

The Alaska BAR RAG

Dignitas, semper dignitas

VOLUME 40, NO. 1 January - March, 2016

It's time Alaskans take a deep breath and pay our way

By Dan Branch

We live in an angry country and an angry state. Since the legislators are sitting in Juneau now, a lot of that anger is directed at them.

It's raining in our angry state. A fiscal rainstorm has settled over Alaska, threatening the kinds of economic downturn that led to bank failures and foreclosures during the 1980's oil glut. Then, home prices plummeted until the amount owed on the mortgage exceeded what the debtor could gross from a sale. Owners of Anchorage townhouses and three-bedroom ranches packed up their family SUVs and left behind Alaska and their mortgage debt. The more thoughtful ones dropped off their house keys at their bank on the way out of town.

If we take a step back and ignore the talk-radio inflammers, self-disappointment may replace our anger. We might, like Walt Kelly's philosophical possum, Pogo, realize that, "We have met the enemy and it is us." We might also remember that the original purpose of the Alaska Permanent Fund was to get the

state through the bust that always follows each boom in a resource extraction economy.

Back in the 1970s, when dinosaurs walked the earth and Jay Hammond was Alaska's governor, I lived in Bethel. Hammond sent some Juneauites dressed in business casual (button-down shirts, "V" neck sweaters, clean pants, XTRA Tuff boots) to the river city to talk about a proposed rainy day account called, "The Permanent Fund."

The bright young things warned a scoping session of Bethelites in Kusko-business casual (clean jeans, wear-to-basketball-games sweat-shirts, JB Crowe ball caps, maybe kuspuku) that someday we would run out of oil money. Rather than blowing all our tax dough on fancy buildings and roads, they wanted to stash away a big chunk of it in an income-generating fund. Even with the planned annual, share-the-wealth payout, this permanent fund would grow like a glutton in a chocolate factory until needed to help the state weather economic downturns.

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Marijuana legalization: Read before you grow, sell, toke

By Jason Brandeis

In November 2014, 53 percent of Alaska voters approved the path to a legal, regulated marijuana market in the state. The passage of Ballot Measure 2 (BM2) amended Alaska's marijuana laws in several

ways. First, it legalized possession of up to one ounce of marijuana (and several plants) and decriminalized public consumption of marijuana (subjecting such activity to a maximum \$100 fine). Next, the initiative tasked the state with creating a Marijuana Control Board (MCB) and developing the regulations necessary to implement and govern the state's future commercial marijuana industry. Recently, after about a year of work, the MCB completed that process.

During that time, municipal governments across the state were also busy contemplating this new industry, as many set up their own local marijuana regulatory authorities and began debating local planning and zoning options. The next phase, where local rules are being finalized, businesses are forming, and application packets are being prepared and submitted, is under way. The last stage—the operation of a legal commercial marijuana industry as envisioned by BM2—is slated to commence in late summer/early fall.

Overview of the final regulations

The MCB adopted final regulations Nov. 20, 2015. Pursuant to the Alaska Administrative Procedure Act, the MCB sent the regulations to the lieutenant governor and Department of Law for review. With several exceptions and correc-

tions, the regulations were signed into law by the lieutenant governor as 3 AAC 306. The effective date of the new regulations, Feb. 21, 2016, came just before the re-named Alcohol and Marijuana Control Office (AMCO) began accepting marijuana establishment license applications Feb. 24.

The regulations are comprehensive, covering all aspects of the marijuana industry. There are rules for growing marijuana plants and for converting plants into other products. There are stringent product safety and quality testing requirements. The regulations include parameters for operating marijuana businesses, detailing when and where stores may operate and advertise; how plants and products must be packaged, labeled, and tracked; and establishing training requirements for marijuana establishment employees. The regulations also give the MCB investigation and enforcement powers, and explain the role of local governments in application, licensing and other administrative processes.

Two of the MCB's proposed regulations were rejected. The first governed background checks for marijuana establishment license applicants. In short, the regulations required a national criminal history record check, but federal law requires that before the FBI will conduct such a check for state licensing purposes, it must be required by a

state statute. The current Alaska statute authorizing national criminal history record checks for employment and licensing does not include marijuana establishment licenses. Thus, there is no authority to conduct the checks, as that authority must come from the Legislature, not the MCB. This disconnect seems amenable to a relatively non-controversial legislative fix. The other problem is more complicated and involves the ongoing tension between state laws legalizing marijuana and the existing federal prohibition.

Federal laws complicate, and in some cases may preclude, the intrastate shipping of marijuana by air or sea. This could be problematic for potential marijuana cultivation establishments located in rural communities off the road system. Those establishments will have to submit their marijuana for the required potency and contamination checks. The problem is that such facilities are expensive to build and operate, and will likely not exist in rural communities off the road system. The MCB attempted to create an exemption for these circumstances by allowing alternate means of testing if "geographic location and transportation limitations" made transporting marijuana to such facilities unfeasible. This regulation was found too vague, lacking the standards necessary to ensure it could be applied "in a balanced, unbiased and

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Here are the 10 top reasons to attend this year's Alaska Bar convention

By Nelson Page

As your bar president I have been reminded frequently that one of my primary responsibilities is to help plan the 2016 annual convention. Last fall a group consisting of dedicated bar staff and masochistic members of the bar began trying to figure out how to make this year's event a memorable and productive use of our members' time and resources. I think we succeeded. Here are my top 10 reasons why you should plan to attend.

1. Our keynote speaker is Alice Rogoff, the owner and publisher of the Alaska Dispatch News. She will be speaking about "Civil Discourse in Alaska", a subject that I am sure we are all experts about – or at least have opinions on. Among her many accomplishments, Ms. Rogoff, who has an MBA from Harvard, was chief financial officer of U.S. News & World Report from 1985 to 1997. She worked at the Washington Post Co. as assistant to publisher Donald Graham and was the creator of the National Weekly Edition of the Washington Post. She served in the Carter administration as special assistant to the director of the Office of Management and Budget. She keeps her Cessna 206 at Merrill Field and serves as "chief pilot" for Alaska Dispatch reporters covering the Iditarod Trail Sled Dog Race. When President Obama came to town last year, he dined with Ms. Rogoff and a small intimate party of friends. I don't expect we will learn much about what was said at dinner (we can only hope!) but Ms. Rogoff's insight into Alaska, its current affairs and its future prospects should be a delightful and informative session for our keynote dinner Thursday, May 12.

2. On Wednesday evening you will have a wonderful opportunity to see Southcentral Alaska with 130 of your closest friends and colleagues. The Alaska Railroad will provide a special train that will cruise along Turnagain arm to Spencer Glacier. A fantastic dinner will be served. The bar will be well stocked. Wildlife are guaranteed to make an appearance. Those

who have had the chance to ride the rails south of Anchorage already know what a special experience this is. If you haven't done this before, sign up now. You are in for a unique and memorable time!

3. As always — or at least since memory runneth not to the contrary — Dean Erwin Chemerinsky and Professor Laurie Levenson will provide us with their entertaining and highly useful summary of Alaska and U.S. Supreme Court decisions of note. I won't speak for anyone else, but I always feel smarter after attending one of these sessions. Or, as one of my favorite cartoon characters used to say, "For a minute there, it almost seemed to make sense."

4. Those of us who are of a certain generation probably know more than we should about a topic of current concern: the law in Alaska relating to marijuana and other drugs. Speaking hypothetically only, I have wondered how the recent changes in the law will impact both Alaska society in general and legal practitioners in particular. Your Board of Governors has already had to deal with the ethical question of how a lawyer can give advice about conduct that is legal under Alaska law but is still a violation of federal law. Josh Kappell and Jordan Wellington, two legal scholars who have given extensive thought to these issues, will present on this topic and the more general topic of how marijuana will be regulated under the new and rapidly changing legal environment.

5. One can only wish that climate change was just a theoretical concern in Alaska. Dr. Robert Gillies has studied this question for years and will present a coherent and compelling explanation of the science behind the issue. What will a changing climate mean for Alaska and the Western U.S.? I have heard Dr. Gillies present on this topic before. He is a fascinating speaker and his presentation



"The annual convention is a lot of fun and a great way to catch up on what is happening with your colleagues and your profession."

will be a highlight of the convention for me, and I hope for you as well.

6. E-filing for state courts is now upon us. For those of us who are still trying to figure out where to put postage on envelopes, this is a daunting challenge that, one way or the other, we will have to meet. Help is at hand. Judge William Morse, who has spearheaded the state court efforts, will present on the new state court system, while U.S. District Court Judge Sharon Gleason will walk us through the intricacies of PACER

in the federal courts. Who says you can't have fun at the bar convention?

7. Michael Carey will speak on "Alaska History as told through the Law." Those of you who have had the privilege of hearing Michael speak before will appreciate his clear and entertaining approach to our state's colorful history and characters as told by public and legal records through the decades.

8. Our own Jeff Feldman has agreed to speak on a subject that, fortunately, most lawyers in Alaska know almost nothing about: "Difficult Judges, Difficult Lawyers." I know it may be hard to believe, but I am told that there are places — certainly not in Alaska — where such creatures actually exist. If you are interested in broadening your general fund of knowledge with a better understanding of this theoretical concern, this is the presentation for you!

9. I have been pleasantly surprised at how useful my iPad has been to my practice over the last few years. At this point it is frequently, at least for me, the most convenient way to stay in touch with my office, catch up on emails, draft short correspondence, and maintain client contacts. Paul Unger will give not one but two presentations on how to turn this basic tool into a powerful practice enhancer.

10. And finally, for those who actually look at the practice of law as a business, Jordan Furlong, of

Edge International Consulting, will give lawyers some tips on what marketing and practice development should look like in the 21st Century. His presentations on "Building the 21st Century Law Firm" and "Scaling the Peak: Challenges and Opportunities in the New Legal Market" should be of interest and benefit to anyone who has to think about how to make an actual living as a lawyer in the modern era.

So those are my top 10, but they don't have to be your top 10. Criminal law types can thrill to a discussion by U.S. Attorney Karen Loeffler and U.S. Public Defender Richard Kurtner on the evolution of Miranda at our Law Day luncheon. Those of you who still haven't figured out that you have a free computer research service at your fingertips courtesy of the bar can learn all you need to know about conducting legal

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The Alaska BAR RAG

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 Bud Root

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Advertising Agent:
 Alaska Bar Association
 840 K St., Suite 100,
 Anchorage, Alaska 99501
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EDITOR'S COLUMN

World looks a little better as the vernal equinox approaches

By Meghan Kelly

I am writing this note on the morning following Super Tuesday in what is proving to be a surreal presidential primary season. Closer to home, the Alaska Legislature is looking for answers to a \$3.5 billion problem. The Supreme Court is hearing its first major abortion case in nearly a decade. Beware the Ides of March, indeed. But take heart: the Vernal Equinox is also coming this month. After this strange winter I think many of us are ready for light, renewal and rebirth, a reawakening — leitmotifs of spring to energize and carry us forward.

President Page's column offers a fantastic preview of one of the

Bar's revitalizing tonics, the annual Alaska Bar Convention, taking place May 11-13 in Anchorage. I encourage those of you who are able to take advantage of the "Two-For-One" discount for new lawyers. Any new lawyer admitted within the last five years can team up with another new lawyer or a more senior practitioner and attend for the price of one conference fee. This is a great opportunity for mentorship that offers lasting benefits for all involved and enriches our association.

In the vein of enrichment, I would also like to put out a call for



"Wishing you an early spring!"

short articles, thought pieces, and point-counterpoint articles to be included in upcoming issues of the *Bar Rag*. The diversity of our perspectives and experiences is a large part of what makes our Bar so unique. Magistrate Judge Peck's letter to Chief Justice Stowers, included in this issue, presents a great archetype of our colorful membership. I know that many of you have similar stories about your practice and your colleagues. Please consider sharing them with us.

Wishing you an early spring!

Letters to the Editor

Attorney's account of marital abuse raises some questions

To the editor:

I am writing this letter in response to your front page article in the December 2015 issue, titled "The vulnerability of lawyers, no easy choices." I feel compelled to take issue with just about everything about it and also with the editor's comment about it. Anything redeeming I could have felt for the author was lost at the third sentence, "He threw their child across the room." At that point, for me, it was no longer about the attorney and her precious career. It was about her precious child and nothing else.

This parent says that because she is a professional in a position of power, people expect more from her than they would from other abused women. I'm not sure that's true. Certainly as a parent she is held to exactly the same standard as any other parent with regard to protecting her child. And she failed. That is the real truth and the real story here, not her friends leaving her or the fear she felt for herself and especially not the fear for her career. Moreover, I have to wonder whether her friends would agree that they "left her" and that they did so to pressure her or to teach her a lesson. That conclusion more likely comes from the author's imagination alone. It seems much more likely that this was a choice made by the attorney, choosing her man over her friends, albeit with pressure from him. It would certainly fit the profile of many battered women.

But I can't be the only one that noticed how she spends most of her time writing about her friends, her property and her career, and very little time writing about her child?

This attorney was worried about her credit rating, or that she will lose some clients, or not get a coveted job offer, or not look judicial. Isn't any or all of that a small price to pay to secure the safety of your child? Maybe someone should have made a report to OCS. Their involvement

big deal. Moreover, like several of my colleagues, and even a judge or two, I had a very public conviction for DWI early in my career. Now more than 30 years later it's still a public record for anyone who cares to see it. It's not a big deal either. I remember when a female friend of

might see her picking up garbage near the highway. I told her that anyone driving by who didn't know her probably wouldn't think twice about her. And if one of her friends saw her and thought any less of her for it then they really weren't much of a friend.

This attorney was not even a defendant. She was a victim. If there was anything undue here it was her excessive concern about what her friends, colleagues and prospective employers might think, when she should have been focused on protecting her child from an unhealthy and dangerous situation. So although I am not without some sympathy for this battered attorney, I also have to call her on her failures and call the editor on the issue of her anonymity. Maybe I know her. Someone does. Maybe I know something about this. Someone does. Maybe some of this story isn't everything the author says it is or everything the editor seems to think it is. There's no way to know is there?

— Karl E. Heimbuch
Alaska Bar # 8308378

Article's author responds

The scenario described in the article references past events; this marriage ended immediately following the child abuse. The family is doing well. The author continues to work as an attorney. For those who expressed disdain for the woman who was unable to leave her abuser expeditiously, the author urges caution. Many of us have attended trainings about domestic violence and have learned about the extreme difficulties faced by victims who want to leave but cannot due to lack of resources or due to fear of physical harm. Domestic violence victims in our profession may face the same obstacles to leaving an abusive relationship, plus the risk of unique professional repercussions. It is important for us as a professional body to acknowledge that domestic violence occurs within our ranks; that not every attorney has a financial or familial safety net; and that when we rush to condemn those whose experiences we can't possibly understand, we become yet another obstacle in the path of our colleagues who are trying to break free.

is probably what this attorney was most afraid of, and for good reason. As an attorney myself with experience representing children who have been the victim of abuse, I don't see this case as so different from others where the mother chooses the abuser over the child.

Excuse me if I seem completely unsympathetic. I'm not. I understand and have personally seen what battered women suffer and battered men as well. But I am unsympathetic to the things that this attorney seems most concerned with, and spent most of her time writing about. Like her, I too have seen my credit rating tank due to factors only partly out of my control. I rebuilt my credit and looking back on it, it wasn't such a

mine was doing community service and was complaining about the humiliation she felt and her concern that people including her friends

Bar dues stable, still pay for a wide range of services for attorneys

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research through the Casemaker service. Professor Jeff Rachlinski will have a fascinating and I am told very revealing presentation about your biases and the ways in which they can affect your clients. And there will be more, so very much more.

And, finally, I have a confession. After a good start as a younger lawyer I did not attend the annual Alaska Bar Convention for years. I was too busy. Despite the best of intentions, deadlines got in the way. The convention was always just a little bit too low on the priority list for me to tear myself away from immediate problems. And paying the bills always seemed to come before anything else.

When I started to attend again several years ago I realized what a mistake my absence had been. I

was surprised — pleasantly — that there was so much to do and learn during the three days of the convention. I got a chance to see lawyers I had only talked to over the phone. I saw friends and colleagues that I had not kept up with for years. And

I actually did learn a thing or two of use to my professional practice. The annual convention is a lot of fun and a great way to catch up on what is happening with your colleagues and your profession. And we do our best to make attending the convention easy and

practical. We are once again offering the "Two-For-One" discount for new lawyers. Any new lawyer admitted within the last five years can team with another new lawyer or a more senior practitioner and attend for the price of one conference fee.

I look forward to seeing you in Anchorage May 11 through May 13.

Nelson Page is president of the Alaska Bar Association

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Office of the Attorney General
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Re: Bar Dues

Dear Board of Governors:

I want to express my gratitude for yet another year in which you did not raise bar dues.

As the state contends with significant budget shortfalls, I know first-hand that providing the same level of service with fewer resources is not as simple as it may seem. Finding and undertaking those cost-saving measures is itself an effort.

