Penalty in Iran -- the Case of the Bahá'í Minority Religious Minority*, in *On the Death Penalty in Iran* 58, 60-63 (2014) (noting that since beginning of Islamic Republic of Iran, more than 200 Bahá'ís

have been executed for their belief, that they lack judicial resources and are branded as apostates, that attacks against them are met with impunity, and that they have experienced in recent years a widespread campaign to incite hate and violence).

¹¹Mobin, *op. cit.*

¹²See UN News, *UN rights chief urges Iran to release human rights defenders, citing COVID-19 risk* (October 6, 2020) (reporting worsening conditions during pandemic).

¹³Michael Lipin & Ramin Haghjoo, *Iran Rejects Bahá'ís' Appeal to Avoid Prison with Coronavirus*, VOA News on Iran (October 2, 2020), available at <https://www.voanews.com/middle-east/voa-news-iran/>.

¹⁴See The Hill Times, *MPs, Senators call an end to persecution of Bahá'ís in Iran* (June 24, 2020), available at <https://opa.bahai.ca/files/uploads/open-letter-june-24-2020.pdf>.

¹⁵See, e.g., Institute for Religious Freedom, *Wave of support in the EU for persecuted Bahá'ís* (August 3, 2020), available at <https://www.iirf.eu/news/other-news/wave-of-support-in-the-eu-for-persecuted-bahais/> (citing letter from Luxembourg's Foreign Minister to his Iranian counterpart as an example of numerous actions being undertaken by European officials); Iran Press Watch, *German Parliament Debate on Human Rights Situation in Iran Mentions Persecution of Bahá'ís Multiple Times* (October 22, 2020), available at <http://iranpresswatch.org/post/21459/> (noting different motions being debated in Bundestag, all denouncing upsurge in persecution); Bahá'í International Community News, *Sweden's Foreign Minister meets Bahá'ís to express concern over human rights violations in Iran and Yemen* (October 28, 2020), available at <https://www.bic.org/news/swedens-foreign-minister-meets-bahais-express-concern-over-human-rights-violations-iran-and-yemen>.

¹⁶Bahá'í World News Service, *UN resolution condemns human rights violations in Iran* (November 19, 2020), available at <https://news.bahai.org/story/1468/>.

¹⁷Winston Nagan, *Keeping Bahá'í prisoners, Iran threatens the entire country's health*, Religion News Service, (April 16, 2020), available at <https://religionnews.com/2020/04/16/>.

¹⁸Id.

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In Memoriam

Pioneer legislator, Kenai lawyer dies

A member of the first Alaska Legislature, James Fisher died of COVID-19 Nov. 21, 2020, at his home at Heritage Place in Soldotna. He was 93.

He played an equally prominent role in shaping the Kenai Peninsula.

Fisher was born Aug. 24, 1927, in Cleveland, Ohio, and grew up in Texas. He spent several years in Asia with the Army and Marines and came to Anchorage in 1955, following the spirit of adventure and the legacy of his great-grandfather, who had sought gold in the Klondike.

He became involved in "Operation Statehood" and was elected to the first Alaska Legislature in 1959, one of eight representatives from Anchorage. The Legislature was majority Democrat at the time.

Fisher married his wife, Helen, in 1960. Shortly after, he lost reelection to the State House and the family moved to the Peninsula, where they raised Tachick and their son Bruce in Soldotna and then Kenai.

That's where Fisher opened his law practice. He recruited Jim Hornaday to be his partner.

The two ended up practicing together for over a decade.

"We basically made legal services available in areas where they hadn't been available," Hornaday said. "He was the first practitioner in Kenai, and then I think we opened the first office in Homer."

Fisher and his wife also spent several years in Juneau. There, they adopted Cory Mann, then a teenager, who they helped guide through school.

The theme for Fisher was always service. He founded the Kenai Bar Society and was a representative to the USDA during the Carter Administration. He was deeply involved with local causes and was famously committed to the Kenai Peninsula Food Bank, where he was inducted into the first Hall of Fame.

A colleague said he especially wanted to support women who ran for office. He championed the League of Women Voters and worked hard to overturn SB21.

Fisher's patronage extended into the realm of music. Once Helen died, he dove into the Peninsula's live music scene, attending open mic nights and shows — often multiple times in one night.

COVID-19 swept through Heritage Place in November. Fisher tested positive for the virus and died four days later, Nov. 21.

A ceremony to celebrate his life will be held at a later date, when it is safe to gather in groups.



James Fisher

Anchorage attorney dies in Hawaii

Anchorage attorney Michael Gregory "Greg" Oczkus died Nov. 8, 2020, at the age of 71 in Hawaii.

Many of his friends started as clients. They came back numerous times for his counsel. Greg was always willing to take on a new case provided he had been paid for the prior one. He always knew who owed him money.

After he tried to retire, he and his wife, Jane, traveled extensively. Greg loved to interact with and question the local people about their lives. Often this was done without approval of the tours guides or, in some cases, the security guards. When at home in Anchorage or on Maui, Hawaii, he would take an afternoon stroll and pick up garbage. This was his way of making a contribution to his neighborhood. Greg also enjoyed reading, listening to books on tape and playing bridge.

Greg was blunt, sometimes gruff, but was always entertaining. He had a generous heart and a soft interior. Greg was the eldest sibling in his family and was considered to be a role model. Jane and son Peter adored him and Greg's love for them was always apparent, as was his love for the Golden State Warriors and the Oakland Raiders.

Greg is survived by his wife, Jane Pettigrew; son, Peter Oczkus; three brothers, Brad, David and Mark Oczkus; sister, Lael Stock; as well as numerous nieces and nephews.

Donations in Greg's name can be given to Saint Jude's Children's Hospital, <https://www.stjude.org/donate/donate-to-st-jude.html>; or the Alaska Dyslexic Society, <https://ak.dyslexiaida.org/donate/>. A celebration of life WILL be held this summer. Notifications will be sent to those who e-mail gregmgolawoffice@yahoo.com with "MGO" as the subject and your contact information. Condolences may be sent to the family at PMB 2867, 3705 Arctic Blvd., Anchorage, AK 99503.

Attorney with Alaska history dies in Oregon

Joyce (Carol) Mansfield Rivers, 85, died peacefully at her Astoria, OR, home Dec. 6, 2020, after a lengthy illness.

Joyce was born in 1935, in Fairbanks and also lived in Juneau when her father, Ralph Rivers, served as territorial Attorney General. She later lived in Sacramento, Calif., where she graduated from University of the Pacific's McGeorge Law School in 1977, one of only three women in her class. After receiving her law degree, she returned to Alaska, where she lived in Anchorage and worked for the Attorney General's office and then for many years as in-house counsel for Alascom. After retiring from Alascom, she attended the University of Iowa, where she received her Master's in Law degree in International Environmental Law.

Joyce was a passionate participant and supporter of many political causes, including women's rights and the environment. She belonged to the St. Mary Catholic Church of Astoria, Ore.

Joyce is survived by her daughter, Eugenie Rivers of Bellevue, Wash.; and son, Ralph Mansfield of Astoria. She was predeceased by her daughter, Patricia Kae; father, Ralph Rivers, who was also Alaska's first Congressman; mother, Carol Rivers; and brother, Julian Rivers of Anchorage.

