

The Alaska BAR RAG

Dignitas, semper dignitas

VOLUME 41, NO. 1 January - March, 2017

Status of marijuana law confused by election

By Jason Brandeis

Ever since the Alaska Supreme Court's 1975 decision in *Ravin v. State*, the legal status of marijuana in Alaska has resided in a gray area. *Ravin* established a stark contrast between Alaska's tolerance and respect for adult marijuana use and the federal government's strict prohibition on the same conduct. By the time Alaskans voted for statutory marijuana legalization in November 2014, *Ravin's* holding was seen by many as mostly symbolic, and "real" legalization was thought to involve a regulated commercial industry with retail stores like those already operating in Colorado and Washington.

The Colorado and Washington models crystallized the confusion: Marijuana use was simultaneously legal under certain state laws but criminalized under federal law. With a growing number of states adopting

a more permissive approach by allowing adult use, medical use and commercial sales of marijuana, the federal government was forced to respond, which it did by issuing the "Cole Memo."

Modern marijuana legalization in the United States survives largely by the grace of this 2013 Department of Justice policy directive. The Cole Memo de-prioritized federal prosecution of certain marijuana crimes, identified areas for increased vigilance, and reflected the view that states should continue acting in their traditional role as "laboratories for democracy," whereby they could experiment with novel marijuana legalization protocols. The memo established a "fragile truce" between the states and the federal government, and though just a policy that could be reversed

Continued on page 22



Writers workshop lures Alaskan to follow Hemingway to Cuba

Story and photos
By Dan Branch

I attended a week-long writer's conference in Havana, Cuba, offered by Santa Fe Photographic Workshops. They had us staying in a convent in Old Havana. The nuns were nice even though they insisted on serving us Swedish style breakfasts. The lighter, Cuban fare would have served us better in the warm climate.

Lee Gutkind, editor of "Creative Nonfiction," who was once called the godfather of the genre by *Vanity Fair* magazine, was our workshop leader.

I'm in the Miami Airport with a bunch of writer types. In an hour we will board a flight to Havana. The other writers seem nice, even interesting but I'm still uncomfortable. We have been warned about Zika and Dengue fever. On my doctor's advice, I've been vaccinated against typhoid. I carry a copy of my passport signature page to produce when agents of Cuba's communist government bang on my bedroom door at 3 a.m. I read that the food will be poor and the water undrinkable, but thanks to a recent visit by then President Obama the people will be welcoming. A child of the Cold War, I try to suppress the image of bearded men in jungle-green mufti yelling "Yankee go home!"

A Cuban family takes the last empty seats in the boarding area. The oldest, a woman with granny clothes and coifed silver hair drops into a wooden rocking chair that I hadn't noticed before. Her daughters, one dressed in conservative department-store church clothes and the other in tight and shiny jeans and top, sit next to her. Their father carefully doles out micro cups of Cuban coffee to grandma and his daughters. They take seconds to down the thick, black stuff. The man acts with the care of a priest at a funeral. I hope that a country that encourages men to have such gentle manners won't offer much danger

for this aging American tourist.

Even though we had been warned to expect a grilling from government agents, I quickly clear customs without having to explain that while I will attend a Havana writer's conference, I am a tourist, not a writer, to avoid being taken away for special treatment. I don't even have to convince them that the antibiotics in my carry-on bag will not be sold on the black market.

At the airport, I exchange \$300 dollars for the CUC's that tourists must use as currency in Cuba – the equivalent of an average Cuban's annual salary. Now I am worried

that with so much in my wallet, I'll attract thieves on the Havana streets like a salmon egg draws attention in a trout stream.

Before our first morning's walk we learn that more visitors suffer injury from stumbling than from insect borne illnesses or violent crime. Once out in the Cuban sunshine, I can't appreciate the crumbling beauty of the pre-revolution mansions lining Havana's narrow streets for fear of stepping into an unmarked hole in the sidewalk, falling into open construction pit, or being run

Continued on page 15



What Alaskan isn't going to check out the fishing in Cuba?

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

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

Defense of democracy leads Alaska Bar convention topics

By Susan Cox

A recent Forbes magazine article by Mark Cohen declared, "With U.S. Democracy In Crisis, It's Suddenly, 'Thank God for Lawyers.'" As Cohen noted, "lawyers around the country and around the world are coming to the defense of democracy and the rule of law. It is not a political issue; it is a process one. It is a fight to preserve the processes and institutions that sustain our democracy."

We live in turbulent legal times. Major constitutional issues are front and center in the news on a daily basis. Foundational principles of our republic are being hotly debated in the media and in courtrooms: separation of powers, the role of an independent judiciary, the proper scope of executive authority and legislative oversight, checks and balances. And lawyers are on the front lines of emergent situations across the country, standing up for civil liberties and fundamental principles of justice.

Lawyers have a pivotal role to play in so many areas: immigration, criminal justice, judicial appointments, governmental ethics and conflicts of interest, regulatory reform. Regardless of our personal politics, it's critical that we lead the way in protecting the Constitution and defending our legal institutions.

At the mid-year meeting of the American Bar Association in February, ABA President Linda Klein exhorted our profession to lead by promoting and protecting the rule of law. One of her central themes was the vital importance of the impartiality and integrity of our court system. As she put it, "personal attacks on judges are attacks on our Constitution" that cannot be tolerated; the judiciary must remain free from political pressure. That is a core constitutional principle Alaskans hold dear.

Against the highly charged backdrop of current events, the presentations at the Alaska Bar Association's annual convention in May will be particularly timely. As in past years, Dean Erwin Chemerinsky and Professor Laurie Levenson will provide informative analysis of the United States Supreme Court's latest decisions and share insights into the future direction of the court. And in addition, Dean Chemerinsky will moderate a panel on ethical issues surrounding judicial selection and retention. Ryan Wright of the organization Kansans for Fair Courts will be a special guest on the panel, as well as several lawyers and judges familiar with Alaska judicial selection and retention issues.

The convention offers numerous ethics CLEs on topics of interest to judges and lawyers alike. Among them are sessions on negotiation ethics and substance abuse and mental health. Bill Slease, chief disciplinary counsel of the New Mexico Supreme Court, will head a panel with Alaska judges on lawyer civility and professionalism. (If the title of that CLE didn't catch your attention, take a closer look at the convention brochure!)

Rebecca Love Kourlis, a former Colorado Supreme Court justice and executive director of the Institute for the Advancement of the American Legal System (IAALS), will present a visionary program on Civil Justice Reform and necessary steps to improving access to justice. Another CLE will tackle the mysteries of metadata and data privacy and ethical implications of technology in today's legal practice.



"The convention offers numerous ethics CLEs on topics of interest to judges and lawyers alike."

Other programs focus on honing advocacy skills, ranging from jury selection to cross-examination to effective use of exhibits in hearings and trials. Whether you're a litigator or not, the program on memory is going to be fascinating. Dr. Craig Stark will share current scientific information on how memory works, followed by a discussion of how lawyers can communicate effectively given the shortcomings of human memory.

Besides providing timely and relevant educational content, the convention affords a unique opportunity to get acquainted with colleagues from the bench and bar across the state. Collegiality is a hallmark of the convention. Special events this year like the opening reception at the Governor's Residence and the whale watching tour, in addition to the Juneau Bar Association's fun hospitality plans (<http://www.juneaubarassociation.com/2017-bar-convention.html>), will give us all a chance to socialize and make new connections.

We are very pleased to have Richard Painter as our keynote speaker at the convention banquet. For those who aren't familiar with him from recent media interviews, Professor Painter is an expert on government ethics and the influence of money in politics. He served as chief ethics lawyer in the George W. Bush White House. Last fall Painter testified in a federal court case challenging Alaska's campaign finance laws. In December 2016 he became vice-chair of the board of the bipartisan organization Citizens for Responsibility and Ethics in Washington serving alongside chair Nor-

man Eisen, former chief ethics advisor in the Obama White House.

One can only begin to imagine what hot legal issues will be in the headlines in the coming months. No doubt Painter's comments will be topical and enlightening. I hope you can take advantage of the great program and networking at the convention and leave inspired.

As we face the future, we can be proud that our profession is in the forefront of protecting the rule of law for all. In ABA President Linda Klein's words, "We defend the Constitution. We are lawyers. We took an oath and these are our values." Let's strive to do our best to serve our clients' interests and instill public confidence in the democratic institutions our government is founded upon.

Susan Cox is the president of the Alaska Bar Association.

The Alaska BAR RAG

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

President: Susan Cox
President-Elect: Darrel Gardner
Vice President: Blake Chupka
Treasurer: Bill Granger
Secretary: Molly Brown

Members:
 Sharon Barr
 Bill Gordon
 Bob Groseclose
 Hanna Sebold
 Rob Stone
 Adam Trombley
 David Wilkinson

New Lawyer Liaison:
 Morgan Griffin

Executive Director: Deborah O'Regan
Editor in Chief: Ralph R. Beistline
Social Media Director: Ruth Anne Bergt

Managing Editor: Tim Jones
Editor Emeritus: Harry Branson

Contributing Writers:
 Peter Aschenbrenner
 Dan Branch
 Jason Brandeis
 Mamie Brown
 Kevin Clarkson
 Monica Elkington
 Bill Falsey
 Darrel Gardner
 Cliff Groh
 Susan Falk
 Steven T. O'Hara
 Steve Pradell
 William Satterberg

Contributing Photographers
 Karen Schmidtkofer
 Mara Rabinowitz

Contributing Cartoonist
 Bud Root

Design & Production:
 Sue Bybee

Advertising Agent:
 Alaska Bar Association
 840 K St., Suite 100,
 Anchorage, Alaska 99501
 (272-7469)

Publication Dates	Editorial Deadlines
March	Feb. 10
June	May 10
September	Aug. 10
December	Nov. 10

Board of Governors meeting dates

May 8 & 9, 2017
 (Juneau: Mon. & Tues.)
 May 10-12, 2017 (Wed. - Fri.: Annual Convention in Juneau)

[Editor's Disclaimer: As with all Bar Rag articles, advertisements and letters, we do not vouch for, stand by, or support most of what we publish. Nor have we cleared any of this with either the FDA or the Department of Homeland Security (aka Interior Ministry). We sure as hell won't be responsible for your hurt feelings or misguided reliance on anything we publish or not]. TVF 2000

EDITOR'S COLUMN

Hello young writers wherever you are ...

By Ralph R. Beistline

I have several things on my mind as I draft my column for this issue.

First, we are reaching out to a new generation of reporters and columnists. Roughly two thirds of Alaska lawyers are over 50 years old with most of those between the ages of 61 and 70. And another 415 over 71. As much as we appreciate the Social Security generation, of which I am one, we would like to bring the average age of our contributors down a decade or two. So, "hello, young lawyers, whoever you are, I hope that your troubles are few, all my good wishes go with you tonight" (The King and I) we could use a few more of you. Give us a call.

Samantha Slanders, of course, generated the most response in our last publication. She seems to be as loved now, as decades ago. But recall that, although timeless, these are largely reprints of her old columns. We have reprinted them as we look for her or for a replacement, merely to illustrate the valuable service the paper can provide to its readership.

Ken Jacobus wrote twice con-

cerning Samantha and speculated that she is really Bill Satterberg. It is true that Satterberg began writing for the paper about the time Samantha disappeared, but does Bill really have the wit and wisdom and sophistication of Samantha Slanders? I suppose we could give it a try and ask if Satterberg would fill in for Samantha with a "Just ask Bill" column.

But then there is Peter Aschenbrenner. You will note in his column this edition he seemed to be auditioning for the role. Maybe a "Just ask Peter" column.

And of course Ken Jacobus himself would be a likely candidate. We need someone politically neutral with all the social graces. Perhaps a "Just ask Ken" column.

We are still looking.

I have also spent some time looking at many of the old Bar Rag publications. There really were some good ones with a lot of valuable



"I have several things on my mind as I draft my column for this issue."

information, Bar Association history, poetry and humor. Problem is, as I was recently reminded at a meeting of the Tanana Valley Bar Association, political correctness would not permit all of it today. But then again there is the disclaimer crafted by Tom Van Flein, the longest serving Bar Rag Editor. He served with distinction for nearly 11 years. That

was amazing. The disclaimer he authored has appeared in every paper since the disclaimer was written. It is printed in gray to right of this column. Perhaps it should be in large print.

Anyway, this edition is a full one with a wide variety of topics. We have even included a crossword puzzle to exercise your minds. But if you can understand everything we've printed, you are smarter than me. Give it a try.

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

Letters to the Editor

Samantha Slanders identity

To the editor:

It appears that you might be looking for Samantha Slanders' identity. This is just a guess. I would guess Bill Satterberg. It looks like his sense of humor and those comments about the Anchorage Bar Association could only have come from Fairbanks.

Kenneth P. Jacobus, P.C.

To the editor:

Dear Samantha,
In your answer to the first question, you made a slight mistake. You must have been referring to the Tanana Valley Bar Association.

*Kenneth P. Jacobus
treasurer, Anchorage Bar Association*

Demise of a Good Man

I was disappointed to read in the Bar Rag of the demise of Geoff Currall, my old friend, and opponent in court back in the days when we were both in Ketchikan.

I was a public defender and he was a district attorney. We would appear before Superior Court Judge Tom Schutz and District Court Judge Henry Keene.

I remember how Geoff would take relish in the situation, where I was the new guy in town, and jury selection was something he had been doing in the community for several years. He probably already knew most of the folks in the jury panel each case. Of course, I was not so blessed, but I am sure my brother in the law did not take advantage of the situation.

Geoff was a wonderful person in and out of court and well respected by all in the bar.

Ketchikan had a wonderful, but small bar back then, and would meet weekly down at the Fire Side Lounge, around a round table, where old Stump senior would hold court, before we all disembarked for the day.

Geoff was a good man. I am sorry to see him go.

Steve Cline

Kenaitze/state court project raises questions

The Moon article is swollen with Kumbaya language extolling the virtues of an Alaska Court agreement regarding the Kenai Kenaitze Tribe and the state. Sadly, the article omits significant legal issues. Other than the Metlakatla (a treaty tribe), Alaska tribes have few civil powers and no criminal power. Tribes determine membership and have rights under the Indian Child Welfare Act. They have no police powers. As we all have learned from ANILCA and the Venetie Case, Alaska has no Indian country (IC). Tribes did, under ANILCA, have the option to receive their land as IC, but declined. Neither Alaska Courts nor the state government can create IC or delegate powers to tribes. Land taken into trust is not IC, but land in B.I.A. trust. Very few of the 227 Alaska Tribes have any governmental organization or have a legal system. Assertion of tribal power raised/raises questions about the powers of congress, the executive, and the judiciary. Then, there are fundamental issues involving the 14th Amendment which does apply to tribes and IC. All the pleasantries and good feelings cannot change these problems. There is a bright side. Lawsuits will be generated, lawyers will be hired. Lawyers will benefit.

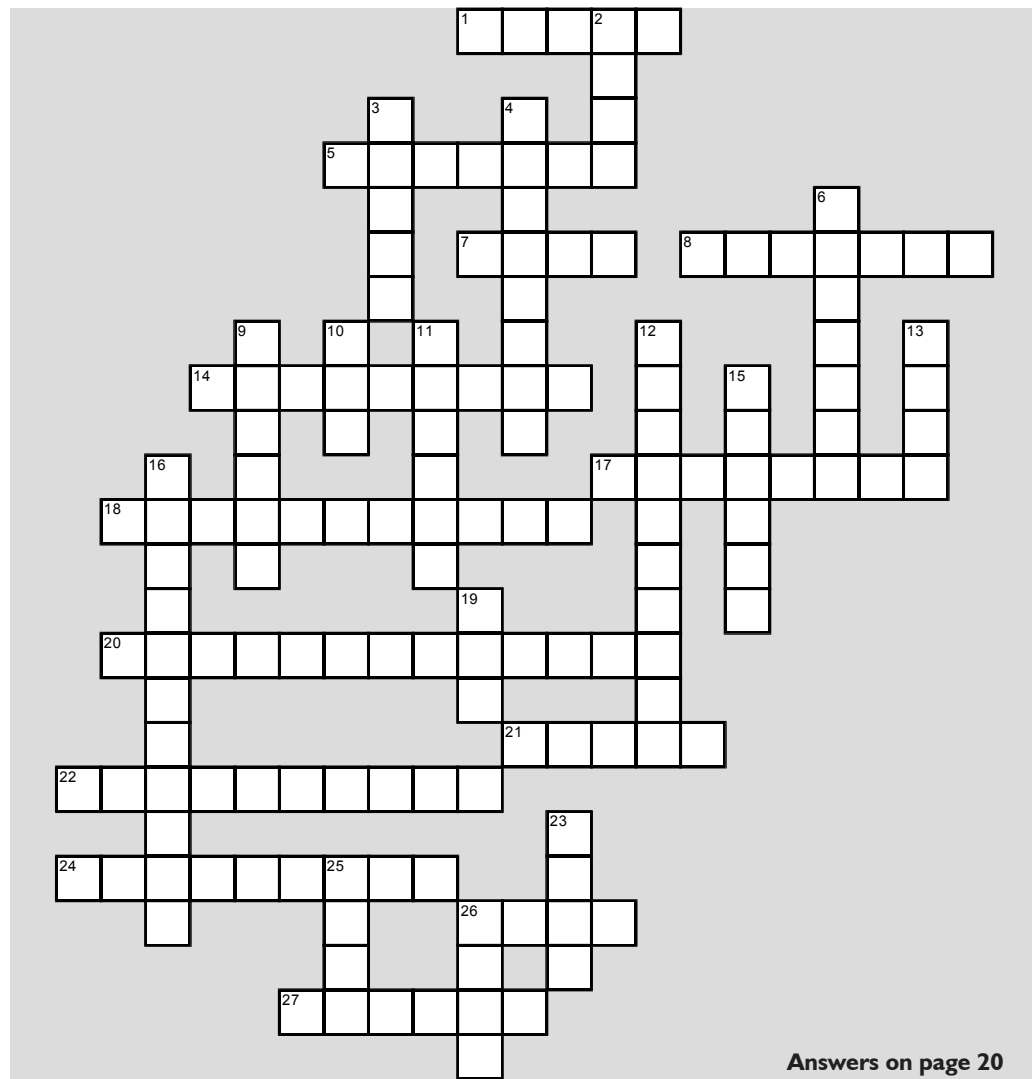
*Ron West
Eugene, OR*

The Alaska BAR RAG
Alaska Bar Rag
Media/News/Publishing

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

Find us on Facebook
www.facebook.com/AlaskaBarRag

CROSS-BAR PUZZLE



Answers on page 20

Across

- 1 MAGNA
- 5 INUREMENT
- 7 DEMISE
- 8 MIRRANDA
- 14 LATENT
- 17 STOPPED
- 18 BREATHALYZER
- 20 JURAT
- 21 TOILET
- 22 FOREVER
- 24 OWN ACCORD
- 26 SCAPE
- 27 REASON

Down

- 2 CIVIL WRONG
- 3 OBJECT
- 4 UPHELD
- 6 S. SLANDER'S MIDDLE NAME
- 9 CONVINCING
- 10 MANN
- 11 GAVEL
- 12 DEMEANOR
- 13 DETAIN
- 15 LEGAL
- 16 WORKING CLASS
- 19 BAR
- 23 SESSIONS
- 25 JUDGE SCALIA
- 26 SHACKLE

CLE at S.F.A. 2017



End of Cruise reception. A grand time was had by all!

Video, still photos slowly supplanting witness testimony

By Joe Kashi

Second in a series

Most lawyers still rely too much upon the traditional spoken or written word, even when it's persuasive in a highly visual age. If you doubt the overarching effectiveness of visual evidence, then take a look at the U.S. Supreme Court's opinion in *Scott v. Harris*, 127 S. Ct. 1769 (2007).

In *Scott*, a generally conservative Supreme Court took the unusual step of not only reversing the lower court's findings of fact based upon the Supreme Court's de novo viewing a police car's dash-mounted video, but also posting that dramatic video on the Supreme Court's own web site at <http://www.supremecourt.gov/media/media.aspx> to illustrate the basis for the court's decision. More recently, the Supreme Court reached a similar result about a defendant's deficient mental abilities in a death-penalty murder case after reviewing de novo the video recording of the defendant's initial statement to police in *Brumfield v. Cain*, 135 S. Ct. 2269 (2015), likewise posted on the court's media web page.