The 260 attorneys employed in the Department of Law pay their own dues. At a time when state attorneys are undertaking more work with fewer resources, accepting furloughs to preserve the jobs of colleagues, and facing the prospect of additional cuts in the coming budget cycle, your decision to hold the cost of bar membership steady is appreciated.

Sincerely,

Craig W. Richards
Attorney General



The Kodiak Bar gathered March 2 to celebrate Judge Roy Madsen's 93rd birthday. Pictured are Judge Steve Cole and Judge Madsen.

Taste for wine sneaks up on an unsuspecting attorney

Dear Colleagues,

Just this morning I read an article concerning the results of a “large new study” showing that lawyers have a very high rate of alcohol abuse and depression. After writing about the “sobering” statistics of our profession’s substance problem, the author concluded by saying that our profession as a group – and individual lawyers – have a responsibility to address this issue. When I read that word “individual,” I thought: “Whoa, that includes me!” So I decided to take the plunge and share my story about how kicking booze has improved my life seven ways to Sunday. I hope you won’t think ill of me for admitting I can’t drink alcohol any more, but if I can encourage anyone with a similar problem to come back from the precarious limb of alcohol abuse, it will be worth it to me.

I was a light social drinker for a long time. When I was a law student at the University of Texas School of Law in Austin, I had a wonderful group of friends, and we would joke on the weekends that we were going to do a “bar review.” Austin had an awesome jazz/fusion music scene, and after a long week of class and studying, it was fun to dance under the stars to the music of Beto y Los Fairlanes. I didn’t have a problem with alcohol – yet. Alcohol and I were mere social acquaintances.

After graduating, I moved to San Francisco with my new husband and we both started practicing law with excellent downtown firms. I remember sitting in the gorgeous law library that looked over San Francisco Bay and hearing two colleagues discussing champagnes and wines from Napa and France. Words like “Chateau Lafite Rothschild” rolled from their mouths as they compared favorites, and I thought: “Wow, these people are so cool.” I determined then and there to learn about wines. And to understand wines and discuss them coolly, you must drink them. And in order to compare them, you must drink them.

In the olden days in San Francisco, we did not walk for miles through the snow, but we (I) went to work seven days a week for months at a time. Coming home after work late at night was the norm, and having some wine became a ritual. I loved the law, and I loved practicing in San Francisco. Everyone, it seemed, loved wine. We’d go to lunch at the many fabulous restaurants, often having wine with the meal. It was no big deal. Alcohol and I were mere friends still, but gradually we were hanging out more. We liked to spend evenings and occasional lunches together.

After making partner, I brought in a large corporate client headquartered in the Midwest and spent a lot of time on airplanes. I knew I was a pretty cool lawyer by then because I flew first class and was served “free” wine as I whisked

back and forth across the country.

Somehow in the midst of all of this practice of law, I had three much wanted and unbelievably awesome children. I did not drink while I was pregnant, but I waited like a thoroughbred in the starting gate to resume my friendship with wine. I left my partnership in San Francisco because practicing law with three small children was – shall we say – difficult. But my large corporate client, who had become embroiled in mass tort litigation, went with me, and my practice “exploded.” It was awesome and cool and lucrative, but quite stressful; and my friendship with wine deepened. Every evening, I HAD TO have wine with my dinner in order to unwind. My friends loved wine, too. We were all pretty cool and funny and erudite and successful and somehow wine was at the center of all the coolness and relaxation. I got divorced (amicably, thank goodness) and moved to Seattle to be close to my family. My ex (awesomely) moved to Seattle where his firm was based.

My friendship with wine was very solid by the time I hit – say 45. I HATED to wake up in the morning thinking, “What stupid thing did I say last night?” I was drinking a whole bottle of wine by myself every evening and had come to be “okay” with it. No one was criticizing me about it. My life was okay. I had awesome kids. I was practicing law well. But I knew that wine was now hooked into me. I couldn’t relax, couldn’t be funny, and couldn’t imagine living without it.

One night I found myself with a nightmarish headache and thought, “I’ve had it.” I had known for quite some time that I had a problem, and I decided I had too much to lose not to fix it. I quit drinking – for 5 ½ years. The program I used does not advertise, but it worked like a charm, and if you want to know what it was (and is), call me any time day or night at 425-260-4670. My life improved by leaps and bounds and so can yours.

I’m skipping many details here, but I got together with my amazingly wonderful husband Jim in 2005. I decided at that point that I had plenty to celebrate, and I really didn’t have any problem with alcohol. And, frankly, I deserved a little celebration. Okay – a big celebration. So we popped that first cork of champagne at an incredibly charming French restaurant and I was off to the races. Guess what? I still had a problem with wine. Damn it! Why me? I mean it’s not like I was a fall-down drunk or anything. But I drank wine every night until my teeth were garnet-colored and I basically felt like *%# about it.

Jim and I bought a cool house in Palm Springs planning to someday retire – ha ha. One night sitting under the stars and looking at the beautiful mountains and sipping away on my wine, I thought: “I don’t really belong on this earth. I don’t fit here very well.” It took a lot more hemming and hawing to really admit that I am a

“problem drinker.” But here comes the good part, my dear friends. I am a problem drinker. But I am also a good person, a good wife, a good mom, a good sister, a good daughter and a good lawyer. Lots of people would have been pretty damn bummed if I let wine take me down. So I decided to kick wine’s butt.

Two and a half years ago, I threw it out on the curb. My darling husband did, too. We did some math and figured we were spending about \$1,000 per month on drinking and that our livers were processing alarming amounts of alcohol. I went back to that organization which shall remain nameless unless you want to call me any time of day or night at 425-260-4670 when I will gladly tell you how much my life has improved and how much yours can, too. (Don’t worry, I won’t rat you out like I’m ratted myself out). Jim and I can’t retire because we keep getting awesome cases. We are sober. We are happy. We are kicking butt. So can you be, too. Don’t let booze kick your butt. There is too much good life out there. I am sitting in the sunshine looking at that gorgeous snow-dusted mountain and remembering that I actually thought I did not belong on this planet. I don’t know that person any more. I don’t know how long I have on this planet. But I want to enjoy it and make the best of my time here. I want to help others. I want to give back to this profession that has been so good to me. My friends, a sober life is terrific. We have so much to live for.

If you have an alcohol problem or addiction, please do not think you can’t kick it because YOU CAN! Get help from someone. Call me any time day or night at 425-260-4670. I will tell you about resources out there to help you.

Now, I must sign off because I must go frost the ginormous three-layer cake I baked this morning with caramel pecan frosting. What?? Sugar is addictive?? Well, that is a story for another day.

Your colleague and friend,

Gail M. Ragen

Proudly admitted to practice law in California, Washington and Alaska



New lawyers provide their names, home states and employers during a swearing-in ceremony in Anchorage in November 2015.

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 someone 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.

Marijuana legalization update: Read before you smoke

Continued from page 1

consistent manner.” The issue remains unresolved.

The remaining regulations comprise 127 pages—far too lengthy and complex to adequately summarize in this space. But there are a few areas worth noting

- **Licenses:** There are four main license types available: cultivation, product manufacturing, retail, and testing. Businesses may hold multiple licenses (e.g., cultivation and retail), but testing facilities must remain independent and objective, without a financial interest in any other licensed marijuana establishment.
- **Residency Requirement:** Ownership of a marijuana establishment is limited to Alaska residents. Residency is determined by the stringent Permanent Fund Dividend eligibility standard. This requirement covers not just sole proprietors and partnerships, but extends to all members of limited liability companies and all shareholders in a corporation as well.
- **Edibles:** Edible marijuana products initially proved difficult to manage in other states. Following those experiences, the MCB produced very specific regulations regarding edible marijuana products. For example, the regulations prohibit the use of cartoons or anything that may appeal to children on packaging; the MCB allows requires a lower level of potency for recreational edible products than is allowed in other states (servings can be no stronger than 5 mg each; with no more than 10 servings in a single package); THC content must be homogenous, or evenly distributed, throughout edible products; and producers of edibles will basically be subject to the same health and safety regulations as restaurants and other food producers.
- **On-Site Consumption:** Alaska will be the first state to allow on-site marijuana consumption at licensed recreational establishments. The MCB authorized an application for an “on-site consumption endorsement,” which will allow a retail store to include a space where customers can consume marijuana. Whether this takes the form of a bar or café, or just an indoor or outdoor smoking area, will ultimately depend on a combination of local laws and further refinement by the board. An updated on-site consumption plan is expected in April.

Next steps: It’s complicated

Although the regulations have been finalized, the path to starting a marijuana business in Alaska is still beset with uncertainty and complexity.

Alaska’s marijuana industry involves a heavy dose of government oversight—it has been described as a prime example of where “democracy and capitalism meet.” Though there is no cap on the number of marijuana establishments that can exist in the state, the combination of strict government regulation and unique market factors limits the potential size of the industry and poses significant barriers to entry.

To begin, municipalities may opt out and prohibit marijuana establishments within their communities. Several have already done so. But even if a municipality has not opted out at this time, entrepreneurs in this industry must consider the possibility that the area in which they seek to operate could later exercise its local option. Eventually, the Legislature will also have the opportunity to revisit and consider repealing the statute created by BM2. These possibilities require businesses to carefully calculate risk and understand the state and local political landscapes.

Attention to state and local politics is crucial, but the possibility of a local ban, or of the state legislature reversing course, pales in comparison to the danger posed by a shift in federal policy. Currently, Department of Justice policy allows state legalization plans to move forward, so long as they respect certain federal protocols. States therefore have largely been left alone to manage their marijuana industries, but this policy is not set in stone, and a subsequent administration could alter it. Indeed, a recent GAO report was quite critical of DOJ’s efforts at monitoring state-level legalization for compliance with federal guidelines, thus reminding states of this policy’s fragility. Continued reports of this nature could lead to additional federal oversight, or a rollback of state autonomy to legislate in this area.

Legalization advocates do not think such a stark and sudden shift is likely any time soon, and many are optimistic about the prospect of future changes to federal law that will ease these tensions. This feeling is buoyed by the financial results of legalization and the sheer size of the legal marijuana market (marijuana sales in Colorado exceeded \$900 million in 2015); recent public opinion polls showing broad national support for legalization (58 percent of Americans want to see marijuana use fully legalized; 84 percent support legalization for medical use); and the push toward legalization in several other states.

Another layer of regulation potential marijuana businesses must navigate is the buffer zone required by both state regulation and local ordinance, precluding, for example, marijuana businesses from being located within 500 or 1,000 feet (depending on the jurisdiction) of a school or other specified entities. Zoning and land use ordinances will then further dictate the specific locations available for marijuana businesses within a municipality, leaving a limited slice of property available for this industry. And property is key: Licenses are not floating; they are tied to the specific location detailed in the license application.

Even if a business can identify a suitable location to operate and apply for one of the available license types, complications exist that do not apply to other ventures. For example, commercial property owners may decline to rent to marijuana establishments, insurance coverage may be difficult to come by, and

banking options are well-reported to be limited (a recent survey indicated that 60 percent of marijuana businesses do not have bank accounts), resulting in cash-only transactions with customers, complications with payroll and tax payments, and significant security concerns.

Assuming a business can clear those hurdles and get off the ground, success is not guaranteed. Marijuana establishments will be interdependent — retail establishments will rely on cultivators and manufacturing facilities to provide product; marijuana product manufacturers will rely on cultivators to provide the raw plant materials to make their concentrates, extracts, oils and tinctures; and cultivators and manufacturers will rely on the work of testing facilities to approve their wares — and all will face similar barriers to entry. Thus, entering the market requires not just successful execution of one’s own business plan, but confidence that inter-dependent businesses will be similarly successful. This risk can be mitigated if a business obtains multiple license types and operates on both the cultivation and retail sides, but testing facilities must still be owned and operated by another party independent of any other licensed marijuana establishment. In short, no marijuana business is an island (and if a marijuana establishment is located on an isolated island, that makes things even more difficult, as discussed above).

The licensing timeline

The move toward marijuana legalization in Alaska, initiated by BM2, continues steadily apace. AMCO was expected to begin accepting applications for all license types Feb. 24. There is no application window or deadline; applications will be accepted year-round and will be addressed at the board’s periodic meetings.

The MCB plans to stagger the review and issuance of licenses. Under the board’s proposed timeline, cultivation and testing facility licenses would be reviewed and approved

first, with the initial approved batch announced in the beginning of June. Marijuana product manufacturing and retail establishment applications would follow, with the first licenses of those types awarded in early September. This timing tracks the planned launch date for the state’s marijuana tracking system followed by a marijuana plant growing cycle.

All license holders will be required to use a state-approved marijuana inventory tracking system to verify that all commercial marijuana was grown, produced and tested in accordance with state law. This “seed-to-sale” tracking system is not expected to be online until May 23, and the board has stated that no licenses would be issued before it is operational. Working forward from that date, the timeline appears to contemplate an approximate three-month growing cycle for marijuana plants. From a practical standpoint, staggering the license rollout like this makes sense. Prioritizing licenses for cultivation and testing fa-

cilities helps ensure that retail and manufacturing licensees will have access to legally grown, tracked and tested marijuana for their inventories before opening for business. Otherwise, there would be financial incentive to skirt the rules and stock illegal product.

Concluding thoughts

This article provides a snapshot of the current landscape of legal marijuana in Alaska. Despite the brevity, it illustrates the complexity of birthing an industry from scratch, of crafting a regulatory framework and of moving a product from the black market to a legal market. The process can appear to grind slowly at times, and is likely frustrating for those anxious to start their businesses or to take advantage of easier access to marijuana. But it is also in line with what voters approved Nov. 4, 2014. BM2 authorized a lengthy rulemaking process and called for the creation of a highly regulated industry.

Going forward, it is important for everyone who is or wants to be involved in the marijuana industry to know the risks of engaging in marijuana business activities, the protocols necessary to enter the legal marijuana market, and the need for strict compliance with the web of applicable laws and regulations. To those ends, it is especially important for lawyers advising clients on these issues to be familiar with the current regulatory guidelines, to closely follow developments in the law, and to be aware of their ethical responsibilities raised by the unique status of marijuana legalization — particularly because of the conflict between state and federal law.

If this all seems stressful and complicated, fret not. There are numerous opportunities to educate yourself on these topics. Or, you can contact a fellow member of the bar with expertise in this area. Alternatively, for those who prefer self-medication to self-education, you will soon be able to lawfully purchase marijuana, certain strains of which I have been told can help alleviate stress and anxiety.

Jason Brandeis is an associate professor of Justice at the University of Alaska Anchorage and works in private practice where he advises clients on marijuana law and policy issues.



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All license holders will be required to use a state-approved marijuana inventory tracking system to verify that all commercial marijuana was grown, produced and tested in accordance with state law.

What Bitcoins are and why lawyers should care about them

By Jeffrey Davis

Bitcoin, one the most known of virtual currencies, is an emerging technology field defined by the European Central Bank as “unregulated, digital money, which is issued and usually controlled by its developers, and used and accepted among members of a specific virtual community.”

Unlike the U.S. dollar, Bitcoins have no physical form, they are simply computer code stored in a digital *wallet*. Users can send and receive Bitcoins in a few seconds from virtually any electronic device. Bitcoins are not legal tender, nor backed by any government or legal entity. Like the U.S. dollar, Bitcoins have no intrinsic value and are not redeemable for other commodities. Instead the value of Bitcoins is due to user’s willingness to accept them as a method of payment. At the time of publication, they are valued at around US\$400 per Bitcoin. They can be subdivided and spent down to one-hundred-millionth of their total value.

The idea for Bitcoin was anonymously published in 2008 and quickly gained popularity because of its unique way of tracking transactions using a *distributed ledger* or *block chain*. Bitcoin is a cryptocurrency meaning it relies on principals of cryptography to ensure the secure validation of transactions and to govern the production of new currency. Transactions in typical currencies, e.g. the U.S. dollar, are tracked in ledgers kept by banks,

but defer to a central bank to keep a master ledger and verify transactions between the lower banks.

Bitcoin has decentralized this process. Transactions in Bitcoins are publicly broadcast. Individuals referred to as *miners* work to verify a block of transactions by solving an algorithm linked to the previous transactions, using free and open-source software. The algorithm is one which is hard to solve, but easy to verify. Once verified by a majority of Bitcoin users, the block is added to the chain. The miners who verified the block are rewarded with newly created Bitcoins.

Proponents of Bitcoin point to a number of advantages over other currencies. The main draw of Bitcoins is privacy. Bitcoin transactions fall between a truly anonymous transaction such as an exchange of cash between two people and a non-anonymous transaction such as a credit card transaction where a third-party identifies and verifies both party’s identities. Bitcoin transactions are pseudo-anonymous because users have an encrypted identity; however, that identity is broadcast and recorded in the block chain. Users have a cryptographic private key known only to them that allows them to sign and verify a transaction. The Bitcoin network verifies the transaction using a corresponding public key.

Another advantage of Bitcoin is the lower transaction costs for electronic exchanges. Traditional payment systems such as Paypal and credit cards typically charge

2-3% per transaction as compensation for their trusted verification. The block chain has eliminated that need, therefore significantly lowering transactions costs. The time between a transaction occurrence and verification is usually about 10 minutes.

