



## Historical Bar

- Anthony Dimond
- Bob LaFollette
- Territorial Lawyers meet

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*Dignitas, semper dignitas*

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## Stressed by all you have to do? Consider Adams' To-Do list

By Todd Sherwood

All of us in the profession of law – just as in any walk of life – often find ourselves feeling overwhelmed with all that we feel we must get done. I keep a “To Do” list in my office to make sure I don’t forget the many things I need to accomplish.

With the success of David McCullough’s bestseller “John Adams” and the recent HBO adaptation of his book, our 2nd President (and an attorney by trade) has become much better known to many Americans.

Having often felt the pressures of life myself, I often remind myself of all that was visited upon John Adams. At such times, I find it is worthwhile to reflect upon a “To Do” list he compiled and find that my list seems quite puny and unimportant next to what faced him and all the Founders of our Nation.

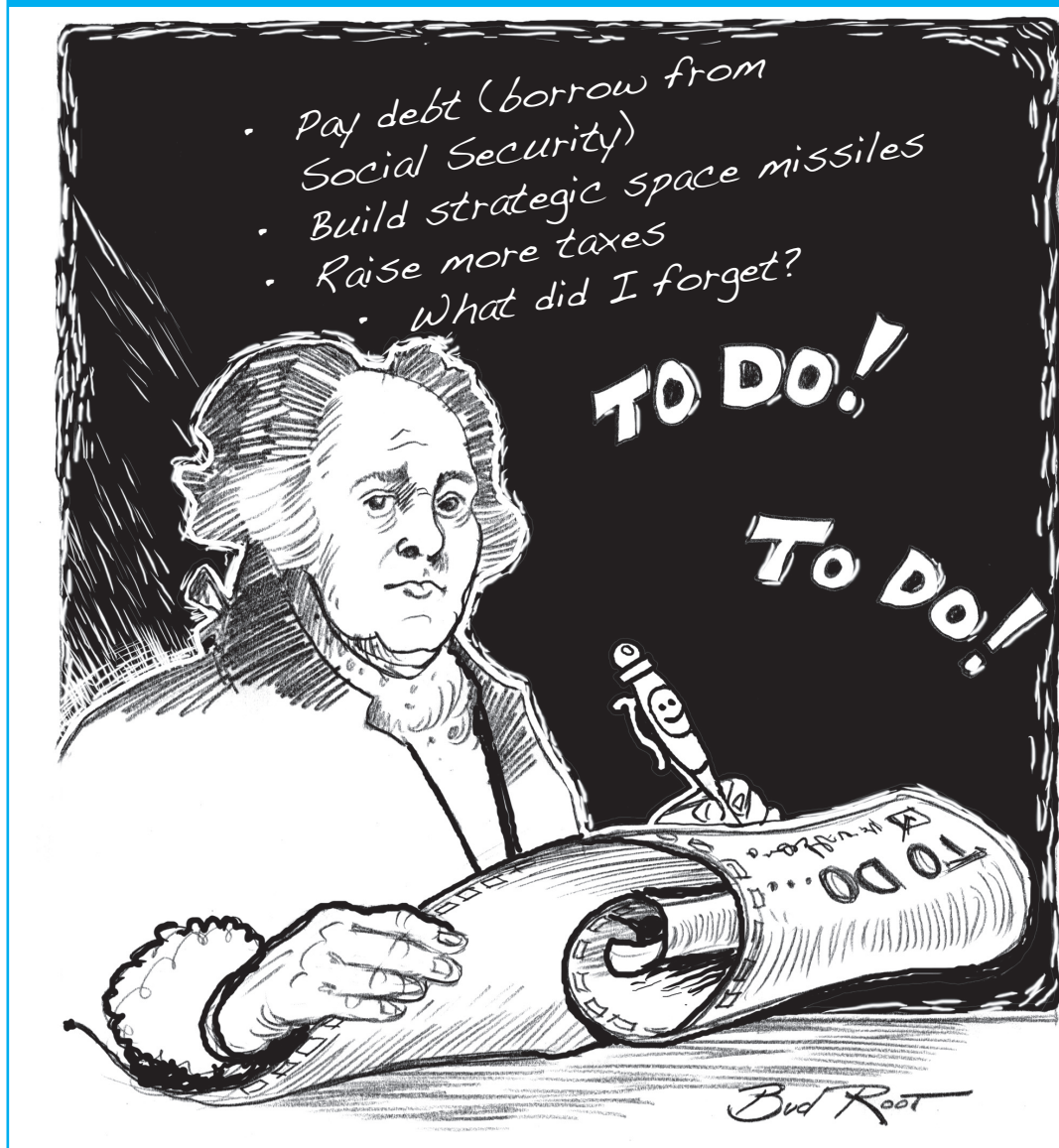
So, feeling a bit stressed or overwhelmed about all you have to do? Contemplate with me for a moment, the list of things John Adams compiled for himself as a Member of Congress setting off to the Third Continental Congress in January of 1776. It may put your “list” in perspective, just as it does mine.

The Battles of Lexington and Concord had been fought the previous spring. Washington had been made Commander in Chief, and yet much remained to be done if the new and unformed country was to have any chance of survival. Adams, better than many of his time, saw with startling clarity what needed to be accomplished. Although he didn’t title his list I can almost see a title: “Things to Do to Create a New Country” – a rather daunting task! While on horseback from his home in Braintree, Mass. to the congressional seat in Philadelphia, he penned the following list in his notebook\*:

- **The confederation to be taken up in paragraphs.** (A reference to the need to write Articles of Confederation to unite the colonies which, to this point, governed themselves individually.)
- **An alliance to be formed with France and Spain.** (To help fight the British and without which we would likely lose the war.)
- **Ambassadors to be sent to both courts.** (i.e. to the courts of France and Spain; the proper choices of ambassadors were absolutely critical as the ambassadors would be acting independently since there were no instant communications in those days.)
- **Government[s] to be [formed] in every colony.** (At the time the revolution began the Colonial governments were beholden to the British Empire and their governors were appointed by the King. Each colony would have to reform itself into a more independent body.

*Continued on page 2*

## IF ADAMS WERE ALIVE IN 2008 . . .



## Bethel trip promotes new guides for seniors and the law

By Zach Manzella

First of all, I loved my time in Bethel. It wasn’t always easy, but the challenges were intriguing and the people make the place wonderful.

I should say that everywhere I went I requested feedback about the Seniors and the Law Guide be sent to us (the AK Bar) in the form of ideas for future editions, translations, and/or local issues and authors. The issue of village elders not having forms of identification that

other citizens take for granted came up more than once.

6/26/08

I met with Judge Marvin Hamilton and Natalie Alexie at the courthouse to discuss the guide and left a pile with Natalie. Judge Hamilton seemed very interested in the concept and happy that the Bar sent me.

I met with Yukon-Kuskokwim Health Foundation’s Marica Coffey and Fran Buckley. I left guides with them. They were very recep-

tive and I hope will provide feedback.

6/27/08

I did a radio spot with Angela Denning-Barnes of KYUK, the public radio station in Bethel. I did leave her a copy or two for review. Later when I traveled up river to Kwethluk and some fish camps to talk with elders, I discovered that many folks had heard the five minute interview.

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## Notes from nowhere

By Mitch Seaver

With all the national attention, I could not resist the title of this column. Actually, "Notes from Mid-Air" would be more accurate. I have spent more time away from Ketchikan the past year and more time on airplanes, in hotels and, yes, on the airport ferry than ever before. One fringe benefit, or at least coping mechanism, has been the chance to do some reading for pleasure. Appropriate to a presidential election year, that reading has included David McCullough's Pulitzer Prize win-

ning biography of John Adams, second President of the United States.

Twenty-five Presidents of the United States have been lawyers. While Lincoln is the lawyer-President that first comes to mind, Adams was a lawyer's lawyer. His best known legal case involved

the Boston Massacre in 1770. British troops killed five civilians in a tense situation in the streets of Boston.



**"When the stresses and aggravations of practicing law build up to the point you start to wonder why you do what you do, you may wish to do the same."**

The soldiers were arrested, and Adams agreed to defend them despite the risk to his reputation. Two soldiers accused of murder were only convicted of manslaughter and the other six were acquitted.