The emotionally powerful impact of visual presentations is well-described in the Supreme Court's denial of certiorari in *California*

v. Kelly, 129 S. Ct. 564 (2008), particularly in Justice Stevens' dissent. In *Kelly*, the Supreme Court denied a certiorari petition challenging a penalty-phase jury's imposition of the death penalty after the jury viewed a moving but generally understated victim impact video documenting the life of the murder victim with still photos and video clips. That video is likewise posted at the same Supreme Court URL as the *Scott* video. If you're a criminal defense lawyer interested in a more detailed discussion, take a look at *Documentation, Documentary, and the Law: What Should be Made of Victim Impact Videos?*, Regina Austin, *Cardozo Law Review*, Vol. 31, p. 979, (2010). Ten years after *Scott*, it's become evident that video recordings of a situation and authenticated, accurate still photographs are preferable to strictly oral testimony describing the same situation after the fact.

Video recordings capture non-verbal cues, such as the broader physical or interactional context of a situation as well as a person's tone of voice, enunciation, and body language that provide as much as 90% of the information upon which we base our understanding of personal



Joe Kashi

interactions, credibility and emotional context. That data is usually lost, or at least inaccurately related, when a dynamic situation is reduced to dry verbal testimony or worse, to a written transcript. After *Scott* and *Brumfield*, is it any wonder that video deposition clips are often more effective documentation

and impeachment?

Still photographs can provide a wealth of detailed information that exceeds and outlasts accurate witness recollections. Careful after-the-fact examination of scene photos often yields new insights beyond initial on-scene witness observations. As an example, I had an automobile injury case several years ago that initially looked grim. A third-party witness stated that he saw my client illegally passing another vehicle while in a left turn lane and my plaintiff client was cited for a moving violation.

Later examination of the same police officer's photographs by an accident reconstruction expert disclosed a rainy road in which a faint but definite oil sheen trail continuously led from my client's post-impact left-turn-lane resting position back to the point of impact, which was clearly in the proper through-traffic lane. The subtle data in that single photograph, unrecognized until months later, conclusively rebutted both the officer's incomplete on-scene observations and a supposed eyewitness's testimony that he saw the collision when, in fact, the witness was facing away when the collision occurred, turning toward the crash site only after hearing the impact.

Complete still photograph documentation is highly useful in most areas of legal practice and particularly needed for crime scenes, personal injury, real property, construction claim and other litigation where objectively ascertainable facts are a critical determinant. Experienced construction contractors usually take hundreds to thousands of digital photos documenting the construction of a building, particularly details that will be later covered in the course of construction, such as foundations, structural elements inside walls, and plumbing. One experienced Superior Court judge suggested that everyone involved in a domestic relations dispute do a photo and video walk-through of their house before separation. He believed doing so would eliminate a great deal of disputed



fact in subsequent divorce litigation.

In the criminal law context, many police vehicles automatically activate dash-mounted video camera and I suspect that, as with DNA evidence, juries now expect to see and judge for themselves videos of such situations as traffic stops, DUI tests, confessions and the like, with the absence of such video evidence being quietly held against the prosecution. It's also likely in our post-Ferguson society that police officers responding to emergency situations will soon be expected to video record arrests, chases, and tactical situations.

Video crime-in-progress evidence is already common due to the proliferation of cell phone cameras and surveillance cameras. I recall an armed robbery some years ago where the accused flashed a gun at a store clerk while in full view of the store's surveillance camera. The investigating detective later remarked dryly that "It's nice to have 'real' evidence," a clear video recording rather than potentially impeachable witness identification.

Nearly all photographs and video are now digital in their original form. As a result, we also need to consider digital imaging and videography as a unique form of Electronically Stored Information (ESI) with some specialized production and authentication requirements under the 2006 amendments to the Rules of Civil Procedure. We'll address those requirements, and pertinent case law, in subsequent articles.

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

The challenges of verbal communication

In his article above, Joe Kashi writes about the fallibility of the spoken word in the digital age. This brings to mind a letter that was first believed to be read publically by Art Linkletter, or one of those early day talk show hosts. It illustrates the potential confusion that can be created by the spoken word.

+++++

It seems that a little old English lady was looking for a house to buy in Switzerland. She asked the local village school master to help her. A house that suited her was finally found and she returned to London for her belongings. Back in London, she remembered she had not noticed a bathroom in the house which she referred to as a "water closet." So she wrote to the school master for his recollection of where the W.C. was. The school master was puzzled by the letters "W.C.," never dreaming that she was asking about a bathroom. He finally asked the help of the parish priest who decided that W.C. stood for Wesleyan Church. This was the school master's written reply to the English lady.

Dear Madam,

The W.C. is situated nine miles from the house in the center of a beautiful grove of trees. It is capable of holding 350 people at a time and is open on Tuesday, Thursday, and Sunday each week. A large number of folks attend during the summer months, so it is suggested you go early, although there is plenty of standing room. Some folks like to take their lunch and make the day of it, especially on Thursday when there is organ accompaniment. The acoustics are very good and everyone can hear the slightest sound.

It may be of interest to you to know that my daughter was married in our W. C. and it was there she met her husband.

We hope you will be there in time for our bazaar to be held very soon. The proceeds will go towards the purchase of plush seats which the folks agree are a long felt need, as the present seats all have holes in them.

My wife is rather delicate, therefore she cannot attend regularly. It has been six months since the last time she went. Naturally, it pains her very much not to be able to go more often

I shall close now with the desire to accommodate you in every way possible and I will be happy to save you a seat down front or near the door, which ever you prefer.

— School Master

Legal tweets

Michael Adler @madler9000

Just settled a divorce over visitation of a parrot. Neither may teach it negative phrases about the other. I went to law school for this.

RETWEETS 709 LIKES 928

Attorney races technology throughout a long career

By Drew Peterson

As a 70 year old attorney and family mediator, I am amazed at the pace of modern practice. At the beginning of my career I had a secretary who took shorthand and typed 120 words a minute with only a rare need to stop and use white out on the page and also on the carbon copies. Shortly thereafter they mass marketed the IBM correcting Selectric typewriter, which could type and correct a full page at a time. This was followed by mag card typewriters which could save entire passages on magnetic cards for repeated use.

I went slowly through the early personal computers like the Commodore 64s with no real personal progress other than to begin playing computer games. My real introduction to the new world of computers came with my purchase of my first Macintosh computer. I remember the pride I had that my secretary figured out how to use it with virtually no down time, while the secretaries of my colleagues took a week or more to master Word Perfect on their early PCs. Eventually I learned how to use the Mac myself. After a few years I no longer needed a secretary while learning how to use a legal assistant for more important tasks.

And so I progressed through the computer age, feeling pride at being slightly ahead of the curve with peers of my own age. But I gradually realized that I was falling far behind the professionals younger than me.

And those years of difference eventually became light years.

And so I progressed through the computer age, feeling pride at being slightly ahead of the curve with peers of my own age.

Now I am luckily mostly retired except for a family mediation practice where my years of family practice actually has some utility, even if it takes me longer than the youngsters to turn out a final written mediation agreement for my clients. I barely know how to send a letter through the postal service and only check my mail every month or so. I scrapped my last Fax machine years ago. I try to check my emails

at least once a day but often forget on those days that I am not much working. When I email my younger colleagues I often receive a response within seconds, if I am still on line to notice the timing. Luckily I have some colleagues of my own age, or close enough, so I can usually get by with my slow responses. If I get worried about the timing I get on the telephone, as I always did, except now I remember no phone numbers or Rolodex but merely tell Siri who I want to call. I then leave message on their voice mails, which usually results in a return call or more likely an email in sufficient time to complete whatever task I had in mind.

In my personal life I increasingly rely on text messages, although again I get in trouble for the slowness of my responses. Some of my

professional colleagues and especially clients try to also communicate by texting, although I try to discourage the process.

My preference for communication remains in-person meetings, or at least personal phone conversations. But I wonder how much longer they will be even possible to arrange. I now do a substantial number of mediations with some or all participants participating on the telephone. I find that frustrating but often successful nevertheless. I am looking forward to the days of easy video conferencing which are starting to occur via Skype, Face Time and the like, but they remain frustrating. I look forward to the days of holographic conferencing, but suspect I will be dead by then. Maybe not at the pace of technologi-

cal change.

So there you have the summary of 50 years or so of professional technological change. When I look it over I can only imagine in amazement what might happen over the next 50 years. I can only hope and pray that my professional colleagues who are currently in their twenties are ready for and can keep up with it.

Drew Peterson is a lawyer in Anchorage. He graduated from the University of Minnesota School of Law with a Juris Doctor degree in 1972. From his earliest days of law practice he has focused on providing quality legal services to individual clients of often limited means. He began his career in a small legal services office in a suburban / rural Minnesota county. He came to Alaska in 1976 with Alaska Legal Services Corp, where his final position was as Rural Litigation Coordinator, with supervisory responsibilities for rural offices all over the State of Alaska.

My preference for communication remains in-person meetings, or at least personal phone conversations. But I wonder how much longer they will be even possible to arrange.

The Alaska Bar Association is proud to offer Casemaker's suite of premium services at no additional cost to our members.

Now, Alaska Bar Association members have access to not only Casemaker's broad and comprehensive libraries which cover all 50 states and Federal level materials - but members also have access to a suite of tools that make research faster and easier.

CaseCheck+[®]

A negative citator system that lets you know instantly if the case you're reading is still good law. CaseCheck+ returns treatments instantly as you research. Link to negative treatments and quickly review the citation history for both state and federal cases.



Upload a brief or pleading and within 90 seconds Casemaker will provide a report stating whether your case citations continue to be good law.

CasemakerDigest™

Daily summary of appellate decisions for all state and all federal circuits, categorized by subject. Casemaker Digest will email or send you an RSS feed of the latest cases in your selected jurisdictions and subject areas of interest.

To learn more about Casemaker and the tools available to you as a Alaska Bar Association member, call Customer Support at 877.659.0801



Forensic Document Examiner

- Qualified as an expert witness in State & Federal Courts.
- 25 years experience.
- Trained (and retired from), the Eugene Police Department.
- Certified by the American Board of Forensic Document Examiners.
- Fully equipped laboratory.

James A. Green
Eugene, OR
888-485-0832
www.documentexaminer.info

To access Casemaker from our website go to www.alaskabar.org and click on the Casemaker logo in the upper right hand corner. Sign in using your member portal username and password. If you don't remember your username and password contact the Bar office at 272-7469 or info@alaskabar.org.



Casemaker[®]

THE LEADER IN LEGAL RESEARCH™

www.casemakerlegal.com

Judge Jonathan Woodman was installed as a Superior Court judge Jan. 12, 2017, in Palmer



From left, Judge David Zwink, Justice Craig Stowers, Judge Jonathan Woodman, Judge Marjorie Allard, Judge William Morse and Judge Vanessa White welcome a new member on the bench in Palmer. Photo by Cheryl Duda



Darrel Gardner, left and Bar President Susan Cox join newly installed Judge Jonathan Woodman. Photo by Cheryl Duda

Accepting humble pie after a rush to judgment

By Vivian Munson

On her way into major surgery Louise gave my name as emergency contact and next-of-kin. We've been friends for six or seven years and I've visited her in the hospital several times, so I qualified as an emergency contact.

Louise* qualified for SSI when I represented her claim on appeal to Social Security's Office of Disability Adjudication and Review. She had an interesting Alaska history: mind-blowing abuse by a foster father, escape into the Army, classified overseas assignments, return to the state and, for decades, survival. When we met she had both mental and physical problems, including seizures.

I appreciated Louise for her irrepresible spirit, despite living conditions. She lived alone in an otherwise abandoned building and maintained her apartment and her independence. Impressive on \$700 a month. Then she was approved for a nice handicapped-accessible apartment but did not do well relating to some of the neighbors. Next she lived on the street where her fragile health deteriorated. She was staying at the Brother Francis Shelter when she named me as next-of-kin.

My favorite Louise story occurred in mid-winter when I was

living in Willow. I was in Anchorage, walking my mutt terrier, Riley, in a parking lot. Wrapping his leash around my legs, Riley knocked me flat; my head cracked against the blacktop. I recovered, ate dinner at my favorite restaurant, and drove home.

Louise happened to call that evening and I told her about the fall. She went on high alert, asking if I had gone to the emergency room, had an MRI, I could have a concussion. I said no, I'm fine, I'm not checking into the ER. She insisted, I desisted. So Louise said, "I'm calling the State Troopers," and hung up.

I put in a call to the State Troopers' dispatch office and explained that Louise is a highly excitable individual, and I'm fine. I do not need a welfare check. Dispatch deferred.

Pitch dark winter, at one o'clock in the morning, a State Trooper called out to my cabin just as Riley started barking. I peered out my door to see three State Troopers. They had a report that I hit my head and lost consciousness. They were informed of my call to Dispatch but were required to check on me, in case domestic violence had occurred. My motion light system had just "scared the crap out of them." I explained that the dog was at fault for the whole thing.

At the hospital I found Louise

on life support. An abdominal medical condition had gone untreated until extensive emergency surgery was required. Louise lay in a room crammed with machines, tubes down her throat and into her arms, totally unconscious. Such a vibrant spirit, lying there, just barely alive. A horrible sight.

A nurse watched all the dials on the equipment and encouraged me to talk to my friend. I wondered what Louise's chances were, and was told that she would recover. I didn't believe it.

On the second visit, I knew that my friend was gone. I mean left the building. Kept alive on machines. On the third visit she was on a ventilator and I saw many more bandages on her body than I noticed before. Was she being kept alive for some reason or no reason?

The ICU nurses insisted that Louise could get well. She might be on one or more than one machine for the rest of her life. Or she might need to come into the hospital every few days, for the rest of her life. But she could at least recover consciousness. They understood that Louise was living on the street, and in shelters, but ignored that fact.

I believed the medical people had lost touch with reality. We were looking at one body and seeing such different things. I argued for letting

her go. She had no advance health care directives but told me that she was not afraid to die. The hospital had located a next of kin, and did not have to deal with me. So there was nothing I could do. Louise would just lie there, bodily functions maintained by a roomful of huge machines. What a fate.

Fast forward several months to Oct. 26, 2015. Louise called to report that she was healing well in assisted living, cared for by a Somali woman. She remembered my talking to her in the life support unit and thanked me. I could not admit that I had assumed that her death was inevitable.

Louise is staying in the medical unit at Brother Francis Shelter. She is not hooked up to or dependent on any machines. Providence Hospital has a presence at the shelter and a nurse comes by every day to dress the wound that is still healing from the operation. Louise and I are going to lunch next week.

I will be delivering this article to the ICU where I questioned staff who knew more than I did, and eating humble pie. Moral of the story: stick with what you know.

*A pseudonym, with permission to tell the story.

Vivian Munson is a Bar member who has contributed Bar Rag articles from time to time.

CLASS A OFFICE SPACE FOR LEASE



From 3,200 up to 9,905 rsf
Terrific Views from 4th Floor
HEATED Garage Parking!
Windows Galore
On-site storage available
Abundant free exterior parking
High-end finishes
Espresso in Lobby

Midtown location at Tudor & C
Minutes to Downtown via C Street

PINNACLE PROPERTIES
Charlene Howe
907-223-7853

NOTICE OF SUSPENSION

By order of the Alaska Supreme Court,
entered December 16, 2016

MICHAEL A. STEPOVICH

Member No. 840651
Fairbanks, Alaska

is suspended from the practice
of law for a period of 12 months,
effective January 17, 2017 for:

A conflict of interest pursuant to ARPC 1.8(c), for
drafting a friend's will that named the attorney as a
contingent beneficiary.

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

The income tax and how it fits in Alaska's history and future

By Cliff Groh

Alaska had an individual income tax paid on a graduated (progressive) basis for more than three decades until it was repealed in 1980 at the beginning of the Big Oil era. The tax was Alaska's largest and most stable source of revenue for decades, and brought in up to 40 percent of total taxes for the Great Land in the 1950s and 1960s. As Alaska brings in less and less oil money into its state coffers, what political factors are relevant to the reinstatement of this tax?

Birth of Alaska's income tax: Fiscal crisis prompts political revolution

Let's start with the origin story. The Territory of Alaska went broke in the late 1940s. The Territory relied on fishing and alcohol taxes for more than half of its revenues, and neither the reds nor the booze were flowing fast enough to make ends meet. In 1947, the Territorial Legislature authorized more than \$10 million in expenditures when expected income was only forecast to be \$6.3 million. On Dec. 31, 1948, the Territory's General Fund had a cash balance of less than \$6,300 and overdue bills of more than \$758,000. The University of Alaska only kept the doors open by getting interest-free loans totaling about \$200,000. (These figures—and a number of other historical details in this column—come from the historian Terrence Cole's excellent monograph *Blinded by Riches: The Permanent Fund Problem and the Prudhoe Bay Effect*, available on the Internet.)

The voters responded to this catastrophe by reconfiguring the Legislature. Only one of eight Senators in 1947 whose seats were on the ballot in 1948 returned to the Legislature in 1949 — as the writer Neil Davis has noted — and several of the new lawmakers had decidedly different fiscal views than their predecessors. The Legislature met in an emergency special session and in 11 days enacted a territorial income tax equal to 10 percent of the amount a person pays in the federal income tax. In the regular session immediately following that special session, the Territory of Alaska adopted a territorial property tax, a uniform business license tax, and a tobacco tax while also increasing the fish trap tax and modifying the raw fish tax. By 1950, total tax collections had doubled, and within three years the Territory went from being essentially bankrupt to a surplus.

Changes in rates and base in individual income tax in 1949-1980 Period

The Legislature (first Territorial, then State) kept the income tax progressive over the next three decades while changing the rate and the base. As other state taxes fluctuated — with the changes including a repeal in 1953 of the territorial property tax enacted in 1949 — the individual income tax rate rose from the original 10 percent of federal income tax liability to 16 percent of federal income tax liability. The Legislature switched over to its own graduated income tax brackets independent of the federal income tax in 1975, leading to a state tax with rates ranging from 3 percent to 14.5 percent of a taxable income base defined in

State statute. This change in 1975 did not lead to a significant change in revenues. (Thanks to Maria Hanson, a Williams College student who wrote a useful paper on the income tax's history last summer.)

First big flush of oil revenues leads to repeal of individual income tax in 1980

The completion of the Trans Alaska Pipeline System in 1977 combined with a run-up in world oil prices in the 1970s to put a lot more oil money in the State of Alaska's treasury than had been expected. The Last Frontier's government was awash in unexpected cash by late 1979, and some Alaskans began to wonder "Why I am still paying taxes?" The post-statehood glow of camaraderie based on shared political achievement had been replaced by a petrodollar frenzy.

The income tax could not survive in this new political environment. Spurred by an effort to repeal the tax by an initiative, the Legislature first passed in 1980 a bill that would have ended the income tax for those who had filed income tax returns from Alaska sources for the past three years. When the Alaska Supreme Court struck down that partial repeal as unconstitutional, the Legislature came back and repealed the tax entirely in a special session. Despite warnings from Gov. Jay Hammond that repealing the state's only broad-based tax would make all Alaskans "freeloaders" and that the repeal would help increase the state's spending by ending Alaskans' status as state taxpayers, the governor reluctantly signed the total repeal bill.

Given Alaska's deep fiscal hole, what are the prospects for the income tax?

The prolonged slump in world oil prices since the summer of 2014, the long-term decline in Alaska oil production, and the heavy reliance of Alaska on oil revenues have combined to paint a grim picture for the Great Land that keeps getting grimmer without substantial changes to our fiscal system. Under these circumstances — and with Alaska being the only state in the nation with no form of a broad-based tax — will an individual income tax be part of the mix?

Here are some factors — mostly political — that seem likely to affect the decision about bringing it back in Alaska.

A. How much would an income tax raise? The answer depends on the structure of the tax, as different rates and different bases would bring in different amounts. Imposing an income tax of 15 percent of federal tax liability would raise approximately \$570 million per year, according to the Alaska Department of Revenue in 2015. To use an example: If your federal income tax bill is \$20,000, you would owe \$3,000 under that proposed state income tax.