Finally, Bitcoin has a controlled supply designed to prevent the erosion of purchase power by inflation. Currently, miners receive 25 Bitcoins per block added to the block chain. In mid-2016 the number will be halved to 12.5 Bitcoins per block for four years until the next halving. This halving will continue until 21 million Bitcoins have been issued. Additionally, the verification algorithm is designed to increase in difficulty with each added block in order to keep the issuance of Bitcoins steady.

Bitcoin is increasing in popularity. It initially gained fame, or rather infamy, due to Silk Road, the deep-web market place which trafficked mainly in drugs and weapons. In October 2013, Silk Road was shut down by the FBI and its founder was prosecuted and convicted of money laundering, computer hacking and conspiracy to traffic narcotics. He is serving a life sentence without the possibility of parole. Many saw the fall of Silk Road as the legitimizing of Bitcoin. Currently companies such as Overstock.com, Microsoft, OKCupid, Virgin Galactic, WordPress, Reddit, Zynga and Tigerdirect all accept Bitcoin as payment.

Bitcoins and other virtual currencies are assets that an attorney may encounter in practice. Busi-

nesses and retailers are beginning to accept Bitcoin as payments. While many quickly exchange them for dollars, some may keep them. Thus, Bitcoins may be implicated in the fields of tax, bankruptcy and general corporate law.

The government has taken notice of Bitcoins and regulations are likely to follow. Both the Senate and House of Representatives have held hearings on Bitcoin. The Securities and Exchange Commission and Government Accountability Office have issued statements on Bitcoin as well. The IRS issued guidelines on virtual currency in bulletin 2014-16. It classified Bitcoin and other virtual currencies as property and transactions over \$600 are taxed the same as property transactions.

Attorneys practicing estate planning may likely see Bitcoins in a client’s digital estate in the future. Because they use a private key known only to the owner, Bitcoins can potentially be abandoned if the password is lost at the client’s death. Due to the decentralized nature of Bitcoins, there is no way to recover the assets. At the current valuation, this could be a significant loss for an estate.

As society continues to rely more and more on the internet and electronic communication, the use of Bitcoins, or some other virtual currency will continue to grow. The legal community must be aware and prepared for this and should stay abreast of the current technology.

Jeffrey Davis is an administrative law judge at the Regulatory Commission of Alaska.

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Supreme Court hears argument at Anchorage's West High School

A record crowd of more than 900 heard oral arguments before the Alaska Supreme Court Feb 24 at West High School in Anchorage. The case, *Recreational Data Services, Inc., v. Trimble Navigation Limited*, involved two companies who agreed to work together to develop and market a GPS-based device for hunters and fishermen to access fish and game regulations and boundary areas while in the field. When their agreement fell apart, RDS sued Trimble for damages, and a jury awarded RDS more than \$50 million. After the jury's verdict was set aside by the trial judge, RDS appealed and sought to have the Supreme Court overrule the lower court's decision and reinstate the jury's verdict. The attorneys who argued the case were Susan Orlansky for RDS and Daniel Elms for Trimble.



Student Destiny Key, a West High junior and a squadron commander in AFJROTC, asks a question.

The Supreme Court LIVE program is designed to help students better understand the justice system, by bringing oral argument in actual cases to local high schools. This was the eleventh Supreme Court LIVE event. Prior sessions were held at schools in Juneau, Anchorage, Fairbanks, Sitka, Barrow and Ketchikan.

Supreme Court LIVE depends on the participation of many people to ensure its success. Enthusiastic teachers made room for this program in their packed curriculums, and arranged for transportation to West High. Local attorneys volunteered their time to go into the classrooms of participating teachers, to discuss the case and the appellate process. Thanks to this preparation by teachers and attorneys, students arrived well-prepared to understand the proceedings. The students were quiet and attentive during the argument, and asked excellent questions during the Q&A sessions with the attorneys and the court. ROTC students acted as ushers for the large crowd, and students from the Highly Gifted Program timed the argument.

Information about this case, and prior Supreme Court LIVE events, can be found on the court system website at <http://goo.gl/9bboek>. The event was live-streamed by 360 North; the video is archived at <http://goo.gl/kCQ7IT>.



The appellate attorneys are (from left) Daniel Elms, Susan Orlansky, Gavin Kentch, James Leik and Brian Samuelson. Orlansky and Kentch were for appellant, the rest for appellee. Members of the Alaska Supreme Court stand in the background.



Attorney volunteers who attended the oral argument included (front row from left): Wayne Watson, Stephanie Galbraith Moore, Susan Urig and Heather Gardner; next row from left are Robert Polley, Meredith Montgomery, Yvonne Lamoureux, Kathy Keck, Aesha Pallesen, Alexandra Zabierek and Kyle Reardon.



Chief Justice Craig Stowers delivers the State of the Judiciary Address to a joint session of the Alaska Legislature Feb, 10, 2016. Seated behind the justice are Senate President Kevin Meyer, left, and Speaker of the House Mike Chenault. A video of the address and a transcript of the speech are posted on the Alaska Court System's website: <http://courts.alaska.gov/index.htm>

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Know your ascertainable standard, use it as basis for drafting

By Steven T. O'Hara

Estate planning means property planning. In property planning, trusts are everywhere.

When looking at a trust, one of the first questions is: For what purpose may or must a distribution of property (including cash) be made to a beneficiary? For health? For education? For support? For best interests? For comfort? For happiness?

The term "ascertainable standard" goes to the heart of this inquiry. To what standard is the trustee subject in making or not making distributions to beneficiaries? Is the standard ascertainable? Could a court determine the circumstances that trigger a duty to make a distribution and then compel compliance by the trustee or restrain threatened action? (*Jennings v. Smith*, 161 F.2d 74, 77 (2nd Cir. 1947).)

If an individual trustee is a beneficiary or related to a beneficiary of the trust the trustee is administering, the trustee could be considered the trust's owner for income, gift, estate and generation-skipping tax purposes. An ascertainable standard may help in this area. If the trustee's distribution power is limited by an ascertainable standard, tax consequences adverse to the trustee in his individual capacity are less likely to occur.

A common thread running through federal tax law is that an ascertainable standard is generally a safe harbor. An ascertainable standard is referenced in:

- the trust ownership income tax rules known as the grantor trust rules in *IRC Sec. 674(b)(5)(A) & 674(d)*;

- the estate tax inclusion rules under *IRC Sections 2036 and 2038* (*Jennings v. Smith, supra*);
- the estate tax inclusion rules for powers of appointment (*IRC Section 2041(b)(1)(A) and 2514(c)(1)*);
- the regulations describing transfers subject to gift tax (*Treas. Reg. Section 25.2511-1(g)(2)*); and
- the disclaimer regulations (*Treas. Reg. Section 25.2518-2(e)(2)*).

Here in Alaska, in coordination with federal tax law, *Alaska Statute 13.36.153(a)(1)* references an ascertainable standard, protecting individual trustees from possible adverse tax consequences in the absence of an ascertainable standard.

The premise of these references in the law to an ascertainable standard is that you tie a trustee's hands with an ascertainable standard. The trustee does not have ultimate control over distributions.

In short, an ascertainable standard is an enforceable standard.

By contrast, where the trustee is given unfettered discretion in making distributions, we say the trustee's distribution power is based on a nonascertainable standard.

We know from the Internal Revenue Code and regulations that the terms "support," "maintenance," "education," and "health" are considered ascertainable standards (*Treas. Reg. Section 20.2041-1(c)(2)*). The trustee is subject to an ascertainable standard, for example,



"A common thread running through federal tax law is that an ascertainable standard is generally a safe harbor."

if the trustee is required to make distributions for the beneficiary's health or education or support. Under the regulations, "support" and "maintenance" are synonymous (*Id.*).

We also know from the same sources that the terms "comfort," "welfare," "happiness," "pleasure," "desire," and the like, such as "best interests," are generally considered non-ascertainable standards (*Id.* and *Treas. Reg. Section 25.2511-1(g)(2)*).

Importantly, state law – and not the IRS – determines whether a distribution standard is ascertainable or not (*Adams and Abendroth, "The Unexpected Consequences of Powers of Withdrawal," 129 Trusts & Estates 41, 42 (August 1990)*). Thus suppose a trust contains a distribution standard not sanctioned by the IRS as an ascertainable standard. If it is clear under controlling state law that the distribution standard is restricted to the beneficiary's health, education or support needs, the distribution standard is an ascertainable standard for purposes of the trust.

Extra care is required in drafting an ascertainable standard. For example, the regulations include the term "support in reasonable comfort" as an example of an ascertainable standard (*Treas. Reg. Section 20.2041-1(c)(2)*). That is "in" reasonable comfort, not "and" reasonable comfort. So if a client intends an ascertainable standard but signs by mistake a trust that provides for "health, education, support and rea-

sonable comfort," the IRS may argue the trustee is subject to a nonascertainable standard.

As another example, the power of appointment regulations include "support in his accustomed manner of living" as an example of an ascertainable standard (*Id.*). Also, the regulations describing transfers subject to gift tax include the language "to enable him to maintain his accustomed standard of living" as an example of an ascertainable standard (*Treas. Reg. Section 25.2511-1(g)(2)*). Yet the IRS has ruled that the language "to continue donee's accustomed standard of living" is not an ascertainable standard, under the power of appointment rules, because the language is not limited to the donee's needs for health, education, or support (*Rev. Rul. 77-60, 1977-1 C.B. 282*).

We cannot be too careful in this area. So in drafting distribution standards, it may be helpful to restrict ourselves generally to the five terms of "health," "education," "support," "best interests" and "welfare." If the client wants an ascertainable standard in a particular case, consider dropping the terms "best interests" and "welfare" and conform the document accordingly.

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

In private practice in Anchorage, Steve O'Hara has written a column for every issue of The Alaska Bar Rag since August 1989.

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Asking people to name their top five favorite songs presents a uniquely difficult challenge. It also provides insight (if you consider yourself an amateur psychologist) into the personalities of the various members of the Alaska Bar. In this installment we highlight the top-fives of: Jill Whittenbrader, president of the Kodiak Bar Association; Josh Fitzgerald who is pulling for a political revolution, believes that caging people is largely a failed experiment, and lives in Kodiak with his wife Aileen, kids Molly and Sawyer, and dogs Arlo and Horton; and Steve Gray who came to Kodiak in 1979 to commercial fish to pay for law school. Later he met his bride there and has been smitten with both ever since.

Jill Whittenbrader

1. "Rainy Day People" – Gordon Lightfoot
2. "Soul Rebel" – Bunny Wailer
3. "Who Loves You" – Frankie Valli and the Four Seasons
4. "Servant of Peace" – Snatum Kaur
5. "Anand" (Bliss) – Snatum Kaur

Josh Fitzgerald

1. "Leave the Light On" – Chris Smither
2. "Johnny Law" – William Elliott Whitmore
3. "Pilgrim's Progress" – Kris Kristofferson
4. "Maybe" – Dan Reeder
5. "Lawyers, Guns, and Money" – Warren Zevon

Steve Gray

1. "Satisfaction" – the Rolling Stones
2. "Like a Rolling Stone" – Bob Dylan
3. "Take Me to the River" – Talking Heads
4. "Wild Thing" – Jimi Hendrix
5. "On the Road Again" – Willie Nelson

FEDERAL PROBE

The Groh Pentagon, or why Alaska fiscal politics are so difficult

By Cliff Groh



Cliff Groh

The Groh Pentagon, or why Alaska fiscal politics are so difficult

By Cliff Groh

Alaska sits in a deep fiscal hole. The deficit for the current fiscal year stands close to \$4 billion, a number more than 75 percent of the size of the state budget.

The pickle Alaska is in comes from a combination of Alaska's heavy reliance on oil production to fund its budget, the almost three-decade decline in Alaska oil production, and the fall by more than two-thirds in oil prices over the past 18 months.

Some observers, however, would look at several facts and wonder how tight that barrel is. Alaska has:

- A state budget of \$5.2 billion widely understood to be the highest in the nation on a per capita basis (even after declining in recent years), presumably providing some room to cut (that \$5.2 billion represents spending of Unrestricted General Fund revenue, the conventional definition of the budget)

- An oil tax system changed in 2013 (a change ratified by the voters in 2014) to cut oil taxes at higher oil prices and raise them at lower oil prices while also featuring refundable oil tax credits that have now become the budget's third largest expenditure, presumably giving some opportunity to change the system again to improve the state government's fiscal position

- The lowest taxes on individuals of any state in the U.S., presumably allowing Alaska to raise more revenues from Alaskans and from non-residents who earn income and/or spend money here

- The Permanent Fund Dividend, which is a program unique in the world that annually pays each Alaskan who satisfies the residency requirements an equal share of about half of the earnings of the Permanent Fund—something that some would argue makes more sense (at least at the levels paid out under the formula in statute) in times of surplus as opposed to austerity

- The Permanent Fund principal, which holds — depending on what the stock market did today — more than \$38 billion, along with another \$5 billion or so in retained earnings not currently designated to be paid out as Permanent Fund Dividends or to inflation-proof the principal

So that's how your average policy analyst or investment banker would see Alaska's circumstances—problematic, but hardly grim. But Alaskans of course tend to have different views on this than some Outside academic expert or Wall Street sharpie.

So here's an analysis of the political fault lines and dynamics of Alaska's fiscal challenge as they are actually showing up on the Last Frontier. This is not — unlike what you may read elsewhere in the press — a statement of normative preferences, and as such it doesn't point the way to a policy solution. What follows is instead an analytical construct, a way of understanding what is going on.

This construct has five positions on it, and given that I don't get paid for these things it is named — rather immodestly — “the Groh Pentagon.”

The organizing principle is one I learned from a former boss, the former Alaska Speaker of the House and Alaska Commissioner of Revenue Hugh Malone. That insight is that what often makes the biggest difference in politics is what you fear the most as opposed to what you want the most. It appears that there are five groups of Alaskans (go ahead and imagine these groups as points on a pentagon):

- People who most fear budget cuts
- People who most fear changes in oil taxes
- People who most fear increases in taxes paid by individuals, particularly the reinstatement of a graduated income tax like the one Alaska had from 1949 to 1980
- People who most fear cuts in Permanent Fund Dividends from the levels produced by the baseline set out by the statutory formula
- People who most fear an economic crash

Let's lay out some obvious caveats before we turn to what we can learn from the Groh Pentagon. The points on the Pentagon are not equal in terms of amounts of money involved or numbers of adherents. The intensity of preferences (or in this case aversions) matters as well as the number of adherents for a particular point. The power of adherents of a particular point or position arise from other sources of power than pure numbers—those other sources would include campaign contributions, for example.

For those interested in those pure numbers of adherents, however, here are some figures from Strategies 360 polling conducted for the Rasmuson Foundation in January of 2016. These are the percentages of Alaskans expressing strong opposition to various policy proposals:

• Introducing state income tax.....	43%
• Reducing Permanent Fund Dividends	39%
• Introducing state sales tax	33%
• Reducing oil tax credits.....	24%
• Reducing state operating budget by 10%.....	23%

The lessons are greater in number:

1. Much of the political action going forward will have one or more of these groups reaching out to other groups to gang up on others. Numerous coalitions are possible. One to watch out for is those who most fear a state income tax approaching those who most fear cuts to the education budget to try to spend a substantial amount of Permanent Fund earnings in the budget. (Note that there are several ways to use substantial amounts of Permanent Fund earnings in the budget, and that those various ways have

different effects on the Permanent Fund Dividend and the Permanent Fund principal.)

2. Another possible coalition is the group of people most afraid of an economic crash joining up with one or more other groups to break the gridlock. A straw in the wind was a woman who said recently that while she would be inclined to oppose a state income tax, she would be much more interested in that proposal if it helped avoid a sudden and sharp fall in the value of her home that would cost her far more than a number of years of income tax payments.

3. The framing of alternatives is critical. A parent concerned about education cuts would be more likely to accept an income tax or a reduction in Permanent Fund earnings from the current baseline if that parent believed the money would be used to keep the student/teacher ratio from increasing. That same parent would be a lot less likely to accept such measures if that parent thought the money would go for spending in other areas, such as more luxurious legislative offices.

4. The groups shown in the Groh Pentagon all live in Alaska today, and do not include those who will live here 10, 20 or 30 years from now.

5. It is difficult to get anywhere if all you know is where you don't want to go.

Two other realities intrude here that lie outside the contours of the Groh Pentagon. The first is numerical. If you add up a number of steps being discussed—each of them a very heavy lift in the political arena—the combined revenues and savings would add up to less than three-quarters of our current deficit of close to \$4 billion. Using the current year numbers and rounding to the nearest hundred million, the math works like this:

Eliminate refundable oil tax credits.....	\$500 million
Reduce rest of budget by 10%	500 million
Cut Permanent Fund Dividends by half	
from current baseline	700 million
Impose individual income tax at	
15% of federal tax liability	600 million
Levy sales tax at 3% without exemptions	400 million
	TOTAL \$2.7 billion

The final reality is not anti-math, but a necessary corrective to an exclusive focus on the numbers. Despite what some politicians and commentators say, the fiscal challenge is not just about math, although it is of course partly about math. The choices Alaska faces now are in part questions about values and what kind of Alaska we want.