Joyce's ashes were interred next to her father's grave at Cloquato Cemetery in Chehalis, Wash., on Feb. 6, 2021, at 11 a.m.



Joyce Mansfield Rivers

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Survey Cost

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Non-members who participated in the survey: \$150
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For more information contact Jodi Walton at
(907) 334-5608 or Jodi@mb-lawyers.com

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NEWS FROM THE BAR

Board of Governors Action Items

December 9, 2020

- Voted to direct the Executive Director and staff to identify, locate, and train a site engineer to facilitate the use of laptops in Juneau and Fairbanks.

January 28 & 29, 2021

- Approved 7 reciprocity and 15 UBE applicants for admission.
- Approved special testing accommodations as recommended by the Law Examiners Committee for two applicants.
- Voted to submit proposed amendments to Bar Rule 3 to the Alaska Supreme Court.
- Voted to submit proposed amendments to Bar Rule 28(g) and 30(e) to the Alaska Supreme Court.
- Voted to send to the Governor the following nominations and poll results to the Alaska Commission on Judicial Conduct for the 3rd Judicial District: Donald W. McClintock and Matthew Widmer.
- Approved the 2020 minutes for: April, October, November, and December.
- Appointed Meghan “Sig” Topkok to the 2nd JD alternate seat of the ALSC Board of Directors.
- Voted to deny a request to waive a Bar member’s annual membership fees.

- Voted to amend Section II (D) of the Standing Policies of the Board of Governors to create a “Selection of Speakers” subsection that creates a process for the President of the Board to select a keynote speaker for the Annual Convention.

- Voted to give the Building Subcommittee authority to: (1) manage the building at its highest net revenue in line with the mission of the Alaska Bar Association, and (2) negotiate and sign tenant contracts, and tenant renewals.

- Agreed to set Special Meeting in the future for purposes of discussing the Diversity Initiative and to continue deliberation on the Disciplinary Matter Involving Ward M. Merdes, ABA File No. 2015D084.

February 19, 2021

- Bar President appointed a board subcommittee to look at the Diversity Initiative which was previously considered at January and February Board of Governor meetings: Topkok, Wildland, Hafner.
- Voted to adopt the Findings and Conclusions of the Area Hearing Committee and Recommended to the Alaska Supreme Court a one-year suspension and payment of a costs and fees assessment of \$3000 in the disciplinary matter involving Ward M. Merdes.



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GST tax issues appear in everyday transactions

By Steven T. O'Hara

A basic truth in estate planning is that tax law may impute a transaction that actually never physically occurred. Another basic truth is that the federal generation-skipping transfer ("GST") tax shows up in ordinary, everyday transactions.

There exists an exclusion under federal tax law that provides a way to avoid an imputed transaction in some circumstances as well as at least two Internal Revenue Service reporting requirements. This exclusion, which also can be considered a safe harbor for de minimis amounts, gained importance when the GST tax regulations were promulgated.

This importance can be seen in basic estate planning like funding an Irrevocable Life Insurance Trust ("ILIT") — i.e., a trust designed to own insurance on the life of the settlor. Recall that in order to qualify for the gift tax annual exclusion, gifts must be present interests as contrasted with future interests such as through trusts.

IRC Sec. 2503(b). A common way of qualifying gifts through trusts for the gift tax annual exclusion is to give trust beneficiaries a power of withdrawal, known as a "Crummey" power. This power is named after the case that affirms its effectiveness, *Crummey v. C.I.R.*, 397 F.2d 82 (9th Cir. 1968). An ILIT with Crummey powers is also known as

a Crummey Trust. Not all ILITs are Crummey Trusts, just as not all Crummey Trusts are ILITs.

The Crummey power is a so-called general power of appointment because the trust beneficiary can appoint property to herself. IRC Sec. 2041(b)(1) and 2514(c). The Crummey power lasts only so long, typically only a matter of weeks. Cf. IRC Sec. 2041(b)(2) and 2514(e). State law may consider the trust beneficiary to own the property she can appoint to herself. In Alaska, there is a statute that provides that the trust beneficiary's creditors cannot reach the property, which the beneficiary can appoint to herself, except to the extent that

the beneficiary "effectively exercises" the power for the benefit of herself, her estate, or the creditors of either. AS 34.40.115.

When time runs out on a trust beneficiary's Crummey power, the power lapses to the extent the power is not exercised. By allowing the Crummey power to lapse, the trust beneficiary may become the imputed transferor of property for income tax, gift tax, estate tax, and GST tax purposes. IRC Sec. 678(a)(2), 2511, 2514(b) and (e), 2033, 2041(a)(2) and (b)(2), and 2652(a).



"...the federal generation-skipping transfer ("GST") tax shows up in ordinary, everyday transactions."

Suppose an unmarried client is considering an ILIT in which she would name her children and grandchildren as the persons to whom trust income and principal may be distributed. To qualify funding of the ILIT for the gift tax annual exclusion, the client is considering giving Crummey powers to each of her children and grandchildren.

Based on GST tax regulations, the client might consider limiting a grandchild's Crummey power to the greater of \$5,000 or 5 percent of the trust property. Crummey powers thus limited are known as "5 and 5" powers because they are based on the 5 and 5 exclusion contained in IRC Sec. 2041(b)(2) and 2514(e).

The GST tax regulations provide that if the client gives a grandchild (or other skip person under the GST tax system) a Crummey power, the lapse of that Crummey power may result in an imputed taxable distribution under the GST tax system. See Treas. Reg. Sec. 26.2612-1(c)(1) (see the final two sentences therein) and Treas. Reg. Sec. 26.2652-1(a)(5) (Example 5). Here, however, the 5 and 5 exclusion can be of assistance. The GST tax regulations provide authority for the conclusion that a taxable distribution does not occur where the grandchild's Crummey power, which lapses, is limited to the greater of \$5,000 or 5% of the trust property. See *id.*

Recall what a taxable distribution is under the GST tax system. IRC Sec. 2611(a)(1). A taxable distribution is a transfer made by a trust to a skip person — i.e., to a beneficiary two or more generations younger than the person who contributed the property to the trust. IRC Sec. 2612(b). In our example, the possible imputed distribution to the client's grandchild would be a taxable distribution regardless of whether GST tax is payable. If GST tax were payable, it would be the obligation of the beneficiary. IRC Sec. 2603(a)(1). Regardless of whether GST tax is payable, the Trustee must file IRS Form 706-GS(D-1) to report taxable distributions, including imputed ones. See Instructions for Form 706-GS(D-1) (Rev. November 2020) at 1 ("The trustee must file a return for each skip person even if the inclusion ratio applicable to the distribution is zero").

There may also be another reporting obligation, call it a downstream transactional cost, of stepping outside the 5 and 5 exclusion, even where the client gives Crummey powers to non-skip persons

only.

Consider that the 5 and 5 exclusion has two distinct limits. One is \$5,000, and the other is 5% of the trust corpus out of which the Crummey power may be satisfied. IRC Sec. 2041(b)(2) and 2514(e). And consider that the gift tax annual exclusion is currently \$15,000, which means the \$5,000 limit within the 5 and 5 exclusion does not maximize use of the gift tax annual exclusion. See Rev. Proc. 2020-45 at 20. With respect to the 5% limit within the 5 and 5 exclusion, the ILIT would need to be funded with at least \$300,000 for 5% to equal the current \$15,000 gift tax annual exclusion.