However, it is not this example of the profession's proud tradition of representing the unpopular that has stuck in my mind. I suspect we have all had days when the practice of law drives us to the point of actually hating our briefcases. When it gets to that point, it is hard to remember why we

do what we do. McCullough's biography quotes the following passage from a letter Adams wrote to a friend concerning the practice of law:

Now to what higher object, to what greater character, can any mortal aspire than to be possessed of all this knowledge, well digested and ready at command, to assist the feeble and friendless, to discountenance the haughty and lawless, to procure redress to wrongs, the advancement of right, to assert and maintain liberty and virtue, to discourage and abolish tyranny and vice?

I have re-read this passage several times over the past few months. When the stresses and aggravations of practicing law build up to the point you start to wonder why you do what you do, you may wish to do the same. Or better yet, read the whole book, particularly if you have a long flight or ferry ride coming up.

## Adams' To-Do list forged a nation

Continued from page 1

• **Coin and currency to be [minted and printed].** (The colonies were dependent on the currency standard of Britain as well as other countries. In order to have a strong economy they needed their own form of coinage and currency.)

• **Forces to be raised and maintained in Canada and New York.** (A reference to the need to raise additional forces both to protect the New York/Canada border (then a raw frontier) and to invade Canada as a way of economically undermining the British and denying them a base of operations.)

• **Powder mills to be built in each colony and fresh efforts to make salt peter.** (Gunpowder was needed for rifles and salt peter for cannons. At the time the revolution started there were no gunpowder or salt peter production facilities anywhere in America and it all had to be imported. With the British fleet trying to blockade the colonies it was very difficult, and expensive, to import any gunpowder.)

• **An address to the Inhabitants of the Colonies.** (Support for the war was by no means universal.

There were many who either didn't care or were Loyalists to the British Crown. A message was needed to "rally people to the colors".)

• **Money to be sent to the Paymaster to pay our debts and fulfill our engagements.** (Money was a chronic problem during the war. Congress had no power to tax and could only request money from the individual colonies. When continental money was printed it was virtually worthless. Paying both contractors who supplied the army and paying the soldiers themselves was a constant problem.)

• **Taxes to be laid and levied; Funds to be established; New notes to be given on interest for bills borrowed.** (More financial problems. Congress frequently borrowed money to keep the war afloat and struggled to find ways to pay the interest and bills. It was up to the individual colonies to raise taxes to pay the levies Congress asked of them. They also needed to establish a proper accounting system.)

• **Treaties of Commerce with France, Spain [and four other countries].** (If the nation was to survive and even prosper during war they needed to engage in commerce with other nations. With the onset of

the war they had lost their primary trading partner, Britain, and the economy was suffering.)

• **Preventing the exportation of silver and gold.** (Since gold and silver were seen as the backbone of the economy and any paper money that was printed, the exportation of gold and silver would hurt the economy.)

• **Declaration of Independency (sic), Declaration of War with the Nation.** (A reference to the need for a Declaration of Independence from Great Britain. Such a Declaration was by no means certain even in early 1776; many still hoped for reconciliation with Britain in spite of the spilled blood, and all in Congress were aware that once they passed such a declaration they could be hung as traitors. A separate Declaration of War was not voted upon, but the Declaration of Independence accomplished the same thing.)

*Note: I compiled this list from a photograph of Adams original notebook page as seen in the book "John Adams" by David McCullough (Simon & Schuster, 2001). Adams' handwriting is a bit difficult to decipher at times and I have added bracketed words where necessary. Parenthetical explanations of my own follow each item.*



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THE KIRK FILES

# When I was 4 and 20, I Heard a Lawyer Say...

By Kenneth Kirk

*(Note to editor: I'm sorry I was a little bit late getting my article done for this issue; I've had a lot going on. The threat of litigation was totally unnecessary. To make your deadline, I'm tapping this out on my laptop while watching late-night TV. Don't forget to edit this note out before you send the article to print. -KCK)*

The following takes place between 4:00 p.m. and 5:00 p.m.

CHLOE! WHERE ARE THOSE DEEDS FOR JAMESON? WE HAVE TO GET THEM SIGNED AND RECORDED TODAY!

They're right here, Jack. I'm watching his accountant on the security camera, he's entering the building right now.

WE'LL GET HIM UP HERE! THEY'RE DISCONNECTING LIFE SUPPORT IN 30 MINUTES! HE CAN'T USE THE POWER OF ATTORNEY AFTER THAT!

All right, Jack, don't worry. It only takes you five minutes to drive all the way across Los Angeles, so you can still get them in today. And Mr. Bogarty is on line 2.

BOGARTY! WHAT'S GOING ON? CAN THIS WAIT?

No way, Jack. I want a restraining order right now. My ex is selling off the artwork we're supposed to split. Tomorrow isn't soon enough.

WE CAN DRAFT UP THE PAPERWORK IN 15 MINUTES, BUT I DON'T KNOW IF WE CAN GET A JUDGE TODAY. CHLOE, ARE YOU GETTING THIS?

Yes, Jack. I'm following Judge Wiggins on the satellite feed, and he's just going into the bar down the street from the courthouse.

BOGARTY, JUDGE WIGGINS IS OFF THE WAGON AGAIN, WE CAN GET IT SIGNED TODAY. DOWNLOAD THE PARTICULARS TO CHLOE. WE'LL NEED YOU TO SIGN AN AFFIDAVIT STATING WHAT SHE'S SOLD SO FAR!

She hasn't actually sold anything, Jack. Her friend just told me she was thinking about it.

I DON'T HAVE TIME TO QUIBBLE, BOGARTY! IT'S IRREPARABLE HARM! NOW GET THOSE DETAILS OVER HERE! (click)

Jack?



WHAT, CHLOE?

The accountant is here signing the deeds. Mr. Samuelson is on line 3 wanting to know when the judge is going to rule. Mrs. Hernandez is on line 4 with a billing question.

TELL SAMUELSON THE JUDGE WILL RULE WHEN HE RULES. I'VE GOT LINE 4. MRS. HERNANDEZ?

Hello, Mr. Bauer. I was just looking at my bill, and I notice it says you researched the "clean hands doctrine". Are my children saying I don't keep my hands clean? I've always been very particular about cleanliness.

MRS. HERNANDEZ, IT DOESN'T HAVE ANYTHING TO DO WITH YOUR HANDS. IT'S A LEGAL DOCTRINE, BUT I DON'T HAVE TIME TO EXPLAIN IT RIGHT NOW. CAN I CALL YOU BACK TOMORROW?

Well, certainly, Mr. Bauer. But I'm not paying this bill until I know exactly what it means.

IN THAT CASE, MRS. HERNANDEZ, YOU'RE RIGHT, YOUR CHILDREN ARE SAYING YOU DON'T WASH YOUR HANDS. I'LL SEND SOMEBODY OVER IN THE MORNING TO GATHER EVIDENCE!

Alrighty, then. I'll get your check into the mail tonight. Good day, Mr. Bauer.

GOOD DAY, MRS. HERNANDEZ. (click) CHLOE, WHERE ARE THOSE DEEDS?

The accountant just signed them, I'm notarizing and making copies. Shall I have somebody bring your car around front?

NO TIME FOR THAT! I'LL HAVE TO TAKE THE CHOPPER! GET IT READY. AND WHERE ARE THOSE PAPERS FOR BOGARTY?

I haven't received anything from him. I'll check the spam-catcher. We just got a FedEx from Mr. Martleson, with a bunch of mark-ups on the contract. I'll get that taken care of. You have a hearing in the morning, so don't forget to take the file home tonight. Oh, and they're telling me the chopper just crashed.

DANGIT! I NEEDED THAT CHOPPER! IS THERE ANY WAY TO GET A TAXI HERE RIGHT AWAY?

At 4:15 in the afternoon? No way. Wait, I'm looking at the security cam, it's showing a cab in front of the building right now. But somebody's getting into it. We can't get down there in time to commandeer it.

THERE'S A WINDOW IN THE WOMEN'S BATHROOM THAT HAS A CLEAR SHOT OF THE FRONT OF THE BUILDING. GET IN THERE, SHOOT OUT THE FRONT TIRE OF THE CAB, AND BY THE TIME HE GETS IT FIXED I'LL BE DOWN THERE.

How do you know that, Jack? About the view out the window, I mean? Have you been lurking in the women's restroom?

NEVER MIND THAT! SHOOT OUT THE TIRE!

Because I thought I heard somebody in the other stall yesterday...

CHLOE! JUST PULL THE TRIGGER!

Okay, clean hit. Jack, while I was in the restroom the Supreme Court called. They've denied the stay on Mr. Wartzman. He's being executed at 4:30.