Cliff Groh is a lifelong Alaskan, a lawyer and a writer. He is also chair of Alaska Common Ground, a non-partisan and non-profit public policy organization focused on helping Alaskans seek consensus on the major issues facing the state. He worked on oil tax legislation while serving as special assistant to the Alaska Commissioner of Revenue in 1987-1990 and was the principal legislative assistant on the legislation creating the Permanent Fund Dividend in 1982. He is the lead instructor for a course scheduled at the University of Alaska Anchorage the last weekend of February 2016 entitled “Shaping Alaska's Future: Navigating Alaska's Fiscal and Economic Challenges.”

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**Lawyers' Assistance Committee
Alaska Bar Association**

It's time for Alaskans to take a deep breath, dig in and pay our own way

Continued from page 1

The idea resonated in a fishing town, like Bethel, where people had to make their cannery settlements last through the long winter.

Alaska had a personal income tax then and the state government was small. After the oil started flowing into Valdez, the legislature eliminated personal income tax. They used Alaska's share of the oil money to build highways and fancy buildings in the Railbelt and fund failed attempts to diversify the state's economy. They even slipped some of it into the Permanent Fund. The size of state government swelled in response to demands for more services until the 1980's oil glut when the legislature reduced the resulting

deficits with cuts to the operating budget. After the glut years, state government swelled again.

Dredging up off-told stories about shovel leaning state employees and junketing legislators, some people argue that we can cut our way out of today's problem. But no amount of cutting will wipe out the current and projected deficits. So Gov. Walker has bravely set out a revenue-generating plan that might staunch the hemorrhaging until oil revenues rise.

The governor's plan calls for milking the permanent fund, which in Alaska, is a like trying to take a



"No matter what happens, we are in for some lean times."

half-full food bowl away from a sled dog. He also proposes that we all pay the state a personal income tax, like almost everyone in the rest of the country.

Since 1980, I have enjoyed life in our socialist state where every adult and child resident receives a yearly payout just for living here. I liked the way the state does so much for us without charge, like plowing state highways, providing police protection and a court system, educating our kids, and offering public health services. I am even grateful that the oil companies kept the state awash

in greenbacks while siphoning off the lion share of profits. But unless we want to sell the state to another country like Russia did in 1887 after over-hunting the sea otters, we have to suck it up and start paying for state services.

No matter what happens, we are in for some lean times. State agencies and the court system have imposed hiring freezes. Already, some of the offices in the Dimond Courthouse in Juneau, which houses the Alaska Department of Law, are dark. Starting July 1, Alaska courts will close at noon each Friday to reduce costs. The governor proposes to cut state spending by 9 percent in FY 2017 to deal with an expected \$466 million shortfall. He is asking the legislature not to fund state employee pay raises. The proposed, across-the-board budget cuts, will impact the services that people now see as entitlements.

Without additional revenues, all the governor's cuts will only dent the deficits. Reductions alone will not eliminate them. If Alaskans continue to press their elected officials to wait until the government is reduced to "the right size," the state deficit will eat up the reserves until we are reduced to issuing junk bonds to keep the lights on in our schools and government buildings.

Suck it up Alaska. We've had a good, free ride. Now it's time to start paying our own way.

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.



Members of the Juneau Bar Association gather at the Baranof Hotel in December. The group meets for a lunch almost every Friday and welcomes attorneys visiting from around the state or Outside.

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A closed door, a hot sun, a ship's secret and a cruiser busted

By William Satterberg

Mom and Dad were married for 35 years. When Mom and Dad were married, it was always nose to the grindstone. Family vacations were rare and usually consisted of land trips to visit relatives, the occasional fishing trip and constant yard work at the family homestead near Willow. Dad thought working at the homestead was supposed to be fun. But no cruises. Cruises were expensive. Cruises were reserved only for the rich elite. Elites like Dad's sister, Aunt Laurie, who always used to revel in sending out glossy pictures of her posing with the ship's captain in formal dinner attire on her various cruises. Dad always complained that Aunt Laurie, who lived in Hollywood, Los Angeles, was incurably starstruck. To Laurie everything was glitz. My Dad used to sarcastically quip, "If you ain't wearing it, living in it, or driving it, you just ain't got it." I agreed.

Following Mom's death, Dad understandably became lonely. Although Dad had always had his trapline, coffee shops and daily routines, Dad lacked basic human companionship. So, eventually, at a friend's suggestion Dad turned to cruises. When married, Dad had never cruised. After mom had passed on, one of Dad's single buddies told him that cruises were fun. They were a great place to meet "girls." To Dad, a girl was anyone under 70 years of age. So Dad decided to give it a try. Single men at Dad's age were a commodity which the cruise lines fully appreciated. Cruise incentives for unattached males abounded, from discounts to upgraded staterooms and more. Although traditionally a skeptic, Dad decided to keep an open mind.

Dad's first cruise was memorable. Without a second thought, the cruise line had upgraded Dad to an oceanside balcony suite. Only limited conditions existed. Dad had to wear a tuxedo to the fancy dinners, sit at his assigned table, go to the ship's dances every evening and dance with the girls. Especially dance. One caveat, however, was that Dad could not pair up with any one female. Rather, Dad had to play the field, courting and flirting with a bevy of ladies. To encourage this exposure, Dad's table assignments would change nightly, thus forcing Dad towards a plethora of eligible elderly ladies. But Dad did not need much encouragement. In point of fact, the cruise line was heavily populated with single, older ladies — primarily widows or divorcees. The proverbial purple-hair group. Fortunately, Dad loved to dance. In fact, sometimes, I thought Dad should have worked in a revue rather than being a plasterer. Or maybe a geriatric Chippendales show. Dad used to tell me that the good dancers always got the girls. But, I wasn't interested in 70-year-olds.

Stated simply, Dad had effectively become a gigolo, paid in upgrades and freebies by the cruise line to entertain different ladies each night. Dad only had to be available to all.

A lot like my mongrel dog, Utz, the neighborhood Don Juan. My sister Julie and I agreed to keep it a family secret. It was almost as embarrassing as having a lawyer in the family.

Following his first cruise, Dad was incurably hooked. Dad became quite the ladies' man for the remainder of his life and enjoyed many cruises. Ironically, following each of his cruises, Dad's phone would ring regularly with lonesome ladies seeking to keep the shipboard romance alive.

When I would answer the phone, Dad would either vigorously nod his head up and down while racing for the handset, or shake his head from side to side while rapidly exiting the room depending upon the caller, whose name he had usually long forgotten. Dad liked to describe himself as similar "to the mechanical rabbit at a greyhound race." Eventually, Dad chose to refer to his many paramours simply as "what's her name?" rather than run the risk of a catastrophic slip up.

Dad wasn't the only one who became hooked on cruising. My wife, Brenda, also became addicted after taking a cruise with her mother and two sisters. After a time, Brenda implored me to go on a cruise to Mexico with her, as well. Supposedly, it would be romantic. And there would be "guy things" on the ship, also. To preserve the peace, I reluctantly agreed. Personally, I did not look forward to cruising — except for the food. Otherwise, I felt a certain panic about the forthcoming venture. No phones. No internet. And no escape. Instead, I would be trapped in a steel coffin for seven days and at the mercy of others who spoke English as a second language or even a third. I am not comfortable being controlled by others. Never have been. Some say I am claustrophobic. I say I am precautious. But I succumbed, nonetheless. To allay my fears of old age and 70-year-old "girls," Brenda booked us on a young person's cruise line known as Carnival.

Shortly after our Carnival Cruise Lines ship left the Port of Los Angeles, I decided to explore my new home. Like a lovestruck dog checking out every neighborhood tree, I set out for a full walk around the vessel. Before long, I decided that I would love cruising, after all.

My awakening took place on the top deck of the ship. It was on that remote deck where I saw a sign on a closed door that read:

Sundeck- Adults Only.

Must be 18 years or older to enter

Tops Optional

Male curiosity set in. At first, I was reluctant to pass the threshold. But I was on a mission. Duty called. Mustering up my rapidly dwindling reserve of masculine courage, I entered the enclave. I immediately saw a herd of young college aged



"After a time, Brenda implored me to go on a cruise to Mexico with her, as well. Supposedly, it would be romantic. And there would be 'guy things' on the ship, also."

coeds tanning their unclothed upper torsos in obvious anticipation of the beaches of Mexico. It looked like a beach full of fur seals at St. Paul Island, but smelled like a tropical coconut oil factory. Wasting no time at all, I tore off my shirt and immediately launched myself into a belly flop on the nearest chaise lounge. Wanting to appear discrete, I ordered a scotch and water and proceeded to pretend that I, too, was simply tanning. But I had forgotten my suntan oil. Still I figured would not be a problem since I only planned to be in the area for a brief period of time. Admittedly, I did surreptitiously sneak views of the surrounding scenery for self-protection, all the while imbibing adult beverages over what became the next two hours. In the end, I didn't get tanned. (My end was covered.) Instead, I burned. Rather than a golden bronze, I was now a brilliant rosy red resembling a freshly cooked lobster.

Eventually, the sun set. By then, the ladies had left. I returned to my cabin. Brenda was understandably curious as to where I had gone for so long, apparently fearing that I had fallen overboard. I told her I had decided to try tanning after exploring the vast vessel. To my relief, Brenda was delighted to learn that I was actually enjoying the cruise. Given my reputation for not wanting to waste valuable billable time tanning, Brenda was especially pleased that I had elected to now enjoy leisurely activities. As far as Brenda was concerned, the cruise was having its intended, therapeutic effects. The spell had been broken. Just as advertised in the promotional brochures. I was entering the hedonistic era of relaxation and pampering. Empathizing with my pain from what was clearly a major sunburn, Brenda lovingly applied aloe vera to my scarlet back, wondering why my frontside was not equally tinged. Again, I felt it best not to explain why I had elected to lie on my stomach for two hours under the

blazing sun.

That evening, we attended a ventriloquist's show in the ship's nightclub. It was there that my escapade was disclosed. Midway through the show, the dummy asked the audience about how many men had already located the topless tanning deck. Widespread laughter quickly erupted. My hideaway was no longer a secret. When realization set in, Brenda gave me a shocked look of recognition and promptly slapped me in the middle of my damaged back. Stifling the urge to scream out in mortal agony, I weakly smiled and tried futilely to explain to Brenda that I was lost. Or tired. Or thirsty. Or something. But, Brenda would have nothing of it. In fact, I felt that she was considering tossing me overboard, herself. I was clearly busted. My days of aloe vera massages were over. Fortunately, Brenda is a forgiving person. The cruise was not entirely a disaster, although, for the next several days, I resembled an anaconda shedding its skin and had the worst case of dandruff imaginable. Children avoided me as if I were carrying a loathsome disease.

I only visited the adult sundeck one time after that. It was on the second to final day of the cruise. That time, the place was virtually deserted except for two elderly ladies who were obviously intent on getting their own full body tans before their return to Canada. It was not what I expected. In scarcely seconds, I was immediately cured of ever reentering the adults only tanning deck again. Some call it aversion therapy. Or waterboarding. Whatever it was, it worked. For several years after that, I avoided cruises altogether.

In fact, it was not until 2015 when I finally went on a family Disney cruise with Brenda, my two grown daughters, and my six-year-old grandson. Brenda made sure that one thing was certain: There were no topless sundecks on the Disney Cruise Line. At least not on the SS Disney Dumbo. But that is another story still to come.

Admitted to the Alaska Bar in 1976, Bill Satterberg 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.

Personally, I did not look forward to cruising — except for the food. Otherwise, I felt a certain panic about the forthcoming venture. No phones. No internet. And no escape.

There were no topless sundecks on the Disney Cruise Line. At least not on the SS Disney Dumbo. But that is another story still to come.

CLASS A OFFICE WITH VIEWS & DECKS

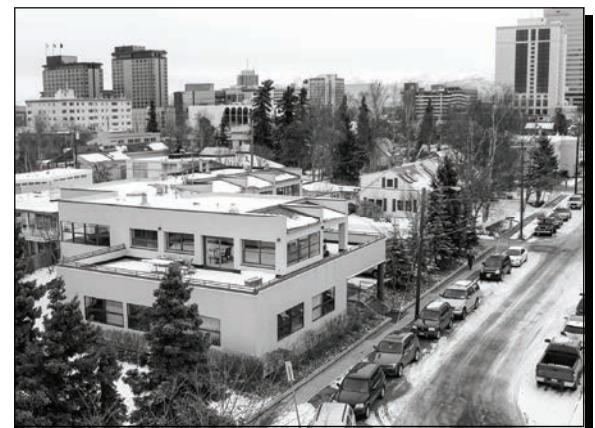
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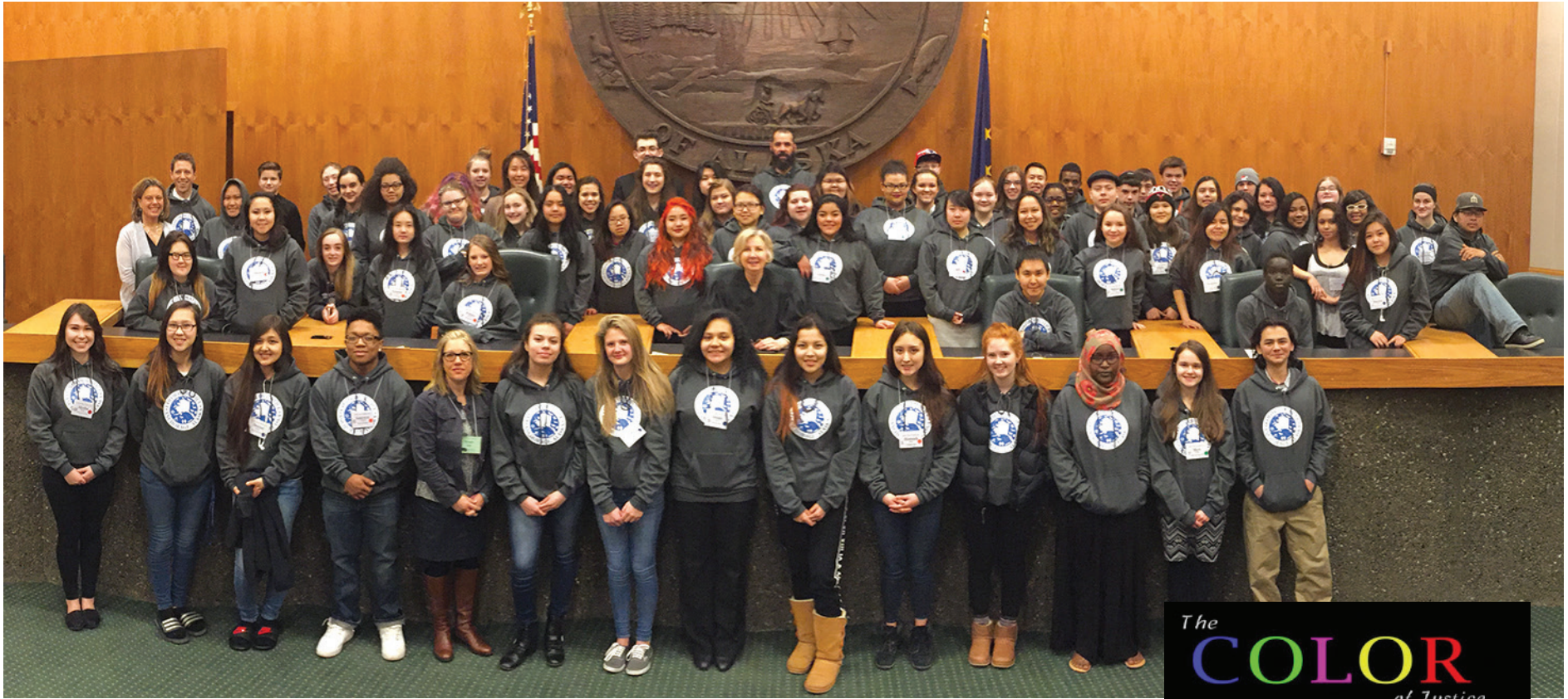
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Participants in the Color of Justice program stopped for a photograph.

70 students participate in Color of Justice program

The Alaska Court System, University of Alaska Anchorage (UAA) Justice Center, and Cook Inlet Region Inc. (CIRI) hosted the Color of Justice program in Anchorage Feb.25-26, 2016. Color of Justice is a law-related education program founded by the National Association of Women Judges that is designed to promote diversity in the legal profession and judiciary by encouraging diverse youth to consider careers as lawyers and judges.

More than 70 high school students from villages across the state

and from Anchorage area high schools attended two days of workshops and other activities presented by law professors from Gonzaga University School of Law, Seattle University School of Law, University of Alaska Anchorage, and University of Washington School of Law. The program was also supported by the Alaska Bar Association, Alaska Federation of Natives, Alaska Native Justice Center, Anchorage School District, Council on Legal Education Opportunity, Law School Admission Council, Northwest Indi-

an Bar Association, and Rotary Club of East Anchorage.