B. Alaskans have gotten used to not paying broad-based taxes to the State of Alaska, and the income tax is the most visible broad-based tax given that many people pay it all at one time for the year.



Cliff Groh

C. Who would pay and who would not pay? Questions of fairness are central in discussions about the income tax, and equity is very much in the eye of the beholder. Advocates of an income tax argue that higher-income Alaskans have a greater ability to pay than other Alaskans,

perhaps particularly pointing to orthopedic surgeons (who probably make between \$1 million and \$3 million per year in Alaska). Supporters also note that non-residents of Alaska — some of whom are known to make large incomes on the North Slope or in commercial fishing — would account for perhaps seven to 15 percent of the revenues of a progressive state income tax.

Opponents, on the other hand, tend to view an income tax—in the words of the writer Josh Goodman—as “discouraging work, wealth creation, and ultimately, economic prosperity.” Rising anti-tax sentiment in the U.S. since Alaska instituted the income tax in 1949 has come north, making it harder to bring the tax back. Opponents are also focused on the role of the Earned Income Tax Credit—enacted in 1975 and expanded since then—in reducing the percentage of Americans who pay the federal income tax; designing an Alaska income tax so that it did not rely on the federal definition of income could avoid or reduce the force of this argument.

D. Has Alaska changed in other ways that make it less hospitable to an income tax? Back in the 1940s, 1950s, and 1960s, Alaska had more snow and less plowing than it does today, and four-wheel drive was far less common. Alaskans consequently spent more time pushing themselves — and each other — out of snowdrifts than they do now. This snowdrift example might get to a cultural difference in how Alaskans would see common sacrifice to help other Alaskans now as opposed to the days in which the income tax was born here.

E. How does the existence of the Permanent Fund Dividend affect the political prospects for an income tax? In the last few years before his death in 2005, former Gov. Hammond urged the State Legislature to continue paying out Permanent Fund Dividends while simultaneously imposing the individual income tax. The idea is to have the public receive dividends and then have the govern-

ment attempt to “claw back” some of that income received from dividends through an individual income tax.

In practical political terms, it would seem difficult for Alaska to have an individual income tax and the Permanent Fund Dividend simultaneously, particularly if the income tax payment is higher than the Dividend for a significant number of Alaskans. The proposal would face political opposition if a significant number of Alaskans paid more in income tax than they received in dividends, and would have more limited revenue-raising horsepower if it was structured to ensure that nobody made a larger income tax payment than that year's Dividend.

Additionally, two reasons make it practically difficult to have significant general taxes on individuals, particularly an individual income tax, while simultaneously paying out dividends. One is an administrative argument based on seeming practicality, as Alaskans will ask “Why are you paying me money while also taxing me?”

The second practical difficulty is based on perceptions of class, regional, and/or ethnic fault lines in Alaska. If there were to be both an individual income tax and a Permanent Fund Dividend, some people would think they were paying taxes so as to pay dividends to people who don't pay taxes.

Supporters of reinstating a state income tax in Alaska face a tall task in overcoming these arguments of opponents.

Tough choices ahead will lead to continuing consideration of the income tax

The difficult decisions that the State of Alaska is staring at in future years will tend to keep bringing back the question of whether the Last Frontier is going to join the 43 other states which have a state income tax.

Cliff Groh is a lifelong Alaskan who spends most of his time as Chair of Alaska Common Ground trying to help Alaskans understand the urgency of the state's fiscal challenge and the range of options for addressing it. He was the legislative assistant who worked more than any other on the legislation creating the Permanent Fund Dividend in 1982. He has authored or co-authored four chapters in academic books about the Permanent Fund Dividend and Alaska fiscal policy, and some of the material in this column overlaps with a chapter he wrote for the book “Exporting the Alaska Model.”



AV issues didn't prevent the group from viewing the presentation. We gathered in a circle.

In Memoriam

John C. Hughes

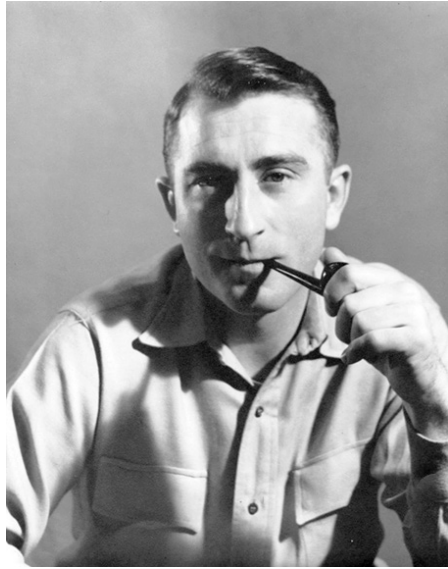
May 22, 1915 – Dec. 4, 2016

John C. Hughes, 101½, died peacefully Sunday, Dec. 4, 2016, at Providence Horizon House in Anchorage. John was born on Bad River, SD, to Florence Chamberlain and Felan Thomas Hughes on May 22, 1915, and was raised on the family homestead and in Madison, Wisconsin. After graduating from Ft. Pierre High School, John initially attended Eastern State Teachers College and taught school before entering the University of South Dakota Law School, pursuing the profession of his grandfather, South Dakota Sixth Judicial Circuit Judge John F. Hughes. After graduating from law school, he headed north, beginning his Alaska odyssey that spanned more than three quarters of a century.

John, the oldest living member of the Alaska Bar Association at the time of his death, began practicing law on Kodiak Island in 1947. A year later, he married his college sweetheart, Marjorie Anstey, and they soon had two daughters, Mary Katherine and Patricia Ann. In 1951, John was offered a partnership with the Anchorage law firm of Davis & Renfrew and the family moved to Anchorage. During the first decade in Anchorage, their third daughter, Bridget, was born.

The firm's practice flourished as Alaska became the 49th State. Once statehood was achieved, Alaskans turned their attention to oil and natural gas, especially the extraction thereof. Natural gas and oil were discovered in abundance in the 1960s. With those discoveries, national retail stores began to seek Alaska venues. John represented JC Penney as it chose its Fifth Avenue and D Street location, kitty corner from the law firm's office in the Loussac-Sogn Building. When the 1964 Good Friday Earthquake demolished the five-story department store, John assisted the company in re-building and enticing Nordstrom to locate in Alaska. But his real estate prowess was secondary to his expertise in estate planning, as he led Alaska's adoption of its first formal probate code and was a member of the Anchorage Estate Planning Council.

He built a firm of lawyers whom he envisioned would serve Alaskans well, and many are still practicing and doing just that. The firm expanded to eventually serve the entire State of Alaska and continues to bear John's name today, 77 years after its creation.



John C. Hughes in his younger days.

The family's life revolved around Holy Family Church (later, Cathedral) and the many families who were parishioners. For decades, John volunteered as an usher for Mass and provided legal services to the Archdiocese of Anchorage from its inception until his retirement in 1980.

John's community activities included membership in the Alaska Bar Association and the Anchorage Lions International. He sold brooms and rang the bell for the Salvation Army Red Kettle campaign for years. He helped organize and was the first president of the Kodiak Independent School District, was a member of the Board of the Anchorage Independent School District, and was a member and president of the Alaska School Board Association. He also served on the Bank of Kodiak Board of Directors and was an organizer and director of Peoples Bank & Trust, later purchased by Bank of America.

Education was his passion and in 1974 John co-founded the University of Alaska Foundation because he was a true believer in public higher education and the University of Alaska had no foundation to which Alaskans could donate. He served as a trustee for many years and was a trustee emeritus at the time of his death. In 2007 he established The John C. Hughes Foundation to fund 501(c)(3) organizations dedicated to improving the quality of life for Alaskans.

John's commitment to people began with his family and extended to his ever-growing circle of friends. Love, compassion and generosity of time were his nature. He delighted in meeting people and entered notes about new acquaintances in a pocket diary he invariably carried with him (his 2016 version graced his chairside table). For years, he spent



John C. Hughes

months preparing his pickled salmon for a bevy of Alaskans at Christmas (and each jar was hand-delivered—at times with three little girls in the rear seat of the car). He also delighted informal gatherings of friends with sagas (usually containing a life lesson) and the recitation of poems and ballads from memory.

After retirement, John spent his days continuing to procure fish and preparing his sought-after pickled salmon; reading voraciously; playing cribbage; purchasing, refurbishing (with Marjorie) and managing rental properties; very actively tending his five acres on E. 88th Avenue (gardening, chopping wood, riding

his John Deere tractor, hanging out in his "shop", and holding court on the wooden bench out front); cheering for his beloved Mariners and Seahawks; and working out daily at The Alaska Club (until he was 96 years of age). He had cared for Marjorie for several years, as her health failed. They had been married for over 56 years when she died in 2004. And he loved and nurtured his daughters, sons-in-law, grandchildren, and great-grandchildren (the youngest, Quinlan, celebrated his first Christmas as John was celebrating his 101st in 2016).

John is survived by his daughters and sons-in-law, Mary Katherine Hughes and Andrew Eker, Bridget Hughes and Stephen Walsh, and Robert L. Eastaugh; grandchildren and spouses Carol Hughes Eastaugh and Adam Ault, Sean Hughes and Laura Peters Walsh and grandson John Frederick Eastaugh; step-grandchildren, J.R. Eker, Erin Ann Eker and Cindy Lee Barrett, their spouses and children; and great-grandson Quinlan Hughes Walsh, all of Anchorage.

He was preceded in death by his wife, Marjorie, and daughter, Patricia Ann Hughes Eastaugh.

John cherished Alaska and the many Alaskans he held dear. He believed it was his great fortune to live in Alaska and loved every moment of his adventure.

The art of the deal – Hughes style

By Richard "Dick" Thaler

I had the occasion to tell a great John Hughes story last December. I was working on closing a land purchase in Bellevue, WA. Following a series of mishaps, our JV partner's wire transfer of a portion of the purchase price didn't arrive until after the wiring deadline, which prevented the deal from closing that day. This didn't please the seller or her attorney. As I often have over the last 40 years, I used a John Hughes story to lighten the mood.

The first large real estate transaction I worked on was the acquisition of the two city blocks due east of the J. C. Penney store in Anchorage.

Working with a team that included John, William G. (Bill) Kurtz, Jr., who was an executive vice-president of JCP Realty Company, Stanley Epstein, who was an in-house attorney for J. C. Penney, Barney Donovan, who was a New York real estate broker, and Larry Leasure, who was a Nampa, Idaho real estate broker, a purchase was completed of all but two of the lots in those two blocks. The last two lots, which were in the northeast corner of the block nearest the J. C. Penney store, were owned by First Federal Savings & Loan. These lots were vital to the assemblage. We had a deal with Ray Wolfe, a former mayor of Anchorage, who held an option to re-purchase the lots that First Federal had given him in connection with a deed in lieu of foreclosure transaction.

For some reason, mostly bad judgment on the part of JCP Realty, the closing was scheduled for 1 p.m. on a Friday, which was also the last day for Ray Wolfe to exercise his option. JCP Realty initiated a wire transfer of the \$500,000 purchase price early on Friday morning, but the wire still had not arrived by noon, Anchorage time. Of course, the banks in New York were closed, and, back then, there was no way to trace the wire anyway. Despair set in.

After a considerable amount of moaning by the JCP Realty team, John leaned back in his chair, with his hands behind his head and his fingers interlocked, something he often did. I can still see him doing that as if it were yesterday. After a suitable pause, John said "Well, I could lend you the money." Bill Kurtz exclaimed "You could do that?" John smiled, calmly said "Yes," reached into his desk drawer, took out his personal checkbook and wrote out a check for \$500,000. Check in hand the whole team headed over to Security Title for closing, which was soon accomplished.

When we returned to the office John had a note for \$500,000 drafted, Bill Kurtz signed it, and when the wire transfer finally arrived on Monday, JCP Realty paid the note, plus interest at the rate of 7% for the three days the loan was outstanding, in full.

Today the Anchorage Fifth Avenue Mall is located on that site. What is most telling was that Security Title closed over John's personal check, never even requesting a certified check.

NOTICE TO THE PUBLIC

By order of the Alaska Supreme Court,
entered December 16, 2016

TIMOTHY R. WATTS

Member No. 1306036
Anchorage, Alaska

is transferred to disability inactive status
effective December 16, 2016.

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

TALES FROM THE INTERIOR

Unlikely precedential candidate remains hopeful, at least for SNL

By William Satterberg

Election Year 2016 was undoubtedly the most contentious, vicious, and dirty year ever for presidential politics. Insults between the two primary candidates were not the exception, but the rule. The entire process was akin to a cheap reality TV show. In the end, Hillary got "fired."

Like most observers, I was convinced that the Trump campaign was initially nothing more than a publicity stunt. After all, Trump had been the star of his own reality TV show. He was certainly known to be outspoken and critical. Some would say he is abusive. However, I did not care for Hillary Clinton, either. I had serious concerns with respect to the whole Benghazi issue, the email issues, and related factors. After all, we always judge people by what we read in the news, don't we?

As the campaigns progressed, I became increasingly disillusioned. The usual group of suspects had been eliminated. Ironically, although I found Bernie Sanders to be a weak candidate, I also found him attractive, probably because of his hair style. But Bernie Sanders, as well, was eliminated. Later, Bernie also surprised and disappointed me when he made a resounding, unqualified endorsement of his opponent, Hillary, while previously maintaining that Hillary was unacceptable. I was conflicted.

There are always the Libertarian candidates, but Libertarians never win presidential elections. Moreover, in Alaska, virtually anyone can call themselves a Libertarian and run on a Libertarian platform. I had few options.

In previous years, I had been involved in political campaigns. It is a hobby. I first took interest in campaigning in Election Year 1990. Rick Halford was running for Alaska's governor. I was asked to coordinate the Interior for the Halford campaign. We organized a group of Fairbanksans. As predicted, our renegade town did quite well for Rick. Unfortunately, Rick did not do well statewide. In fact, during the last three days before the election, Rick essentially went missing in action. Rick lost his campaign to the Republican opponent, Arliss Sturgulewski, and her cohort, Jack Coghill. Yet, just about the time that I was going into one of my usual self-esteem dives, Rick called me, telling me to "keep your powder dry, Bill." Something was in the works. It was the candidacy of Walter J. Hickel on Joe Vogler's Independent Party ticket, and Jack Coghill joined the campaign. Surprisingly, the Independent team of Hickel/Coghill won the 1990 election, with Hickel bragging to the Anchorage Daily News in a blistering headline that "Fairbanks won it!"

In 1992, I was active in Don Young's campaign. The controversial House banking issue had arisen. At one point, Don was an underdog by 17 points to John Devens of Valdez. Don clearly was losing. Yet, in a surprise move, two months before the election, Don publicly confessed that he had been somewhat obnoxious and humbly asked for the public's understanding and forgiveness. It was Don's famous "Fire in my belly" advertisement. In less than two months, the Congressman

went from the underdog to winning the election. The success was reported in *U.S. News and World Report* as an incredible turnaround. By then, the campaign bug had solidly bitten me. Over the years, I have been active in several campaigns, to include being part of Senator Lisa Murkowski's 2010 write-in campaign, where myself and two other attorneys were Lisa's "Opposition Research Team" to conduct inquiry into Lisa's opponent, then not Libertarian Joe Miller. And, in a remarkable turnaround, the only one since Strom Thurmond's write-in campaign of 1956, Lisa won the 2010 campaign on a write-in vote. In retrospect, perhaps the most difficult part of that campaign was trying to teach Alaskans how to spell Murkowski correctly. Lisa's win, similar to that of Governor Walter J. Hickel in 1990 and Congressman Don Young in 1992, was a surprise. All three of these wins taught me that Alaskans are unpredictable. One should never give up hope simply because of what the "polls" try to tell folks.

With the 2016 presidential election, I was again conflicted. Bernie Sanders had lost the Democratic nomination and was now endorsing his hated Hillary Clinton. All of the standard usual suspects for the Republican Party had dropped out. Reality star, Donald Trump, was now the GOP torch bearer. And then there was the Libertarian whose name I did not remember.

People told me, "Vote your conscience, Bill." "Do the right thing." "Be courageous." Clearly, it was time to exercise independent thinking.

Yet, two weeks before the election, I was still uncertain. Time was growing short. Brenda and I were leaving for Saipan. We likely would not be back in Alaska on Election Day. So we requested the absentee ballot forms from Juneau. Surprisingly, the ballots arrived in a timely manner. Given the reputation of the Alaska Division of Elections in the earlier August primary, I had actually hoped to receive an extra two or three absentee ballots, but I had failed to use Shungnak as my home address.

It was after the ballots arrived that I decided that I would toss my hat in the ring for United States president. POTUS. Commander-in-Chief. The Big One. I, too, would get my own executive jet, Frank! And not just some used Westwind junker. Anticipating victory, I began to interview possible interns for a position. I even bought a box of cigars. After all, established presidential standards had to be kept. Battle plans made, I launched my campaign in earnest. Not that Ernest was running for any positions. Still, it was a good place to start. I voted for myself on my absentee ballot, spelling my name correctly, and sent it off to Juneau.

That evening, I proudly told Brenda of my decision. Rather than offering expected spousal support, Brenda chastised me. I had "wasted" my vote. Voting was an important franchise. It was the patriotic



"I voted for myself on my absentee ballot, spelling my name correctly, and sent it off to Juneau."

duty of all Americans, to be taken most seriously. Enough for talk radio.

I was stunned. I could not imagine how my devoted wife could not support my bid for the presidency. After all, I had been elected as unopposed to be president of my second year class in law school. I had also unsuccessfully run several times for Woodland Park Elementary School student council. And, in 1961, I had been overwhelmingly elected president of the Youth Bowling League at the Anchorage Center Bowl. I served for almost two hours before Dad and Mom pulled my funding, forcing my untimely resignation. True, I was 10 years old at the time. But it was a good start. In short, I had a long history in politics. Yet, for some reason, Brenda still did not accept the likelihood of my success. Not only had I wasted my vote, but my vote conceivably could have cost the entire national election. After all, Al Vezev, a state representative from North Pole, had once won his reelection by five votes.

Personally, I did not think that my one vote would matter. Nevertheless, my arguments fell on deaf ears. Clearly, I would have to campaign beyond the family unit. That following day, I publicly announced I had voted for myself. My candidacy was official, although destined to

be short lived.

Eventually, Trump won the 2016 Electoral College vote and Hillary won the popular vote. Regardless, the following day, after allegedly sobering up, Hillary conceded. While one out of every two voters was apparently saddened, I was elated. With Hillary conceding, my likelihood of being POTUS had soared. I arguably was now in the second position. Moreover, should Trump withdraw, I could be next. I thought seriously about demanding a recount but did not have June Stein's cell phone number, nor her money. But I could get lucky. In his recount, Al Vezev had increased a three-vote lead over Joe Ryan to five. Although the chance might have been one in a million, I still had a chance. And,

unlike Hillary, I am not a quitter. So I am still waiting.

In 2016, I voted my conscience. I voted for the right person for the job. As usual, I have no shame. Per Trump's allegations, and later

Hillary's, I also accept that the election possibly was rigged. Maybe I will never get the call. But I will remain positive, since other positions may open in Trump's cabinet. So eat your hearts out, Tina Fey and Alec Baldwin, when Danny DeVito accepts the Saturday Night Live offer to play Bill Satterberg.

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

Clearly, I would have to campaign beyond the family unit. That following day, I publicly announced I had voted for myself. My candidacy was official, although destined to be short lived.