Suppose the client in our example cannot afford to contribute more than \$75,000 to the ILIT in the year of initial funding. Suppose, under the terms of the ILIT, that there are five intended beneficiaries, all adult children of the client, each of whom is granted a \$15,000 Crummey power. Suppose none of the children exercises his or her Crummey power.

Under these circumstances, a child has a Crummey power to withdraw \$15,000, which is a sum in excess of the 5 and 5 exclusion, and thus tax law treats the child as having made a transfer to the ILIT of at least \$10,000 on the date of the lapse of the \$15,000 Crummey power. IRC Sec. 678(a)(2), 2511, 2514(b) and (e), 2033, 2041(a)(2) and (b)(2), and 2652(a). This imputed transfer is at least \$10,000 because the \$15,000 Crummey power exceeds \$5,000, which in this case is the larger of the two limits that make up the 5 and 5 exclusion, by \$10,000. IRC Sec. 2041(b)(2) and 2514(e). Here, there is an IRS requirement that the child file a federal gift tax return, IRS form 709, to report the child's imputed gift to the ILIT, even if the imputed gift is incomplete under federal gift tax rules. See IRC Sec. 2503(b)(gifts of future interests do not qualify for gift tax annual exclusion) and 6019; Treas. Reg. Sec. 25.2511-2(j) and 301.6501(c)-1(f)(5). The imputed gift could be incomplete if the ILIT grants the child a testamentary special power of appointment over property that the child could have withdrawn but allowed to stay in the ILIT. Treas. Reg. Sec. 2511-2(b) and (c).

Moreover, assume the client allocated \$75,000 of GST Exemption to the ILIT, resulting in the ILIT having a zero inclusion ratio under the GST tax system. IRC Sec. 2631 and 2642. Here, the lapse of the \$15,000 Crummey power compromises the ILIT's zero inclusion ratio, resulting in exposure to the GST tax by reason of the GST tax system treat-

Continued on page 13

There exists an exclusion under federal tax law that provides a way to avoid an imputed transaction in some circumstances as well as at least two Internal Revenue Service reporting requirements.

DO YOU KNOW SOMEONE WHO NEEDS HELP?



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

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Through working with you and close friends of the family, the coordinator will help determine what would be the most appropriate expression of support. We do not solicit cash, but can assist with contributions of clothing, transportation, medical community contacts and referrals, and other possible solutions through the contacts of the Alaska Bar Association and its membership.

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GST tax issues

Continued from page 12

ing the child as the transferor of at least \$10,000 to the ILIT. IRC Sec. 2652(a)(1)(B) and 2514(e). Thus the child would need to allocate sufficient GST exemption to the ILIT if the goal is to maintain a zero inclusion ratio for every part of the ILIT. IRC Sec. 2631 and 2642. Recall that under the language of the GST tax system, the inclusion ratio is said to be either one, zero, or something in between. IRC Sec. 2642(a)(1) and (2) and (c). An inclusion ratio of one, for example, means the GST tax, which is currently 40%, is payable on the entire applicable transfer. IRC Sec. 2641. An inclusion ratio is always one, except with respect to certain nontaxable gifts and transfers sheltered by GST exemption. IRC Sec. 2642(a)(2)(A) and (c).

Another consequence of stepping outside the 5 and 5 exclusion is that if the child dies prior to the termination of the ILIT, a portion of the ILIT will be included in the child's gross estate for federal estate tax purposes. Treas. Reg. Sec. 20.2041-3(d)(4) and (5). The portion relating to 5 and 5 exclusion is not included in the child's gross estate. IRC Sec. 2041(b)(2) and Treas. Reg. Sec. 20.2041-3(d)(3).

If there are advantages to staying within the 5 and 5 exclusion when creating an ILIT with Crummey powers, there is a necessity to do so in one common situation. If the client is married, wants to grant her spouse a Crummey power under the ILIT, and wants to allocate GST exemption to the ILIT, the GST tax regulations make the 5 and 5 exclusion mandatory for the spouse's Crummey power. Treas. Reg. Sec. 26.2632-1(c)(2)(ii) (B). Proactive allocation of GST exemption to appropriate trusts is a good thing, because although there are certain automatic allocations of GST exemption to lifetime trusts, the rules governing these automatic allocations are by no means clear cut. See IRC Sec. 2632(c).

Here, with respect to Crummey powers, the IRS invokes the so-called estate tax inclusion period ("ETIP"), which is a limitation on the authority to allocate GST exemption so long as the ETIP exists. ETIP is the period during which, should death occur, the transferred property would be includable in the gross estate of either the transferor or her spouse, other than by reason of the three-year rule of IRC Sec. 2035. IRC Sec. 2642(f).

The GST regulations also mandate, as a practical matter, that the spouse's 5 and 5 Crummey power must last no longer than 60 days. Treas. Reg. Sec. 26.2632-1(c)(2)(ii) (B). This limitation is yet another example of the basic truth that the GST tax shows up in ordinary, everyday transactions.

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

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

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Letter to the Editor

Dear Editor,

I was enjoying John Havelock's article ("String of historic 'senior dinners' a victim of virus", December 2020 issue), and particularly the tricks the established lawyers used to try to keep young attorneys from coming in to compete with them. I was enjoying it, up to a point.

After showing these barriers to entry, Mr. Havelock complains that now, lawyer advertising is allowed. He considers it "degrading." Does he not see that bans on the ability of attorneys to publicize their services, were yet another attempt to make entry into the law more difficult?

Without being able to advertise, young lawyers have little choice but to beg work from the more established heads, or to slave away in the law libraries of those gray-hairs, drafting and cite-checking while the older guys take credit with the clients.

My grandfather practiced during the depression. I have read his letters, sweating whether he could pay his bills. He had few options but to sit

around in his office waiting for clients to wander in the door. In the same circumstances, I could have let prospective clients know that I was there, and willing to take cases in "recession-proof" areas of law.

In fact, that's just what I did when, as a newly admitted lawyer in 1987, I couldn't find a job. I placed a modest ad in the yellow pages to let people know I was available for divorce cases. Years later, sick of handling divorces, I advertised for estate planning and was able to change my practice.

Don't we have enough barriers to entry? We make these kids go through seven years of schooling, make them take a three-day exam which we then take months to grade, offered only twice a year and with a high fail rate; and only then can they start paying back their monstrous student loan debt.

Give 'em a break and let 'em compete. There's enough work out there for all of us.

—Kenneth Kirk

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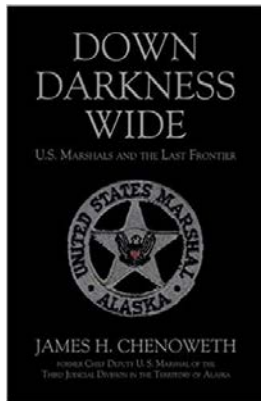
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The floating court sails north along Alaska's west coast

The following article is from *Down Darkness Wide*, a book written by James Chenoweth about his career as a lawman in territorial Alaska. We reprint this chapter with his permission. In Part I (*Alaska Bar Rag*, April-June, 2020), the young Mr. Chenoweth boards the Coast Guard Cutter *Wachusett* on its journey from Seward to Barrow during the summer of 1957. It was the last time a federal "floating court" put to sea in Alaska waters. In the previous installment, we left the *Wachusett* in Mekoryuk on Nunivak Island.