New to Color of Justice this year, was a Rural Student Initiative made possible by contributions from all 12 ANCSA Regional Corporations, the Alaska Native Justice Center, and by program support from the UAA Justice Center, the Multicultural Center, the Alaska Native Student Center, Alaska Native Studies Program, UAA Department of Anthropology, Alaska Native Science and Engineering Program (ANSEP), the UAA Pre-Law Society,

and the First Alaskans Institute. Rural Student Initiative attendees traveled from Akutan, Atkasuk, Chignik Lake, Dillingham, Dutch Harbor, Egegik, Fairbanks, Galena, Hooper Bay, Houston, Huslia, Kaktovik, King Cove, Kongiganek, Kotzebue, Koyuk, Larsen Bay, Nenana, Nikiski, Saint Paul Island, Soldotna, and Valdez. Participating Anchorage area students came from Bartlett, Dimond, Eagle River, East, SAVE, Service, and West high schools.

Continued on page 13

2016 NINTH CIRCUIT CIVICS CONTEST

50 YEARS AFTER THE MIRANDA DECISION

How Federal Courts Defined the Rights of the Accused

Cash Prizes in both contests
 1st place: \$2,000
 2nd place: \$1,000
 3rd place: \$500



An essay and video contest sponsored by the U.S. District Court for the District of Alaska and the Ninth Circuit Courts and Community Committee. Rules and entry instructions are available at



<http://www.ca9.uscourts.gov/civicscontest>

50 YEARS AFTER THE MIRANDA DECISION

How Federal Courts Defined the Rights of the Accused

In 2016, the nation marks the 50th anniversary of the United States Supreme Court decision in *Miranda v. Arizona*. In that 1966 case, the court ruled that someone taken into police custody must be informed – prior to questioning – of their Fifth Amendment right against self-incrimination. Now referred to as a “Miranda Warning” or a recitation of “Miranda Rights,” police must advise persons in custody of their right to remain silent and their right to an attorney.

The 2016 Ninth Circuit Civics Scholarship Contest asks high school students to consider how Miranda Rights came to be defined, how they are safeguarded by the federal courts and why they are so important to our system of justice.

The contest has two components: 1) Individual students can express their thoughts and ideas in an essay of 500 to 750 words, and 2) Individual students or teams of up to three students may submit a 2-3 minute video presentation on the theme. Students may participate in one or both competitions.

The contest is open to students in nine western states, Guam and the Northern Mariana Islands. Sophomores, juniors and seniors in public, private and parochial high schools and home-schooled students of equivalent status may participate. The contest begins January 1, 2016, and ends on April 15, 2016.

Circuit contest winners will be announced in June. Cash prizes will be awarded to the top three finishers in both the essay and video competitions. Contest rules, entry instructions and other information will be available December 1, 2015, at <http://www.ca9.uscourts.gov/civicscontest>.



The U.S. District Court for the District of Alaska will conduct preliminary judging for the contest. The district will hold a local contest to select finalists who will move on to compete in the Ninth Circuit contest. The district will award cash prizes for top finishers in both the essay and video categories. District winners will receive \$500 for first place, \$300 for second place and \$200 for third

place. More information on the local contest will be available December 1, 2015, at <http://www.ca9.uscourts.gov/civicscontest>.

For more information about the district contest, please contact Ruth Tronnes at (907) 677-6210 / Ruth_Tronnes@akd.uscourts.gov

70 students participate in Color of Justice program

Continued from page 12

Color of Justice sessions included “MentorJet: A Speed Mentoring Experience,” where students got the chance to meet with 14 diverse law-

yers, judges, and justices, including Supreme Court Justice Dana Fabe. They also participated in “Constitutional Cranium,” a quiz show on Alaska constitutional knowledge hosted by Judge Pamela Washing-

ton and UAA Justice Center Prof. Jason Brandeis, and a *Mock Trial* coordinated by UAA Justice Center Prof. Ryan Fortson with 16 volunteer mock trial coaches from across the state.

For the rural high school students attending the program this year, the Rural Student Initiative coordinated donated food, transportation, and friendly volunteers and students who welcomed Initiative students and showed them the UAA campus and spoke to them about educational and cultural issues. Volunteer host families in Anchorage housed the students, fed them, and transported them to and from the program events.

Some Initiative students required helicopter and bush plane hops to get from island to mainland to hub village to Ted Stevens International Airport. Some had never seen a traffic light, or been in a movie theatre. They not only converged in Anchorage to learn about the legal profession and all that it has to offer them and their nation, state, community and ethnic group, but they did so alongside students from Anchorage who brought their own perspectives, but from an urban environment. The convergence was historic.

Increasing diversity on the bench is important to fostering public trust and confidence in our justice system, according to Justice Fabe. Color of Justice serves this goal, she says, “by affirming for our young women and youth of color that the judiciary is a career path that is open to them.”

A Color of Justice video is available on the court system website <http://courts.alaska.gov/outreach/index.htm#coj>



L-R: Magistrate Judge Kari McCrea, Judge Sen Tan (Ret.), Judger Herman Walker, Nicole Borrromeo, Prof. Christian Halliburton, Judge Pamela Washington, Justice Dana Fabe, and Prof. Stephanie Nichols with one of the Color of Justice Student participants.



Mentor Prof. Mathiew Le meets with Color of Justice Student participants.



Mentor Peter Boskofsky meet with Color of Justice Students.



Color of Justice 2016

Fostering Diversity in the Legal Profession & Judiciary...One Student at a Time

Anchorage, Alaska February 25-26, 2016

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January, earthquakes, so head to the Anchorage Museum

By Jean Bundy

Early Sunday, Jan. 23-1:30 a.m. – Dave and I were sitting in bed, sandwiched between our two Cockers, Orpheus and Hogarth, reading Boris Johnson's book about Winston Churchill. Churchill's art is the subject of my almost finished PhD project.

"I think we're having an earthquake," I said to Dave as I fluffed another pillow while Dave read on about whether Churchill had had dalliances. The mild rolling suddenly changed to loud shaking as we knotted our bathrobes, clung to the stair railing, finally standing by the garage door watching ski poles gracefully dance in the moonlight. OK, I hate earthquakes. I joke, maybe I should market sugar pills as "earthquake xanax." The abrupt scare had removed us from our 'LL-Bean' coziness, a not so subtle reminder that Alaska's raw Nature isn't far from our midtown, Moose's Tooth existence. At least the earthquake had the sense not to disturb Sunday night's episode of *Downton Abbey*.

Dark afternoons in January are a great time to head to the Anchorage Museum. It's contemplative, no tourists and just what we needed after Nature's jolt.

I am often asked how I acquired "museum feet;" I'll go anywhere for art, a museum café and bookstore. Here's some advice. Read ahead on what you want to experience. Don't try to see everything, and halfway through your sleuthing take time to re-cap with lunch, before your final look-see. Make sure your camera battery is charged, take a pad/pen for jotting, and put water and some crackers in your day-bag. One time we found ourselves very hungry at the Punta della Dogano or Venice's contemporary art museum, formerly a customs building. We headed for their café only to find it was full except for a kids' table. We asked the manager if we could sit with the crayons and were emphatically told "no." Famished, we boarded a vaporetto to Peggy Guggenheim's Villa-restaurant which we discovered made the best burgers and fries on the Grand Canal.

I like to have a theme when I cruise galleries of art. Since layering different eras is part of my Churchill paper, I decided to explore Native art as cultural overlay. The exhibition, *Our Story* (thru Sept. 11, 2016), curated by carver Drew Michael, displays masks and even such Native-pop-art as decorated high heels.

Man's Fate/Snow blinded, by Melvin Azittauna Olanna (Inupiaq), 1989, is a marble head and arms—no eyes. Left unfinished in a similar way to Michelangelo's *Prisoners or Slaves*, c.1520-1523, found at the Academia, Florence, Olanna's head twists to escape its rock enslavement. Marble has been roughly scored, contrasted with the smooth fluted ruff, evident below a partially exposed face, and around the head-bulge in back. Except for faint clues that the face might be Native, nose and mouth are ambiguous as are the massive hands in the rear. Fingers aren't folded in rever-



Man's Fate - Snow blinded (1989) (frontal view)

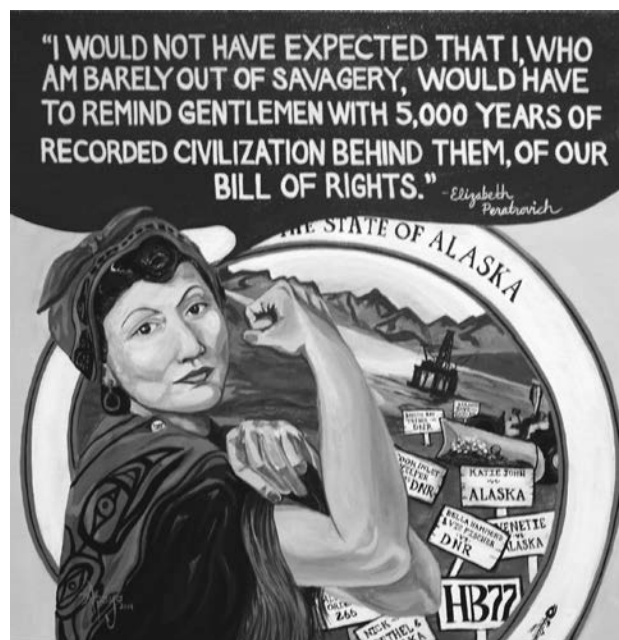


Man's Fate - Snow blinded (1989) (rear view)

ence, or juxtaposed for work, they cascade awkwardly, like catalogued specimens in a lab. Using the word "blind" in the title plays with snow-blindness or dangerous white-out conditions. "White" is synonymous with Western domination by people who came to Alaska with cultural blindness.

Apayo Moore's (Yup'ik) *We Can Do It* (Elizabeth Peratrovich, Tlingit 1911-1958), 2014, parodies *Rosie the Riveter*, iconic symbol of the American housewife who went into munitions factories during World War II. Here, Rosie is portrayed as Native, Elizabeth Peratrovich, an early advocate for equal rights. The work is painted in acrylic, a medium far removed from organic materials used for Native craftsmanship. Rosie's flesh tones are monochromatic, more like a mannequin than a real human. Is this woman Native or really White?

Moore positions Peratrovich in front of a faux-State of Alaska seal where mountain-majesty and seascape are littered with signage about Native battles for land rights. The yellow/blue background gives this composition a patriotic feeling only to be wrenched by the fist of Rosie who is wearing a bandana and shawl embossed with clan symbolism. Moore teases the viewer with



We Can Do It (Elizabeth Peratrovich, Tlingit 1911-1958) (2014)



Blood Quantum (2007)

more layering; is this piece high art or kitsch with its Roy Lichtenstein speech-bubble? Look carefully, has Moore allowed Rosie to give "the finger" by placing a smidgeon of yellow paint above Rosie's fist?

Emotionally wiped out by *Our Story*, we headed to the Museum's atrium for tea and a cookie as we contemplated our next sleuthing.

Living Alaska: A Decade of Collecting Contemporary Art for Alaska Museums is curated by Sven Haakanson Jr. (thru Feb. 7). You may recall professor Haakanson curated *Giinaquq: Like a Face*, Sug-



Beaded Cell Phone Cover (2007)

piac Masks of the Kodiak Archipelago, 2008. These masks housed at Chateau Musée in Boulogne-sur-Mer were acquired in 1871 by Louis Alphonse Pinart who was on an ethnological adventure to coastal Alaska.

Continuing with themes about layering culture, Rochelle Adams' *Beaded Cell Phone Cover*, 2007, is a moose hide beaded satchel similar to larger ones made for carrying survival items: tools, fish and game, now reduced to house a cell phone, feminine in appearance, too. Adams' sack becomes transportation for verbiage instead of a vehicle to transport sustenance. Or has a phone become sustenance? Mobile phones have only been around for 20 years and don't carry the baggage of some other Western implements. Natives aren't denied cell phones, as long as they can afford them.

Nicholas Galanin's *S'igeika'awu:Ghost*, 2009, resembles a Native ceremonial mask, made of ceramic instead of wood. Stark white with glazed blue flowers, the work parodies European china patterns that might have been brought to Alaska by Russians. The coarse hair on the mask attempts to cover the design which can't be obscured, just as cultural appropriation can't disappear. Unlike wooden masks, clay can shatter. The hair or its 'Nativeness' is the only element that could burn-disappear. This mask is funny, eerie, sad and pensive; the stare from the mask lurks like a 'Lacan-gaze'.

Erica Lord's *Blood Quantum* ($1/4 + 1/16 = 5/16$), 2007, depicts a human right arm, a photograph-composite of a limb with different flesh tones. Tattooed on the forearm is a math problem; the answer indicates no one is ever 100% any single ethnicity. Tattoos traditionally referenced aboriginal cultures. Now accepted in Western culture, tattoos still suggest the other."

This arm appears plastic, like an appendage from a mannequin or doll; humans are sometimes treated as unreal. Segmenting this arm into subtle color variations conjures themes about discrimination based on ethnic purity. The subplot of the musical *Showboat* is about being Mulatto, which returns us to the idea of percentages. In Alaska, how much Native blood someone possesses can mean receiving or being denied Native corporation allocations.

A woman painted on the left side of a canvas is in a sinister space. But this is a right arm suggesting power, while questioning superficiality of skin color and social acceptance, argued in all cultures. And yes, laminated wood is stronger than tree sawn boards.



S'igeika'awu Ghost (2009) (1)

Some might see Native artists diluting their heritage by employing Western themes and Western media, as derogatory. Here Native culture is not being beaten or verbally abused but blended freely, reminding the viewer of the need for change by creating new dialogues of Form and Content. Happy Sleuthing for Art.

Jean Bundy AICA/USA is a writer/painter living in Alaska; photography by David Bundy; email: 38144@alaska.net

Of Note: The catalogue: *Living Alaska*, is available at the Anchorage Museum store.

As machines advance, judges pushed aside in the office

To Chief Justice Craig Stowers:

I am just in receipt of your letter of July 21, 2015 congratulating me for 40 years of service with the Alaska Court System.

Thank you. It is my privilege and pleasure to work for the ACS and serve the wonderful community of Seward.

Let me bother you with a few thoughts and changes in the Seward Court from that time hence.

When I walked in the door of the Seward Court in the fall of 1976 the office was still using rotary dial phones (remember...?, 911 would be //zick// click click,click,click,click,click,click,click, click/ /zick//,click / /zick//, click/). There were no computers in the office, not even a digital watch. Everything was done by hand. We had reams of carbon paper to make copies, but to this day I cannot reliably insert the dreaded carbon paper properly to get a copy transfer to the page below rather than the backside of the top page.

Well, things gradually changed. We got our first copier – Halleluia! No more carbon paper. But the trade-off was that we now became experts at removing tangled and shredded paper from the bowels of cranky, early generation copiers.

In the courtroom the first generation recorder was a huge, 70-pound Akai high fidelity reel-to-reel recorder. Even today, this machine would be prized for its high quality recording. But it was a beast. The 12-inch reels only held two and a half hours of analog recording, threading the new reel was tricky, and the only index was a tiny mechanical revolution counter. Because of poor acoustics in the courtroom and the difficulty finding any specific portion of a hearing, appeals were rare.

Then we got our first computers. These were the epitome of kludge – dark green screen with bright fluorescent green text. But they were a start. In order to write judgments and orders, I bought myself one of the first Macs and a dot matrix printer. I went through several iterations of Macs until the Court finally got real computers with Word and laser printers.

What really broke things open was the fax machine. Now there was nearly instant filing in a town with no attorneys. It made covering St. Paul and other courts possible and greatly smoothed our connection with Kenai and Anchorage.

Initially we did nothing by phone. Heck, we didn't even have a speaker phone so it wasn't possible. We dealt with our public face to face. I would guess the phone rang maybe a dozen times a day back then. When it did ring there would be an audible gasp from the staff ... "Who could that be?"

Now *everything* is done by phone or has a telephonic component. Speaker phones? Hah! Now we have SRS built into the courtroom. Not always successfully because the audio is frequently very poor. Curiously, the video is always great. Many improvements still to go on the audio part but our new PolyCom makes video conferencing tolerably good, but it too has a long way to go before it is a substitute for a room full of people.

If I had to call Anchorage Court (our mother-ship then) it was 274-8611 and ask the operator for your party. If you didn't know who to contact (there was no phone directory), you ran your problem by the operator and she (always a she) would connect you to the proper party/office.

In the courtroom, recording went through Beta Max, cassette, and CDs to its current iteration of hard drive/server configuration. Oh, what an improvement. Now there is instant and precise access to any hearing in reasonable fidelity. Duplication is a snap. So, now, are appeals. More work for you.

Things were much simpler then and I could and did all of the clerk duties on a regular basis – accounting, counter and telephone work, civil, criminal, traffic, land recording, coroner, vital statistics, passports, and once I clerked my own jury trial.