GET PRESIDENT PALMER ON

THE PHONE! IT'S A FEDERAL CRIME, SO HE'S OUR ONLY HOPE! AND WHERE ARE THOSE BOGARTY DOCUMENTS?

I found the email and I'm typing them up now. But the only way I can get the President that quick is if we hack into the phone company computer and reroute your call to the red phone. And that's illegal.

THEN MAKE SURE YOU SEND THEM A VIRUS TO CRASH THEIR COMPUTERS AND COVER OUR TRACKS! CHLOE? CHLOE!

I'm standing right here, Jack. You have to sign the Bogarty motion, right here. And here. I'll get these copied. And I have the President on line 1.

MR. PRESIDENT? THIS IS JACK BAUER, ATTORNEY AT LAW!

Jack? I thought it was the Russians calling. (Hey, General, take it back down to DefCon 3). What can I do for you, Jack?

MR. PRESIDENT, YOU HAVE TO PARDON MYRON WARTZMAN! HE'S INNOCENT, IT'S A COVER-UP AND HE'S THE PATSY!

How do you know this, Jack? The man's a known terrorist, they caught him on video, his fingerprints are all over the detonator, and those three nuns made a positive identification....

MR. PRESIDENT, I JUST KNOW! I CAN FEEL IT IN MY BONES!

Well, that wasn't good enough for the jury, but... I trust you Jack. Okay, I'm issuing a full and irrevocable pardon as we speak. But if we can't prove it, the Cabinet will remove me from office under the 25th Amendment, in which case Vice-President Daniels will immediately launch a nuclear war against China. So I need you to bring me the real bomber before the next Cabinet meeting.

WHICH IS WHEN?

4:55 this afternoon. And I'll need unassailable proof.

YOU'LL HAVE IT, MR. PRESIDENT. (click) CHLOE, I HAVE TO GET TO THE RECORDING OFFICE! GO HELP THEM CHANGE THAT TIRE!

Okay, Jack. By the way, Mrs. Hernandez is on line 3 with another billing question...

4:15:22....23....24....

*Editor & Publisher's Note: Esteemed Editor Tom Van Flein would likely coincidentally sympathize with Mr. Kirk's description of the last hour of an attorney's day. The Editor has been unavoidably detained, himself, from submitting a column this month.*

## Catching up on the convention



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Vivien Noll, long-time public member of the Fee Arbitration Committee, received the Alaska Bar 2008 Laypeson Service Award. L to R: Fee Arbitration Coordinator JoAnne Baker, Vivien Noll, Fee Arbitration Coordinator Ingrid Varenbrink.

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## Gifts in trust may be more valuable

By Steven T. O'Hara

More and more, with our court-houses crammed full of lawsuits and divorces, individuals may prefer to receive their inheritances in trust.

To protect assets, people pay significant sums for umbrella liability insurance, for malpractice insurance, for properly-structured prenuptial agreements, and for long-term care insurance. Receiving your inheritance in trust can also provide asset protection. With the protection a trust can provide, a gift in trust may be more valuable than a gift outright.

Suppose you are a doctor, a dentist, a lawyer, an accountant, a minister, an architect, a stock broker, a commercial fisherman, a real estate investor, or a coach. Suppose you are about to marry, get divorced, guarantee a debt, or file bankruptcy. Suppose you own property with environmental contamination. Suppose you serve on a Board of Directors. Suppose you own a construction business, a small airplane, a boat, a pool, or a trampoline. Suppose you own a car — with teenagers! Suppose you or a family member has long-term care needs. Now suppose you receive a call from your long-lost uncle. He has good news and bad news. The good news is he is about to give you an inheritance. The bad news is he is dying. He is meeting with his lawyer, and they want to know how you would want the inheritance — outright or in a trust with you as Trustee (Cf. AS 13.36.153 and AS 34.40.110(g)).

In this day and age, who would run a business outside of a corporation or a limited liability company? More and more, who would not want to manage inherited wealth in a trust that helps preserve that wealth?

Besides providing protection from creditors and predators, trusts when properly structured can also avoid estate tax.

It is also possible for trusts to save gift tax. Recall that the lifetime gift-tax exemption is, at least currently, significantly less than the estate-tax exemption. Thus it may not make sense to give property outright to an individual who then, during her lifetime, must pay gift tax to pass the property on to her children or grandchildren. If instead the property is given to a trust with multiple beneficiaries and the individual as Trustee, it may be possible to take care of the various needs of the family and avoid gift tax.

Some advisors urge clients to avoid trusts, noting that trusts currently are subject to income tax at the top 35% rate on ordinary income over \$10,700 (IRC Sec. 1(e)). Trust income tax rates are a valid concern and are one reason why this writer advises clients to consider providing that all trust net income must be distributed annually. With this provision, the trust's ordinary income will



"With the protection a trust can provide, a gift in trust may be more valuable than a gift outright."

be taxed at the beneficiary's income tax rates (IRC Sec. 651 & 652).

Another concern is the generation-skipping transfer ("GST") tax. Indeed, the GST tax is a major concern when dealing with clients whose assets exceed the current \$2,000,000 exemption from this tax (IRC Sec. 2631). The GST tax exemption is scheduled to decrease, under current law, substantially in 2011. For background on the GST tax and planning opportunities, see O'Hara, *Working In A World With*

*The GST Tax, 137 Trusts & Estates* 47 (February 1998).

Fear of the GST tax may lead some attorneys to not give clients the choice of creating trusts that may last for the lifetime of a child beneficiary. The attorney may automatically, with no discussion other than to ask what age to use, provide that all or a significant portion of the client's assets pass outright to the child upon reaching a certain age. Such a plan often avoids GST tax because no generation is skipped; the client's child receives her inheritance in a way that subjects the assets to potential estate tax at the child's generation.

Subjecting assets to potential estate tax for fear of the GST tax could result in higher taxation for the client's family. For example, one or more of the client's children may never have children of their own, in which case exposing assets to estate tax at the children's generation could result in a windfall to the Internal Revenue Service. As another example, aggregate federal and state death taxes could exceed aggregate federal and state GST taxes if a child resides in a state that has a significant death tax but no significant GST tax.

Outright gifts are also costly if the beneficiary later loses the assets from guaranteeing a company debt — not to mention all the other vicissitudes of life.

The best of all worlds might be to give the child her inheritance in one or more trusts and grant the child a limited power to say where the trust assets go upon the child's death (*Id.* at 55). To minimize GST tax, the child may exercise the power in any number of ways, such as by giving trust principal to her grandchildren and skipping estate taxes for multiple generations (*Id.*). It may also be possible to exercise the power in such a way as to elect, in effect, to pay estate tax where it would be lower than any otherwise applicable GST tax (*Id.*).

Trusts are *not* just for millionaires or large sums. Long-term trusts may make sense in our garden-variety

Wills. Consider that the marginal utility of a dollar is greater the less we have. Indeed, those of us closer to having genuine support needs may be the best candidates for receiving assets in trust, no matter the sum, rather than outright.

Of course we do not all have rich uncles calling us with their lawyers on the line asking how we would like to receive our inheritance. More common is the blank stare when the subject is raised at a family meeting. With a blank stare in mind, the following provisions are offered as an example of a possible lifetime simple trust for a child. The following provisions are for illustration purposes only and, in any event, must not be used without being tailored to the applicable law and circumstances:

### Long Term Trust For Child:

Notwithstanding any other provision of this instrument, property required to be distributed under any other provision of this instrument (other than pursuant to a power of appointment) to a child of mine shall be held in trust for the child (and I intend that GST Exempt and non-Exempt principal be held in separate trusts for the child). The Trustee of each trust shall be the child for whom the trust is held or any citizen or resident of the United States of America or any U.S. bank or trust company as the child may appoint. The Trustee shall pay the entire net income of the trust to the child for whom the trust is held in convenient installments, at least as often as annually, and shall apply as much or all of the principal as the Trustee determines to be required for the child's health, education, and support. On the death of the child for whom the trust is held:

1. Such part or all of the principal of the trust as then constituted, and any accrued or undistributed net income thereof, shall be distributed to such one or more persons or organizations as the child may appoint by Will specifically referring to this power of appointment, except this power shall not be exercisable in favor of the child, the estate of the child, or the creditors of either; and

2. Any remaining trust principal or income not effectively appointed by the child under the power created in subparagraph 1 of this paragraph shall be distributed to the then living descendants of the child, per stirpes, or if none, to my then living descendants, per stirpes, or if none, as provided [in the ultimate taker clause].