By James H. Chenoweth

PART II OF III

On July 18, 1957, we moved up to Stebbins in Norton Sound. A skeet shoot was held mid-morning on the fantail, but the weather on our arrival was too rough to risk going ashore until the following morning. It took about an hour for the first boat to go through the passage and reach Stebbins itself. It was a small village, older than Meko-

ryuk, though it seemed to me that it smelled better and that the villagers themselves were cleaner and happier. Some villagers worked during the summers at Nome, St. Michael, or in the Yukon area. Others helped manage a reindeer herd they didn't own which milled around somewhere south of Stebbins. Residents had hoped the construction of an airstrip would improve things but after the strip had been surveyed and staked out, nothing else happened. Local crimes were handled by the five-man village council, elected annually. There seemed to be no liquor problem. I was told that loose dogs were their biggest headache, so I counseled the council about licensing dogs.

The next day, Saturday, July 20 (and still at Stebbins while additional medical and dental work was being done aboard the *Wachusett*), we acquired another civilian passenger. Nurse Beltz, from the Public Health Service, was making her rounds and would be with us as far as Unalakleet. A pleasant companion. The Captain was holding an inspection; she and I stayed carefully out of the way as the crew prepared for it.

St. Michael is just a short distance east of Stebbins. We moved there on the 20th and managed to land one boatload of patients brought from Stebbins but the rest of us were un-

able to go ashore until the next morning. Dr. Thompson, Chief Steyskal, Nurse Beltz and I caught the first boat. During our trip to the beach, the sea was very choppy and everyone got soaked. I helped them to set up clinic facilities and then began talking to local officials. The weather grew increasingly violent. The wind had picked up and breakers were high out on the water. Around noon we were recalled to the *Wachusett*. Waves were breaking over our boat as soon as we left the beach. Coming alongside the *Wachusett*, we had trouble hooking onto the falls which would hoist us up. When we finally hooked on and started up waves were still breaking over us. Part of the way up, one fall jammed and the boat hung down at an angle. Waves bounced us against the side of the ship. We were lowered back into the water while the drum for the forward fall was fixed. The sea was violent and there was no lee for our boat to hide in. Hooked on again, we were finally hoisted aloft. Overheard, once aboard, were some angry words between the Chief Boatswain Mate and the Captain, who had jumped into the middle of the situation, and (as I was later told) "spewed directions like a whale spouting at the moon."

Personally, I was more interested in the medicinal libation administered to those of us who had gotten drenched — 2 ounces of brandy. With only eight feet of water under our keel, Captain Applegate moved us six miles offshore to wait out the storm. The sea had eased a bit the next morning but it was still too rough to put a motor launch over the side. The launches are about 28 feet long and weigh nearly two tons. They were nearly impossible to sink but because of their high prow, they were rough to handle in a strong wind. There wasn't much activity aboard that day except for the court-martial of a sailor who had gone AWOL while the ship was in Seward.

On the morning of the 23rd, we were back in St. Michael. The town was a sad relic of its past. Only 70 miles up coast from the Yukon River's mouth, it had been a major trading post when the Russians owned Alaska. Gold made its impact on St. Michael

in the late 1800s. A revenue ship patrolled the Yukon River to protect the flow of gold coming from the up-river mines and heading for St. Michael. The army posted soldiers at St. Michael for further protection. Sometimes they acted to prevent serious violence, but there was a limit to what the army could do in civilian affairs. Gold, ships, and a large population had filled St. Michael with hustle and bustle.

I would never have guessed at its history when I came ashore. It was a weather-beaten town with a disintegrating boardwalk that led to nowhere. One building had been built by the Russians in 1833. No landing strip and no commercial fishing. Money came from occasional longshoring chores; the town was still a transfer station for goods moving up the Yukon's 1,800 miles of navigable water. A six-man council was elected every November. While the medical and dental teams treated patients ashore or aboard the cutter, I met with the village council. Their problems? Dogs, drunks, and vandalism! Exorbitant prices might have triggered the vandalism. As one example, the Northern Commercial store paid \$4 for a bag of coal to be shipped in but charged St. Michael residents \$7.50 for each bag. Among the 200 residents, there had to be some resentment about over-pricing. I passed on whatever guidance I thought appropriate, doubtful that it would be anything more than a temporary Band-Aid for their real difficulties.

Community spirit was spiritless. In my opinion, Alex Wiksik seemed to be the only person resisting the growing dry rot. He was a patient but deliberate man who had been crippled early in life from bone disease. As president of the council, he forced through a regulation that every male villager had to contribute one hour of labor daily to keep the boardwalk in repair. For every failure to do so, the town imposed a \$1 fine. One section of St. Michael's constitution and by-laws really impressed me:


"Drinks and Cards: Stakes shall always remain

Continued on page 15


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The floating court sails north along Alaska's west coast