Now, court processes have become so complicated and technical that I am not allowed to:

1. Answer the telephone
2. Deal with people at the counter
3. Do anything with Courtview more complicated than entering case numbers and judgments.
4. Touch the cash drawer or do receipts.
5. Go anywhere near traffic or jury.

I am still allowed to move furniture, go into court when summoned, take and retrieve the mail and change the occasional light bulb. But you have to understand that 90% of the work here is done by clerks.

Seward demographics in those days were stark; 95% white and an average residency of 26 years. Definitely an old school town (compare Kenai with 2.1 year average residency). Population varied between 2,000 and 3,000 depending on the time of year, but back then Seward was small enough and old enough that everyone thought they knew everyone else and what they were up to, but, it was big enough that they didn't. So Seward had a vibrant rumor mill. Growth, younging and the advent of instant news via electronic newspapers put a damper on it, but as late as 2010 while I was at the transfer facility an employee there greeted me with the question, "Hey, are you still selling cocaine to the kids at school?" I didn't stick around to find out if he wanted to buy some or was just curious.

As the budget shrinks and the processes of law becomes more and more complicated and e-filing is coming on line, the ACS must consider covering more and more court proceedings remotely. This would save money, speed things up, and put qualified staff on the problem. For example, Seward does two or so CINA cases per year. This is a specialty field with labyrinthical procedures, best handled by staff who specialize daily in this type of case.

I applaud the ACS's current goal of reducing prison and jail populations. We simply put too many people in jail for too long for too many offenses. There has to be a better way.

Alaska is going to see big changes in the next 50 years. It boggles the mind just thinking about it – weather, commerce, immigration, energy, food. It's going to be a vastly different state in

2050 than it is now. I hope that throughout these challenges the ACS keeps its eye on the goal of providing quick, accessible, competent and fair justice to its public.

Enough.
Sincerely,
George Peck

George Peck is Magistrate Judge in Seward.



Magistrate Judge George Peck navigates a unicycle in the forest near Seward.



George Peck tries a stream crossing by bicycle.

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Bar People

Jermain, Dunnagan & Owens welcomes several to firm

Jermain, Dunnagan & Owens, P.C. is pleased to announce that Michael R. Gatti, Eric E. Wohlforth, Cynthia L. Cartledge and Nathaniel O. Parr have joined the firm expanding the firm's public entities practice into public finance and municipal law. Eugenia G. Sleeper has joined the JDO team and practices in the areas of education, employment, labor and commercial law. In addition, Bonnie E. Bull has joined the commercial and business practice group of the firm.



Wohlforth



Cartledge



Parr



Sleeper



Bull

Jill McLeod Joins Dorsey & Whitney in Anchorage

Jill Ann Fleischer McLeod has joined international law firm Dorsey & Whitney LLP as a partner in its Corporate Group in Anchorage. McLeod brings the firm more than 15 years of U.S. and international legal experience, including extensive work in oil and gas, telecommunications, transportation, commercial transactions, procurement and supply chain, contracts, regulatory compliance, environmental, employment and property law.



McLeod

Bryant becomes shareholder

Guess & Rudd P.C. is pleased to announce that Kristin Eagen Bryant has become a shareholder of the firm. Since joining Guess & Rudd in 2011, Ms. Bryant has represented insurance companies, corporations, municipal governments, small businesses, aircraft overhaulers, and individuals in a broad range of litigation matters. Bryant has tried cases in both federal and state court. In addition, she works on a variety of estate planning and disposition matters. She attended Seattle Pacific University where she received a 4-year gymnastics scholarship. She is a graduate of Gonzaga University School of Law in Spokane, Washington.



Bryant

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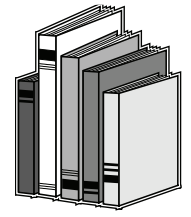
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Law Library News

Law Library has digitized Constitution Convention materials

By Susan Falk



The good folks at the Legislative Reference Library recently shared some wonderful news: the librarians have digitized a trove of Alaska Constitutional Convention materials, finalized on the 60th anniversary of the adoption of our state constitution. The files include correspondence, committee minutes, all delegate proposals, all versions of the committee proposals, the chief clerk's journal with all final amendments, and all the proceedings. You can visit the website at akleg.gov/pages/constitutional_convention.php.

After several years of research and consideration, the law library recently migrated to a new Integrated Library System. We are thrilled with our new system, which controls all aspects of library workflow, including cataloging, circulation, and acquisitions. If you use our online catalog, you'll notice the change to a more intuitive, web-based product. This new modern system is also better equipped to handle electronic material, including eBooks. That said, some eBook users' passwords were a casualty of the migration. We believe this problem has been resolved, but if you have any trouble logging into the Lexis Digital Library with your existing password, please let us know and we'll help you reset it. As an aside, the new system allows users to change their own passwords. This feature, as well as other exciting new ones, is not yet operational as I write this, but should be turned on by the time you read it (or will be very soon!). And if you haven't set up your own password for eBooks yet, what are you waiting for?

We've made lots of progress on our boxed books and empty shelves. Since I last wrote in this space we've unpacked most of the reporters and digests, the Statutes at Large, the USCA, and more. Having trouble visualizing our new shelves? Could that be because you still haven't stopped by the library to see our beautifully remodeled space? Swing by the Anchorage library and one of us will be happy to show you around.

If you are attending the Bar Convention this May, you can also visit us at our table in the exhibitors' hall. We can show you our databases, sign you up for eBooks, or help you with a nagging research question. Or just stop by to say hello. We're always happy to talk to you about eBooks! (Or anything else you'd like. Come say hello, is what I'm saying. See you there.)

ATTORNEY DISCIPLINE

BAR COUNSEL ISSUES WRITTEN PRIVATE ADMONITION TO ATTORNEY X

Attorney X pled guilty to fourth degree misdemeanor assault arising from an altercation with his ex-wife. The superior court sentenced Attorney X to serve 180 days, with 180 days suspended. Attorney X paid a court-ordered fine and completed a mental health screening evaluation. Attorney X did not report the conviction to Bar Counsel.

After learning of it, Bar Counsel referred a certified copy of the judgment of conviction to the Supreme Court. The court referred the matter back to Bar Counsel under Alaska Bar Rule 26(h) for proceedings following conviction for other than serious crimes.

Bar Counsel also reported to the Supreme Court that Attorney X had received DUI convictions. Upon referral back from the court, Bar Counsel sent the matter to the Lawyers' Assistance Committee (LAC) which addresses issues involving alcohol through non-disciplinary proceedings after a court referral under Bar Rule 26(i)(l). Members of a LAC subcommittee dealt directly with Attorney X on issues relating to alcohol abuse. The Committee reported to the Bar that Attorney X had satisfactorily complied with LAC recommendations.

Bar Counsel concluded that Attorney X should receive a written private admonition for the misdemeanor assault (conduct that reflected adversely on his fitness as a lawyer) and failure to report to Bar Counsel the criminal convictions (a violation of Alaska Bar Rule 26(d)). An Area Division Member reviewed the file and approved the disciplinary recommendation. Attorney X agreed to accept the written private admonition.

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Territorial code lives: Fenwick's march on Nome foiled, unfoiled

Peter J. Aschenbrenner

"You are familiar with *American Trading v. Steele*, are you not?" Alaska's most famous former Governor skewers me.

"It's like number one on my audio parade," I gasp, "*272 F. 774, 781 (9th Cir. 1921)*: 'conceding, without deciding, that the Alaska Code is controlling in the United States Court for China ...'."

"So how many countries are there that Alaska lawyers can count on? In the world-wide census?"

"Does Wales count?" I ask her. "Since devolution they've been reduced to zoning big box stores outside Aberystwyth," she sniffs. "So no."

"Okay," I count on my fingers. "The Channel Islands, Ecuador, Antarctica, Wrangell Island and now the Republic of China. Up to 1943 and the treaty of — it's got a long name but it's at 57 Stat 767."

"Does it mention Alaska?" she asks. "Prospectively?"

"Not really," I reply. "There must be a savings clause in there, but I didn't find it."

"Assume, *arguendo*," the Governor Latinos me, "that Alaska territorial law could still apply in China. Okay?"

"That's what *Biddle v. United States* held. The trial courts had the power to select forum law. *156 F. 759 (9th Cir. 1907)*. Of course, the Alaska territorial code won, hands down."

James and Dolley heave to and drop anchor.

"So Alaska was the most recent colony to get organized before the extraterritorial jurisdiction of the United States Court for China was established in 1906. Hence the holding," Jimmy continues: "In view of the legislation of Congress making the obtaining of money or property by false pretenses a crime in Alaska ... ' and so forth. Alaskans finally amounted to something. It is, however, a bit confusing that the Treaty of 1943 didn't expressly vacate the applicability, *in futuro*, of the Alaska territorial code."

"How could that come back to haunt Alaskans?" TJ shrugs.

"It shot a billion-person hole in your anti-poverty program," Dolley adds. "I suppose the Superior Court in Ketchikan will take venue over litigation Antarctica, given Alaska's extension via non-Euclidean lines of longitude to the Ross Ice Shelf. But who cares?"

"The idea was to see how many places applied Alaska state or territorial law in the world," I explain. "And then Alaska lawyers could set up shop and offer their services to one and all. Ad campaigns tailored accordingly to demotic taste."

"Have you been wrongfully accused of harassing penguins?" TJ and Sally join us. "We can help where others have failed," Sally adds.

"I've got the solution to all our problems," The Palin motors onwards, "but I warn everyone The Fenwick isn't going to like it."

"That's too bad," Dolley speaks up. "We were really looking forward to his rally in Nome."

"And especially that catchy slogan," Sally adds. "Make Alaska Grate Again."

"Don't hold us in suspense, Governor," Jimmy declares. "You've got something up your sleeve."

"President Obama has something up *his* sleeve," she retorts.

George Washington winks at the assembly.

"I should get my oar in here before they put Martha on the dollar bill and send me back into retirement."

"I'd love to get my hands on some of *my* money," Martha tugs at her signature bonnet.

"Maybe I could get Hamilton to write another Farewell Address when I lose that job," Washington considers the upside. "This time in rappin' rhythms. Whatever the hell 'rap' is."

"My husband means to say," Martha adds, "read section 10 of the Statehood Act."

"Let's say The Fenwick's parade jumps off from Nenana and everything is going swimmingly," Palin sets the tempo. "Ruby, Galena.

Up and over the Nulato Hills. All Obama has to do is to issue a 'special national defense withdrawal within the exterior boundaries of Alaska' and whammo, the March on Nome might as well be —"

"The March on Rome?" I ask.

"The laws of the State of Alaska shall not apply to areas within any special national defense withdrawal established under this section.' Section 10(c). There's more like that," she adds.

"Grover Cleveland recites the details. 'It's a *Presidential Problem*, sure enough," he plugs his most famous book. "Special national defense withdrawals ... shall be confined to those portions of Alaska that are situated to the north or west of the following line: Beginning at the point where the Porcupine River ...'"

"Go west, young man!" the assembly interrupts.

"Okay," the Grover speeds things along. "Thence along a line parallel to, and five miles from, the right bank of the main channel of the Yukon River to its most southerly point of intersection with the meridian of longitude 160 degrees west of Greenwich ...'"

"So Nome wouldn't be in Alaska," an unrecognized figure speaks up, "and thanks to an executive order from Obama!"

The assembly is startled to discover Chester Alan Arthur wiping sweat from his forehead. He flashes us the '21' gang sign.

"Isn't Adlai Stevenson at fault?" I ask. "I mean, he was tipped to run in 1960. At least that's what people thought in 1958 during the Statehood debates."

"Don't you know your Alaska history?" Governor Egan drills me a hard right. "Richard Nixon promised, if nominated, to campaign in all fifty states. On his campaign swing through Alaska, Ike could pull the plug. With a stroke of the pen."

"It would prove Tricky Dick Tricky all over again," TJ assesses the situation, "by forcing The Milhous to break his promise. There he would be, campaigning outside the

United States!"

"Fenwick Frumpf and Richard M. Nixon." I am in awe. "And in the same mouthful!"

"Section 10(d) goes on to provide that 'all laws in force within such withdrawals,' Jimmy explains, "'prior to the creation thereof by Executive order or proclamation shall apply within the withdrawals and, for this purpose, are adopted as laws of the United States ...'. Since the Alaska territorial code was in force at the time of the Statehood Act it could be revived by Obama at any time! In Alaska and China, *pro tanto publico!*"

"Aschenbrenner, do you have anything else?" Arthur and Cleveland ask me. "You've been studying the treaty, right?"

"He's been looking in the wrong place. It's not in the treaty," the Governor beams at me. "It's in a super-secret protocol published at 57 Stat. 781 which at 782 guarantees the *res judicata* effect of cases, aforementioned, which holdings secure the effect of the Alaska territorial code in Shanghai. In perpetuity!"

Wild cheering erupts.

"At last we're getting somewhere," Palin leads the way forward. "Alaska territorial law has been getting itself adopted all over the globe, and since 1906 no less. And even if the President pulls the rug out from under Fenwick's Rule-by-Decree event in Nome, the president's withdrawal will, *ipso facto*, reinstate the Alaska territorial code as federal law."

"Win some, lose some," TJ and Jimmy shake on it.

"May the 'laws in force' be with us all," The Grover intones.

"You betcha," we chorus.

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 46 of his articles.

MARK WITTOW
 Mark Wittow is a partner in the Seattle office of K&L Gates, where he is practice leader for the firm's intellectual property/technology transactions practice group



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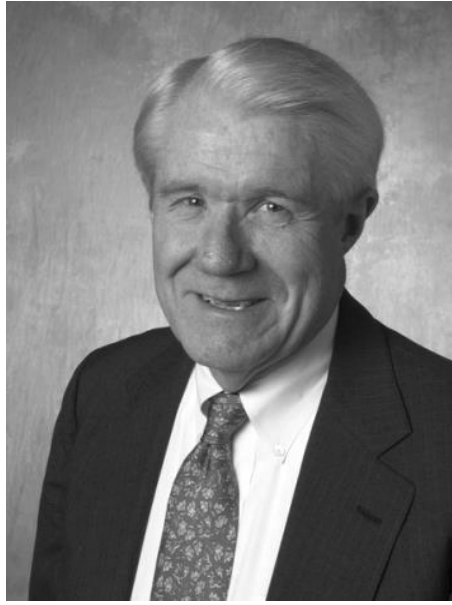
In Memoriam

Former Alaska attorney general served state for decades

Wilson L. Condon, 76, former Alaska attorney general and Department of Revenue commissioner, died Dec. 27, 2015, at the Anchorage Pioneer Home.

Condon was involved in oil and gas issues facing Alaska over the past 35 years. He led the Amerada Hess royalty litigation against oil and gas producers. Condon helped win \$1 billion for the state and set the rules for Alaska to get a fair share for its royalty oil. After working from 1971 to 1980 as an assistant attorney general and then deputy attorney general for the Department of Law, Condon was named attorney general by Gov. Jay Hammond, serving in that position from 1980 to 1982. He was Department of Revenue commissioner under Gov. Tony Knowles from 1995 to 2002, and then continued his public service under Gov. Frank Murkowski, heading the oil and gas section at the Department of Law from 2003 to 2005.

In between the departments of Law and Revenue, he was a partner in Anchorage law firms where he led the state's royalty litigation against North Slope oil and gas producers. Alaska had accused the companies of underpaying royalties to the state. The case settled after more than 15 years of



Wilson L. Condon

legal battles, with the last settlement agreement signed in 1995.

Condon was born Sept. 28, 1939, in Livingston, Mont., where his father worked for the National Park Service. He graduated from Phillips Exeter Academy and in 1963, earned a bachelor's degree in political science from Stanford University. He went on to receive his law degree from Stanford in 1971. In between degrees, he served as assistant director of student financial aid at Stanford from 1965 to 1968. Condon was a founding member of the Stanford Environmental Law Society. While there, he served as a member of the Stanford University Crew Board and coached Stanford's freshman and varsity crews from 1961 to 1970.

Condon served as chairman for the Alaska Governor's Commission on the Administration of Justice from 1980 to 1982, was on the Governor's Alaska Gas Pipeline Task Force from 1980 to 1981, was a member of the Alaska Code Revision Commission from 1983 to 1991, served on the board of trustees of the Alaska Permanent Fund Corp. from 1980 to 1982 and also from 1995 to 2002, and served on multiple state boards and commissions during his tenure at the Department of Revenue. After leaving state service, he worked at the Anchorage office of K&L Gates from 2005 to 2011, continuing to assist with oil and gas cases on behalf of the state.

Condon is survived by his wife of 41 years, M. Susan, of Anchorage. He is also survived by his sister, Marianne (Dennis) Donnelly of Pocatello, Idaho. He was preceded in death by his father, David and mother, Lorna Wilson.

Condon was a longtime supporter of several nonprofit organizations in Alaska, including the Anchorage Youth Court, KSKA public radio, United Way and the Gastineau Humane Society (animal shelter) of Juneau. In lieu of flowers, friends are invited to make donations to the Anchorage Youth Court, PO Box 100359, Anchorage 99510.

Russell E. Arnett 1927-2016

Russell Eugene Arnett, 88, a retired Anchorage attorney, succumbed to kidney disease Jan. 18, 2016.