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ECLECTIC BLUES

# Words from the delegates can inspire us today, too

By Dan Branch

The formal struggle for Alaska Statehood started in 1916 when Delegate James Wickersham introduced Alaska's first statehood bill.

Advocates' efforts didn't bear fruit until 1955 when 55 Alaskans met in Fairbanks to bang out a new state constitution. That led to Congressional passage of the Alaska Statehood Act, which was signed into law by President Eisenhower on July 1, 1958. The constitution and the delegates who approved it deserve our attention today.

To produce an acceptable constitution the delegates had to resolve the hot Alaska concerns of the time—fish traps, Alaska Native land claims, federal wire tapping, privacy, and the location of the future state's capital. Some of these issues are addressed in the constitution. For example Section 24 of Article XV abolished fish traps. The constitution specifically guarantees our right to privacy.

Despite efforts by Muktuk Marston, the delegates failed to include an Alaska Native lands claim provision. Mr. Marston advocated for inclusion of such a provision in response to the treatment an Inuit friend of his received from the Federal government when they built a radar facility near his fish camp. Delegate Marston, who organized the Alaska Scouts military unit during World War II, attempted to insert a provision in the constitution that would recognize the rights of Alaska Natives to the lands that they occupied.

Standing before his fellow delegates, Mr. Marston said, "We can make this Constitution with heart and soul and justice in it if we just do that little thing and not forever pass by these people that are pleading to us. We have problems here; let's recognize them. I believe this Convention has the honor and the justice and the will ... to do this job which the United States government has been unable to do." His motion failed.

Delegate Warren A Taylor successfully fought against an attempt to include a constitutional ban on wire-tapping. The man, who had served as U.S. Marshall and then U.S. Attorney in Valdez between 1922 and 1939 urged the convention to follow the lead of J. Edgar Hoover and oppose a wire tapping ban. Mr. Taylor apparently convinced the convention that a wire tapping ban is not required because Alaskans' civil rights are adequately protected by the Bill of Rights.

As a resident of Juneau I was very interested in the debate over whether to lock in my city as the new state capital. Representative Thomas Harris of Valdez made a resolution that the constitution be

silent as to the location of the capital. After several days of debate his resolution was defeated. Section 20 of Article XV still provides that "The capital of the State of Alaska shall be Juneau."

There were strong women delegates at the convention. At least one of them stood up against sexual discrimination. Helen Fischer argued for a ban on discrimination based on sex. Unfortunately Alaskans had to wait until 1972 for their right to be free from sexual discrimination to be enshrined in our constitution. That year Section 3, Article I was amended to include the right to be free from



**"We have problems here; let's recognize them. I believe this Convention has the honor and the justice and the will ... to do this job which the United States government has been unable to do."**  
—Muktuk Marston

discrimination based on sex in the list of Alaskan's civil rights.

Sometimes the delegates spent time on small issues. Delegate Yule Kilcher of Homer moved unsuccessfully for the word "boro" be used rather than "borough" to describe our country-style governmental unit. Mr. Kilcher could not "see any reason at all why we should stick to this u-g-h spelling [which] hasn't changed since Chaucer used it." Think of the bother we lawyers would have avoided if Mr. Kilcher had prevailed on this point.

Yule Kilcher was a farmer and journalist, not a lawyer, but there were ple-

nary of our brethren at the convention. Delegate Seaborn Buckalew went on to serve Anchorage for 16 years as a superior court judge.

Ralph Rivers was Alaska's Attorney General from 1945-1949. Apparently the law-trained delegates sometimes had trouble getting along. On the 40th day of the convention, Delegate Frank Barr brought back the following message from the lawyer caucus: "Mr. President, I met with some of the attorney members on the matter of this amendment of mine and at first they did not exactly agree, but with great effort, bloodshed was avoided."

The quotes used in this article were collected by The University of Alaska for a project called, "Creating Alaska— The Origins of the 49th State." The fruits of this wonderful effort can be found online at <http://www.alaska.edu/creatingalaska/>.



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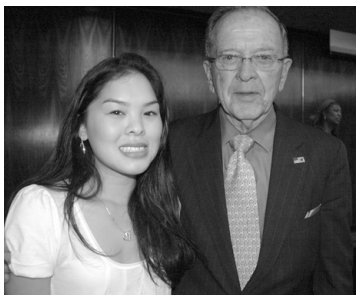
## Seniors & The Law publication available online!

The recently published legal resource guide for senior citizens is now available. Many thanks to the volunteers, American Bar Association, Anchorage and Juneau Bar Associations and numerous community partners who brought the guide to life for Alaskans' use. Download the publication at <http://www.alaskabar.org/library/SeniorLaw.pdf>





# The Color of Justice 2008



Color of Justice Career Track participant Doanh Tran of Unalaska, L, meets Sen. Ted Stevens, keynote speaker at the Mentoring Reception held at the Hotel Captain Cook at the close of the program.



Color of Justice High School Track participant Laura Fox of Takotna displays her certificate of completion during the closing ceremony.



Anchorage Superior Court Judge (Ret.) Larry Card speaks on a panel during the Advisors Track session of Color of Justice, held June 19, 2008, at the UAA Consortium Library. The panel, *The Road to the Bench*, featured lawyers, judges, law school professors, educators and youth advisors and explored ways to (1) identify minority youth who are strong candidates for legal or judicial careers; (2) encourage minority youth to pursue these careers; (3) ensure access by minority youth to challenging educational opportunities and experiences that will prepare them adequately for the challenges of a legal career; and (4) support youth as they navigate the steps needed to obtain a college degree, a law degree, and entry into the profession. Fellow panelists pictured include, L-R: Denise Wike, Legal Advisor for Anchorage Youth Court; Professor Lorraine Bannai, Seattle University School of Law; Judge Card; and Professor Paul Ongtooguk, UAA Department of Education and 2008 Gordon Russell Visiting Professor at Dartmouth College. Color of Justice Chair Judge Stephanie Joannides moderated the panel, which also included Judge Kari Kristiansen, Palmer Superior Court; Tamika Wesley, Education Specialist, UAA TRIO Programs; Professor Deb Periman, UAA Justice Center; and Denise Morris, Executive Director, Alaska Native Justice Center.

## Diversifying the judiciary... 1 student at a time

Color of Justice is a program initiated by the National Association of Women Judges to encourage diversity in the judiciary. In Alaska, which has a large minority population yet very few minority judges, diversifying the legal profession and judiciary is an important goal of our justice system. Alaska's Color of Justice program for high school students has been in existence since 2003, and has provided a valuable and inspirational educational experience to hundreds of diverse Alaskan young people. For the first time, this year's Color of Justice program included an "Advisors Track" for adults who work in career development, education, community diversity initiatives or other fields that involve regular engagement with youth. "Advisors" included teachers, school administrators, guidance counselors, Youth Court advisors, and other adults who have a role to play in encouraging diverse youth to consider and pursue legal and judicial careers.

Over 120 youth and adults took part in Color of Justice 2008, with 80 youth participating in the High School Track, 20 adults participating in the Advisors Track, and 20 youth and adults participating in the Career Track for college students and other adults interested in legal careers. Visiting professors and admissions officials from the three major law schools in the Pacific Northwest offered workshops on both substantive legal issues and education and career planning, and many volunteer attorneys from Anchorage helped coach and mentor participants.

The program continues to expand each year and raise awareness in both the educational and legal communities about ways to foster greater diversity in the legal and judicial professions. Major financial support for this year's program came from the Council on Legal Education Opportunity [CLEO] and the Law School Admissions Council [LSAC]. Other major support came from the Alaska Court System, the University of Alaska Anchorage, the Alaska Bar Association, Seattle University School of Law, University of Washington School of Law, Gonzaga University School of Law, the Northwest Indian Bar Association, the M. Ashley Dickerson Alaska Chapter of the National Bar Association, and the Alaska Native Justice Center.

For information about next year's program, please visit the program's webpage at <http://www.state.ak.us/courts/outreach.htm>.



Keith Underwood of Anchorage, a recent graduate of Dimond High School, gave the keynote address during the Color of Justice High School Track on June 20, 2008, in the Supreme Court Courtroom at the Boney Courthouse. Underwood participated in Color of Justice in 2007 and plans to pursue a legal career. He is now attending Western Washington University on a scholarship. Here, he visits with members of the Alaska Supreme Court at the close of his address, L-R, Justice Warren Matthews, Justice Walter Carpeneti, Underwood, Chief Justice Dana Fabe, Justice Daniel Winfree, and Justice Robert Eastaugh.