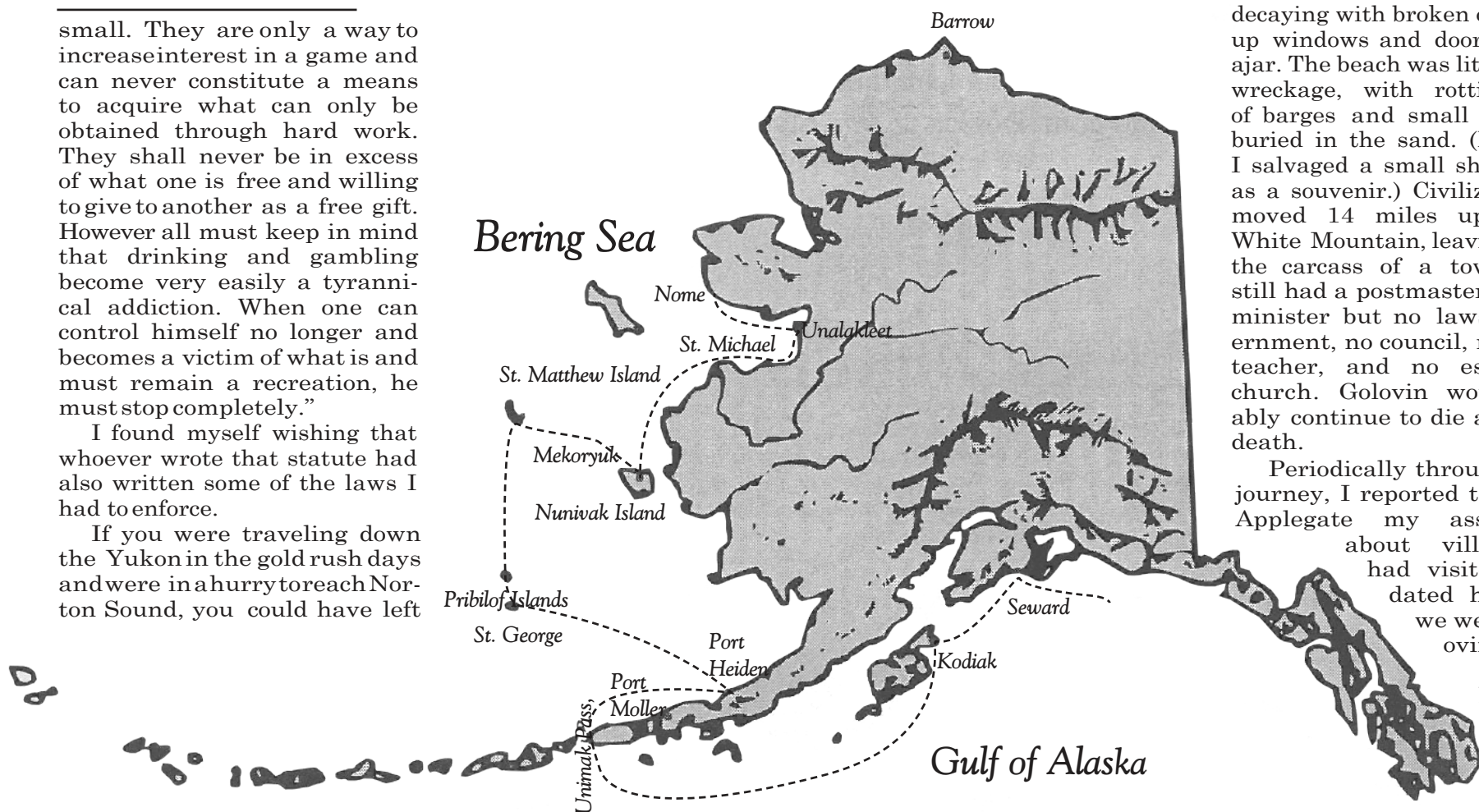
Continued from page 14

small. They are only a way to increase interest in a game and can never constitute a means to acquire what can only be obtained through hard work. They shall never be in excess of what one is free and willing to give to another as a free gift. However all must keep in mind that drinking and gambling become very easily a tyrannical addiction. When one can control himself no longer and becomes a victim of what is and must remain a recreation, he must stop completely."

I found myself wishing that whoever wrote that statute had also written some of the laws I had to enforce.

If you were traveling down the Yukon in the gold rush days and were in a hurry to reach Norton Sound, you could have left

THE ROUTE OF THE U.S.S. WACHUSETT



other buildings were empty and decaying with broken or boarded up windows and doors hanging ajar. The beach was littered with wreckage, with rotting hulks of barges and small boats half buried in the sand. (From one, I salvaged a small ship's wheel as a souvenir.) Civilization had moved 14 miles up-river to White Mountain, leaving behind the carcass of a town which still had a postmaster and a lay minister but no laws, no government, no council, no school-teacher, and no established church. Golovin would probably continue to die a peaceful death.

Periodically throughout our journey, I reported to Captain Applegate my assessments about villages we had visited. I updated him while we were at Golovin.

We still had unfinished business back in Shaktoolik and a

the Yukon at Nulato and gone down the Unalakleet River to — where else? Unalakleet. It was a large coastal village with a population of 600, including 150 school children. Already two days behind schedule, that's where we went next, going ashore early on Thursday, July 25. Unalakleet was actually a Native reservation, as many villages were not. One of the councilmen was the local police officer. The U.S. Commissioner told me the village was a quiet one but it was pretty obvious that liquor was a problem. Sale within the village was prohibited, but liquor could be flown in, and was. DEW line (Distant Early Warning) and White Alice installations for communications were already under construction. Their completion would add nearly 200 civilian personnel to the area. Many of the local women were attractive and had lived or traveled in the lower 48 states. I noted that Unalakleet's problems would bear watching.

The workload of the medical and dental teams kept us there until the afternoon of Saturday, the 27th. I heard we were leaving about noon, but additional patients kept coming aboard so we didn't actually leave until 4:00 p.m. when we moved up the coast to Shaktoolik. The next morning, a strong running surf and shallow water made landing there very difficult. I went in with the first boat. There was no way for the anchor to grip and hold. The boat broached broadside and the crew did a terrific job of keeping it from being swamped by waves. We finally got on shore amid haze, mist and rain. I did my bit by interviewing local officials and then pitched in to help the shore party. Patients going out to the *Wachusett* had to be ferried by raft and small boat, hauled out to the surf boat on a line between it and the shore party, where we worked

in waist-deep water. They went out then through rough water to the cutter itself. As a passenger in the only boat to get ashore, I stayed ashore where manpower was limited, trying to assist the beach party and keeping out from underfoot when not needed. Wet, tough stuff! Back aboard the *Wachusett* in time for a hot shower, dry clothes, supper- and my bunk.

In such bad weather, staying at Shaktoolik was impossible. The next day (leaving a radio behind in the village), we moved across Norton Bay to Elim on the north side. The sea was rough, but the surf was not as bad along the shore. Catching the first boat in, I finally made a landing where I didn't get wet! I thought that Elim was really unique. Timber grew around Elim (very unusual that far north) and there was no permafrost. In January of the year we were there, it had rained, and from what I was told, well water didn't freeze in Elim.

I talked with some residents, the school teacher, surveyors from the Civil Aeronautics Authority, the local nurse, and an Alaska Native Service carpenter (who came from Denver, NJ). The town was founded in 1914 and was originally intended to house an orphanage. So it wasn't surprising to learn that a large part of the village income came from Aid to Dependent Children funds. Many unwed mothers in Elim refused to marry the fathers of their children because doing so would make them ineligible for that income. Which didn't prevent the fathers from living with them. The financial assistance from territorial funds encouraged illegal cohabitation

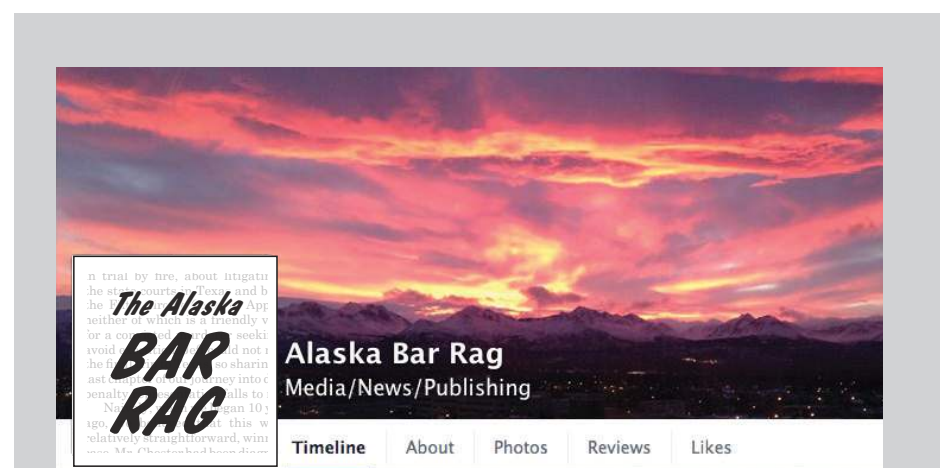
in many parts of Alaska. Privately, I thought that children gained a lot by having a father in the house, and the possible misuse of ADC funds was not really within my jurisdiction.

Although a doctor and a dentist had come ashore with me, patients had to be taken to the ship, which meant carrying them out to the motor launch. So I got wet again.