Substance Abuse Help

We will

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

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

Anchorage

Gayle Brown
306-3527

Shannon Eddy
360-7801

Michaela Kelley Canterbury
276-8185

Serena Green
777-7258

Megyn A. Greider
269-5540

David S. Houston
278-1015

Mike Lindeman
760-831-8291

Suzanne Lombardi
770-6600

Jennifer Owens
271-6518

Michael Stephan McLaughlin
793-2200

Greggory M. Olson
269-6037

John E. Reese
345-0625

Palmer

Brooke Alowa
269-5100

Glen Price
746-5970

Fairbanks

Valerie Therrien
388-0272

Arizona

Jeffrey A. Gould
520-808-4435



Lawyers' Assistance Committee
Alaska Bar Association

Speaker enlightens group on early Fairbanks justice

By Darrel J. Gardner

The Alaska Chapter of the Federal Bar Association held its first meeting of the year Jan. 24, featuring Alaska author and speaker Michael Carey, who presented a fascinating hour-long talk on “Frontier Justice.” Most Alaskans know the name of one famous territorial judge: James Wickersham. Carey presented a biographical review of three lesser-known Alaska territorial judges, all of whom presided in Fairbanks: Peter Overfield (1909-1912), Frederick Fuller (1912-1914), and Charles Bunnell (1915-1921). Carey provided copies of various historical documents and newspaper clippings to supplement his talk. One clipping detailed “The Iditarod Murderer,” Joseph Campbell, and his escape from Leavenworth Prison. In 1912, Campbell met two Swedish brothers, John and Gus Nelson, who were mining on a lonely island in the muddy Kuskokwim River. Campbell offered them breakfast and the three became acquainted. A few days later Campbell shot both men at point blank range and then robbed them of gold and cash. Following a trial, Campbell was convicted and sentenced to life in prison by Judge Fuller. In 1917, Campbell and another inmate secretly dug into the ground ten feet down to a storm sewer, and then crawled 260 yards to freedom. The government offered a \$100 reward for Campbell’s capture, which went uncollected, as Campbell was never apprehended. As late as 1948, when Campbell would have been 70 years old, federal law enforcement officials were still asking if anyone had seen him.

The FBA board is planning several more meetings in the coming months, and the Annual Alaska District Conference is tentatively set for Aug. 16, 2017, during the week in which the Ninth Circuit Court of Appeals is currently scheduled for oral argument in Anchorage. Please mark your calendars.

The latest news from the federal court is the launch of a pilot project involving *pro bono* attorney volunteers willing to assist *pro se* litigants with federal Section 1983 cases. Catherine Rogers is the (relatively) new *Pro Se* staff attorney at the federal district court. Chief Judge Burgess asked her to implement the court’s goal of establishing a small

project to provide *pro bono* counsel to prisoners in civil litigation. There are approximately 30 prisoner-filed civil cases each year, mostly Section 1983 claims. The project’s first case approved for placement alleged an assault against an inmate by guards at the Anchorage Correctional Complex. The case has been accepted for initial review by an Anchorage law firm.

A second case was approved in early February, and involves a claim regarding safety issues at Spring Creek Correctional Center. A prisoner alleges that he reported to prison officials threats made to him by prison gangs after he testified in a high-profile criminal case. He alleges that because of the threats he reported, he was taken out of the general population, and subsequent disciplinary actions caused him to be segregated in “the hole.” At the end of his disciplinary period, the prisoner alleges that he was only given the option of continuing to be housed in “the hole” or returning to the general population; and when he returned to housing in the general population, he was beaten by a gang member, as previously threatened. The prisoner alleges that he should not have been given the option of returning to the general population if he could not be kept safe there; he claims that the prison gang presence at Spring Creek is counterproductive to Alaska’s sentencing goals and that the determination of his housing categorization violated procedural due process requirements. The prisoner needs assistance drafting an amended complaint, and the court is willing to appoint *pro bono* counsel for this limited-scope representation.

It is important to note that the court is allowing limited appointment in these cases; for example, an initial appointment might be to consult with the defendant through the discovery stage of the case. There is also an opportunity for the interested lawyer to meet with the client first, before deciding whether to take on the initial representation. After the initial stage of representation, the lawyer could seek to continue to represent the client through additional stages, or to withdraw



Darrel J. Gardner

and terminate representation. For example, a portion of the order appointing counsel filed in the first approved project case reads as follows:

“Christopher Y. Felthouser, an Alaska state prisoner representing himself, brought this civil rights action under 42 U.S.C. § 1983. Mr.

Felthouser’s request for an attorney at Docket 5 was previously denied at Docket 10. The Prisoner Pro Bono Pilot Project, however, has since identified two volunteer attorneys understood to be willing and able to work on this case: Kevin Cuddy & Sarah Langberg, Stoel Rives LLP. Mr. Cuddy and Ms. Langberg have agreed to represent Mr. Felthouser on the condition that they can meet with Mr. Felthouser and the parties are able to reach a representation agreement. Accordingly, pursuant to 28 U.S.C. § 1915(e)(1), IT IS ORDERED that Mr. Cuddy and Ms. Langberg will be appointed to represent Mr. Felthouser in this matter, provided that Mr. Felthouser reach a representation agreement with them no later than Friday, Feb. 17, 2017. When an agreement has been reached, Mr. Cuddy and Ms. Langberg shall file entries of appearance, at which time the appointment will become effective. Until that time, Mr. Felthouser will continue to represent himself.” (*Felthouser v. Krieger, et al*; Case Number 3:16-cv-00235-SLG; Order dated February 8, 2017.)

This is a terrific opportunity for members of the Bar to step forward and demonstrate willingness to engage in *pro bono* service to the federal court. The project is being assisted by the Alaska Bar Association. If you are interested in becoming involved with this project, please contact Catherine Rogers or any of the project committee members:

Joshua Decker

JDecker@acluak.org

Eva Gardner

eva@anchorlaw.com

Darrel Gardner

Darrel_Gardner@fd.org

Susan Orlansky

Susano@reevesamodio.com

Catherine Rogers

Catherine_Rogers@akd.uscourts.gov

Krista Scully

scullyk@alaskabar.org

Magistrate Judge Deborah M. Smith

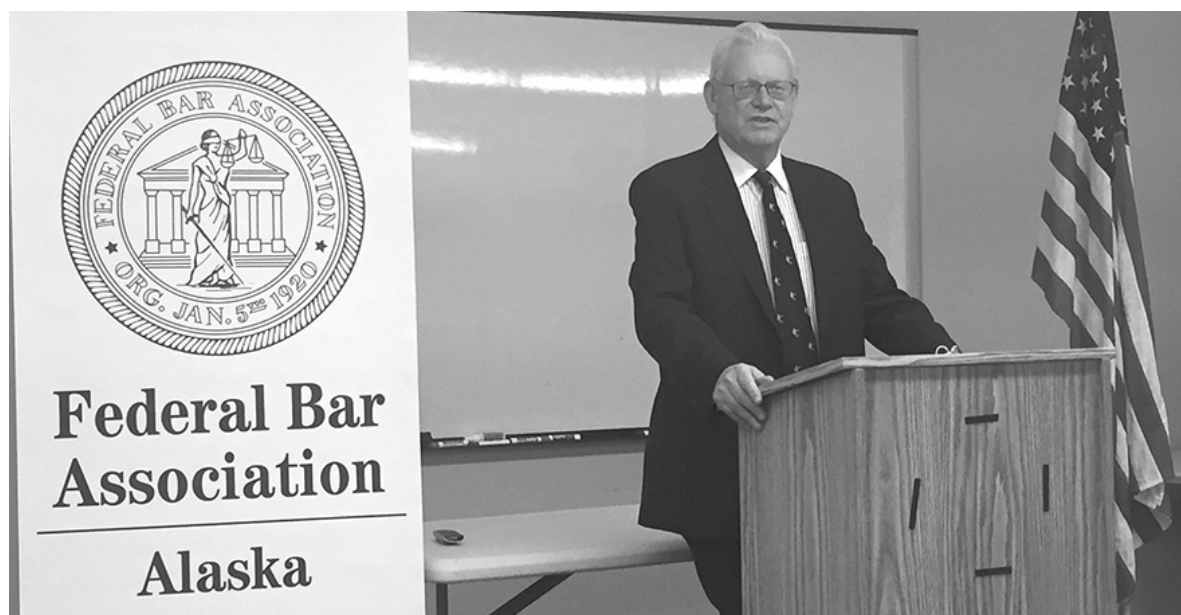
Deborah_M_Smith@akd.uscourts.gov

For more information, or to join the Federal Bar Association, please contact Lane Tucker (lane.tucker@stoel.com), or visit the Alaska Chapter website at www.fedbar.org; like us on Facebook at “Federal Bar Association – Alaska Chapter;” and follow “Fed Bar Alaska” on Twitter “@bar_fed.”

Darrel Gardner is a past president of the Alaska Chapter of the FBA, and president-elect of the Alaska Bar Association.



Members of the Office of the Federal Public Defender volunteer at the lunch service monthly at Beans Cafe. Pictured left to right are: Gary Schuster, Rich Curtner, Jamie McGrady, Bruce Johnson, Darrel Gardner and Beans Cafe Chef Aaron Dollison.



Author Michael Carey gives a presentation on “Frontier Justice” at the January meeting of the Alaska Chapter of the FBA.



Outgoing FBA Alaska Chapter president Jamie McGrady receives an honorary plaque for her service from current president Lane Tucker.

State of the Judiciary



Alaska Supreme Court Chief Justice Craig Stowers delivers the annual State of the Judiciary speech Feb. 8 in the Alaska House of Representatives. Here is a link to his speech: goo.gl/AQEr1J

Diversity stories affecting our community

The annual diversity luncheon took place Nov. 22 at the Captain Cook Hotel. Nicole Borromeo, General Counsel, Alaska Federation of Natives; Una Gandhir, Magistrate Judge, Alaska Court System; Judge Rene Gonzalez, Alaska Superior Court (Retired); and Natalie Landreth, Senior Staff Attorney, Native American Rights Fund were featured speakers. Senior Justice Fabe moderated the event. More than 100 attorneys and community members attended the event. The event was sponsored by the ANSCA Regional Association and Outlook Law, LLC in cooperation with the Alaska Supreme Court's Fairness Diversity & Equality Committee, the Anchorage Bar Association, Anchorage Association of Women Lawyers and the Alaska Bar Association.



Diversity panel attendees from left are retired Judge Rene Gonzalez, Nicole Borromeo, Senior Justice Dana Fabe, Christine Williams, Natalie Landreth and Una Gandhir.

Experienced medical paralegal serving your injury claim needs

- Specializing in litigation support for ALL TYPES of injury claims
- Medical records gathering, deciphering, digesting, summarizing, etc.
- Paralegal in personal injury and workers' compensation since 2003
- 17 years prior as a medical professional
- Flat rate services or hourly billing available
- Work samples available - CALL 277-1328



Joaquita B. Martin, BS, ACP

NALA Advanced Certified Paralegal – Workers' Compensation
907-277-1328 • www.meddiscoveryplus.com

Governors awards nominations sought

The Alaska Bar Association Board of Governors is soliciting nominations for awards to be presented at the annual convention. Send your nomination letter to oregan@alaskabar.org. Deadline is March 24.

The **Professionalism award** recognizes an attorney who exemplifies the attributes of the true professional, whose conduct is always consistent with the highest standards of practice, and who displays appropriate courtesy and respect for clients and fellow attorneys. The Professionalism award has traditionally been presented to an attorney in the judicial district where the convention is being held.

The **Robert K. Hickerson Public Service Award** recognizes lifetime achievement for outstanding dedication and service in the State of Alaska in the provision of pro bono legal services to low income and/or indigent persons.

The **Judge Nora Guinn Award** is presented to an individual Alaskan who has made an extraordinary or sustained effort to assist Alaska's rural residents, especially its Native population, overcome language and cultural barriers to obtaining justice through the legal system. See the Bar website for the nomination form.



Nora Guinn



Robert K. Hickerson

PAUL COSSMAN

Freelance "Contract" Lawyer

Over 30 years of trial and appellate experience in all types of cases, from personal injury to commercial, from intake through appeal, for both plaintiffs and defendants.

Available for all types of work including:

- Research/Writing
- Motions
- Discovery
- Depositions
- Trial Assistance
- Case Analysis/Planning
- Arbitration panels
- Appeals

(907) 602-7984

paulcossman@hotmail.com

*Based in Anchorage, but in-state/out-of-state travel welcome.
Resume, recommendations, and writing samples upon request.*

Intrastate Crowdfunding now in place for Alaska

By Julius J. Brecht

Copyright© November 2016
First of two parts

Intrastate crowdfunding is here for Alaskans

Intrastate crowdfunding (Alaska Intrastate Crowdfunding) is now available for resident Alaskans An Alaska entrepreneur seeking out resident Alaska investors to fund development of a new idea in Alaska or an Alaska small business owner wishing to take on resident Alaska investors to establish or expand a business in Alaska (in either case, Alaska issuer) can now consider use of crowdfunding as a means to that goal.

You may say, what is crowdfunding? In essence, it is a method for funding a project or venture through raising monetary contributions from a large number of people, i.e., the crowd. Until recently, crowdfunding was limited in the United States to funding the project or venture and did not extend to investing in the issuer responsible for the crowdfunding offering.

Crowdfunding has been accomplished through various forms of communication with the crowd, including statements distributed by mail to the crowd, holding events which the crowd may attend and otherwise publishing statements and advertisements by which the crowd and others might become in-

formed. However, the term is now more closely associated with use of the internet to access the crowd.

A caution is in order to the Alaska issuer and to his or her legal advisor in the context of Alaska Intrastate Crowdfunding. An offer to a member of the crowd of an investment in a project or venture is an offer of a security under the Alaska Securities Act (ASA). Such an offer *must be* registered under ASA, unless there is a separate registration exemption or other authority to avoid registration under ASA. All of the requirements of the exemption must be satisfied (including pre-filing with the state, if any) prior to commencing the offering.

As further described below, Alaska now has a specific statutory exemption from registration for an offer and sale of a security under ASA in the form of the Alaska Intrastate Crowdfunding exemption (ICE).

While not the focus of this article, such an offer would also be an offer of a security under the federal Securities Act of 1933, as amended (Securities Act). Registration of the offering would be required under the Securities Act, unless the offering otherwise satisfied an exemption from registration under that act.

The exemptions from registration provided in ASA prior to enactment of ICE were many, including ones which an Alaska issuer might consider. However, none of these other exemptions directly addressed

challenges posed to the Alaska issuer in seeking to use the internet in communicating with prospective investors in an offering. With the increased use of the internet for communication, ICE provides a possible means by which the Alaska Issuer may make use of the internet for communication with prospective investors in the context of an offering in compliance with ASA.

What is Alaska Intrastate Crowdfunding?

In its past session, the Alaska Legislature enacted legislation establishing an exemption from registration for the offer and sale of securities making use of Alaska Intrastate Crowdfunding, and otherwise amending provisions of ASA. The legislation was signed into law by Gov. Bill Walker as an amendment to ASA, with an effective date of Oct. 16, 2016 (*ch 38 SLA 2016, Alaska Legislature*).

The state, through regulations (ICR) adopted by the Alaska Department of Commerce, Community and Economic Development has interpreted ICE for its implementation (primarily, *3 AAC 08.810-08.895*). The effective date of ICR was Nov. 26, 2016. The department's administration of ASA and regulations adopted pursuant to ASA is carried out through the Alaska Administrator of Securities and is centered in the Division of Banking and Securities within the department.

The following outlines some of the important aspects of Alaska Intrastate Crowdfunding. However, to get the full impact of ICE and ICR on a particular entrepreneur or small business owner contemplating becoming an Alaska issuer, requires

a careful reading of both documents.

What is crowdfunding?

As a concept, garnering funds from many to support a limited, precise objective or cause has been around for ages. A form of it was supposedly used by merchants in the 1700s to save the Bank of England.

Crowdfunding has typically been used to raise funds in a specified amount for a specified purpose. That is, an individual interested in a particular crowdfunding project, i.e., a member of the crowd, may share information about the project with others who have expressed interest in the project and use that information to decide whether to participate in, i.e., to fund, the project.

Crowdfunding can be of two types—reward-based and equity-based. For example, crowdfunding was first used on the internet as early as the 1990s to fund artistic endeavors (reward-based). However, the term “crowdfunding” came into general use on the internet in the mid-2000s.

In the context of reward-based crowdfunding, e.g., to fund an artistic endeavor, the members of the crowd who made contributions or donations to the project could be rewarded with something of token value related to the project. For example, in raising funds for produc-

tion of a film or music album, the token might be tickets to the premier viewing of the film or an advanced copy of the album.

Equity-based crowdfunding is a more recent phenomenon on the internet, first starting outside of the United States. However, until this year, equity-based crowdfunding was generally barred by the Securities Act and severely limited under ASA.

Crowdfunding as envisioned through ICE takes the step to clearly allow equity-based crowdfunding in the context of a public securities offering in Alaska. ICE provides an exemption from registration under ASA for a securities offering allowing an Alaska issuer seeking out investors in a project or venture to offer equity interest in the project under limited conditions. Those conditions must be met to enable the entrepreneur or small business owner, in each case as the Alaska issuer, to enjoy an exemption from registration of the offering under ASA.

What does it mean to limit crowdfunding to Alaska?

Before getting too wrapped up in ICE and ICR, one ought to be aware of interstate equity crowdfunding (IEC) as allowed under regulation crowdfunding (RCF). RCF was adopted by the Securities and Exchange Commission (SEC) in May 2016 in interpreting and implementing certain changes enacted by the U.S. Congress in 2010 to the Securities Act. A copy of RCF is available on the SEC's website at www.sec.gov.

In contrast, ICE focuses on offerings of securities made only in Alaska and only to residents of Alaska, i.e., Alaska Intrastate Crowdfunding offerings. ICE and ICR coordinate with the Securities Act and RCF. However, ICE and ICR, taken together, only pertain to an exemption from securities registration under ASA.

Amendment to ASA—ICE So, what are the provisions of ICE allowing for Alaska Intrastate Crowdfunding?

ICE provides that an offer or sale of securities which is conducted solely in Alaska to a person, who is a resident of the state, by an Alaska issuer in a transaction meeting requirements as set forth in ICE, and as interpreted through ICR, is exempt from specified security registration provisions of, and advertising provisions of, ASA.

What are the conditions and steps to be followed in satisfying ICE?

The Alaska issuer must be a for-profit entity having its principal place of business in Alaska and must be licensed by the department. The transaction, i.e., an Alaska Intrastate Crowdfunding offering, must meet the requirements of the intrastate securities registration exemption under the Securities Act and certain rules adopted by the SEC interpreting that exemption.

In that context, the offering may

You may say, what is crowdfunding? In essence, it is a method for funding a project or venture through raising monetary contributions from a large number of people, i.e., the crowd.

With the increased use of the internet for communication, ICE provides a possible means by which the Alaska Issuer may make use of the internet for communication with prospective investors in the context of an offering in compliance with ASA.

The Perfect Downtown Location no matter what size space you need

Just steps from great restaurants, the coastal trail, and the courthouse. Building also features a health gym area for tenants and breathtaking views.

Penthouse Suite - 8,000+ sf on the 7th floor. Sweeping views of Cook Inlet and Denali

950—3500 sf - on the 4th floor. West-facing windows offer outstanding views of Cook Inlet and Susitna

Executive, Part-Time & Virtual Offices - on the 2nd floor, Pacific Office Center offers a professional work environment with access to receptionist, meeting rooms, office equipment and as many other services as you need. Support available for all building tenants as well.

Carr Gottstein Building

310 K Street

For leasing information contact:

Bob Martin
Denali Commercial
(907) 564-2424
BobMartin@DenaliCommercial.com

Pacific Office Center contact:

(907)564-2400 POC@gci.net

Intrastate Crowdfunding

Continued from page 12

only be made and sold to persons who are residents of Alaska at the time of purchase. Before such an offering is made, the Alaska issuer must obtain documentary evidence from the prospective purchaser that provides the Alaska issuer with a reasonable basis to believe that the purchaser has established residency in the state.

The prerequisites also go to the amount of the offering. The sum of all cash and other consideration to be received in an Alaska Intrastate Crowdfunding offering for sales in reliance on ICE must not exceed \$1 million, less the aggregate amount received from all sales of securities by the Alaska issuer within 12 months before the first offer and sale made in the offering and in reliance upon ICE.

Furthermore, the Alaska Issuer must not accept more than \$10,000 from a single purchaser during a period of 12 months, with limited exception. The exception applies where the purchaser is an accredited investor, as defined by rules adopted by the SEC in interpreting the Securities Act.

The Alaska issuer also must reasonably believe that each purchaser is purchasing for investment and not for sale in connection with a distribution of the securities involved. No commission or remuneration can be paid or given directly or indirectly for any person's participation in the offering, with limited exception. The exception applies where the recipient is otherwise licensed under ASA as identified in ICE.

Reliance upon ICE requires the Alaska Issuer to establish an escrow account in a bank or other depository institution as further limited in ICE. The funds received from purchasers in the Alaska Intrastate Crowdfunding offering must remain in escrow until the minimum target dollar amount for the offering is met. The escrow agreement for the escrow must be filed with the department. The funds in escrow may only be used in accordance with representations made to investors.