He retired from legal practice in 1996. Arnett was born in Oak Park, Ill., July 28, 1927, to Evelyn and Roy Arnett. After moving to Chicago, his mother died when he was 8 years old. He was then raised by his father and maternal grandmother, who had a strong and positive influence on his life. Arnett enlisted in the Navy and served in World War II; he received an honorable discharge in August 1946. With funding from the GI bill, he entered college at Central Methodist University in Fayette, Mo. He received a law degree from Northwestern University in Evanston, Ill., where he met his long-time friend, Judge James von der Heydt.

In the winter of 1952, Arnett was invited to Alaska by his former classmate to become the U.S. commissioner in Nome. At age 24, Arnett found Nome wanting in social life and decided to see more of Alaska. He landed in Seward, where he met his future wife, Betty Jane Epps, a housemother at Jesse Lee Home. Arnett worked as a longshoreman and a janitor at the hospital, however, as he was then to be married, it was time to take a more serious step and study for the Alaska Bar exam. He left Seward and law clerked in Anchorage, while studying for the Territorial Bar. Russ and Betty were limited to seeing each other on occasional weekends until they married Aug. 7, 1954, at Seward Methodist Church. The two moved to Anchorage and lived in an apartment in what is now the Inlet Tower Hotel. In December 1954, they bought a house in the Turnagain by the Sea neighborhood and had three children: April, Heather and Hans.

Russ and Betty were both in-



Arnett

strumental in the founding of Turnagain Methodist Church in 1958, serving on the steering committee. Arnett became a member of the first board of trustees. After the 1964 earthquake, their house was the first moved out of the damaged Turnagain area and was placed near Rogers Park School. By fall, it was moved to the Anchorage hillside, where it stands today. Slowly, Arnett constructed a very large lawn surrounding the house and gained great enjoyment in its care.

He passed the Alaska Bar Exam in February 1955, and served on the Alaska Bar Association's board of governors. He practiced law in Anchorage for 41 years, mostly as a sole practitioner. He served on a variety of boards in the community. His daily lunchtime walks made him a fixture in downtown Anchorage for many years. Because of his reputation for integrity, he served on the Ethics Commission for the Municipality of Anchorage during the terms of Mayors Knowles and Fink.

Throughout his career, he preferred work that brought parties together in a positive outcome. He was appointed arbitrator during the dispute between the Anchorage Times and the Anchorage Daily News, who were locked in a battle over their joint operating agreement. Arnett was thrilled when each newspaper ran front-page stories declaring they had gotten what they wanted in the binding arbitration. As city attorney for Whittier, he was instrumental in turning the Hodge building into condominiums. Russ once said, "Having arrived during the territorial days of Alaska, we have lived through a lot of the state's history and have been fortunate to have known many of the well-known figures who contributed to the growth of this state." As a result, he wrote remembrances of lawyers and judges that he had known dating back to territorial days. He was published in the Bar Rag, the quarterly journal of the Alaska Bar Association.

With Dave Thorsness, Arnett conceived the popular annual Territorial Bar parties, honoring those

who practiced law in Alaska in the territorial days. He enjoyed travel and took his family on a number of vacations around the world. He had a special fondness for Hawaii and went there often. He was a highly intelligent man who enjoyed reading and watching television programs about nature and the cosmos. He loved both classical and big band music and had been a cornet player in his youth. He was a private man with an even temper and a sense of humor that he retained up until the last few days of his life. He was a kind and loving husband and father and was very proud and supportive of his children, sons-in-law and grandchildren.

Arnett was predeceased by his parents, Roy and Evelyn Arnett; and brother, Gordon. He is survived by his wife, Betty; his daughters, April (Rick Miller) and Heather (Jeff Sinz); and son, Hans; grandchildren, Alicia and Cameron Sinz; and sister, Audrey King in Florida; and many nieces, nephews and relatives scattered throughout the U.S. He enjoyed watching public media in his final years, so in Russ' memory, contributions may be sent to Alaska Public Media/Channel 7. Contributions may also be made to Food Bank of Alaska or Central Methodist University in Fayette, Mo.

Douglas L. Gregg 1927 - 2015

Douglas Larson Gregg died July 21, 2015, at the Juneau Pioneers Home. He was born in Marshalltown, Iowa, Jan. 6, 1927, to James and Inez (Larson) Gregg. When he was young, the family moved west, following work for his musician father. In Seattle, Doug grew to love the water and the distant mountains. He also early on fell in love with the guitar, which he continued to play all his life. A



Gregg

gig playing music on a steamship brought the senior Gregg to Juneau, and soon Doug and his mother followed. Gregg always described Juneau in the late 1930s as a paradise, and he never really changed his opinion. He described his childhood as a happy one, fishing, hunting, and playing music.

Toward the end of World War II Doug dropped out of high school, where he'd been senior class president, and joined the Merchant Marine. He traveled to the east coast, to Germany and the Philippines, eventually returning home and finishing high school. He fell in love with another high school senior, Lily Ann Maurstad, and shortly after graduation, they left for Seattle and were married Sept. 13, 1947. Gregg began playing in clubs around Seattle. He played back-up guitar for performers coming through Seattle, including Sammy Davis Jr. and was friends with the young Ray Charles. He was the first white musician to play at Seattle's Black and Tan Club.

Shortly after the birth of their first daughter, Susi, the Greggs returned to Juneau where he worked a variety of jobs, from pumping oil to commercial fishing, eventually getting on with Pan American World Airways ending up as their field manager. He still worked nights at gigs at different venues around Juneau, sometimes playing with his dad, sometimes with other musicians.

The chance gift of a book on the law and literature inspired Gregg and he set himself a new goal. With no college background, and with a full time job and a family which now included two more children, Jan and Walt, the idea of becoming a lawyer might have seemed impossible, but Doug was determined. He read for the law, in the tradition of Abraham Lincoln as well as many notable Alaska attorneys in the old days. He studied nights while working full time and was eventually able to leave Pan American Airlines to work as a full time law clerk, first

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In Memoriam

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for Howard Stabler and his wife Gladys and eventually moving to the territorial Attorney General's Office. He took the bar exam in 1958 and Feb. 2, 1959, was sworn in to the Alaska Bar.

Gregg was the first person in Alaska to learn President Eisenhower had signed the Alaska Statehood Act. The signing happened on the weekend, and when Sen. Bob Bartlett's office couldn't get through to the governor's office with the news, they called the Attorney General's Office where Gregg was working and asked him to carry the message. Although by the time Doug reached the governor's office, the call had gone through, he was invited to stay for Bill Egan's swearing in as governor of the new state of Alaska.

When he retired after 40 years of legal practice, then presiding Judge Larry Weeks remarked, "If more attorneys practiced law the way Doug Gregg has, the profession would be in a lot better shape and the people would be much better served."

Lily and Doug celebrated their 45th wedding anniversary before her death in 1992. In 1994, he married Anne Chase of Gustavus and they lived together until her move to the Juneau Pioneers Home in 2011. He remained at home until August 2014 when he, too, moved there where he lived for the last 11 months.

Well into his 80s, Doug continued as guitarist with the Thunder Mountain Big Band. When the schedule became too much for him, musician friends included him in their Saturday afternoon Dixieland band sessions at "Big Blue." When he wasn't playing music himself, Gregg was usually listening to it. Jazz and old standards were his particular passion, but he also loved classical works. He loved the Juneau Symphony, the Thunder Mountain Big Band, the annual Gospel Choir sponsored by the Juneau Arts and Humanities Council, the Juneau Jazz and Classics events, and listening to the musical explorations of his kids, grandkids and great-grandchildren.

Gregg was predeceased by his parents, Jim and Inez Gregg and his first wife Lily. He is survived by his wife Anne Gregg; his children Susi Gregg Fowler (Jim), Jan Gregg Levy (Keith), and Walter Gregg; his grandchildren Jacob Soboleff, Nathan Soboleff (Angie Wright), Madeline Soboleff Levy (Trinidad Contreras), Abraham Levy (Mikaela), and Micaela Fowler, all of Juneau, and Angie Fowler Williams (John) of Brooklyn, New York; and great grandchildren Callahan, Cedar, Hayden, Riley, Cora, Sofia, Elijah, Jillian, and Chava, and his little dog Cassie. He is also survived by his sister-in-law Harriet Maurstad Klein (Jim) and family, brother-in-law John Lite (Margo) and family, many cousins around the country, and by his wife Anne's children Sylvia Petersen (Doc), Gloria Chase, Don Chase, and Robert Chase (Mary Ann), all of Gustavus, and their children and grandchildren, along with many dear friends.

Friends are invited to give to the Juneau Pioneers Home Foundation, any of the arts groups mentioned above, or to a charity of their choice.

Erling T. Johansen 1956-2015

Erling Trygve Johansen, 59, of Anchorage, died on Dec. 24, 2015, in Overhalla, Norway, with his wife, Eileen by his side.

Born May 9, 1956, in Rochester, N.Y., Johansen graduated from Pittsford High School in 1974. He attended St. John Fisher College in Rochester and transferred to the University of Alaska, Fairbanks. Johansen moved to Cordova and managed Bayside Cold Storage and the Copper River Fishermen's Cooperative. He later formed Independent Cordova Alaska Fish Company, exporting salmon and halibut to domestic and international markets.

A two-term mayor of Cordova, Johansen dealt with the aftermath of the 1989 Exxon Valdez Oil Disaster and established a permanent fund for the city worth \$1 million as he left office. In 1987 and 1988, he served as president of the Alaska Conference of Mayors.

Johansen earned his Juris Doctorate at New England School of Law in 1993, and was awarded the T. Cronin Award for Public Service. Erling's law practice included civil law at Davison and Davison Law Firm in Anchorage, from 1994 through 2006, assistant borough attorney for the North Slope Borough in Barrow through 2009, and assistant attorney general for the State of Alaska through 2014.

In May 2007, Johansen was appointed as Royal Norwegian Honorary Consul for the State of Alaska. The highlight was receiving His Majesty King Harald V of Norway in May 2015, on an official visit to the U.S., including Alaska. Johansen was the recipient of the Royal Norwegian Order of Merit, for outstanding service. From May 2011, Erling served as honorary consul of Sweden for Alaska. Erling was a long-standing member of Sons of Norway, 2-046 Anchorage, most notably serving as president. He met Eileen there in February 2000 at a "Snakk Norsk" event. He was an avid fly-fisherman of the Kenai Peninsula, and he enjoyed gardening.

He is survived by his wife, Eileen Haagensen Johansen; son and daughter, twins Elias Erling Johansen and ElliAnne Marie Johansen; daughter, Elisebeth Eileen Johansen; stepson, Logan P. Prokopowich; step-grandson, Taylor S. Prokopowich of Anchorage; and brothers, Erik Bjarne Johansen of Sydney, Australia and Steven Douglas Johansen of Nordli, Norway. Erling is preceded in death by his parents, Dr. Erling Johansen, D.D.S. and Inger Marie Johansen.

Funeral services were at Ranem Kirke, Overhalla, Norway, Jan. 8, 2016.

Patrick G. Middleton 1956 - 2015

Patrick Gaynor Middleton, died Sept. 3, 2015, at home surrounded by his loved ones. He was born April 30, 1956. The youngest of four, he grew up in Port Orchard, Wash., alongside his older siblings, Mary, Tom and Mike. Tom



Johansen

Middleton was his father, an MD who often took Pat along with him to medical appointments and raised him to love football and family. His mother, Carol Middleton, passed on to him an infinite love for the ocean, books, and sarcastic humor. After high school, Middleton went straight to college at the University of Washington, where he earned a Bachelor's degree in history and English. Initially, he wanted to follow in his father's footsteps and become a doctor. However, after getting his first and last D in Chemistry class, he turned to something at which he was a natural, reading and analyzing. He studied law and went on to earn his degree at Gonzaga University.

The first two years following graduation, he worked in Anchorage at a local firm. It was during this time, that he met Amy Marie Williams, a young artist from New Jersey. He was attending a college reunion in Spokane, Wash., when they met. The two fell in love, soon got married, and moved to Seattle, along with Amy's 7-year-old son Timothy Jack O'Brien. In 1985, the three of them moved to Bainbridge Island, Wash.

Middleton became a partner of a law firm in Seattle, Forsberg & Umlauf, which he where he would work for 25 years. In 1988, Patrick and Amy had their first and only daughter, Kelsey Gaynor. And what a little joy she was. By 1991, they had a son, Connor Williams, a boy very much like his father. Family was one of the most important things to

Middleton, so he made sure to assure that all three children attended college and received higher education and opportunity. He also made sure to take them on countless trips; to name just a few, he took them to Italy, Ireland, three Super Bowls and many trips to Hawaii.

In 2011, he slowed down his practice at the law firm, as he began pursuing yet another degree in the field of teaching. He attended an online program through the Augustine Institute, and earned a master's in theology. He graduated in March 2013, valedictorian of his class. For years he had taught the RCIA program at St. Cecilia's Catholic Church, where he impacted many people converting to the faith.

With the new degree, he intended to teach in Catholic elementary schools and high-schools. He loved to read, write, and learn. He was a scholar. And he was a man of God. Teaching theology was a perfect fit. Other than his kids and the Seahawks, nothing was more certain to him than this calling from God.

Edward J. Reasor 1939 - 2015

Edward J. Reasor, 76, of Russell, Pa., died Dec. 11, 2015, at Warren Manor, Warren, Pa. He was born Sept. 30, 1939, in Moline, Ill.

He served with the U. S. Army, the Iowa National Guard Reserve and the U.S. Air Force Reserve. In January 1969, Reasor was dis-

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In Memoriam

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charged from the U.S. Army as a first lieutenant with the Judge Advocate General's Corps. He graduated from Drake Law School and practiced law most of his life in Alaska and Hawaii.

Following an early retirement from his law practice, Reasor followed his two favorite loves, writing and making movies, for which he had some success. He was of the Catholic faith.

Reasor is survived by his wife, Liliane Reasor; four children, Edward A. Reasor of Tampa, Fla., Lt. Col. Reid D. Reasor, Retired, and his wife, Heidi, of Austin, Texas, Richard Reynolds and Sterling M. Reasor and his wife, Waka Kitabayashi of Seattle, Wash. Ed is also survived by two grandchildren, Chase Reasor and Halston Reasor of Colorado Springs, Colo.

William G. Stewart 1953 - 2015

William Grant Stewart died Sept. 19, 2015, at the age of 62. He was the oldest child of Ann and Paul Stewart, of Bakersfield, Calif.

Stewart's father was in the Army and the family moved to Camp Eielson, Alaska, where they lived for a few years. At a young age, Grant fell in love with Alaska, and he wanted to live here after he graduated from college. In 1979, after he graduated from BYU Law School, he and his little family moved to Alaska. They first lived in Anchorage, but in 1982 they moved to the Matanuska Valley, and have lived in Wasilla ever since.

Eventually Stewart opened his own law business, where he loved serving his clients. He loved to hike, fish, go camping and play board games with his family. He also was an avid reader and a keen student of American and world history. He was an active Boy Scout Leader and served in many different areas of the program. He looked forward to the times when his troop would take off on "50-mile hiking trips," or sleep overnight in snow shelters to earn their "100 Below Badges."



Stewart

He is survived by his wife, Susanne Stewart; parents, Paul and Ann (Chamberlain) Stewart; and his siblings, Robert (Candie) Stewart, Carolyn Stewart, Pam (Jerry) Hootman, Cheryl (Chuck) Smotherman and Debbie (Heber) Farnsworth; and his children, Israel (Rebecca) Stewart, Daniel (Rose) Stewart, Jessica Stewart, Esther (Adam Pigg), Jeremiah (Stephanie) Stewart and Josiah Stewart; and eight grandchildren. He was preceded in death by his brother, Matthew Stewart; and his son, Isaiah Stewart.

Susan E. Thomsen 1950 - 2015

Susan E. Thomsen, 64, of Olympia, Wash., died Nov. 16, 2015, following a year-long resistance to cancer.

She was born to Darlene and William Thomsen of Tucson, Ariz., in 1950 and spent her early years there, then moved with her mother, younger brother Bill and stepfather to Ketchikan in 1965 where she completed high school, worked in banking, and did a little local theater ("Fish Pirate's Daughter"). She earned college credits and transferred to complete a bachelor degree followed by a Juris Doctorate from Gonzaga School of Law in Spokane, Wash., in 1980.

She and her daughter Jennifer returned to Ketchikan, where Susan had a colorful career as law clerk for Superior and Districts courts for several years then as a magistrate judge, coroner and public guardian/administrator for 23 years. She moved back to Spokane in 1996 then took a position as an assistant attorney general in Olympia, completing her career with five years at the Washington State Liquor Control Board in 2014, then writing stories about her Ketchikan career in a memoir for her granddaughters.

During her career, she discovered the joy of teaching, so she obtained a Master of Arts in teaching. She taught legal procedure at the annual State Trooper academy in Sitka, for years, and then taught business law at South Puget Sound Community College in Olympia.