During the night, we sailed a short distance westward to Golovin. There we had to anchor so far offshore that it took an hour by surf boat to reach the beach. On the beach, I wondered why we bothered. It was a deserted village, peopled by only a few locals where it had once housed thousands. There was a time when Golovin could boast of having several stores, a school, a Mission Home, a herring cannery, and a herd of 30,000 reindeer. The herd had dwindled to 2,000. The school, the stores and

radio to recover, but weather conditions there made it impossible to return so we went on to Nome, arriving there during the early morning of Wednesday, July 31. Moving up Alaska's coast had taken me into jurisdictions outside of my own. I had passed through areas policed by the U.S. Marshal in Fairbanks, Al Dorsh, and was now in the territory of Bob Oliver, the U.S. Marshal in Nome. My travels had been coordinated with both and when I came ashore in Nome, Oliver's Chief Deputy, George Bayer, was there to meet me. Bob, George and I spent some time together and I passed on whatever I had learned during my trip. Criminal cases I had picked up in Stebbins and Elim were already known to them. The Elim situation was under consideration by the U.S. Attorney in Nome.

(Next installment, Nome to Barrow)



Known for its often-irreverent and always-topical content, the *Alaska Bar Rag* is the official newspaper of the Alaska Bar Association.

www.alaskabar.org

www.denaliwolf.site

Scholarship recipient seeks current scholarship support

Continued from page 1

ment of any scholarship. Advertising is done through the Bar's electronic newsletter, website and The Bar Rag, as well as emails to law school financial aid departments and to potential donors. Interested first and second-year law students submit an application and include a statement about why they want to come back to Alaska to practice law. A Scholarship Committee is responsible for fund raising, as well as reviewing scholarship applications and making awards. The committee may request proof of residence or enrollment in law school to verify applicant eligibility requirements.

The Bar is now accepting donations for the next round of scholarships. Any contribution will be greatly appreciated, and you or your organization will receive public recognition at the 2021 Alaska Bar Convention, as well as acknowledgment in the Bar Rag. This is a great opportunity to help struggling Alaska law students make the most of their legal education, especially during this extraordinarily difficult

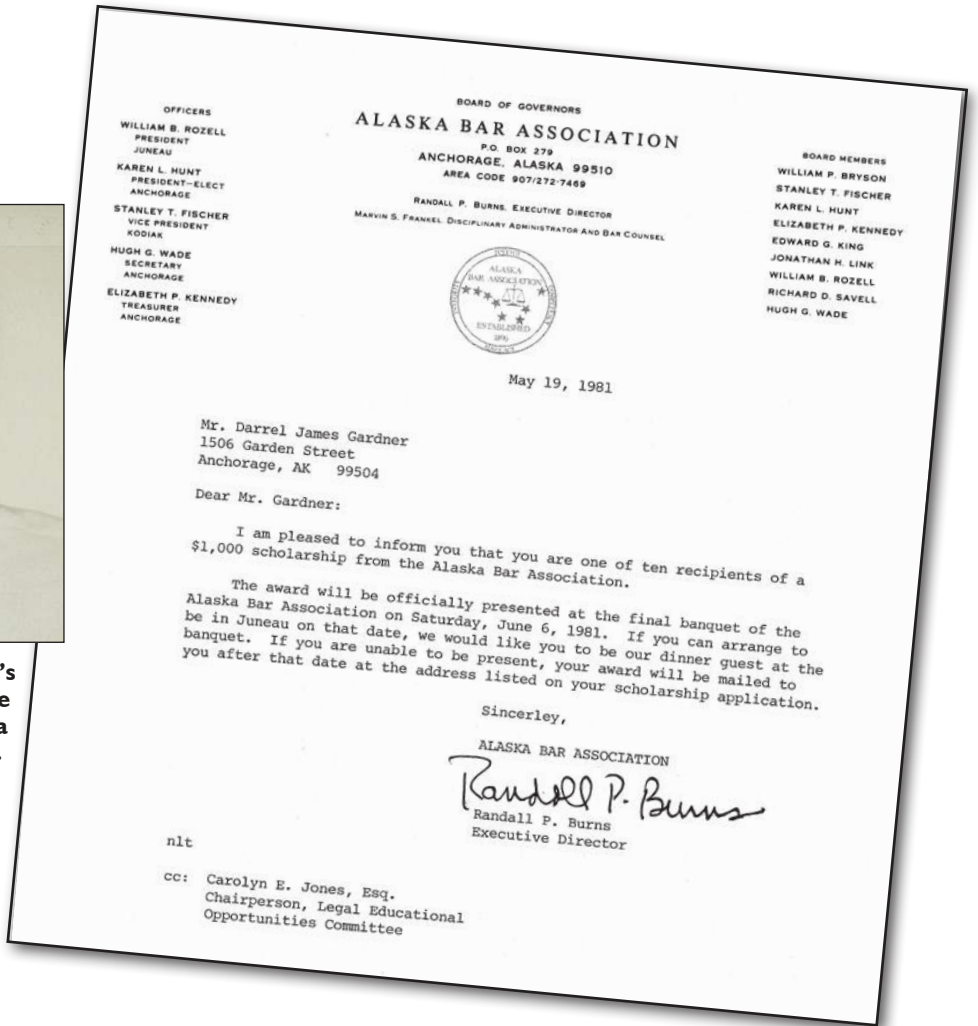
time caused by the pandemic. These students will return to Alaska to become our next generation of lawyers and judges. Please send your tax-deductible check, payable to the Alaska Bar Scholarship Fund, to the Bar office, or log on to the Bar's website at www.alaskaba.org and pay online. Please contact Bar staff if you have any questions.

Thank you for your consideration and support. *Darrel Gardner is a past president of the Alaska Bar Association and the Alaska Chapter of the FBA, and current national FBA vice president for the Ninth Circuit.*



Above: Darrel Gardner's applicant photo that he submitted to the Alaska Bar Association in 1983.

Right: The original scholarship notification.



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Lawyer jokes ...

Losing a case
A man sued an airline company after it mislaid his luggage. Sadly, he lost his case. #amwriting #lawyerjokes #nearlyFriday #jokes
— Tony Batton (@thetonybatton) December 7, 2017

The right to remain silent
A man in an interrogation room says, "I'm not saying a word without my lawyer present."
"You are the lawyer." said the policeman.
"Exactly, so where's my present?" replied the lawyer.
— Dad Jokes (@Dadsaysjokes) July 27, 2018

Things paralegals say?

- It's on the Reminder List I sent you Monday.
- It's on the Nag list I sent you Tuesday.
- It's on the PLEASE list I sent you Wednesday.
- It's on the URGENT list I sent you Thursday.
- It's on the THIS IS GOING TO BLOW UP IN YOUR FACE list I sent you Friday.

— The Paralegal Society

Bar People

Partner named by Dorsey & Whitney

Dorsey & Whitney LLP is pleased to announce that Anchorage attorney **Bonnie J. Paskvan** has been promoted to partner, effective Jan. 1, 2021.

Bonnie's legal practice includes complex commercial, M&A, board governance, corporate compliance, regulatory, finance, and other transactional matters within a variety of industries, including telecom, banking and finance, transportation, and consumer services, among others. She has significant experience working with Alaska Native Corporations and currently serves as Co-chair of Dorsey's firm-wide Indian & Alaska Native Law Practice Group.

Prior to joining Dorsey in 2018, Bonnie was general counsel for Anchorage-based Calista Corporation, an Alaska Native Corporation.