The Alaska issuer must inform the purchasers that the securities have not been registered under ASA, that they are exempt from such registration under specific provisions of ASA, i.e., ICE, and that the securities may not be resold unless the securities are registered or qualify for an exemption from registration under ASA. The provisions of ICE

further require that the Alaska issuer obtain a specified acknowledgment from each purchaser as to the high risk of the offering.

Is there a filing requirement associated with ICE?

Not less than 10 days before the use of general solicitation or within 15 days after the first sale of a security under ICE (if general solicitation has not been used before the sale), whichever first occurs, the Alaska issuer must provide notice to the department. The content of the notice is prescribed in ICR.

In particular, the notice must specify that the Alaska issuer is conducting an Alaska Intrastate Crowdfunding offering in reliance upon ICE. Also, the notice must contain the names and addresses of the Alaska issuer, its officers and directors and other persons involved in the offering, along with the name of the escrow agent.

What is the extent of the exemption provided by, and authority given to the Department in administration of, ICE?

ICE provides that, under its terms, it does not release a person from the anti-fraud and other provisions of ASA. ICE also provides that the exemption is not available for a security offering, should, as of the date of the offering, the Alaska issuer or any of its officers, control persons or promoters be subject to a disqualifier as generally applied under RCF.

ICE provides various other tools to the department in administering the exemption. For example, the department may by order deny or revoke a registration exemption given under ICE should the department find that the sale of the securities would work a fraud on the purchasers of those securities.

Julius J. Brecht is an attorney in private practice and Of Counsel with the law firm of Bankston Gronning & O'Hara, P.C. with offices in Anchorage. Brecht's concentration of practice is in state and federal securities law and corporate and finance law. This article was prepared solely to provide general information about the topic. The content of this article was not prepared as, and must not be construed as, legal, tax or investment advice to anyone. Nothing in this article is intended in any way to form an attorney-client relationship or any other contract. The author may be reached at jbrecht@bgolaw.pro.



Kirsten Swanson begins her career on the bench. (Photo by James Brooks, Juneau Empire)

New judge takes her seat in Juneau

Last fall Gov. Bill Walker appointed Kirsten Swanson to the Juneau District Court. She heard her first case Dec. 2.

A resident of Juneau for more than 17 years, Swanson has practiced law for more than two decades. She received her JD from Gonzaga School of Law in 1995, and has spent the majority of her career in the courtroom. Swanson previously served in the U.S. Army as a JAG officer, and worked in the Alaska Public Defender's Office in Juneau from 1999-2001.

Most recently she had been a self-employed attorney in Juneau, representing court-appointed and private clients in state and federal courtrooms. Swanson replaced retired Juneau District Court Judge Keith Levy.



Find out why more law firms choose ALPS as their direct option for malpractice insurance at www.alpsnet.com/alaska.

WITH ALPS, YOU'RE NOT BUYING A POLICY.
YOU'RE BUYING A PROMISE.

ALASKA BAR ASSOCIATION

ALPS

The nation's largest direct writer of lawyers' malpractice insurance.

 (800) 367-2577  learnmore@alpsnet.com



30th Anniversary

Looking forward to the future — Celebrating our past!

NORTH COUNTRY PROCESS INC.
274-2023

Alaska's statute on disposition of human remains

By Steven T. O'Hara

Estate planning is about planning for harmony. There is never any guarantee that a client's survivors will agree with the client's decisions. A step crucial in planning for harmony is naming one or more persons to act as decision maker once the client has passed.

Estate planning also is about documenting instructions in writing. Harmony is always the goal.

By statute, Alaska has authorized alternative ways for clients to provide written burial or cremation instructions, including naming those in charge to carry out the instructions and make any related decisions. The statute is known as the Disposition of Human Remains Act (AS 13.75.195).

Below is an example of a Disposition Document pursuant to the act and in particular Alaska Statute 13.75.030. The next issue of this column will provide an example of instructions clients may consider inserting into their wills, as an alternative to a disposition document (*Cf. 13.75.020(a)(2)*).

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

DISPOSITION DOCUMENT AS 13.75.030

You may select Part 1, Part 2, or both, by completing the part(s) you select, including providing any signatures indicated. Part 3 contains general statements and a place for your signature. You must sign in front of a notary.

PART 1. APPOINTMENT OF AGENT TO CONTROL DISPOSITION OF REMAINS. If you appoint an agent, you and your agent must complete this part as indicated, and the agent must sign this part.

I, JANE A. CLIENT, being of sound mind, willfully and voluntarily make known my desire that, on my death, the disposition of my remains shall be controlled by JOSEPH A. CLIENT (name of agent first named below), and with respect to that subject only, I appoint that person as my agent. All decisions made by my agent with respect to the disposition of my remains, including cremation, are binding.

ACCEPTANCE BY AGENT OF APPOINTMENT.

THE AGENT, AND EACH SUCCESSOR AGENT, BY ACCEPTING THIS APPOINTMENT, AGREES TO AND ASSUMES THE OBLIGATIONS PROVIDED IN THIS DOCUMENT. AN AGENT MAY SIGN AT ANY TIME, BUT AN AGENT'S AUTHORITY TO ACT IS NOT EFFECTIVE UNTIL THE AGENT SIGNS BELOW TO INDICATE THE ACCEPTANCE OF APPOINTMENT. ANY NUMBER OF AGENTS MAY SIGN, BUT ONLY THE SIGNATURE OF THE AGENT ACTING AT ANY TIME IS REQUIRED.

AGENT:

Name: Joseph A. Client
Address: 123 Client Drive, Anchorage, Alaska 99501
Telephone Number: Not Provided to Protect Privacy

Signature Indicating Acceptance of Appointment:

Joseph A. Client
Date of Signature: _____

SUCCESSORS:

If my agent dies, becomes legally disabled, resigns, or refuses to act, I appoint the following persons (each to act alone and successively, in the order named) to serve as my agent to control the disposition of my remains as authorized by this document:

A. First Successor

Name: Joseph A. Client, Jr.
Address: 234 Client Drive, Anchorage, Alaska 99501
Telephone Number: Not Provided to Protect Privacy

Signature Indicating Acceptance of Appointment:

Please sign after my death as applicable and indicate the date signed.

B. Second Successor

Name: Joseph A. Client III
Address: 567 Client Drive, Anchorage, Alaska 99501
Telephone Number: Not Provided to Protect Privacy

Signature Indicating Acceptance of Appointment:



"A step crucial in planning for harmony is naming one or more persons to act as decision maker once the client has passed."

Please sign after my death as applicable and indicate the date signed.

C. Third Successor

Name: Joseph A. Client IV
Address: 8910 Client Drive, Anchorage, Alaska 99501
Telephone Number: Not Provided to Protect Privacy

Signature Indicating Acceptance of Appointment:

Please sign after my death as applicable and indicate the date signed.

PART 2. DIRECTIONS FOR THE DISPOSITION OF MY REMAINS.

Stated below are my directions for the disposition of my remains:

A. The disposition of my remains shall be by cremation.

B. For purposes of this document, I sometimes refer to the agent – *i.e.*, the person named and acting under this document – as “My Person In Charge.” My Person In Charge shall make all decisions with respect to the disposition of my remains in accordance with what My Person In Charge considers appropriate under the circumstances then existing at and after my death. All decisions made by My Person In Charge with respect to the disposition of my remains shall be conclusive and binding on all persons.

C. My survivors shall not have the option of cancelling the disposition of my remains and selecting alternative arrangements, regardless of whether my survivors consider a change to be appropriate.

D. The determinations of My Person In Charge regarding the meaning of the words used in this document shall be conclusive and binding on all persons.

E. The certificate of My Person In Charge that he or she is acting in accordance with my written instructions contained in this document shall fully protect all persons dealing with My Person In Charge.

If the disposition of my remains is by cremation, then (pick one):

(X) I do not wish to allow any of my survivors the option of canceling my cremation and selecting alternative arrangements, regardless of whether my survivors consider a change to be appropriate.

() I wish to allow only the survivors I have designated below to have the option of canceling my cremation and selecting alternative arrangements, if they consider a change to be appropriate: Not Applicable.

PART 3. GENERAL PROVISIONS AND SIGNATURE.

WHEN DIRECTIONS BECOME EFFECTIVE.

The directions, including any appointment of an agent, in this disposition document become effective on my death.

REVOCATION OF PRIOR APPOINTMENTS.

I revoke any prior appointment of any person to control the disposition of my remains.

IN WITNESS WHEREOF, I have hereunto signed my name this _____ day of _____, 2017.

JANE A. CLIENT
123 Client Drive
Anchorage, Alaska 99501

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

On this _____ day of _____, 2017, before me, the undersigned Notary Public, appeared Jane A. Client, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this document, and acknowledged that the person executed it.

[Seal] _____
Notary Public in and for Alaska
My Commission Expires: _____

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

Writers workshop lures Alaskan to follow Hemingway to Cuba

Continued from page 1

down by one of the ubiquitous bicycle taxis. "A good personal injury lawyer could clean up in this town" I mutter to myself after a Soviet-era sedan narrowly misses my leg.

Living in the summer tourist town of Juneau, I expect Cuba to have crowded streets lined with shops that feature Che and Castro T-shirts. But on most of the city's narrow avenues, the merchants only sell basics, like bread and beans, and hand out rationed food. Singing entrepreneurs offer fruits or vegetables from doorways or bicycle-powered carts. Even though a cruise ship is moored to a downtown quay, we see more locals than tourists. The locals watch us passively from doorsteps or go about their

business. In the corner of one plaza, a crowd of men debate baseball.

Our group rides on a bus to Hemingway's home where hordes of Germans and French folk peer through the windows of the great writer's house at his books, and typewriter, and bathroom. After re-boarding our bus for a ride to the fishing village of Cojimar, I wonder whether the gap separating Hemingway from myself has narrowed now that I have seen the man's toilet.

The leaders of our writer's group arranged for locals to help us interview some fishermen who anchor their boats along the Cojimar



"They have had to build their lives around hard work, ingenuity, and things rejected by the builder."

River. They fish with long-line gear that they store in sheds made from salvaged wood or corrugated metal. In the shade of a corrugated one, a bearded man with skin leathered by a lifetime on the water pierces a chunk of freshwater perch with a large, rusty hook. This action is one of the few familiar ones I've seen on this visit to Cuba.

When he has baited one hundred hooks with perch he will tie them to a kilometer long line. In the morning, when he reaches a spot that has brought him luck he will hand lower one end of the long line until he feels it go slack when the his makeshift anchor hits bottom. Then his mate will slip the engine into gear. The fisherman will watch each baited hook slide over the boat's stern. After the fish have had enough time to take the bait he will pull up the long line by hand. It will take three hours, more if he is lucky with the fish.

After the man smiles for my camera, I leave him with his tub full of perch and his un-baited hooks to walk to the river where I ask another fisherman why they don't use the circle-shaped hooks like the longliners do in Alaska. Stiffening, he acknowledges through a translator that they would lose less fish with the circle hooks. Relaxing into a shrug he leads the translator and I to three men who stand in the

shade. Pointing to a tall, middle-aged man with a fisherman's tan, he says, "He is the best fisherman." In Alaska he'd be acknowledged as a highliner.

The Cojimar highliner extends his hand and takes mine. He doesn't crush it but I'd be unable to break the handshake against his will. His hand feels like leather from being repeatedly wounded by fishhooks and grooved by the daily pulling up of longlines. With their access to powered gear to lift their longlines from the waters of Southeast Alaska, the fishermen in my town can have hands as soft as a banker's, as soft as mine.

The fishermen we meet are old enough to have lived through the special period after the collapse of the Soviet Union destroyed the Cuban economy. They have had to build their lives around hard work, ingenuity, and things rejected by the builder.

Now, I only have one day left to enjoy Havana. No Zika-bearing mosquito has buzzed or threatened me. I've walked the town's narrow streets late at night without being threatened by villains. I've only had to guard against falls on the holey sidewalks and watch out for erratically driven mid-century cars. But, there's still the custom agents to deal with at the airport tomorrow.

Dan Branch, a member of the Alaska Bar Association since 1977, lives in Juneau. He has written a column for the Bar Rag since 1987. He can be reached at avesta@ak.net



Part of the Cuban fishing fleet floats at docks in a harbor.

My Five



In honor of Alaska Legal Service Corporation's 50 year anniversary, we offer you the musical selections of Executive Director Nikole Nelson and staff attorneys Sarah Carver and Sydney Tarzwell. Look for all the ways you can participate and celebrate ALSC's history in 2017 at www.alsc-law.org.

Sarah Carver

- "Fade into You" – Mazzy Star
- "Golden" – Jill Scott
- "The Long Way Around" – Dixie Chicks
- "Born to Run" – Bruce Springsteen
- "With a Little Help from My Friends" – Joe Cocker version

Nikole Nelson

- "A Hard Rain" – Bob Dylan (live version recorded at Carnegie Hall in 1963)
- "Starman" – David Bowie
- "Ootishenia" – Be Good Tanyas
- "Dunes" – Alabama Shakes
- "Revelation Blues" – The Tallest Man on Earth

Syd Tarzwell

- "It's the End of the World as We Know it" – REM
- "Helpless" – Neil Young [and/or k.d.lang's cover]
- "Tomorrow, Wendy" – Concrete Blonde
- "Get By" – Talib Kweli
- "Fake Empire" – The National

Best in Every Case.
NORTHERN
LIGHTS

REALTIME & REPORTING

Our experienced and highly skilled reporters utilize the latest technology to provide the ultimate in instant transcription from voice to text, along with a wealth of additional reporting and access services, including:

- Depositions
- Arbitrations
- Court Trials
- Meetings
- Voice to Text...Instantly!
- Digital Video
- Webcasting
- Captioning
- LiveNote
- C.A.R.T.

Sandra M. Mierop, President • Certified Realtime Reporter
545 E. 12th Ave. • Anchorage, AK 99501 • info@nlrr.com
Tel 907.337.2221 • Fax 907.337.2231 • WWW.NLRR.COM

Outdated civil case reporting requirements make lawyers criminals

By Ken Jacobus

AS 09.68.130, Civil Rule 41(a)(3) and Appellate Rule 511(c) require that attorneys report civil case information, including results reached and costs and attorney fees charged, to the Alaska Judicial Council on its form. This applies to all civil cases, except those specifically exempted by the statute. The information collected has not been used for any purpose for years. The reporting requirements, in addition to interfering with attorney-client confidentiality, impose a financial burden on all attorneys and clients who comply with the requirements. Collecting this information also imposes a financial burden on the State, wasting public money in this period of necessary austerity.

No one involved in this matter believes that the requirements should be retained. Even the Alaska Judicial Council is in favor of repeal. The council has issued two reports based on collected data. In the first report dated February, 2000, the council analyzed data reported from cases resolved between September 1997 and May 1999. In its second

report dated May, 2001, the council analyzed reported data from cases closed between June 1999 and December 2000. In its second report, the council recommended that the automatic reporting requirement be repealed. No action was taken.

In November 2011 the Alaska Judicial Council published a report entitled "Alaska Civil Case Data, 2001-2010." In that report, the council observed that, much more often than not, the attorneys and litigants have failed to comply with the reporting requirements. The council provided data which demonstrated that less than 13 percent of the available data was reported to the Council. An analysis based on less than 13 percent of the available data is not reliable. In addition, there is no reason to believe that the information provided to the council was a representative sample of all available information. The report specifically states: "It is a waste of State resources to collect data that cannot be credibly analyzed."

This 13 percent reporting figure means that attorneys representing 87 percent of the reportable data are criminals for failing to report

as mandated by law. The attorneys who report as required by law are wasting their time and money to produce worthless data which the State cannot even use. Many attorneys bill their clients for producing this worthless data, and waste the clients' money in the process.

Some of us have tried for years to get these requirements repealed. For the past two years, during the 29th Legislative Session, we did a lot of work to obtain repeal of the law. The repealing legislation was introduced by Rep. Gabrielle LeDoux as HB 83. It was co-sponsored by attorney-representatives Matt Claman and Elizabeth Vasquez. The bill cleared all the assigned House Committees and the Senate Judiciary Committee. HB 83 was stalled in the Senate Rules Committee at the end of the session.

After two years of work, the 29th Legislature did not enact our bill at the end of the session. It had nothing to do with the merits of the bill. The loss of our bill appears to have been collateral damage as a result of a political disagreement. So, we have to try again this year.

This year, I asked two senators – John Coghill and Mia Costello – and two representatives - Matt Claman and Gabrielle LeDoux – to reintroduce the Committee Substitute for HB83 in both the House and the Senate. The actual language of the bill was determined last session, and it should be a simple matter to reintroduce the bill and pass it.

However, I have been advised that it might be difficult to get it passed this session. The Legislature is mainly interested in dealing with revenue sources and expenses. I hope that this is not accurate, and that we can get the bill introduced and passed.

There has been progress already. The 29th Legislature Committee Substitute for HB 83 has been introduced in the 30th Legislature in the House as HB104. The sponsor is the House Judiciary Committee, rather than an identified individual sponsor. The first reading was on Feb. 3, 2017. The only referral was to the House Judiciary Committee. A Committee hearing is presently scheduled for Feb. 22. Representative Matt Claman is the chair of the House Judiciary Committee and Rep. LeDoux is a member of the committee. I sincerely thank them both for the progress so far.

The bill not yet been introduced in the Senate. I believe that the bill will be introduced by Sen. John Coghill, chair of the Senate Judiciary Committee, in the near future. I also want to thank Sen. Coghill in advance for this assistance, and also want to thank other legislators and legislative aides who have helped or will help with this project.

The repeal of Civil Rule 43(a)(3) and Appellate Rule 511(c) will also be presented to the Civil and Appellate Rules Committees. I expect these committees to take no action, but to defer the issue to the Legislature. I hope that they do more than this.

The Alaska Bar Association will not provide much help, except for allowing me to write for the Bar Rag. The Alaska Bar's position has always been to keep a low profile, to protect itself against what are now non-existent threats from the Legislature. It is also apparently concerned about possible lawsuits

against it. There is no danger of lawsuits, however – everyone wants the reporting requirements repealed. The Bar's position, as determined at the January, 2017, meeting of the Board of Governors, is that the matter needs to be resolved by the local bar associations or individual attorneys. The Anchorage Bar Association annually enacts resolutions supporting the repeal of the reporting requirements. In the past, such resolutions have been adopted by the members at the Alaska Bar Convention. I hope that other local bar associations will assist in this effort.

At this point, there are certain choices we need to make.

(1) Attorneys can choose to obey the law – a law which has no purpose – and file these reports. Attorneys can choose to intentionally disrespect and ignore the law, knowing that there is no enforcement. In fact, one attorney told me that he does not report. The reason is that there is no enforcement, and, therefore, no reporting requirement.

(2) Enforcement agencies and the courts need to determine whether to enforce compliance with these requirements, or allow continued widespread intentional violations of the statute and applicable Court Rules. The most questionable violation is what I believe to be a common practice of providing the certification required by Civil Rule 41(a) (1) in order to close a case, and then failing to follow through on what one certified that he or she did or was going to do. I would suggest that enforcement of the Civil Case Reporting Requirements is required. Strict enforcement of a law with no purpose would probably result in this law being repealed.

(3) Everyone ignores the problem, and encourages continued disrespect for the law and Court Rules, (4) Everyone helps get this law repealed, including, but not limited to, supporting HB104.

As for me, I intend to continue to comply with the reporting requirements. If the requirements were statutory only, I might violate the statute. I have no problem with violating statutes which I believe to be unconstitutional for the purpose of obtaining judicial review. (See *Jacobus v. State of Alaska*, 338 F.3d 1095, 1105 (9th Cir. 2003); *Jacobus v. State of Alaska*, 182 F. Supp. 81 (D. Alaska 2001)) However, I am reluctant to intentionally violate Court Rules.

I intend to continue to try to get a legislative repeal of these requirements during the 30th Legislature, hopefully during the first session. If this does not work, I intend to litigate the matter to try to force the courts to deal with the problem. The courts have been aware of the situation for years, and may be the only branch of government which will be able to solve the problem.