The national Council on Legal Education Opportunity (CLEO) is a major sponsor of Alaska's Color of Justice program. Here, CLEO Executive Director Cassandra Sneed Ogden (front right) and project coordinator Bernetta Hayes (back left) visit with local Color of Justice participants Judge Kari Kristiansen of Palmer Superior Court (front left) and Cheryl Jones, Administrative Assistant for the Appellate Clerk's Office, Alaska Court System (back right).



Anchorage Superior Court Judge Sen Tan describes the "Top 10 Reasons You Want to be a Judge" during the Color of Justice High School Track.



The Color of Justice Welcome Luncheon took place in the UAA Commons and featured remarks by, L-R: Denise Morris, Executive Director, Alaska Native Justice Center; Provost Michael Driscoll, University of Alaska Anchorage; and Palmer Superior Court Judge Beverly Cutler, a co-founder of Color of Justice in Alaska.



During a reception for Color of Justice sponsors and presenters held at the home of Anchorage Superior Court Judge Sharon Gleason, Anchorage Superior Court Judge Stephanie Joannides, Color of Justice Chair, visits with UAA Chancellor Fran Ulmer and Monica Kane, Executive Assistant to UAA Provost Michael Driscoll.





# The Color of Justice 2008



Anchorage attorney Kevin Anderson serves as a mock trial coach.



Anchorage attorney Johnny O. Gibbons coaches a Color of Justice mock trial participant.



Participants in the Career Track workshop gather with presenters in the Alaska Court System's Snowden Training Center on June 20.

## Judicial Council recommends retention of 11 judges

The Alaska Judicial Council has recommended a "yes" vote on the retention of 11 of the 12 judges eligible to be on the ballot in 2008. They recommended a "no" vote on the retention of Judge Dennis Cummings, Bethel District Court.

The Council evaluates judges' integrity, legal ability, fairness, judicial temperament, and overall performance. Members look for freedom from arrogance, equal treatment of all parties, ability to control the courtroom, and knowledge of the law. Sources of information include public hearings throughout the state, judges' conflict of interest statements, appellate records, peremptory challenges to judges, and other investigation and interviews. In addition, the Council surveys thousands of Alaskans, including peace and probation officers, attorneys, court employees, jurors and social workers, guardians ad litem and Court Appointed Special Advocate (CASA) volunteers. An independent group, Alaska Judicial Observers, evaluates judges in Anchorage, Kenai and Palmer and shares its findings with the Council.

The Council emphasizes the need to evaluate performance comprehensively, taking into account all of the information available. To provide the best evaluation, the Council looks at the judges' entire terms in office. Superior court judges serve a three to four year term before their first retention, and six-year terms after that. District court judges serve a two to three year term before the first retention, and then a four year term before their next election.

Judges stand for retention in non-partisan, unopposed elections, with their own records as the focus for the voters' decisions. This means that the Council's evaluations are a critical

source of objective information about judicial performance. The Council's evaluations include more information about judges than any other judicial evaluation in the country, particularly because the Council asks groups such as court employees, jurors, and peace and probation officers for their input. It also investigates specific issues that arise, using interviews, court records, and other research. In making the reasons for its retention recommendations public, the Judicial

**The Council evaluates judges' integrity, legal ability, fairness, judicial temperament, and overall performance.**

Council must be careful to balance its obligations to provide reliable information to the public, to be fair to the judge standing for re-ten-tion, and not to jeopardize the confidences of people who provided information to the Council.

After receiving a number of reports and comments from those who work with and appear before Bethel District Court Judge Dennis Cummings, the Judicial Council undertook an additional investigation including a review of court records and interviews with forty people. The Council also reviewed a complaint issued by the Alaska Commission on Judicial Conduct that found probable cause to allege that Judge Cummings had violated several Canons of Judicial Conduct relating to ex parte contact with a state witness in a criminal trial. The Council also reviewed Judge Cummings' response to that complaint.

The Council also considered ratings from attorneys statewide who rated Judge Cummings "below acceptable" in the areas of Legal Ability and Temperament. Among attorneys in the Fourth Judicial District, where Judge Cummings presides, the judge received ratings that were substantially "below acceptable" on Legal Ability, Impartiality, Temperament,

and Overall Performance.

Based on this investigation and a meeting with Judge Cummings in which he had an opportunity to respond, the Judicial Council had considerable concerns about Judge Cummings' lack of impartiality, inappropriate ex parte contact, inability to control the courtroom, inadequate legal knowledge, and lack of candor.

The Lieutenant Governor's Official Elections Pamphlets published in October by the Division of Elections will contain the Council's information and recommendation about each judge. The Council also will publish more information about its evaluations during September and October. Before the election, copies of the Council's surveys and other information will be available on its website at [www.ajc.state.ak.us](http://www.ajc.state.ak.us)

The judges recommended for retention in 2008 are:

**Statewide:**

Supreme Court Justice Robert Eastaugh

Court of Appeals Judge Robert Coats

**First Judicial District:**

Juneau Superior Court Judge Patricia Collins and

Juneau District Court Judge Keith Levy.

**Third Judicial District:**

Anchorage Superior Court Judge Craig Stowers;

Anchorage District Court Judges Patrick Hanley and Alex Swiderski;

Homer District Court Judge Margaret Murphy; and

Valdez District Court Judge Daniel Schally.

**Fourth Judicial District:**

Fairbanks Superior Court Judge Robert Downes and

Fairbanks District Court Judge Raymond Funk.

*Alaska Judicial Council press release, 7-18-08.*

*The Judicial Council is a seven-member citizens commission established in the constitution at statehood. Members evaluate applicants for judicial positions using the merit selection system and nominate the best qualified to the governor for appointment. Three non-attorneys, appointed by the governor and confirmed by the legislature, and three attorneys appointed by the Alaska Bar Association Board of Governors constitute the Council, with the Chief Justice of the Alaska*

*Supreme Court sitting as chair ex officio. Alaska law requires the Council to evaluate each judge eligible to stand for retention, and to publicize its findings, so that the public can make informed choices when voting on judges.*

*The Council met on July 15 and 16, 2008 to make its recommendations.*



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## Board of Governors action items September 11 & 12, 2008

- Voted to approve the admission of 9 reciprocity applicants.
- Voted to approve the Rule 43 (ALSC) waivers for Dorothy Heim and Christopher Skipp.
- Voted to raise the fee that members on the Lawyer Referral Service can charge for a half hour consultation to \$125.
- Voted to add an ADR panel to the Lawyer Referral Service. There will be no fee to join this panel or charge to the lawyer for the referral.
- Voted to include \$10,000 in Law Related Education grants in the proposed 2009 budget which will be considered in October.
- Voted to accept the stipulation in a discipline matter which provided for a three year suspension; conditions for reinstatement included CLE requirements, paying outstanding Fee Arbitration judgments, reimbursing expenses for retaining Trustee Counsel, and paying the Bar Association \$1,000 in costs and attorney fees.
- Voted to adopt the ethics opinion entitled, "Is an Attorney/Client Relationship Implicating Alaska Rule of Professional Conduct 4.2 Created Between Insured's Counsel and Insurer When Insured's Counsel Pursues the Insurer's Subrogated Claim under *Ruggles v. Grow*, 984 P.2d 509 (Alaska 1999)?"
- Voted to send to the Supreme Court amendments to ARPC 1.5(b) and Bar Rule 35(b) which would increase the threshold for a written fee agreement from \$500 to \$1,000.
- Voted to adopt an amendment to Bylaw III, section 1(a) which would waive bar dues for lawyers who have been members of the Association for 60 years or more.
- Voted to adopt an amendment to Bylaw VII, section (a)(13) which would form a standing committee on Diversity.
- Voted to publish a proposed amendment to Rule 2, section 3(b) to clarify that an applicant applying to take the Bar exam under this section must complete a clerkship program under AS 08.08.207.
- Voted to publish an amendment to Bar Rule 9(e) which would require a member to disclose an e-mail address for Bar Association and client purposes, or to advise the Bar Association that the member does not maintain an e-mail account.
- Voted to adopt a resolution that the Alaska Bar Association urges the State of Alaska to provide legal counsel as a matter of right to low income persons in those categories of adversarial proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health or child custody.
- Voted to adopt a stipulation for a private reprimand with conditions for CLE, mentorship, trust account training and audit, and recording time on client matters.
- Heard a request for a \$5,000 grant for the Language Interpreter Center to be included in the 2009 proposed budget.
- Voted to adopt the Lawyers' Fund for Client Protection hearing committee recommendation for no reimbursement in an LFCP matter.
- Voted to table the issue of Bar Counsel conflict policy until the October meeting.