Bonnie also previously served as the chief legal officer for The Alaska Wireless Network and as corporate counsel for General Communication, Inc



Bonnie Paskvan

Attorney joins firm's litigation practice

Whitney A. Brown has joined **Stoel Rives LLP's** litigation practice in Anchorage where she will focus her practice on complex litigation. Before joining Stoel Rives, Brown was a law clerk to Judge Morgan Christen of the U.S. Court of Appeals for the Ninth Circuit, Judge Guido Calabresi of the U.S. Court of Appeals for the Second Circuit, and Judge Goodwin H. Liu of the Supreme Court of California. She earlier worked for several years in Washington, D.C., on health policy issues. Brown received her J.D. from UCLA School of Law, where she was Editor-in-Chief of the UCLA Law Review, her Master of Public Health and Graduate Certificate in Human Rights from Emory University Rollins School of Public Health, and her A.B. from the University of Chicago.



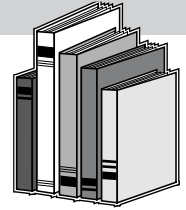
Whitney Brown

Recent graduate joins Baxter Bruce & Sullivan

Rachel K. Bergartt, D.V.M., J.D., has joined **Baxter Bruce & Sullivan P.C.** as an associate attorney. Baxter Bruce & Sullivan P.C. is a four-attorney firm in Juneau. Dr. Bergartt's practice emphasizes contracts, family law, and professional / business transactions. She also has a particular interest in providing animal law services to Alaskans. She has been with the firm since June 2020. Rachel graduated from the Ohio State College of Veterinary Medicine in 2001, moved to Fairbanks, Alaska in 2002, and has called Juneau, Alaska home since 2003. Rachel graduated *magna cum laude* from Seattle University School of Law in May 2020. Dr. Bergartt may be contacted at (907) 789-3166 or rberngartt@bbslawyer.com.

Law Library News

New online databases available at the Alaska Law Library



By Susan Falk

Great news for tax attorneys. The *Standard Federal Tax Reporter* is now available online via law library public computers statewide.

The two newest electronic resources at the Alaska State Court Law Library are AnswerConnect, featuring CCH tax materials, and Cheetah, which includes titles from Wolters Kluwer and Aspen.

Cheetah is a legal research platform and e-book collection provided by publisher Wolters Kluwer. Our subscription includes digital access to many Wolters Kluwer and Aspen titles, including major treatises like *Wigmore on Evidence*, Pierce and Hickman's *Administrative Law Treatise*, and *Bromberg and Ribstein on Partnership*. Other practice areas include family, elder and estates law, healthcare, energy and environmental law, labor and employment law, and litigation. Cheetah is available at all law library locations and from any court computer.

AnswerConnect, also a Wolters Kluwer product, provides tax material from CCH. Unlike Cheetah, AnswerConnect does not include e-books, so titles do not necessarily appear online in the same format as in print. Content from the *Standard Federal Tax Reporter*, for example, is accessed through topic or code section, rather than by direct page citation. AnswerConnect offers a broad array of federal and state tax materials, and its clean interface is easy to use. Content includes the *U.S. Master Tax Guide*, a variety of customized charts, tools, and forms, and an expansive collection of Covid-19 resources. AnswerConnect is available at all law library locations and from any court computer.

The law library continues to be open with limited hours — noon to 4 pm, Monday through Thursday. Masks are required. Remote services, available during all of our pre-pandemic hours, include document delivery, curbside pickup and limited mediated searching. Access to Westlaw is still available through Thomson Reuter's expanded free trial program. Bar members are also eligible for individual accounts with the Lexis Digital Library, which provides on-demand access to many LexisNexis publications. Though this column was devoted to services available in the library only, we encourage our patrons to make use of remote services when possible. Your continued support and cooperation will allow us to remain open.

Contact us at 907-264-0856 or library@akcourts.us for assistance.



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Cooties in the age of Covid demand creative solutions

By William R. Satterberg Jr.

"OMG! I've got the Cooties!"
It was Dec. 2, 2020. As I was walking out of my office into Fairbanks subzero temperatures, I smelled the unmistakable odor of uric acid. Almost 70 years old, I had concerns. My immediate reaction was to check to see if I had missed the toilet again. I had the same problem when I was a young child. Now it was developing with old age. To my relief, there were no signs that I had again been less than accurate.

When I reentered the office, the smell went away. Returning outside, the smell also returned. I naturally concluded there was likely another meth lab in the office neighborhood.

That afternoon, arriving home, I still smelled the now familiar uric acid. But my home was miles from the office. I realized something was wrong after re-checking myself for any new personal leaks.

The next morning, neither my manly Right Guard deodorant nor my classic Aqua Velva aftershave had any noticeable fragrance. I told Brenda I didn't smell. She disagreed and emphatically told me I certainly did smell, and that I needed to take a shower.

At breakfast, I couldn't taste orange juice nor food. I realized that I was on my way to my long awaited diet. If I could not smell or taste, perhaps the incentive to eat might disappear, also. As a final test, I took an Altoid- the "Curiously Strong Breath Mint." It tasted like the chalk I used to crunch when I was a 9-year-old first grader. I decided on a Covid test.

Brenda and I were going to have a close friend come to our house in two days to celebrate his 91st birthday. Clearly I could not play games if it would result in infecting him with deadly Covid. Fortunately, I was able to locate a rapid test facility which would see me in an hour. At the clinic, a nurse jammed two oversized Q-tips up my nose and twirled them around, just like I used to do in elementary school with a pencil in order to bring on a sneezing bout. It never failed to disrupt the class and upset the teacher.

I learned the worst after 15 minutes. The nurse practitioner quietly summoned me into the back room to tell me I had Covid. Realization set in. I had the dreaded Cooties!

I went directly home from the clinic. I could not enter the office and jeopardize my coworkers. Home would be my sanctuary. But, when Brenda learned that I had tested positive for Covid, rather than giving me a loving hug, she said something that I had not heard since childhood: "Bill! Go directly to your room!" Brenda then pointed up the stairs. I received another order: "And do not come out of your room for the next 10 days! I will bring your meals to you."

I learned what it was like to be an inmate. At least I had a room and a TV. Admittedly, it was certainly larger than most prison cells. My warden, however, was far more demanding.

For the next day, Brenda would scurry up the steps and place a food tray outside the door. Back at the bottom of the steps, she would then yell that I could now open the door for my rations. No delay was permitted in the exchange. Clearly, quarantine was going to be a trying experience.

I considered the limited options. I decided that Brenda needed her own Covid test, and convinced her of such. The next day, Brenda had her nasal swab. To my relief, it was positive. She also had the Cooties, but started blaming me. I was no longer locked in my bedroom subject to the whims of a rogue jail warden. Kindred spirits once again. How romantic. Even if my roommate was angry at me.

I pondered my future. Fortunately, my symptoms were mostly benign, but I had lost my taste and smell. Still, I was aware that there could be further complications. I was only three months shy of 70 years old. I was a little bit portly. And I had other things called "comorbidities." I sought medical advice, talking to three different doctors.

Two of the doctors told me just



"Covid serum antibodies are now in my system. Hopefully, they should provide several months of immunity."

to take it easy. Tough it out, and call the hospital if I couldn't breathe. That was not encouraging. Machismo was definitely out. However, the third, younger doctor had been proactively researching the subject. He found an experimental antiviral treatment called a monoclonal antibody infusion. The name of the treatment officially was Bamlanivimab. However, because most doctors could not pronounce the name, which

sounded like a remote mideastern village, the nickname "Bambam" had emerged. It reminded me of the Flintstones.