I will provide reports of progress on this repeal in every future issue of the Bar Rag until the repeal takes place. If anyone needs copies of anything that I have referenced, just let me know. Any help would be appreciated. Please contact your legislators, and tell them to repeal this statute and the Court Rules, so that a large number of civil attorneys and litigants are no longer criminals.

Ken Jacobus is an Anchorage attorney who has been a member of the bar since 1969.

Samantha Slanders



Advice from the Heart

Dear Samantha,

I recently passed my 40th birthday and consulted my local physician as to what I should do to keep fit and ensure continued good health. Among other things, he suggested a barium enema. I am not at all familiar with this and request your advice.

Aging in Anchorage

Dear Aging,

As a result of your letter, I have completely changed a practice of mine that I have followed for many years. In the past, if a reader had a medical question that I was unfamiliar with, I simply underwent the same diet or procedure myself, and could thereafter give a meaningful opinion. I did the same thing in response to your letter.

Actually the 24-hour diet wasn't that bad, but the next day follow-up was different than I had expected or was prepared for. Surprises like this I don't need. In the future, if you have any medical questions, ask a doctor!

Dear Samantha,

I have been dating an attorney in town for some time now and feel that we have a very special relationship. I have always appreciated the fact that I am accepted just as I am. For Christmas this year I received a \$5,000 gift certificate to a local plastic surgeon. Characteristically, I am allowed to choose precisely what I want done and in fact was told to start anywhere I like. I decided to start from the head down and need your advice as to the perfect nose and hair style.

Accepted in Anchorage

Dear Accepted,

You do have a special relationship although I can't tell from your letter whether you are male or female. But it doesn't matter. Either way your question as to perfect features can be resolved by looking at my photograph above. Simply clip it out and take it to the doctor – then prepare for eternal beauty.

Dear Samantha,

A matter of dispute around our office recently has to do with how often a person should shine their shoes. I don't think it is covered in *Dress for Success*. What do you think?

Curious in Juneau

Dear Curious,

I find a good rule of thumb in this regard that has worked well for me over the years, is to shine your shoes whenever you change your underwear or the oil in your car. I personally do all three quarterly – and look where I am.



Alaska's new and revised power-of-attorney rules and form

By Abigail E. O'Connor
and Steven T. O'Hara

Part II

The following discussion is Part II of an article regarding Alaska's new rules for durable powers of attorney and its new form – Part I was published in the December 2016 Alaska Bar Rag. As mentioned in Part I, on July 28, 2016, the governor signed into law House Bill No. 8, titled “An Act relating to powers of attorney and other substitute decision-making documents; relating to the uniform probate code; relating to notaries public; and providing for effective date” (the “Act”, see <http://www.akleg.gov/basis/Journal/Pages/29?Chamber=H&Bill=HB8&Page=03207#3207>). The Act is found at: goo.gl/3vNJmq. The new rules went into effect on Jan. 1, 2017 (Section 30 of the Act). Part I highlighted some of the procedural and substantive differences between the old rules and new rules. Part II will focus on a couple areas of particular concern, and provide some examples of various language to consider including in the new forms. Part III will include a sample letter for those clients who have an Alaska Statutory Power of Attorney that was signed prior to 2017 (referred to in this article as “grandfathered” powers of attorney), as those documents carry different consequences to third parties who refuse to accept them.

Acceptance of Document

Powers of attorney have a new name under Alaska law. The new Act calls them “substitute decision making documents” under the part of the act called the Uniform Recognition of Substitute Decision-Making Documents Act. AS 13.28.090(8). One effect of the new law is to give third parties in Alaska a list of reasons why they do not have to accept the directions of an agent acting under power of attorney or substitute decision making document signed after 2016.

In other words, one concern with the new set of rules is the acceptance of the new form by third parties. Under the new law, among other requirements, a third party may require “an opinion of counsel as to any matter of law concerning the power of attorney if the person making the request provides in a writing or other record a reason for the request.” AS 13.26.328(a)(3) and cf. AS 13.28.040(b). This requirement may place undue burden on the agent and incur unnecessary legal fees. In addition, the time delay to obtain a legal opinion may be critical. Imagine a repeat of the 2008 financial disaster, when stocks and bonds tumbled at a rapid pace. If an agent takes a new (executed after 2016) power of attorney to the brokerage house to quickly sell certain stocks, and the broker requires a letter from counsel, such delay may cause tremendous financial harm.

What incentive does a third party have to accept the new form as-is? Although one who fails to honor a new power of attorney may be liable for the legal fees and costs incurred to enforce the document (AS 13.26.328(f) and AS 13.28.040(c)(2)), that threat comes after the ability to require the legal opinion. In contrast, a grandfathered power of attorney carries no right for third parties to request legal opin-

ions. In the experience of at least one of the authors, those powers of attorney were immediately accepted by financial institutions, for example, throughout Alaska once they learned that failure to accept the document carried a \$1,000 civil penalty in addition to damages. AS 13.26.353(c) – prior to repeal by the Act.

Lastly on the topic of acceptance, the act applies only to powers of attorney created on or after Jan. 1, 2017. Section 29 of the Act. The “old” form remains valid if it was executed on or before Dec. 31, 2016. The new statutory form for those documents executed on or after Jan. 1, 2017, is a safe harbor. If an individual inadvertently signs an old form now, whether it will be accepted is anyone's guess – but it will not enjoy the support of the statutes regarding acceptance.

Duty to Maintain Estate Plan

Another area of concern is the agent's new duty to preserve the principal's estate plan. AS 13.26.327(b)(6) provides that an agent shall “attempt to preserve the principal's estate plan, to the extent actually known by the agent, if preserving the plan is consistent with the principal's best interest based on all relevant factors...” The statute includes a short list of factors, including the value and nature of the property, the principal's obligations and need for maintenance, eligibility for a benefit or assistance under a statute or regulation – and, ominously, the minimization of income and transfer taxes! *Id.* This new duty as it applies to an agent likely was inspired by the existing duty of a conservator and the court to preserve a protected person's estate plan (See AS 13.16.295) and the Uniform Powers of Attorney Act (2006) Section 114(b)(6).

Does this new duty to agents under a power of attorney give heirs carte blanche to sue the agent later on, when they discover that the agent could have taken steps to reduce taxes? Does this risk extend to agents acting not under the new Alaska statutory form power of attorney but, say, under a brokerage house power of attorney form?

Unlike conservators in court-supervised guardianships, an agent under a power of attorney generally does not operate with a court's seal of approval. The concern may be relieved by AS 13.26.327(c), which provides that an “agent that acts in good faith is not liable to any beneficiary of the principal's estate plan for failure to preserve the plan.” Nonetheless, suppose the principal arguably needs to sell one of several investment properties to provide liquidity to support the principal. Does she now have to consider the estate tax ramifications of her choice as well as the possible loss of step-up-in-tax-basis-at-death opportunities? Perhaps the “good faith” language in the statute will provide ample protection. But what volunteer acting under a power of attorney would want to be the subject of a test case? The exposure still is there in the statute.

To be safe, so that agents will be willing to take needed action, clients may consider including language that expressly relieves the agent of any duty to preserve the estate plan. Although not all of an agent's responsibilities may be re-

moved by a power of attorney, this particular duty may be removed. See AS 13.26.327(b). The following is sample language: I expressly relieve my agent or agents from any duty to preserve my estate plan under AS §13.26.327(b)(6). My agent or agents has no duty to preserve, manage, or enhance my estate plan, and will have no liability to my heirs, beneficiaries, descendants, Personal Representatives, and successors for any aspect of my estate plan (or lack thereof).

Another option for sample language, that applies a bit more broadly to all tax issues, without referring to the estate plan, is the following:

Under no circumstances shall any person named as my agent under this document be liable for any acts or omissions, or alleged acts or omissions, relating in any way whatsoever to any tax that is or could be connected in any way whatsoever to me or any property connected in any way whatsoever to me, including without limit any one or more of income tax, gift tax, estate tax, and generation-skipping transfer tax.

Whether the client chooses to focus more specifically on estate plans or taxes is in his or her discretion – the moral of this story is to recommend considering some kind of language that relieves the agent of this liability exposure and encourages the agent to accept the appointment.

Broad Liability Relief

With the new, more stringent duties and potential obstacles faced by an agent under the new power of attorney rules, clients may consider including express releases of liability and indemnification. The following is an example of an indemnification from the principal, the principal's estate and, in this example, the principal's revocable trust:

My estate and the Jane A. Client Trust dated Jan. 2, 2000, jointly and severally, shall indemnify and hold each person named as my agent under this document harmless from and against any damage, expense, injury or loss suffered or sustained by the agent by reason of any acts, omissions, or alleged acts or omissions, arising out of, in connection with or incident to his or her being named as my agent under this document, including (but not limited to) any judgment, award, settlement, attorney's fees, and other costs or expenses incurred in connec-

tion with the defense of an actual or threatened action, claim, demand or proceeding, provided that the acts, omissions, or alleged acts or omissions on which the action, claim, demand or proceeding is based are not adjudged (by a court of competent jurisdiction) to have been performed or omitted fraudulently or in bad faith or as a result of gross negligence.

If a trust is involved, as in this example, the best practice is to have the trustee sign at the end of the power of attorney, consenting to the indemnification.

If a new Alaska statutory form power of attorney is not involved but, say, a brokerage house form is, the agent may very well be subject to a claim by heirs that the agent did not preserve the estate plan. The duty to preserve the estate plan under AS 13.26.327(b)(6) is not limited to powers of attorney in any particular form. This new risk to named agents, presumably family and friends acting on a volunteer basis, is reason enough for clients to avoid forms “required” by the home office of financial institutions in Alaska.

Other areas of concern with the new statutes exist; this article touched on what the authors thought the most serious, including the possible requirement of a legal opinion and possible litigation over a volunteer agent being responsible for tax matters. Over the next several years, the Alaska legal community and its clients will learn which of these issues are as concerning as they seem now, and which are not as concerning.

Alaska sells itself as one of the premier estate planning states. The new statutes were a surprise to the estate planning community. Be on the lookout for legislation intended to improve the law on powers of attorney in Alaska.

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. The sample language in this article is for illustration purposes only and, in any event, must not be used without being tailored to the applicable law and circumstances.

Abigail E. O'Connor is a trusts and estates attorney with Holland & Knight LLP in Anchorage. Steven T. O'Hara is a lawyer working for Bankston Gronning O'Hara, P.C. in Anchorage.

SEATTLE UNIVERSITY SCHOOL OF LAW

LAW SCHOOL IN

ALASKA

«—————»

Spend a semester or your entire 3L year at our
ALASKA SATELLITE CAMPUS

law.seattleu.edu/alaska

Book Reviews

Justice for Wards Cove a worthwhile read

Bruce E. Falconer

A number of us who practice in Anchorage will remember Seattle lawyer Doug Fryer from the Bristol Bay salmon antitrust case, tried before Judge Michalski in 2003. Doug successfully defended Wards Cove Packing Company in a class action lawsuit alleging a price fixing conspiracy among the salmon processors and importers to depress the ground prices paid to fishermen. A jury found otherwise. My role as local counsel for Wards Cove in that case was relatively modest. However, during the course of it, I came to know and respect Doug for the very fine lawyer that he is.

What many may not know is that Doug also successfully defended Wards Cove against a federal employment discrimination lawsuit that lasted over a quarter century, with numerous appeals, including a controversial 5-4 decision by the United States Supreme Court that favored Wards Cove and limited the rule of *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971). *Griggs* embraced the “disparate impact” theory in cases brought under Title VII of the Civil Rights Act of 1964. By showing a statistical disparity be-

tween the racial composition of the local work force and the employer’s workers, *Griggs* allowed an employee alleging discrimination to shift the burden of proof to the employer to show the disparity resulted from something other than illegal discrimination.

Such a case was brought against Wards Cove in 1974 based on the relatively high percentage of non-white workers (Natives and Filipinos for the most part) performing less-skilled cannery line work in Wards Cove’s Alaska canneries when compared to the percentage of nonwhites working in the more skilled, non-cannery jobs, which paid more. The case was certified as a class action. After a bench trial, the federal district court rejected the plaintiffs’ claims, finding the disparity resulted from filling the cannery line jobs under a hiring hall agreement with a predominantly nonwhite union. The Ninth Circuit initially affirmed but in a later *en banc* decision reversed the lower court, which led to Wards Cove’s appeal to the Supreme Court. *Wards Cove Packing Co. v. Atonio*, 490 U.S. 642 (1989).

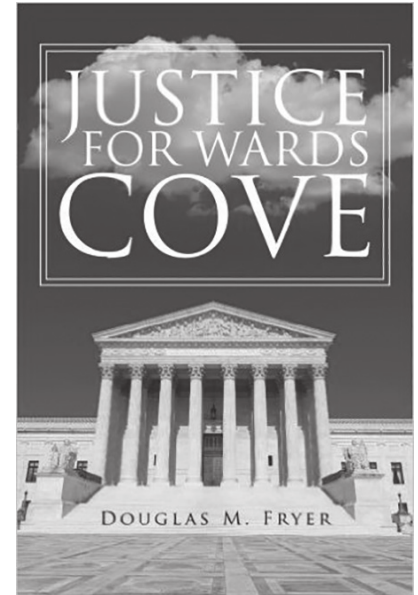
Despite winning its case at the Supreme Court, Wards Cove’s battle

did not end there. Congress amended Title VII in 1991 to nullify the Court’s decision in *Atonio*. It even tried to make the amendment retroactive (in a bill passed in 1990 but vetoed by President George H.W. Bush), and it took another case before the Supreme Court to decide that the Civil Rights Act of 1991 was not retroactive. It was not until 2001, after remand to the district court and a subsequent appeal that the case finally ended – with Wards Cove victorious.

On his annual treks out to Bristol Bay before the start of each fishing season, Alec Brindle, Wards Cove’s CEO during much of the case, and himself a retired member of the Alaska bar, would stop by my office and tell me about the case that Doug kept winning, over and over, but which never seemed to end.

Doug has written a book about the case, released last July (Xlibris), in which he very humbly tells the story, from soup to nuts, and of his role in it. The book, *Justice for Wards Cove*, is available through Doug’s website (www.douglasmfryer.com) and through Amazon.

In its review of the book, Kirkus stated: “An outstandingly methodical commentary on the American



legal system and its political components.”

Doug’s book is very readable, dispels a number of popular myths about the actual facts of the case, and should appeal to any Alaska lawyer and to those interested in the history of Alaska’s salmon fishing industry.

Bruce E. Falconer is an attorney in Anchorage

Ice and Bone: Tracking an Alaska serial killer

By David A. James

As Anchorage reels from the news that the recently killed James Dale Ritchie could be the city’s latest serial killer, a recent book about a murderer who stalked the streets and took at least five lives has been drawing considerable attention. “Ice and Bone: Tracking an Alaskan Serial Killer” by Monte Francis tells the story of Joshua Wade, who twice dominated headlines over high-profile murders in 2000 and 2007.

The first was the beating death of Della Brown, an Alaska Native woman found in an abandoned building in Spenard in September 2000. After a lengthy trial notable for a lack of physical evidence, poor work by the prosecution and by a highly skilled defense team, Wade was found innocent of all charges except evidence tampering. Despite widespread belief that he was the culprit, he was a free man by the end of 2004.

The second time he came to the public’s attention was when he was tied to the 2007 disappearance of Mindy Schloss, a psychiatric nurse practitioner and neighbor of Wade’s who went missing that summer and whose body was later found in Wasilla, shot execution style. Because he had used Schloss’s ATM card to withdraw money from her account, the crime rose to the federal level and carried a possible death penalty. Rather than risk a trial he pleaded guilty to shooting Schloss and admitted to killing Brown in exchange for a life sentence without parole.

Francis, an award-winning television journalist from the San Francisco Bay area who moonlights as a true crime writer, stumbled on the story in 2014 while researching unsolved homicides. An article from September 2000 in the Anchorage

Daily News discussed efforts by city police to solve the killings of six women — five Native and one African-American — over a 16-month period. That story was published in the wake of Brown’s murder and before Wade was arrested in connection with it.

Speculating that the killings were linked and that Wade had carried them out, Francis traveled to Alaska and started digging. He plowed through news reports from the time, trial transcripts, police records and other sources, which he draws upon heavily. He also met with family members and friends of the victims, investigators, prosecutors and jurors. He interviewed people who knew Wade, including his father and sister.

A tremendous amount of exceptional journalistic work went into this, and the book that emerges is richly detailed and deeply sensitive toward the victims and those who loved them. And while in no way forgiving to Wade, Francis seeks to locate the human deep inside him that went terribly wrong, apparently from a very young age.

The first part of the book covers the killing of Brown. Abandoned by her mother as a child and a victim of domestic and sexual abuse throughout her shortened life, she was living in a trailer park with a sometimes-violent man and struggling with alcohol and drug problems at the time of her death. Yet she was also very loving toward her mother and family, whom she only came to know as an adult. In exploring Brown’s life and her mother’s grief, Francis displays tremendous compassion and honors her memory well. He makes the loss feel personal to his readers.

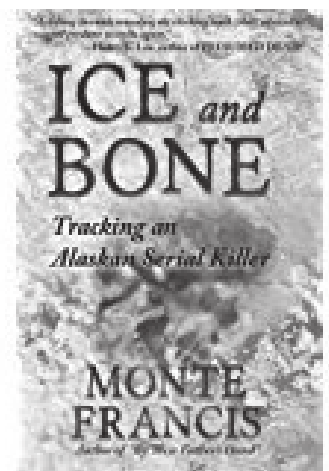
Between Brown’s murder and her body’s discovery, Wade bragged

about the killing to several people and took them to see the corpse. Eventually one of them came forward and Wade was arrested, but there was no physical evidence tying him to the scene. Additionally, those he had admitted the murder to were themselves petty criminals and easily discredited by the defense. To enormous public outrage, Wade walked.

The Schloss disappearance and killing was where Wade tripped himself up. Apparently he only intended to rob her house, thinking she wasn’t home. When she emerged from the bedroom where she’d been sleeping, he abducted her and drove her north to Wasilla in her car, where he killed her. A suspect from the start, he became a fugitive until his capture some weeks later after a brief hostage situation that ended without bloodshed.

A few years after admitting to the Brown and Schloss murders, Wade confessed to killing three men in a bargain with authorities to get transferred out of Alaska’s correctional facility in Seward, where he felt he was too well known, and into the federal prison system, where he hoped he would just be a number. Most who know him, however, suspect he has left a much longer trail of victims behind him.

Citing the work of serial killer researcher Harold Schechter, Francis considers the numerous ways Wade matches the profile of a psychopath. Raised in a broken home, angry with his mother, his father absent, sexually abused at a young age, he was using drugs by his preteens and in trouble with the law soon after. More telling, both his sister and father say Wade hates women and both suspect that he has killed many of them. He also



carries a particularly strong animus toward Alaska Natives (at least two of the men he admitted killing were Natives, the third has never been identified). Where he differs from the mold is that his murders all appear to have been spontaneous and committed in anger rather than the result of methodical planning. This quirk fits with the other killings Francis believes Wade carried out. If they were his victims, it doesn’t appear that he stalked them. They just crossed his path at the wrong time.

In the end, Francis reminds us that even when murders are solved, the cases are never truly closed, writing:

“Although Joshua Wade has spent almost a decade behind bars (in Alaska, Indiana and now Texas), his evil acts continue to have repercussions in many people’s lives. The FBI is confident Wade has killed at least five people and we can speculate about at least a few other unsolved crimes, but the true number of his victims reaches into the dozens. That’s because murder is never just a solitary act; the consequences for the victim’s loved ones often play out in the most unfortunate and tragic of ways for years following the crime.”

David A. James is a Fairbanks-based freelance writer and critic.

Lawyers' Assistance Committee offers information meetings

The purpose of this notice is to let you know that members of the Lawyers' Assistance Committee (LAC) are available to meet over a lunch hour with the attorneys in your office to discuss the services available through the LAC. We are able to offer one ethics CLE credit for attending such a meeting.

The LAC is a standing committee of the Alaska Bar Association created pursuant to Article VII, Section 1(a)(10) of the Alaska Bar Association Bylaws to provide services to members of the Bar, their families, and their business associates when it appears that a bar member is suffering from substance abuse and/or mental health issues. We are concerned with protecting clients and the public from harm caused by members whose professional practices are compromised by substance abuse and mental health issues. We are also dedicated to assisting members in overcoming substance abuse and mental health issues which have or may become problematic for the bar member.