## Board proposes changes to rules on clerks, e-mail

The Board of Governors invites member comments concerning the following proposed amendments to the Alaska Bar Rules. Additions have underscores while deletions have strikethroughs.

### Alaska Bar Rule 2:

The Bar Association was recently alerted to an apparent incongruity in Alaska Bar Rule 2, Section 3(b). As currently written, the section states that a clerkship program must meet the requirements of paragraphs (a), (c), and (d) of Section 1 of the rule. However, those paragraphs refer to the requirements for a general applicant and not to a clerkship program.

The attached draft clarifies that, in addition to successfully completing not less than one academic year at an approved law school, the applicant must complete a clerkship program under AS 08.08.207 and meet the requirements of paragraphs (a), (c), and (d) of Bar Rule 2, Section 1.

Alaska Bar Rule 2 is amended as follows:

### Section 3.

(a) An individual who has not graduated from a law school accredited or approved by the Council of Legal Education of the American Bar Association or the Association of American Law Schools shall be eligible to take the bar examination as a general applicant if he/she (1) has been licensed to practice law in one or more jurisdictions in the United States for five of the seven years immediately preceding the date of his/her first or subsequent applications for admission to the practice of law in Alaska, (2) was engaged in the active practice of law for five of those seven years, and (3) meets the requirements of (a), (c), and (d) of Section 1 of this Rule.

(b) An individual shall also be eligible to take the bar examination as a general applicant if he/she (1) has successfully completed not less than one academic year of education at a law school accredited or approved

by the Council of Legal Education of the American Bar Association or the Association of American Law Schools, and (2) has successfully completed a clerkship program under AS 08.08.207, and (3) which meets the requirements of (a), (c), and (d) of Section 1 of this Rule.

### Alaska Bar Rule 9

Since a significant percentage of the membership uses e-mail for communications with the Bar Association and clients, e-mail has become as important a means of communication as the telephone and a postal service address.

This proposal would add a requirement to disclose an e-mail address for Bar Association and client purposes or to advise the Bar Association that the member does not maintain an e-mail account. The proposal would only require disclosure of an e-mail account for contact by the Bar Association or by clients of the lawyer. It would not require the lawyer to have an e-mail account.

Alaska Bar Rule 9(e) is amended as follows:

...

### (e) Attorney Roster.

(1) Within 30 days of any change, each member of the Bar has the duty to inform the Bar or otherwise make available to the public his or her current mailing address and telephone number to which communications may be directed by clients and the Bar, and

(2) Within 30 days of any change, each member of the Bar has the duty to inform the Bar of a current e-mail address to which communications may be directed by clients or the Bar or to advise the Bar that the member does not maintain any e-mail account.

Please send comments to: Executive Director, Alaska Bar Association, PO Box 100279, Anchorage, AK 99510 or e-mail to [info@alaskabar.org](mailto:info@alaskabar.org) by October 20, 2008.

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# Bar People

Former Public Advocate **Joshua Fink** has joined the Law Office of Joshua Fannon and opened an Anchorage office. The practice will focus primarily on criminal defense and personal injury.

Heller Ehrman LLP announced that **James E. Torgerson** and **Andrew F. Behrend** have been ranked among Alaska's leading attorneys in the 2008 Chambers USA. Torgerson is managing shareholder of the firm's Anchorage office and Behrend is a special counsel in that office. Behrend was recognized for his Labor & Employment practice. Torgerson was recognized for his Litigation: General/

Commercial practice. Torgerson also has been recognized recently as an Alaska "Super Lawyer" for his work as a litigator and by Benchmark: Litigation as an Alaska "Local Litigation Star."

Chambers lists the top lawyers in 175 countries based on research of the legal profession's main practice groups and on client interviews. In addition to Torgerson and Behrend, 43 individuals at Heller Ehrman and 23 of the firm's practice areas also were recognized in the 2008 Chambers USA.

Torgerson joined Heller Ehrman in 1998 and is managing shareholder

of the Anchorage office. His practice focuses on complex trial and appellate litigation in state and federal court. His federal practice includes litigation of environmental, False Claims Act, Native American and white collar criminal disputes.

Behrend joined Heller Ehrman in 1993 and practices general litigation and employment law. Behrend represents employers in matters relating to employment contracts, non-competition agreements, the development of employment policies and procedures and compliance with employment laws.

Perkins Coie is pleased to welcome attorney **Mark Watt** to its Anchorage office. He will be a member of the firm's national Environment & Natural Resources practice.

Prior to joining the firm, Watt worked as an attorney in the Rocky Mountain Region of the Solicitor's Office for the U.S. Department of the Interior in Cheyenne, Wyoming. Prior to his position with the Department of the Interior, Watt worked at the U.S. Department of Justice as a trial attorney for the Environment & Natural Resources Division, and before that as a Judge Advocate in the U.S. Air Force.

"We are excited that Mark has joined the Perkins Coie team in Alaska," stated Eric Fjelstad, Managing Partner of the Anchorage Office. "Mark has a wealth of knowledge and experience in federal permitting and litigation and will be a real asset to our project development and natural resources practices."

Watt joins a team of more than 40 attorneys focused on environmental and natural resource issues. Watt received his law degree from the University of Colorado School of Law and his undergraduate degree from the University of Northern Colorado.

**Bradford Keithley** has joined Perkins Coie as a partner in its national Environment & Natural Resources practice. He will focus on oil and gas issues, practicing in the firm's Anchorage and Washington, D.C. offices.

Recognized repeatedly by *Cham-*

*bers USA: America's Leading Lawyers for Business* for his skill on oil and gas matters, for the past 18 years Keithley has been a partner with international law firm Jones Day, practicing from its Dallas and Houston offices. Prior to joining Jones Day, Keithley was Senior Vice President and General Counsel of Arkla, Inc., which at the time was one of largest integrated gas companies in the United States.

Keithley has been actively involved in Alaska North Slope and Cook Inlet issues for more than 10 years, and, in total, has more than 30 years of experience in complex legal matters involving the oil and natural gas industry.

"We are excited Brad has joined Perkins Coie. His background and expertise will help our clients overcome the significant challenges facing the Alaska oil and gas industry," said Eric Fjelstad, Anchorage managing partner. Keithley said the move is a natural. "Oil and gas development in Alaska and the Arctic is critical to the world's future, but faces a number of significant challenges. I have long respected Alaskans' efforts in dealing with these challenges, and through this move look forward to deepening my involvement in finding solutions at state, national and international levels."

Perkins Coie also announced that once again it has been ranked by Chambers & Partners, publishers of *Chambers USA: America's Leading Lawyers for Business*, as a top law firm in the United States. The firm was recognized in the annual directory as a leader in the Environment, Natural Resources & Regulated Industries, Labor & Employment, and Construction Litigation practice areas in Alaska.

This year, three attorneys from the firm's Anchorage office were recognized as top lawyers in their respective practice areas. **Eric Fjelstad** was ranked for his Environment & Natural Resources practice, **Thomas Daniel** for Labor & Employment, and **Michael Kreger** for Construction Litigation.



Bradford Keithley



Bill Halsey, left, receives the pro bono award from Attorney General Talis Colberg.

Photo by Krista Scully

## Young Lawyers pro bono awards

The Young Lawyers Section of the Anchorage Bar Association announced the recipients of this year's public service awards recognizing their meritorious service and commitment to pro bono. This year's recipients--William Falsey of Feldman Orlansky & Sanders and Catherine Rogers of Hartig Rhodes Hoge & Lekisch--were honored for their contributions to the 2008 Mock Trial competition and organization of the Covenant House holiday party for youth residents.

The presentation was attended by Alaska Attorney General Talis Colberg, the guest speaker at the July 2008 YLS meeting.

## Loan repayment program enacted

For many law school graduates, the desire to work in the public interest field is often delayed because of high law school debt. Now, however, recent law school graduates seeking fulfilling careers in legal aid have a new tool to help them accomplish this goal. Following several months of discussion and debate, on July 31, both houses of Congress reauthorized the Higher Education Act, which included a provision to provide loan repayment for civil legal assistance attorneys. This provision was an amendment added to the Higher Education Act by Sen. Tom Harkin (D-IA). The Higher Education Act reauthorization bill passed the Senate by 83-8 and the House of Representatives by 380-49. President Bush has since signed the bill into law.