Thomsen

She particularly enjoyed the surprise and discovery as her students grasped the legal foundations for privacy law and gained financial literacy which inspired them to give her great reviews.

She loved beauty, created a sanctuary home, enjoyed tea parties with her granddaughters, Jennifer's accomplishments, cooked gourmet food (she never owned a microwave), a nice wine with cheese and friends, reading and classic movies, her cats and knitting items for friends and the homeless.

Susan is survived by her mother, her daughter Jennifer and granddaughters, Reese and Norah of Seattle, and many friends from her years in Alaska and Washington. Donations in her name can be made to Wolf Haven, Olympia.

Hugh G. 'Jerry' Wade 1934 - 2015

Hugh G. "Jerry" Wade, a life-long Alaska resident, died after a long struggle with a neurological condition on Dec. 12, 2015.

Wade was born in Juneau May 12, 1934. Juneau provided the ideal stomping grounds for a childhood filled with the freedom to fish, hunt and explore the surrounding forest with his buddies. From these early experiences, he was inspired to successfully earn the rank of Eagle Scout. It was in Juneau that Jerry developed a lifelong passion for being on the water. From his father, Hugh J. Wade (who became Alaska's first lieutenant governor), Wade gained key insights into politics, history and law. Alongside his father, he was keenly involved in the movement for Alaska statehood.

He graduated from Catholic University Law School and took the Washington, D.C. bar exam in 1959, subsequently returning to Alaska, where he was recognized as a territorial lawyer – he passed the Alaska bar in 1960. Jerry actively practiced law in Anchorage for more than 50 years. He began his practice in an era when Alaska lawyers did not typically specialize, but took every kind of case, or were assigned them by the Bar Association.

Wade's early clients sometimes paid him with fish, bear-skin rugs, gold nuggets or, in one case, an oil painting of the client's crying ex-wife. He later specialized in contract and commercial litigation, representing some of the state's largest construction contractors and subcontractors. During those wild frontier boom times, he was awakened more than once in the middle of the night to bail out one of his more colorful clients from jail – one time

to find a drunk driving arrestee already released, sitting back on his favorite bar stool, and urging Wade to join him for a drink.

Wade was president of the Anchorage Bar Association in 1974-1975, and he served on the Board of Bar Governors in 1982. He was known as a "lawyer's lawyer." His great enjoyment, five days a week, was lunching with a circle of colleagues, exploring the complexities of their cases as well as his own. Over the years, he had many successful associations with dozens of lawyers, including being a partner in the firms of Atkinson, Wade, Conway & Young; Wade & DuBrock; Wade, Dittus & Hammond; Wade & DeYoung; and Wade, Kelly & Sullivan. He enjoyed long-lasting friendships with all of his colleagues. Many lawyers have considered Jerry a mentor.

For many, Wade was the guy who stood up for them and helped when nobody else could or would. Some of his happiest days were spent with his wife, Sylvia, at their cabin on MacDonald Spit. Wade loved clamming on the beach, salmon fishing on his boat (with the occasional halibut thrown in, as a favor to Sylvia), blueberry picking in the fall, duck hunting with his friends, picking out the perfect piece of plywood at Home Depot, puzzling over domestic construction projects (preferably, ones that gave him an excuse to buy the latest gadget), gardening, flying his plane, playing duplicate bridge (he was a Life Master), enjoying a fierce game of gin rummy or hearts with his family, watching his beloved Notre Dame football or basketball games (he was a 1956 ND graduate) or simply having a martini with friends while recounting stories.

When his children Hugh, Megan and Greta were young, Jerry relished coaching and rooting for them at their hockey, gymnastics, volleyball, basketball and downhill skiing events. He cooked a mean sourdough pancake and smoked and canned his own salmon. He could recite Robert Service poems from memory and read tide tables, property plats and dense tech manuals – and then explain them to others.

He is survived by his wife, Sylvia of Medford, Ore.; son, Hugh J. Wade and granddaughter, Kyla Mae of Anchorage; daughter, Megan Wade with her husband, David Schroeder and their son, Charlie of Chicago, Ill.; daughter, Greta Wade with her husband, Laurent Dick and their son, Florian of Juneau, Alaska; stepdaughter, Deirdre Kelly with her husband, David Beers and their children, Nora and Quinn of Vancouver, British Columbia; stepdaughter, Marion Kelly and her husband, Ed Rais of Anchorage; stepsons, Edward of El Cajon, Calif., and Matthew Kelly of Anchorage; and sister, Sue McKeown and nieces and nephews and their children of Juneau.



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The Federal Bar Association has a full schedule of events for 2016

By Darrel J. Gardner

The Alaska Chapter of the Federal Bar Association continues to grow under the leadership of President Jamie McGrady. As of February 2016, the Alaska Chapter had 77 members (up from 44 in 2012). In order to help encourage FBA membership, the court now sends out electronic meeting notices via the Alaska CM/ECF system. If you are interested in attending FBA meetings and are not on the CM/ECF system, please contact Jamie (see below) for meeting reminders.



Senior District Judge Ralph R. Beistline and his wife, Peggy, enjoy the reception in his honor as he moves to senior status.

The FBA capped off 2015 by co-hosting a reception celebrating Judge Ralph Beistline in December. Judge Beistline has moved to senior status, joining our three other senior federal judges, H. Russel Holland, James K. Singleton and John W. Sedwick. Judge Beistline will continue to handle new criminal cases in his hometown of Fairbanks, and he will also be assigned to new civil cases statewide. Judge Beistline will also finish his existing criminal docket, such as overseeing the fraud trial of Mark Avery in February. At the December reception, the Alaska Chapter presented Judge Beistline with an engraved plaque honoring his many years of public service as a judge in federal court, as well as his prior service as a state superior court judge in Fairbanks.

The Honorable Timothy M. Burgess became the District of Alaska's new Chief District Judge Jan. 1. The FBA's first meeting of 2016 took place several weeks later and featured Chief Judge Burgess. Judge Burgess presented a "state of the court" address that covered numerous topics such as the federal

court budget, proposed Civil Rule changes, and even a project under way to provide petit jurors with individual electronic tablets for viewing exhibits during trials. Judge Burgess also described the lengthy nomination, selection, and confirmation process involved in filling Judge Beistline's vacant seat. It will likely be many, many months before Alaska again sees three district judges on the federal bench. The FBA provided free pizza to members at the meeting. Meetings are generally open to anyone interested in attending (non-members typically pay \$10 at the door).

The second meeting of the year in February involved a panel presentation by the members of the Hope Court including Magistrate Judge Deborah Smith and Magistrate Judge Kevin McCoy, Federal Defenders Rich Curtner and Jamie McGrady, AUSAs Andrea Hatton and Kyle Reardon, and USPOs Chris Liedike and Allie Abbott. Also commenting were Chief Judge Burgess and District Judge Sharon Gleason, both of whom fill in if a magistrate judge is unavailable for the semi-monthly Hope Court proceedings. The Hope Court was established in June 2015. This federal reentry program is a pilot project with an initial 3-year term to determine if such a court contributes to the reduction of recidivism by criminal defendants on supervised release following prison terms.

The court started with a limited number of participants, all of whom have been assessed as being at "high risk" for recidivism, particularly because of prior substance abuse issues. Research establishes that recidivism can be reduced through a court program that provides individuals who have completed their imprisonment with: (1) immediate and proportional sanctions for misconduct; (2) positive reinforcement for personal progress in a public setting with judicial participation; (3) substance abuse and/or mental health treatment as needed; (4) assistance in meeting personal needs such as employment, stable housing, and medical attention; (5) assistance in developing life skills and critical thinking; and (6) peer pressure from other participants to



"FBA-Alaska, along with the Alaska Bar Association, will host the Third Annual Alaska Federal Bar Conference Aug. 12, 2016."

avoid risky behavior.

The program is voluntary, and defendants who successfully graduate from Hope Court will receive at least a one-year reduction in the period of supervised release or probation and, at the discretion of the sentencing judge and Hope Court Team, could receive as much as a 50 per cent reduction in the period of supervised release or probation. The program requires defendants to complete 18 successful months of participation with no violations in order to graduate. Judge Smith reported that there



Immediate past-president of the FBA Alaska Chapter, Brewster Jamieson, receives a plaque for his outstanding service from current Alaska Chapter President Jamie McGrady.



Magistrate Judge Deborah Smith and Chief District Judge Timothy Burgess attended the Conference of Chief District Judges and Lawyer Representatives Coordinating Committee in Tucson this past January.

have been some bumps in the first seven months of the Hope Court's existence, including three participants facing new petitions to revoke their supervised release because of alleged violations of release conditions. Overall, however, the panel reported there has been much progress, with some of the Hope Court participants achieving the longest period of sobriety of their lives when not incarcerated.

The Annual Ninth Circuit Judicial Conference is already well into the planning stages, with input from Conference Executive Committee member Timothy Burgess and Lawyer Representatives Coordinating Committee member Darrel Gardner. The next Ninth Circuit Conference will be July 11-14, 2016, in Montana, the home of Judge Sidney R. Thomas, who succeeded Alex Kozinski as Chief Circuit Judge in December 2014.

The Alaska Chapter welcomes Mary B. Pinkel, a state assistant attorney general, as a new Alaska district lawyer representative. Mary began her three-year term in October. If you have any questions or concerns about the federal courts or federal practice, please contact any lawyer representative:

Gregory Fisher (Appellate Rep)
Phone: (907) 257-5335
Email: gregoryfisher@dwt.com

Kevin R. Feldis
Phone: (907) 271-5071
Email: kevin.feldis@usdoj.gov

Darrel J. Gardner (LRCC Chair)
Phone: (907) 646-3400
Email: Darrel_gardner@fd.org

Richard D. Monkman
Phone: (907) 586-5880
Email: dick@sonoskyjuneau.com

Mary B. Pinkel
Phone: (907) 269-6379
Email: mary.pinkel@alaska.gov

FBA-Alaska, along with the Alaska Bar Association, will host

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Attendees at the February meeting of the FBA Alaska Chapter's presentation on the Hope Court re-entry program. From left: attorneys Brian Heady and Scott Dattan; AUSA Kyle Reardon, Magistrate Judge Kevin McCoy; and AUSA Andrea Hatton.



Former FBA national president and Alaska Federal Conference presenter Judge Gustavo Gelpi (Puerto Rico), and former Alaska Assistant Federal Defender Cara McNamara teach a class in Boston where McNamara continues to work as a federal public defender.

Federal Bar Association has a full 2016 event schedule



Federal Defender Rich Curtner and Magistrate Judge Deborah Smith discuss the progress of the newly established Hope Court reentry program.

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the Third Annual Alaska Federal Bar Conference Aug. 12, 2016. For the third year in a row, the national president of the FBA will be attending our conference. This year's president is Mark Vincent, an assistant U.S. attorney from the District of Utah. We are planning a terrific conference with many varied presentations that will have broad appeal for anyone who practices in federal court. We are also taking steps to reduce the cost of the conference to make it more accessible and an even better value, particularly to new practitioners. Please save the date.

The Alaska FBA Chapter has also adopted a community outreach project for the year. "We the People" is an instructional program on the principles of the U.S. Constitution and the Bill of Rights for elementary, middle and high school students. Activities include oral arguments and simulated congressional hearings with community members as judges. Local middle schools compete annually with dozens of four-person teams, and the winners compete in a national competition in Washington, DC. The experience for the students is enhanced by qualified and knowledgeable judges. The Alaska Chapter has also been awarded a coveted, merit based competitive grant of \$2,500 from the national Federal Bar Foundation to assist in this project. This is a great opportunity for our members to give back to the youth of our community



Chief Judge Burgess presiding over the presentations and remarks at the reception honoring Judge Beistline's transfer to senior status.

and share our love for the Constitution and Bill of Rights. We will be requesting volunteers as the program unfolds.

For more information on any of our events, or to join the Federal Bar Association, please contact Jamie McGrady (jamie.mcgrady@fd.org), 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 Federal Bar Association's Alaska Chapter, and he currently serves as vice president of the Alaska Bar Association.



Members of the Federal Public Defender office participate in serving meals at Bean's Café once a month. Recently, several prosecutors from the U.S. Attorney's office joined the FPD regulars on the tray line during a busy lunchtime meal service. Pictured are (L to R): FPD Investigator Bruce Johnson; AUSA Andrea Hatton; FPD Rich Curtner; AUSA Kyle Reardon; FPD Darrel Gardner; FPD Administrative Assistant Jenny Hinrichs; and FPD Receptionist Gary Schuster." Members of the Federal Public Defender office participate in serving meals at Bean's Café once a month. Recently, several prosecutors from the U.S. Attorney's office joined the FPD regulars on the tray line during a busy lunchtime meal service. Pictured are (L to R): FPD Investigator Bruce Johnson; AUSA Andrea Hatton; FPD Rich Curtner; AUSA Kyle Reardon; FPD Darrel Gardner; FPD Administrative Assistant Jenny Hinrichs; and FPD Receptionist Gary Schuster.

RAINMAKING FOR THE NEW SOLO

How does the solo practitioner manage the office cash flow?

By *Monica Elkinton*

For the new solo, how do you manage your cash flow? I remember my first few months, I was sharing an office with two other more experienced attorneys, and I asked one of them, "How much money do you keep in the business, and how much do you pay yourself?" The attorney I asked told me that he kept about two- or three-months-worth of overhead expenses in his business account, and pulled the rest out as salary for himself.

That was terrifying for me. So I asked a few more people. I found that there were as many answers as there are lawyers in private practice. So I asked my CPA. She suggested that I elect to be taxed as an S-Corporation (talk to your CPA to see if this is the right option for you), and part of the tax advantage to that is paying myself a "reasonable salary."

That led to the question, what's a reasonable salary for a solo practitioner? I started out conservatively, and paid myself very little in the beginning. I could always take an "owner draw" out of the practice's operating account, or give myself a raise any time. I use QuickBooks Online to keep my books, and they have a very easy integration with QuickBooks Online Payroll. The Payroll software pays you and any employees you have via direct deposit on whatever pay schedule you set, and manages all the withholdings. It keeps track of when withheld taxes need to be paid to the IRS or the State of Alaska, and you can pay electronically with one click. I highly recommend QuickBooks Online Payroll.

How does a solo practitioner know how many hours to work? Like any other entrepreneur, solos can end up thinking about their practice all day and all night. Many of us have a hard time turning off our "business brain" when it's time to spend time with loved ones. On the other hand, there are solos who have a hard time getting motivated to start client work, especially if you have a home office. Sometimes a second or third cup of coffee in the morning, or another YouTube video, is much easier than opening that client's file with the complex area of law, or starting on that appellate brief. So how many hours are enough? It's really a balancing act between taking on too much, and having enough incoming work to pay your bills.

Instead of acting like a firm and setting a billable hour quota, I think it's more helpful to figure out what your budget is. Look at

your personal finances. How much actual take-home pay do you need to pay your main expenses: rent or mortgage, food, student loans and health insurance? Then look at your overhead expenses: office rent, equipment, software, supplies. Once you have those two budgets, you can figure out how much you need to get paid from clients. I even broke down my necessary income by week and by day.

When I first started, I had a goal each day to bill a few hundred dollars. I had done enough calculating and budgeting to know that if I could bill that much each day, I could pay my overhead as well as stay afloat personally. I have adjusted my daily goals upward as my practice has become more successful. I still keep a daily realistic goal in mind every day. Some days I make it, some days I don't. I don't beat myself up too much if I don't make it. I'll do better tomorrow. Some days I exceed it, and those days I feel great.

I love my practice management software Clio for keeping track of this. I keep the Clio "Activities" page open all day on my second monitor, and record everything I do on it. It keeps a running hourly and monetary total at the bottom. As I work, I watch the total go up all day. When I've hit my goal, I know I don't have to feel bad about working on non-billable work (like bookkeeping or marketing) or just going home.

It also depends on how much you want to work. There's always billable work out there if you want to work ten or twelve-hour days. I don't. That's not why I went into business for myself. I started my own practice so I could have some control over my work, not so my work could control me.

One of the huge benefits of solo practice is that you get to decide for yourself. You can be one of the lawyers that make millions as a solo practitioner. You can be one of the lawyers that work out of your home and raise your kids on the side. However you want to do it, you get to pick. That's what makes this business fun.

Monica Elkinton started her solo practice in 2011. She practices statewide criminal defense, family law, and other civil litigation for individuals such as small claims and FED. Her website is www.elkintonlaw.com, and you can follow her on twitter at @elkintonlaw. She is co-chair of the Alaska Bar Unbundled Law Section and serves on the Alaska Bar Pro Bono Services Committee.

Did you hear the one about the lawyer who ...?



A physician, an engineer, and an attorney were discussing who among them belonged to the oldest of the three professions represented. The physician said, "Remember, on the sixth day God took a rib from Adam and fashioned Eve, making him the first surgeon. Therefore, medicine is the oldest profession."

The engineer replied, "But, before that, God created the heavens and earth from chaos and confusion, and thus he was the first engineer. Therefore, engineering is an older profession than medicine."

Then, the lawyer spoke up. "Yes," he said, "But who do you think created all of the chaos and confusion?"

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