While we have authority to make recommendations for professional evaluation and professionally recommended treatment, we

have neither the expertise nor the authority to make our own independent recommendations for treatment or, subject to the enforcement procedures specified in Bar Rule 26(i)(2), to make any other formal recommendations. All communications between bar members and the LAC are confidential by rule.

We are currently conducting outreach to let bar members know what services are available and why they are needed. We would like to make a presentation to the lawyers in your firm to make them aware of the resources available and the importance of seeking help by or for those who need it. Please contact Deborah O'Regan at (907) 272-7469 or me at (907) 793-2200 if your firm or organization would be interested in having members of the LAC come and speak. Thank you for your consideration.

*Michael S. McLaughlin,
chairman*

Lawyers' Assistance Committee

¹Alaska Bar Rule 26(i)(1) authorizes the Supreme Court, in its discretion, to refer a lawyer to the LAC when the Supreme Court receives notice that a lawyer has been convicted of a crime relating to alcohol or drug abuse.

Bar People

Paul Cossman, freelance contract lawyer has reopened his research and writing practice. Cossman has more than 30 years of trial and appellate experience in all types of cases, from personal injury to commercial, from intake through appeal, for both plaintiffs and defendants.

Two join Birch Horton Bittner & Cherot



Sarah A. Badten



Kristy A. Garrett

Birch Horton Bittner & Cherot is pleased to announce that Sarah A. Badten and Kristy A. Garrett have joined the firm in its Anchorage, Alaska office.

Badten joined the firm Jan. 1, 2017. Her litigation practice has a primary focus on representing homeowner and condominium associations, as well as advising on contract and real estate disputes, creditor rights, secured transactions, landlord-tenant law (landlords), employment law and commercial litigation. Badten has been a partner/member at Groh Eggers, LLC for the past four years and was an associate for the previous five years. Prior to joining Groh Eggers, Badten was an associate in the litigation department at Dunn Carney in Portland, OR, after receiving her J.D. from Willamette University College of Law in 2006. Badten is a native Oregonian who grew up on a ranch near the town of Madras. She now enjoys all things Alaskan, including skiing, fishing, hiking, camping, backpacking and mountain biking.

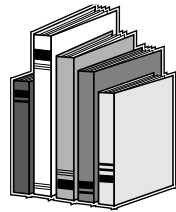
Garrett joined the firm Nov. 21, 2016. Garrett's transactional practice has a primary focus on real estate finance, commercial transactions and corporate governance. Garrett practiced with the national firm of Dickinson Wright, PLLC in their Troy, MI, office as both an associate and of counsel for a total of three years. Prior to returning to Dickinson Wright in 2014, she served as in-

house counsel for TD Bank for seven years, representing her clients in the areas of real estate finance, regulatory compliance, corporate governance and creditors' rights law. She received her J.D. from Wayne State College of Law in 2006. Garrett was born and raised in Michigan and lived for several years in Colorado. She enjoys spending time with her husband and son doing anything outdoors, running and yoga.

Law Library News

Here's what's new on WestlawNext

By Susan Falk



In December, the Alaska State Court Law Library entered into a new contract for WestlawNext that significantly expanded our access to legal content. While we have always had access to Alaska materials and black letter law from all 50 states, the new contract adds secondary and practice materials from the 50 states, including briefs, orders and dockets from around the country. We also have access to many more treatises than before.

The new *Westlaw Advantage Plan* includes primary law, KeyCite, graphical legislative history, state analytical collections, forms, law reviews, news and statute and regulation versioning (which enables you to quickly locate the version of the section in effect when the legal matter you are researching occurred).

On top of that we also selected three add-on collections:

•**Analytical Premier Collection.** Contains thousands of titles in familiar areas of law, combining expert legal analysis with forms, jury instructions, etc. A short list of some of the content contained in this collection includes ALR, AmJur All, CJS, and federal treatises.

•**Litigation Collection.** Includes court documentation to help find arguments and evaluation strategies, and litigation reports. In this collection you will find briefs, pleadings, motions, and memoranda, trial court orders, expert materials, jury verdicts, arbitration, and dockets.

•**Legal Know-How Collection.** Contains thousands of practical resources, toolkits, and checklists. Primarily, this includes Practical Law, which makes available how-to guides and explanations of current law and practice ranging from basic overview to detailed analysis. It also includes timelines and flowcharts.

All of this will greatly expand the content to which we have access and provide added flexibility to meet your research needs.

Under the new plan, there is no distinction between our judicial and public patron access. All public users will have access to the same content as court employees, which gives the public access to more much more content than was previously available. In what will has already proven to be a popular addition, public users now have access to the National Reporter Images. This is the format where cases look like they do in the print reporters, rather than formatted for html.

Susan Falk is the Alaska law librarian.



As an attorney, you're a member of a professional association; your legal administrator should be too.

The Association of Legal Administrators, Alaska Chapter, is looking for local administrators. Is your manager or administrator a member? If not, your firm is missing the following benefits:

Legal Management Resources	Continuing Education
Human Resources	Webinars
Financial Management	Conferences
Marketing	Retreats
Technology	Local Salary & Benefits Survey
Industry Advances and Trends	Educational Scholarships
Vendor Discounts & References	Professional Networking and Support
Certified Legal Manager (CLM) Certification Program	Local & National Discussion Forums
Industry Publications	

It's time to get connected!

For more information contact Debbie Swinney at (907) 793-2200 or dswinney@guessrudd.com

www.alaskaala.org

Bonaparte sells Alaska Territory in yuge real estate deal

By Peter J. Aschenbrenner

Dear Sarah, I'm a 60-year-old male, good health, hands – not small, okay?– you know what I mean. Here's the problem. People love me! For the wrong reasons! /s/ Sleepless in DeeCity.

Dear Sleepless, Getting praised is merely an occupational hazard to people like us. Join the club! I just hope you're satisfied with my answers. /s/ Sarah 'Advice to the Lovelorn.' PS I send everyone who complains a letter with a check for \$40. The letter says 'Checks will not be honoured.'

Dear Sarah, I really like your style! So don't stop me now. I just signed a bill that will, like double or triple the size of the United States. This was a great deal! Tremendous! I have to be honest. I negotiated it myself.

Dear Sleepless: But the deal was signed in Paris.

Dear Sarah: That was just for convenience, because I'm so nice. I'm too nice! I mean the USA is going to run from here, Washington, D.C., all the way to Russia! America's a winner! We're all winners! This is the world's biggest real estate deal, since Christopher Columbus bought North America from the Indians for not so mucho wampum!

Dear Sleepless: So how did you know what real estate came with the deal?

Dear Sarah, Bonaparte himself sent me a map. He said I could build a wall around it, so he meant Alaska, obviously. Have you ever seen it?

Dear DeeCity, I can see Russia from my house and if I climb on my

roof and fiddle with my TV antenna I can see Fairbanks. But how do you know that the Louisiana Territory runs all the way to Russia? Or includes any part of Alaska?

Dear Sarah, I know these things. I have reasons. They are confidential. I can't tell you. But right now I have two guys, very nice men, top-rated, not billionaires, but ex-mil. They're going out there to find where the end of this thing is. This is biggest real estate deal since Adam and Eve left the Garden of Eden to shop for condo deals. And we can build a wall around it.

Dear DeeCity, To keep the Russians out?

Dear Sarah, To keep Alaskans in.

Dear DeeCity, How much did you – I mean we the taxpayers – get taken for all of this land?

Dear Sarah, I negotiated this myself so it's a very good deal. We paid fifteen million. And we borrowed every penny. That's how good a deal it is. When you borrow that much you don't have to pay it back.

Dear DeeCity, But don't you have to know where the Alaska Territory is? To build your wall?

Dear Sarah, So what am I supposed to do? Go up there and see where the Frozen Northern Ocean begins? This is yuge! No one ever made a deal like this before. Never in human history! This is like unprecedented! Okay, Constantine gave the Western Roman Empire to the Pope, but that was a gift!

Dear DeeCity, If you came up to Alaska you could see what you bought.

Dear Sarah, This is so true. But I

have to stay near my base.

Dear DeeCity, Your political base?

Dear Sarah, My house. I'm remodeling. It's like gold faucets and everything. I'm building a live-in bidet! It's tremendous. No one is higher than me. From the dome on my house I can even see the Mississippi River!

Dear DeeCity, Have you considered moving to Alaska? In the last few years I, myself, have given it serious consideration.

Dear Sarah, How would this help me?

Dear DeeCity, We need a law school. We don't have one.

Dear Sarah, This is amazing. I run a law school at Monticello. My prize pupil is James Monroe – was James Monroe. You may have heard of him. He was top in his class in school. Okay, the only one. He carries the flag, right behind the General. You can see him in 'Washington Crosses the Delaware'. As soon as the paint's dry. Monroe's very ambitious. I tell him he has to wait his turn. We're very polite in Virginia. 'Stop measuring the drapes in the Oval Office,' I tell him. He's thinks he's already President! 'So how many electoral votes did you get in the last election!' That's Monroe's idea of taunting me. I won by a lot! It was a landslide. Adams came in third! They had to keep on counting the votes up to Inauguration Day, it was so yuge!

Dear DeeCity, And what about our law school?

Dear Sarah, I can see it now. 'Jefferson University School of Law'. I could charge students a fortune! What a great business idea! Thanks a lot.

Dear DeeCity, For what? You're going to –

Dear Sarah, Would you like a free law degree? I can send one up to the Alaska Territory. I'll have Meriwether and Lewis bring it up. It's very nice. It's got a scroll and ribbon. I sign it. Have you seen my signature? Very manly.

Dear DeeCity, I still don't get

this part. Why do you think that Alaska is included in the Louisiana Territory? Or the Oregon Territory, for that matter?

Dear Sarah, I have to be perfectly honest. Bonaparte shipped me a boatload of wine. Chateau Lafite. And it's already labelled *Cuvée TJ*.

Dear DeeCity, Don't you know that you can't accept gifts from foreign governments?

Dear Sarah, Who's going to find out? Anyone who drinks at the President's Palace place is going to get snookered!

Dear DeeCity, But you're renowned for abstinence. And isn't it called the White House?

Dear Sarah, Sheez! It's not like they burned the place down and white-washed it! It's the President's Palace! So that's like two of them I own! Bonaparte asked me if I wanted to build a hotel in Paris – you know, for my cut – and I said 'no thanks!' The wine's all I want! It's mucho tasty! Okay, this is what I've been told.

Dear DeeCity, So I guess you wouldn't fit in up here, Mr. President. Given that you don't touch a drop.

Dear Sarah, Wait a second, here's Monroe. I'll ask him. This is crazy! He's got the punch-line for the article! 'You don't have to drink to have fun in the Alaska Territory, but why take the chance?'

Dear DeeCity, Who wrote that gag? *Bar Rag* editors are really fussy about credit where credit is due. Alternative citations won't cut it!

Dear Sarah, Around here we call the guy who wrote that joke, 'The so-called President!'

Peter J. Aschenbrenner has practiced law in Alaska since 1972, with offices in Fairbanks (until 2011) and Anchorage. From 1974-1991 he served as federal magistrate judge in Fairbanks. He also served eight years as a member of the Alaska Judicial Conduct Commission. He has self-published 16 books on Alaska law. Since 2000 the Bar Rag has published 47 of his articles.

DO YOU KNOW SOMEONE WHO NEEDS HELP?



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

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

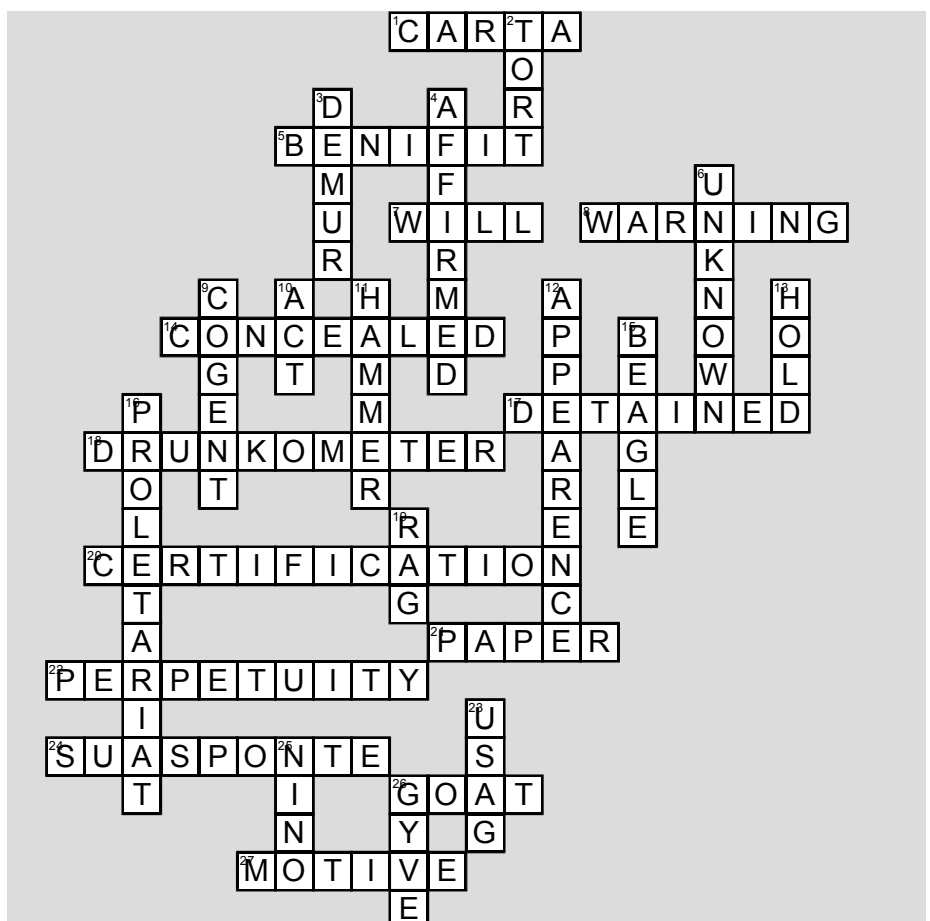
Fairbanks: Aimee Oravec, aimee@akwater.com

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

Anchorage: Mike Walsh, mike@wheelslaw.com

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

CROSS-BAR PUZZLE Answers from page 3



Reflections on hearing Justice Sotomayer speak in Anchorage

By Cynthia Strout

Justice Sonia Sotomayer, the third woman appointed to the United States Supreme Court, spoke in Anchorage in August. I attended and made sure my two daughters were there as well. Justice Sotomayer is a warm and inspirational speaker who impressed the entire audience. She especially described the family support she received as a significant key to her success, even though they perceived her as different in some way. This struck me. I believe the justice was saying that her family recognized early on her intelligence, her ambition and her energy to engage in the world, and while they may not have completely understood this, they supported and encouraged her. This article is for the women who did not have that.

As I listened to Justice Sotomayer, I couldn't help but recall the opposite pressures I got from my family and community, and I know I am not the only woman who experienced negative responses to the idea of being a lawyer. I grew up in a white middle class world, with a professional father and a stay-at-home mother. I had many privileges that I am sure Justice Sotomayer did not have. I was a teenager in the 60s and in college in the 70s. The women's movement was nascent and it had not hit my hometown, Bangor, Maine.

My father allowed me to go to an

all-women's college in Boston. During that time I had only one female professor. While women students surrounded me, there was little bonding or support for women like me who knew, somehow, that getting married right away was not what they wanted to do. I made a circle of friends, mostly men, from surrounding schools. As we came to graduate, several were applying to, or at least considering, law school or other graduate level programs. Somehow that was not on the plate for me. My father was a doctor, as was his father, in rural Maine. It

She especially described the family support she received as a significant key to her success, even though they perceived her as different in some way.

never occurred to him that I could be a doctor. When I moved home to Maine after college, I held a variety of jobs. I was sexually harassed at several of these jobs, although we didn't really call it that then. I had no real focus and no mentors or role models who offered a positive vision of what a professional life could be.

A male friend decided to apply to law school. I knew no lawyers at all, and certainly not any women lawyers. I don't believe there were any woman lawyers in my hometown at the time. I took the LSAT on something of a whim. I had taken a constitutional law class in college and had done very well. But looking back, no one said to me "hey, maybe you should be a lawyer." I think I took the test because I knew I was smarter than my friend and wanted to prove it.

I received no support from my

family at all; in fact I was actively discouraged from pursuing the idea of law school. I heard the then usual warnings — "you're not smart enough, it's too expensive, men don't find smart women attractive, you can't be a professional and have a family" etc. These were powerful deterrents to a twenty-something woman trying to figure out a life path.

I attended Northeastern University School of Law in Boston and that changed my life. I came to Alaska for a summer job and that changed my life further. But it wasn't until Justice Dana Fabe at the Alaska Public Defender Agency hired me that I understood what it was to be supported, encouraged and challenged by a mentor, and surrounded by other women, all very different, who did the same. It was my early years at the agency where I finally found a support system that encouraged a professional life. We were the "Ms-demeanors" — Susan Orlandy, Barb Brink, Beth Kerttula, Tina Kobayashi, Jacqueline Bressers and myself.

Not all was smooth even then. A long-gone administrator at the agency once left a drawing of a clock on my desk, showing the hands at 10 to 12, with a note about my biological clock ticking down. Another [male] attorney suggested that I had won a case because of the dress I was wearing. These types of comments are harmful far beyond the probable intent of the speaker. I was lucky enough to be in an environment where there was enough positive support that such conduct did not drive me out. I know other

women, in other jobs, where it did. Very few of my women law school friends practiced full-time law for more than a few years. Most found it impossible to integrate family life and a full-time law career.

I hope it is better. I hope that all young women are encouraged and supported to explore whatever career paths they choose. I am not sure that they are. I see young women facing the same struggles I did when it comes to attempting to meld a professional life with a family. Where is our available, affordable, quality childcare? Why don't the court systems, whose employees are largely women, offer in-house day care that could be used by all within the system? Why is this never a priority? Why do we all still cobble together child-care until they are school age and then panic if they can't get into Campfire for after-school? These issues still fall primarily on women's shoulders, but they impact the whole family — does one parent take a year off working? Can the family afford for someone to work part time? A more available child-care system would ease these burdens for all family members.

It pains me to see young working women forced to make these same decisions I faced thirty years ago. We need to do better.

Cynthia Strout has practiced criminal defense law in Anchorage for 35 years. She is the president of the Alaska Association of Criminal Defense Lawyers and has two bold daughters and an always-supportive husband, Judge William Morse.

Live for today. Plan for tomorrow.

INVESTMENT MANAGEMENT SERVICES CAN HELP



At First National Bank Alaska, trust has been a bedrock value since 1922. It's what Alaskans count on when they come to us for Trust and Investment Management Services.

WE MANAGE INVESTMENTS WITH A LOCAL TOUCH

Our local knowledge and experience are second to none, and our goal is simple: Deliver fast, friendly, local service so you can make the most of the present with a solid plan for the future.

From business and personal Investment Management Accounts to rolling over IRAs and overseeing your assets, come see the experts at First National Bank Alaska.

FNBAAlaska.com/Trust

INVESTMENT MANAGEMENT & Trust Services



First National Bank Alaska

Election leaves Alaska marijuana laws in uncertain status

Continued from page 1

at any time, reliance on the Cole Memo buoyed an uptick in the number of states that began legalizing recreational marijuana.

Thus, the executive branch plays a crucial role in setting the tone for nationwide marijuana laws. Despite the Cole Memo, marijuana remains a Schedule I Controlled Substance, and its use, possession and sale remain illegal under federal statute. Yet, notwithstanding this federal prohibition, marijuana has been legalized under state law for medical or other adult-use in over half the country. This legal limbo is confusing at best, unsustainable at worst, and inspires fear in the marijuana industry about what will come next. As President Obama remarked during his final month in office, the current patchwork of marijuana laws across the country is “untenable.” Thus, sharing this view, many marijuana advocates, business owners, consumers, patients and government regulators were looking to the 2016 election to bring more clarity, certainty and consistency to marijuana law and policy.