In fact, Bambam had received an Emergency Use Authorization (EUA) less than a week before from the Food and Drug Administration (FDA). Antibodies would be intravenously infused into the patient. Those antibodies would then attack the evil Covid virus. Brenda and I could be Fairbanks "guinea pigs." There had only been one previous treatment in Fairbanks, making us the second and third candidates. If the treatment were successful, the doctor stated that there would be no way of knowing, since, perhaps we were simply destined not to develop serious sickness. Or maybe, the antibodies had worked. In a less than reassuring note, the doctor said he would know if the treatment were not successful because we could become seriously sick.

We also learned that it was important to have Bambam before serious respiratory issues developed. Once the respiratory issues set in, the treatment would be ineffective. The only option would be to "tough it out" or go to the hospital, per my earlier medical advisors. The purpose behind Bambam was to keep from using up scarce ICU beds.

Certain things about Bambam were still unknown. For example, whether or not the use of Bambam would make somebody more susceptible or less susceptible to a future Covid infection. Questions also existed as to whether or not the expected Moderna/Pfizer vaccines

would be more or less effective on Bambam recipients.

I thought about the vaccines for a minute. My friend, Craig, a strident anti-vaxxer, is convinced that the vaccines carry an imperceptible dye which will show up on airport scanning devices. Not to mention the developing Bill Gates microchip conspiracy where subjects would be injected with the proverbial "Mark of the Beast" for future tracing. I also thought about the Fairbanks Patriots who would not take any vaccine on principle because, if the government recommended it, it had to be bad.

I decided that those were bridges to cross in the future, if at all. Brenda and I elected the infusion therapy. After all, if we were to succumb to Covid, it really would not matter if we were more or less susceptible to the vaccine or future infections. Like my dear old Dad used to say, "Billy, one of these days you're going to wake up dead!"

Our romantic couples infusion therapy took one hour. We were attended in the hospital by a very compassionate nurse, Michelle. Michelle had recently lost three family members to Covid in the Midwest. When asked why she had not gone home for the funerals, Michelle's response was that her calling was to stay in Fairbanks and help those who had Covid. We were humbled. For over two hours, Michelle had sat with two sick people in a closed room.

In so doing, Michelle had courageously exposed herself to the disease and the risks of acquiring it from us or others. Michelle was our modern day hero.

During the following days of quarantine, Brenda and I remained essentially asymptomatic. The loss of smell and taste was certainly frightening for a person who obviously enjoys doughnuts and banana milkshakes. On the other hand, we were both grateful that we survived Covid without any significant ill effects. In celebration, I had a T-shirt made which stated "I am a Covid survivor. Now, I hang with positive people!"

At breakfast, I couldn't taste orange juice nor food. I realized that I was on my way to my long awaited diet. If I could not smell or taste, perhaps the incentive to eat might disappear, also.

Brenda and I elected the infusion therapy. After all, if we were to succumb to Covid, it really would not matter if we were more or less susceptible to the vaccine or future infections.

Continued on page 19

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274-2023

Cooties in the age of Covid demand creative solutions

Continued from page 18

Covid serum antibodies are now in my system. Hopefully, they should provide several months of immunity. Moreover, as a Covid survivor, I should not be able to transmit Covid to others during immunity. Not that we have stopped exercising precautions. We are still being careful, wearing masks, and keeping a bag of kids Sourpatch candies in the office as a test kit.

It is reassuring that we did survive Covid. We learned much, as well, as honored guinea pigs. Our hearts go out to those healthcare providers who are risking themselves daily to care for those of us with Covid. Their dedication and bravery is unfathomable. And, to those reading this article, please don't be so arrogant to think you don't have to wear a mask to protect yourself and others. Don't be like the person who drives down a road at night without headlights since,

after all, because they can see in the dark, it doesn't matter that nobody else can see them.

Instead, exercise precautions, even if you have survived Covid or feel that Covid is not a threat to yourself. There are other people who will be affected or infected. They may very well be close to you at some point in time. I, for one, do not want to be somebody who later says "I told you so."

Finally, for those of you who have

contracted Covid, might I please ask you to strongly consider donating blood to your local blood bank so that others can have the benefit of your antibodies? It's the least we can do to say thank you. And it's the positive thing to do.

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

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More accolades for our retired executive director

Editor's note: Our last issue was pretty much dedicated to the retirement of Deborah O'Regan who had been the Bar Association's executive director for more than 30 years. One of the articles included comments of recall from former Bar presidents. Here are a couple more that didn't make the deadline last time.



Mike Moberly (2013-14): I had the pleasure of serving on the Board of Governors in the late 1990's and again from 2010-16. From those experiences, I found Deborah to be a capable leader of the Bar staff, an able representative of the Bar Association, a dependable advisor to the Board, and a genuinely good person. It was my pleasure to work with Deborah and I am happy to see that she is now going to enjoy retirement, something she had hinted at for some time, with her husband, Ron (and possibly some fly fishing?).

During my times on the Board, Deborah helped in gracefully moving the Bar Association offices *twice*, first to the Atwood Building and then to its current location. She helped oversee transition to the Uniform Bar Exam (UBE), respond to challenges to the Judiciary and Alaska Judicial Council, manage changes in Bar Counsel, and other difficulties faced by the Bar Association. Deborah handled such matters with a calm and steady hand, surely guided by the experiences she gained directing the Bar through similar turbulence both before and since.

When time for my term approached, I said (jokingly) that I would only be president if Deborah promised that she would not retire. She already had decades of service to the Bar, along with others of significant tenure including Steve Van Goor, Karen Schmidtkofer, Louise Driscoll, Mark Wolber, Ingrid Varenbrink and Gail Welt — the consistency and length of service of the others at the Bar spoke volumes of Deborah as a leader. I knew that Deborah had the temperament and experience to help me get through whatever arose during my term. Thankfully, we weathered it together and I can look back at that time fondly.

My term of service to the Bar was certainly made better, and easier, through Deborah's years with the Bar and her presence as a centering force, for which I give her my most sincere thanks.

Sidney Billingslea (2009-10): I was president for the 2009-2010 term, having been on the Board of Governors since 2006. Working with Deborah was a pleasure. Never was there a moment when I didn't believe that the Alaska Bar Association was in capable hands with her at the helm.

Deborah makes the job of executive director look effortless: How does she get all those lawyers and the public to agree with her proposals? It must be her charm and steely resolve.

While Deborah has earned a well-deserved retirement from herding cats, the Bar will surely miss her. She takes with her decades of historic knowledge, but I am positive that she will be as generous with her time and energy during the transition and beyond as she was with all of us who relied on her over the years.

*Congratulations, Deborah,
and enjoy the rest!*

ALASKA BAR ASSOCIATION ANNUAL CONVENTION



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Public Notice

Appointment of a United States magistrate judge

September 2021

The Judicial Conference of the United States has authorized the appointment of a full-time United States Magistrate Judge for the District of Alaska in Anchorage. The current annual salary of the position is \$201,112. The term of office is eight years.

A full public notice for the magistrate judge position is posted in the office of the clerk of the district court at 222 West Seventh Ave., Room 229, Anchorage. The notice is also available on the court's website at www.akd.uscourts.gov.

Interested persons may contact the clerk of the District Court for additional information and application forms. The application form is also available on the court's website.

Applications must be submitted only by applicants personally and must be received by March 15, 2021.