Once it becomes law, lawyers who commit to working in legal aid for at least three years will be able to have a sizable chunk of their student loans paid. Legal aid attorneys who take part in the program, which will be administered by the U.S. Department of Education, could individually receive up to \$6,000 per year up to a total amount of \$40,000. In addition to attracting attorneys who might

not otherwise find legal aid law a feasible alternative, the program is expected to stem high turnover rates, which will provide offices with better trained and more experienced staff. NLADA has been a strong champion of this provision, working with Sen. Harkin to get it passed.

"This opportunity will allow thousands of young attorneys each year to enter the legal aid field without the overwhelming burden of law school loans forcing them into private sector positions outside their areas of interest," said NLADA Director of Civil Legal Services Don Saunders. "Legal aid attorneys are charged with helping millions of our nation's least-fortunate people triumph through what, for most of us, would be unimaginably difficult life situations. This program is poised to bring some of the most talented and dedicated young attorneys into this important field of work, thus improving the tools that those millions of people need to make their American dream a reality."

To see a full text of the bill, please visit <http://thomas.loc.gov/cgi-bin/bdquery/z?d110:h.r.04137>.



Mark Watt



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Several chief justices participated in the panel "Enhancing the Judicial Role in Civic Education" during the CCJ-COSCA conference in Anchorage. L-R: Margaret Fisher, LRE Coordinator for Washington State Courts; Chief Justice Chase T. Rogers, Connecticut Supreme Court; Chief Justice Dana Fabe, Alaska Supreme Court; Richard Dreyfuss, the Dreyfuss Initiative; Chief Justice Karla M. Gray, Montana Supreme Court; and Chief Justice Gerry L. Alexander, Washington Supreme Court.



NPR Correspondent Juan Williams presented a luncheon keynote during the CCJ-COSCA conference, during which he described his experiences interviewing the late U.S. Supreme Court Justice Thurgood Marshall. His biography of Marshall, *Thurgood Marshall: American Revolutionary*, was published in 1998. Williams meets with members of the Alaska Supreme Court after his remarks, L-R: Justice Walter Carpeneti, Justice Robert Eastaugh, Williams, and Chief Justice Dana Fabe.

## 100+ Judges, administrators hold annual conference here

The Alaska Court System hosted the annual Conference of Chief Justices and Conference of State Court Administrators July 26-30, 2008, in Anchorage. Chief Justice Dana Fabe and Administrative Director Stephanie Cole welcomed over 100 state court leaders to Alaska for several days of educational programs focused on the theme "Media and the Courts."

In addition to the chief justices and court directors from most states and territories, visiting dignitaries included Anthony Lewis, Pulitzer Prize winning journalist and author of the recent book *Freedom for the Thought*

*That We Hate: A Biography of the First Amendment*; First Amendment expert Floyd Abrams; lawyer-journalist Manny Medrano; and NPR correspondent and FOX News commentator Juan Williams.

Also featured were presentations on the role of the judiciary in civic education featuring actor Richard Dreyfuss, a prominent advocate for civic education in the U.S. The CCJ-COSCA conference rotates locations each year, and was last held in Alaska in 1980.

## Structure a credit card service carefully

Attorneys are held to a strict set of ethical and accounting guidelines to safeguard client funds and prevent the commingling of earned and unearned fees. As a result, attorneys must carefully structure all of their accounts including credit card payment arrangements to ensure compliance with ABA and State guidelines.

To professionally accept credit card payments in your firm, you can open a merchant account. A merchant account enables your firm to receive card authorizations from the Visa/MasterCard network and works with your existing banking arrangements. The risk when opening a merchant account is that the majority of payment

processors are unaware of the rules for attorneys and can seldom differentiate the requirements of a law firm from those of a retail establishment or even another professional service. That is why due diligence is necessary when establishing a merchant account. The following explains how to properly structure your merchant account to accept credit cards the right way and avoid the risk of commingling client funds.

To begin accepting credit cards make sure you establish separate accounts on the back end to deposit retainers (unearned fees) or to deposit earned fees. That way when a client pays for a retainer with a credit card you can direct the unearned funds into

the trust account. When your client pays for services provided or past due balances, the earned funds are then deposited into the operating account. Structuring your account in this manner separates earned and unearned fees. However, you must go one step further to ensure compliance.

The key to compliance is structuring your account to deduct processing fees, service charges and charge backs from the operating account and never the trust account. This process keeps the balance of your firm's trust account intact.

Finally, as an added safeguard of client funds, processing fees for both earned and unearned transactions should not be taken out of each individual deposit, but deducted as a one time withdrawal from the operating account at the end of the month. Traditional merchant services are

designed to deduct processing fees from the actual transaction only depositing the difference. For example a \$100 transaction with a 2% fee would result in a \$98 deposit to the account. With a law firm merchant account, the entire \$100 is deposited.

In spite of the regulations, ensuring your merchant account is structured properly is easy. Use the suggestions described above and your firm will soon realize the benefits of credit card acceptance. Credit acceptance attracts and retains clients and can be used to avoid "slow pay" and "no pay" pay clients entirely. Simply include a credit card authorization form with your letter of engagement or on past due balances. Collections are easily and quickly reduced.

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*Wait, wait, don't tell me.*

# Beebo Brinker meets the 10th Amendment

By Peter Aschenbrenner

Ann Bannon (not her real name) born 1932, invented Venus Bogardus (real name). I'm not making this up. She is.

Ms. Bannon gives workshops. April in Seattle. July in California. She has a nice website. [annbannon.com/](http://annbannon.com/)

"'Darling,' Paula said, and Beebo thought how much warmer and truer the word was when Paula spoke than when it bloomed on Venus's perfect lips like a gaudy rose." (Triangle Classics ed. p. 682)

Ann Bannon is the George Washington of both gay and lesbian fiction. George, a snappy dresser and dab hand at dancin', would enjoy the compliment.

Bannon proves that both S. Richardson and H. Fielding knew what they were talking about. It's all in the dialogue.

We're not talking the twinkling lights of Staten Island or Jersey City.

It's just straight, unvarnished dialogue with tranches of, "now take this" or "now take that." You the reader are on the receiving end. "Feel this." "Feel that." As in watching warm and true words or that gaudy rose is a rose.

But if you put characters into a situation in which the plot drives their conduct; if you put them in a situation

in which there are no twinkling lights of Staten Island, no earthquakes, no road trips –

What are they going to do? They're going to talk to one another.

That's all they've got to do. Talk to one another and make judgments about each other's behavior, and then discover how inadequate those judgments are, appeal from those judgments, and so forth.

(Kant said the same thing. Kritik of Fahrvergnuegung B93, but I digress.)

Everyone knows what a platform is. It's the soapbox you stand on. The reader's experience is likely to be this: You're sitting at your computer. An email arrives in your inbox. You know you don't want to read it. You delete it.

You do this day after day after day.

What we're talking about is a 'platform.'

Somebody got up on your (yes, your soapbox) and commenced to rant.

You were (with modest effort) able to dismiss 'em. Into vapour.

Platform is a broken, raggedy-edged, unfilled shell in which one side or the other, sometimes even both sides, peep out.

They rant or strut. At somebody. You, if you let 'em.

It's not dialogue.

Beebo knows what dialogue is and she knows it when she sees it. "I found other girls [this is Laura to Beebo] while I was waiting so trustingly for this perfect love." That's dialogue. Discourse of the ethical variety.

(Beebo's reply runs: " 'I won't believe anything bad about you.' She guided her back to the bedroom." p. 683)

Beebo's not the only one who trusts the Laura's of the world when they say they've found 'perfect love.'

Lawyers and judges. To name two.

Which brings me to the point. What's the gold standard for dialogue?

Do we know it when we see it? Of course, I refer to the 'few, the happy few'. In short, the licensed.

That's you and me. Sorry Beebo. Lawyers and judges invented it.

The gold standard.

It's trial by jury, and taking several slices: opening arguments, direct and cross-examination of principal witnesses, closing arguments, the judge charging the jury, the jury deliberating, publication of the verdict, and appeal. Near-endless appeals, true. And the reformer Jeremy Bentham wanted to shoe-horn into this process yet another jury (quasi- by name). Madison rejected his offer. 1816 was a bad year to be takin' advice from people who just burned your house to the ground. Another story.