Marijuana in Alaska 'gets real'

My last marijuana industry update, in the September 2016 Bar Rag, explained that marijuana legalization in Alaska was “about to get real.” After passing the ballot measure authorizing the creation of a regulated commercial marijuana industry, it took about two years for the state to craft and implement the necessary regulatory framework

and for businesses at all stages along the marijuana supply chain to begin operating. The first retail marijuana stores in Alaska opened in October 2016, and that number has been slowly increasing. Today, more than a dozen stores are currently operating statewide. But with relatively few commercial outlets and a limited initial supply of product, stores are having difficulty meeting demand. Still, sales for the first two months totaled more than \$2 million and the state's tax revenue approached \$250,000.

With the industry now a reality, previously theoretical questions about the legal friction between state and federal law now pose concrete problems for Alaska marijuana businesses. Banking services are

still elusive, leading most businesses to operate on a cash-only basis. This in turn yields accounting difficulties, security concerns and generous profits for the owners of ATMs located near marijuana stores. Transportation of marijuana to testing labs and retailers around the state remains an issue as well, due to federal regulation of air space and waterways. And the highly regulated nature of the industry — necessary for compliance with the Cole Memo — makes the process of changing operating plans or business models or adding investors much trickier than for other enterprises.

Many in the marijuana industry, both in Alaska and the Lower 48, were hoping that a Hillary Clinton victory in the presidential election would have led to smoother sailing. Clinton supported legal access to

medical marijuana, more research into the medical benefits of marijuana, and reclassifying marijuana from a Schedule I to a Schedule II controlled substance. The Democratic Party took a further step, endorsing creation of a “reasoned pathway to future legalization.” The outlook for marijuana legalization under a Trump presidency was less rosy, but still promising. On the campaign trail, Trump's positions on marijuana legalization were vague, but he spoke of supporting legal access to medical marijuana and that states should be able to set their own policies with respect to adult use. Though he did not elaborate or take a firm stance on the issue, visions of a Trump administration that maintained the status quo or even reduced some of the barriers facing marijuana businesses seemed reasonable.

As it turned out, the election of Donald Trump as president of the United States has so far led to more questions than answers, and has amplified uncertainty in the already uncertain world of marijuana law and policy. Since the election, Trump has not clarified his stance on marijuana legalization, but his Cabinet selections, and statements from his press secretary, indicate hostility toward the industry.

As previously discussed, the Department of Justice has played a crucial role in shaping the current marijuana legal landscape; the discretion of whether or not to maintain the current “fragile truce” between state and federal marijuana law rests primarily with that office. Recently confirmed Attorney General Jeff Sessions has long been an outspoken critic of marijuana legalization and use. Similarly, the new Health and Human Services Secretary, Tom Price, has a consistent anti-marijuana voting record in Congress. HHS is less prominent than DOJ when it comes to marijuana law enforcement, but the agency gives input on Controlled Substances Act rescheduling decisions, is involved in national drug prevention policy, and could restrict the availability of marijuana in legalized states. On their face, these two appointments reflect a prohibitionist view, and there is concern about whether a rollback or crackdown is looming — one which would have significant economic consequences across the nation and could neuter the Alaska market before the industry really gets off the ground.

Short-term outlook

With great power resting in the president and attorney general to affect the immediate course for marijuana legalization in the United States, five possible scenarios have been identified:

1. **Legalization:** The Trump Administration supports the existing marijuana industry, advocates for nationwide marijuana legalization and urges congressional action to ease the state-federal conflict.
2. **Prohibition:** The Trump Administration cracks down on both

medical marijuana and recreational/adult use of marijuana and attempts to roll back legalization efforts.

3. **Medical Exception:** The Trump Administration shuts down recreational marijuana markets, but leaves medical marijuana markets intact pursuant to current (or new) rules.

4. **Freeze:** States with existing recreational/adult-use and medical marijuana legalization continue to operate under current guidelines, but new states are targeted and prevented from legalizing.

5. **Status Quo:** The industry continues as it has been operating — in a gray area where marijuana is simultaneously legal and illegal depending on the state.

Of course, some other combination of scenarios could emerge, and we may witness various policy forays designed to gauge the political winds and public response. But given the cast of characters at the

helm, it seems clear that any expectation that the current White House will spearhead widespread marijuana reform is misplaced. Since neither the president nor his cabinet have given

any indication of strong support, nor was legalization part of the Republican Party platform, the first scenario, endorsing nationwide legalization, is highly unlikely. For reasons explained below, it is similarly unlikely that the other end of the spectrum, a full federal crackdown, will materialize either. Rather, the most likely near-term outcome is a policy that leaves things somewhere in the middle, with the last scenario (maintaining the status quo) is one the public is familiar with and tolerates, and therefore offers the path of least resistance, a compromise approach could emerge as the most politically viable. For instance, the administration could push for even more permissive rules for medical marijuana states, but at the same time increase enforcement against recreational marijuana enterprises. However, any scenario that does not involve reconciling federal law with current state practices would leave the status of marijuana as legally tenuous for the duration of the Trump administration as it was before the election.

Though the status quo, or something short of it, would avoid elimination of the marijuana industry, it is still not the best news for those invested, both financially and otherwise, in such enterprises. Many have poured significant amounts of time and money into building businesses, advocating for change, and developing new guidelines and regulations from scratch. Hoping for clarity, investors, advocates, consumers and patients are now left rattled by the continuing uncertainty. Still, these concerned parties have reason to be cautiously optimistic about the future of federal marijuana law and policy and how it will impact states like Alaska.

To begin, the president's own words support maintaining the status quo. Trump has said he supports

The first retail marijuana stores in Alaska opened in October 2016, and that number has been slowly increasing. Today, more than a dozen stores are currently operating statewide.

As it turned out, the election of Donald Trump as president of the United States has so far led to more questions than answers, and has amplified uncertainty in the already uncertain world of marijuana law and policy.



Anchorage
Bar Association, Inc.

ANNUAL St. Patrick's Day CELEBRATION

Friday, March 17, 2017
5:00 - 7:00 p.m (or until the keg is dry!)
PERFORMING ARTS CENTER
Free for Anchorage Bar members and a guest
\$25/person for extra guests
"Irish" meal, Beer, Wine, Irish music

Come one and all and enjoy a "wee bit" of Irish merrymaking!

Membership sign-ups taken at the door



www.anchoragebarassociation.org info@anchoragebarassociation.org

Continued on page 23

Election leaves Alaska marijuana laws in uncertain status

Continued from page 22

medical marijuana and that states should decide whether to legalize. This reflects a strong states' rights approach, which appeals to many Trump supporters and is a core tenet of conservative politics. This should carry great weight. Yet, as described above, Trump's initial Cabinet selections seem to undercut this position and send mixed messages to the public.

Next, the legal marijuana industry is lucrative. The industry generates tax revenue for state and local governments and has created many jobs. Nationwide, the marijuana industry is currently estimated to be worth about \$7 billion. Sales of marijuana in Colorado alone totaled \$1.3 billion in 2016. The prospect for future growth is also strong: The nationwide legal marijuana market is estimated to hit \$20 billion by 2020. Any true pro-business politician will have a hard time supporting a decision to close this tap and shut down this industry.

Accordingly, reversing course from the Cole Memo's "hands off" approach to state marijuana legalization plans would not only reduce legitimate state-level economic activity and reinvigorate the black market, it would also cost the federal government a lot of money, take a lot of time and tie up significant legal resources. DEA raids and DOJ prosecutions are expensive, and Congress ultimately controls the funding for such operations. These agencies could apply some advanced metrics and try a Moneyball-type approach, waging war with cease-and-desist letters to a targeted audience — essentially betting the cost of a postage stamp that they will be able to stymie the industry with threats of enforcement. This approach might provide the "most bang for the buck," but Congress might not even approve that scant level of funding. For example, during the past few years, an amendment prohibiting the federal government from spending any money to interfere with state medical marijuana programs has been attached to the federal budget.

Congressional support for a widespread federal crackdown is far from certain. More members of Congress than ever represent states with legal marijuana industries, and their constituencies favor marijuana legalization. As more states legalize marijuana, pressure builds on Congress to act. Several bills aimed at amending the Controlled Substances Act and respecting state marijuana laws have already been introduced and a bipartisan group of lawmakers (including Alaska Rep. Don Young) formed the Congressional Cannabis Caucus, a group dedicated to developing policy reforms intended to bridge the gap between inconsistent state and federal marijuana laws.

Fully reversing course by rolling back current federal marijuana policies would also lead to uncharted legal territory and conflict. Changes to current federal policy would not

automatically obviate any state law and the extent of federal authority to completely shut down existing state legal marijuana markets is untested. At a minimum, such action would raise due process concerns, create new legal gray areas, and establish state-federal conflicts that will require further court action to resolve. Additionally, the practicalities and logistics of any widespread enforcement action raise numerous red flags. For instance, the federal government cannot require states to completely prohibit marijuana and cannot force states to march in lock-step with federal law. This is particularly concerning because, though state and local police are generally under no obligation to assist with federal drug raids, DEA has historically relied on the assistance of state and local law enforcement agencies in carrying out its mission. It is not outlandish to imagine that a state or local community with a booming marijuana economy will be hesitant to instruct its law enforcement agencies to enforce federal marijuana law against its citizens in contravention of state law and policy. This could give rise to the first marijuana "sanctuary states."

Next, a return to a staunch "War on Drugs" approach to marijuana defies the will of the voters and public opinion. Support for marijuana legalization was one of the few issues that voters across the political divide agreed on in 2016. Nationwide, eight of nine marijuana legalization ballot measures passed on Election Day. Of those eight pro-marijuana states, four voted for Trump, four for Clinton. These ballot measures raised the total number of states with medical marijuana laws to 28 and the number with legal adult use and regulated commercial sales to eight.

With the majority of states enacting legalization laws, about 60 percent of the total United States population now live in states with some sort of legal, regulated marijuana program, and more than 20 percent live in states that legalized adult use. And if you consider states that allow limited medical use of marijuana-derived CBD oils in certain circumstances, almost the entire country has, in some way, embraced lawful use of marijuana-related products. These numbers led many to conclude that, despite the resulting Trump marijuana policy wildcard, the election was a net win for marijuana legalization.

These numbers are aligned with increasing public support for marijuana legalization. Recently Gallup reported that support for legal marijuana use was up to 60 percent in the United States — the highest percentage reported in 47 years of tracking this topic — and a Quinnipiac University poll found that 71 percent think the federal government should not crack down on states with marijuana legalization laws.

The rise in support for marijuana legalization can be credited to numerous factors, including the sheer number of people who use

and enjoy marijuana, the increasing interest in its potential medical applications, and the industry's economic impact. But another significant factor is that perceived harms of legalizing marijuana have not materialized in the jurisdictions that have recently implemented adult-use marijuana laws. Data is limited, so one should be cautious about drawing too many conclusions from such a small sample size, but early reports focusing on Colorado and Washington show that marijuana arrests have dropped post-legalization; there were no significant increases in youth marijuana use post-legalization; tax revenues have exceeded initial revenue estimates; and legalization has not led to more dangerous driving conditions.

Finally, making a significant change to federal marijuana law and policy does not seem high on President Trump's list of priorities, especially if you consider the president's Twitter account a good barometer of his policy agenda and prerogatives. A search of his Twitter archive as of this writing reveals the following:

- Tweets mentioning "Obamacare": 426
- Tweets mentioning "immigration": 126
- Tweets mentioning "taxes": 110
- Tweets mentioning "Saturday Night Live" or "SNL": 70
- Tweets mentioning "marijuana": 0

Conclusion

Marijuana law is still in its famil-

iar legally tenuous position with an ever-widening divide between state and federal law. There is looming conflict between the president, who has voiced support for state determinism of marijuana law and policy, the Cabinet, which now houses officials with documented hostility toward legalization, and members of Congress, who have an increasing obligation to support states' rights and the will of their pro-legalization constituents. In between the wills of these branches of government, public support for marijuana legalization and the economic impact of the industry continues to grow. It is thus difficult to imagine the Trump Administration leading a federal effort to fully reverse course, as such a move would be unpopular, expensive and turbulent. But something short of a full federal crackdown, such as increased enforcement of federal law against recreational marijuana programs, is conceivable. What such a policy change would entail and how smoothly it could be rolled out is unclear. Any abrupt change would certainly lead to public confusion, legal challenges, and would amplify the need for congressional action to harmonize state and federal marijuana laws. In the meantime, marijuana will remain simultaneously legal and illegal in most of the country.

Jason Brandeis is an associate professor of Justice at the University of Alaska Anchorage and is of counsel at Birch Horton Bittner & Cherot, where he advises clients on marijuana law and policy matters.

Since neither the president nor his cabinet have given any indication of strong support, nor was legalization part of the Republican Party platform, the first scenario, endorsing nationwide legalization, is highly unlikely.

CLE at S.F.A. 2017



Greeted by the locals as we arrived on the island of Roatan, Honduras.



The island of Roatan, Honduras near the port. They use wind energy and it is still the most expensive commodity. Most residents don't have air-conditioning and temperatures rise to 115 with high humidity in their summer months.

**LIVE SEMINARS;
VIDEO-ON-DEMAND; WEBINARS**

CLE2017
Alaska Bar Association

LIVE Seminars

Friday, March 17

**Just Another Day at the Firm:
An ALPS Ethics and Professionalism Program**
Dena'ina Civic & Convention Center – Third Floor
3.0 Ethics CLE Credits | CLE #2017-311
Free Admission for AK Bar Members | \$95 Non Member

9:00 a.m. – 12:15 p.m.

Presented by: Mark Bassingthwaighe, ALPS along with Maria Bahr, Bar Counsel, and Thomas Wang, Ashburn & Mason, P.C.
"Just Another Day at the Firm" is an educational seminar designed to shed light on ethical issues that many attorneys face daily.

Although the vignettes may be presented as taking place outside your jurisdiction, we will apply the Rules of Professional Conduct of your jurisdiction to the analysis of the issues presented. This program is designed to be somewhat interactive. After

viewing a series of video vignettes, a panel will discuss a series of questions that address the issues raised in each vignette. During the panel discussions, attendees will be encouraged to ask questions and share comments.

The intent is to emphasize that attorneys should take time to reflect upon ethical issues and what it means to be a professional on a more frequent basis. Ultimately, the desire is to have attendees leave the program with a greater sensitivity of the many ethical issues that can be in play any day of the week, be better prepared to view these issues as learning opportunities, and be more willing to take advantage of these opportunities in order to see that the issues are responsibly addressed and resolved.

Friday, March 27

Environmental Law
Dena'ina Convention Center – 2nd Floor
9:00 a.m. – 12:15 p.m.

3.0 General CLE Credits | CLE #2017-005
Registration fee: \$105 After March 17: \$130

- Proactive Environmental/Permit Compliance and Self-Audits
Presented by: Tina Sellers Wareham, Senior Attorney, Landye Bennett Blumstein LLP and Robert K. Reges, Jr., Partner, Reeves Amodio LLC
- Recent Developments - Alaska Contaminated Sites Program, Uniform Environmental Covenants Act
Presented by: Breck Tostevin, Assistant Attorney General, Alaska Department of Law, Environmental Section and Jennifer Currie, Assistant Attorney General, Alaska Department of Law, Environmental Section
- Commercial Use of Drones/Unmanned Aerial Vehicles for Environmental Studies & Permitting
Presented by: Howard Martin, Regional Counsel, Alaskan Region, Federal Aviation Administration and Benjamin Kellie, CEO & Chief Engineer, K2 Dronotics, LLC

Friday, April 14

Using and Misusing Visual Evidence
Dena'ina Convention Center | 2nd Floor
9:00 a.m. – 12:15 p.m.

1.5 General & 1.5 Ethics CLE Credits | CLE #2017-016
Registration fee: \$105 After April 7: \$130

Presented by: Joe Kashi

This program examines the practical aspects and legal issues pertaining to the use and misuse of photographic and video evidence. We live in a visual age in which visual photographic and video evidence is both expected and often highly persuasive to the trier of fact. Yet, visual evidence is underutilized yet unusually susceptible to legally inappropriate misuse or latent suspicions about manipulation that can undermine the credibility of the visual image.

This CLE will address:

1. Practical discussion about using visual evidence when developing and trying a case, including a primer about those basic technical concerns that every attorney should understand when preparing, offering at trial, or opposing the introduction of specific visual evidence.
2. What to prove when authenticating visual evidence for admissibility as well as what to look forward when challenging visual evidence suspected of being inaccurate, excessively enhanced, or outright manipulated.
3. Alaska and developing national case law about the appropriate use of visual evidence, both still photographic and video as well as the legally permissible limits of "enhancement".
4. Developing ethical standards pertaining to the proper use and authentication of visual evidence and the identification of potentially excludable manipulated images

April 20

Marijuana Law in Alaska: Finding Clarity in a New Legal Regime
Dena'ina Civic and Convention Center, Third Floor
5.75 General & 1.0 Ethics CLE Credits | CLE #2017-004
Registration fee: \$195 After April 13: \$220

8:00 a.m. Check-in and continental breakfast

8:30 a.m. Legal Developments in Federal and State Marijuana Laws Jason Brandeis, of Counsel Birch Horton Bittner & Cherot This session is snapshot of the current state of marijuana law locally and nationally, a brief overview of the history and development of marijuana regulation in Alaska (including discussion of Ravin), a discussion of some pertinent state/federal conflicts that attorneys should be aware of, and address ambiguities that still exist

9:30 a.m. Break

9:40 a.m. Licensing and Contracts 101
Jana Weltzin, JDW Counsel

This session provides for an in-depth look at the state licensing process and regulatory steps necessary to obtain a commercial marijuana license. The second half of this session is a brief overview of contracts involving cannabis businesses and the unique challenges and pit falls to be aware of when engaging in a cannabis related contract.

10:40 a.m. Break

10:50 a.m. State and Municipal Taxes and Revenue Trends
Regina James, Tax Enforcement Officer, Municipality of Anchorage
Brandon Spanos, Deputy Director, Alaska Tax Division

Current tax structures for state and Anchorage municipal taxes, reporting requirements, how taxes are paid in this mostly cash business, and current trends in state revenues.

11:50 a.m. Lunch (on your own)

1:00 p.m. Cannabis Banking: Fact or Fiction?

Adam Crabtree, CEO, Nationwide Compliance Specialists, Inc.
Will the cannabis industry really have to wait for federal regulation? This session gives an in-depth overview on cannabis banking and how it is actually working. We will review several of the leading methods from traditional banking, to state and public banking, to closed loops systems and crypto-currencies. We examine what is attractive about each, where they are being offered and potential shortcomings.

1:45 p.m. Marijuana Testing Labs - What Why and How
Brian Coyle, AK Green Labs

What we test for: cannabinoids, terpenes, residual solvents and microbial contaminants; How we do the testing: laboratory setup, instrumentation and methods; Why we run different tests on different products; with some discussion on regulations.

2:15 p.m. Break

2:30 p.m. Cannabis in Alaska: State of the Industry
Brandon Emmett, President of the Alaska Marijuana Industry Assoc.

This session covers the chronology of marijuana regulation in Alaska, details current rules for commercial marijuana facilities and outlines the state of the industry.

3:00 p.m. Creating a Marijuana Industry in Alaska with the APA
Jedediah Smith, Alcohol & Marijuana Control Office

Regulations are not conjured from thin air. The Alaska Administrative Procedures Act (AS 44.62) says that to be effective, regulations must be adopted within the scope of authority conferred and in accordance with standards prescribed by provision of law, and in order to be carried out effectively, regulations must be consistent with the statute. The APA provides a very specific and rigid framework for the adoption of regulations, including the recording of public comments, the judicial review process, appeals to an administrative law judge, and definitions and prohibitions of appropriate communication with respect to open meetings laws.

4:00 p.m. Ethics in Marijuana Law
Maria Bahr, Alaska Bar Counsel

5:00 p.m. Concludes

Video-on-Demand

Never miss another program! Recorded CLE programs are provided on-demand as streaming video presentations. You just need an active internet connection to access. View our library at www.AlaskaBar.org under the CLE logo.



Webinars

View from the convenience of your home or office. These one-hour high quality programs are presented by national speakers with an entertaining quality. View webinars at www.AlaskaBar.org at the link under the CLE logo.

**Register for programs at alaskabar.org/members
For more information, call 907.272.7469**