So is this constitutionally-required speech?

Sure is. And it's not mandated by one of

those low-numbered amendments either. This is the Tenth-worth of gold standard.

Think of it this way.

Beebo comes over to Laura's house and Laura emotes. Or Venus unloads on Beebo the pizza-delivery girl. (This is the Village; use your imagination!)

Free speech? Sure.

But what's required of the author?

Dialogue. In short, advocacy, attack and defense of should statements.

Sure, some of this dialogue is pretty cheesy.

We're not talking Henri Beyle or the Immortal Jane, here.

It's compelled discourse.

Logos you gotta have.

It's no different from what the Bill of Rights compels states to afford, by, in a rather Madisonian reversal of fortune, guaranteeing to states the right to compel citizens to engage each other with their wits.

Proof?

Imagine that everyone in the B.B. Chronicles emails each other.

Kinda hard to imagine Venus Bogardus munching down Beebo's pizza, stiffing her for the check and tryin' to seduce her all at the same time. By email. Or any other rickety old platform.

Like I said, the Tenth is one fine amendment. As is speech that you gotta have, when you gotta have it.

Hey, don't ask me. Ask the folks in the Village.

## Consultation fee for Lawyer Referral Service increased; ADR panel added

Lawyers receiving referrals from the Alaska Bar Association Lawyer Referral Service may now charge up to \$125 for the first half hour of consultation. This is an increase from the \$50 consultation fee which had been in place since 1994.

The Board of Governors also voted to add an ADR panel to the Lawyer Referral Service. Lawyers on this panel will not have to pay a fee to get on the panel, or for any referrals.

For more information about the Lawyer Referral Service, contact the Alaska Bar Association at [info@alaskabar.org](mailto:info@alaskabar.org) or 272-7469.

### Need clients?

#### Join the Alaska Bar Lawyer Referral Service

The Alaska Bar Association Lawyer Referral Service is a convenience for people who believe they may need a lawyer but do not know how to go about finding one. The LRS receives over 4000 calls a year from the public and makes referrals to lawyers participating in the program.

Calls are answered by staff who do a brief intake to determine the nature of the request. There are 33 practice categories.

#### How do I join?

To participate in the LRS, a lawyer must be in good standing with the Alaska Bar Association and have malpractice insurance of at least \$50,000 and complete nine hours of VCLE.

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## Voluntary Continuing Legal Education (VCLE) Rule – Bar Rule 65 8th Reporting Period January 1 - December 31, 2007

The following is the updated list of active Alaska Bar members who voluntarily complied with the Alaska Supreme Court recommended guidelines of 12 hours (including 1 hour of ethics) of approved continuing legal education the 2007 reporting period.

We regret any omissions or errors. If your name has been omitted from this list, please contact the Bar Office at 907-272-7469 or e-mail [cle@alaskabar.org](mailto:cle@alaskabar.org). We will publish a revised list as needed.

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Acharya, Surasree	Blackburn, Joanne T.	Carpeneti, Anne D.	Daniels, Susan L.	Evans, Susan L.	Grant, Paul H.	Huguelet, Charles T.
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Aguero, Dorothea G.	Bledsoe, Mark S.	Carter, Mickale C.	Dattan, D. Scott	Fabe, Dana	Gray, J. Michael	Humm, Marguerite
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Allan, Daniel W.	Bocko, Robert J.	Cashion, John P.	Davis, Jody L.	Farleigh, Randall E.	Green Jr, Harold W.	Hunt, Karen L.
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Allee, Rita T.	Bohms, Ruth Bauer	Cavaliere, Michael	Davis, Marcia R.	Fehlen-Westover,	Greene, Angela M.	Hunter, Grant W.
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Legacki, Kenneth W.	McKay, Patrick J.	Oberly, William B.	Reep, Janine J.	Sigmon, Sharon DeLana	Tempel, Janet K.	White, Michael N.
Leik, James N.	McKay, Cheryl L.	Oczkus, M. Gregory	Reese, John E.	Silver, Steven W.	Theiler, Shana L.	White, Vanessa H.
Leman, John	McLaughlin, Michael Sean	Odsen, Frederick J.	Reges, Mala J	Silverberg, Elizabeth A.	Therrien, Valerie M.	White, Marshall T.
Lempriere, Philip R.	McLaughlin, Robert J.	Ogg, R. Danforth	Reineke, David D.	Silvey, Gregory G.	Thibodeau, Nicole	White, Erin E.
Lenhart, Thomas E.	McLaughlin, Michael S.	Olsen, Randy M.	Renfor, Zachary N.	Simel, Nancy R.	Thomas, Lisa N.	Wicks, Sandra J.
Leonard, Cameron M.	McLean, Susan S.	Olsen, Dianne E.	Reynolds, Lisa	Simpson, Sara E.	Thomas, Donald C.	Wielechowski, William P.
Leonard, David F.	McLeod, Jill	Olson, Gregory M.	Richard, John M.	Simpson, Randall G.	Thompson, David	Wilcox, Paul S.
Lepore, John	McNamara, Cara	Olson, Gustaf	Richards, Angelique R.	Sites, Timna A.	Thompson, Michael A.	Wilder, Patricia C.
Leque, John A.	McQuerry, Samuel A.	Oravec, Scott A.	Richardson, Ann Marie	Sivertsen, John W.	Thompson, G. Nanette	Wilkerson, Daniel
LeRoy, Erik	McVicker, Suzanne	Osborne, Melanie Baca	Rickey, Douglas K.	Skala, Jason	Thompson, Darryl L.	Wilkerson, Joan M.
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Leuning, Scott J. Hen- dricks	Meacham, Thomas E	Ott, Andrew	Ringsmuth, Eric	Skladal, George Wayne	Thurbon, Terry L.	Willard, Donna C.
Levesque, Joseph N.	Meachum, Robert F.	Otterson, J. Stefan	Ritchie, Barbara J.	Skrocki, Steven E.	Thwaites, Richard S.	Williams, Andrew
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Levy, Keith B.	Meddleton, Mary-Ellen	Owens, Thomas P.	Robertson, Heather N.	Sleater, Regina L.	Tillery, Craig J.	Williams, DeWayne A.
Lewis, Robert D.	Menard, Amy R.	Owens, Bradley D.	Robinson, Arthur S.	Sleeper, Gary	Tilly, Cassandra J.	Williams, Regan L.
Libbey, Colleen A.	Mendel, Allison E.	Owens, Robert P.	Roetman, Paul A.	Slone, Frederick T.	Timmermans, Todd J.	Williams, Teresa Ann
Libbey, Daniel	Merriner, Charles M.	Owens, Thomas P.	Rogers, Margaret O'Toole	Smith, Kevin B.	Tindall, John H.	Willoughby, Julie
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Limon, Lynda A	Messenger, John R.	Pallenberg, Philip M.	Roley, Ryan R.	Smith, Eric B.	Torgerson, James E.	Wilson, Lisa M. F.
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Lohff, John R.	Michaelson, Peter L.	Parvin, Gregory S.	Ross, Herbert A.	Soule, William J.	Trimmer, Beth G.L.	Winston, T aylor Elizabeth
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Longacre, Roy L.	Milks, William E.	Passard, Christina M.	Roumagoux, Bhree	Spaan, Michael R.	Trumble, Jay W.	Witty, Rachel L.
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The City of Palmer's Code, 3.16.040, "Examples of Taxed Transactions," states in Section N that "Services rendered by lawyers, accountants, show repair shops, carpenters and cabinet-makers, etc." are deemed to be subject to the City's three percent sales tax.

All attorneys conducting business within the City of Palmer's city limits must have a City of Palmer business license and report, on a monthly or quarterly basis, their taxable sales and remit the applicable sales tax. This includes all payments received for services that are physically conducted within the City limits.

If you have any questions about the ordinance, please do not hesitate to contact Lisa Vaughn at 746-1314 or the Palmer Department of Administration at 745-3271.



## Alaska Bar MCLE Rule

First Reporting Period: January 1, - December 31, 2008  
Reporting Deadline: February 1, 2009

Go to [www.alaskabar.org](http://www.alaskabar.org) for:

1. MCLE Reporting Form - signature of Bar member required on form
2. MCLE Rule and Draft Regulations
3. MCLE FAQs

### Rule at a Glance

- If you are an Active Member, you are required to complete 3 hours of approved ethics CLE each year.
  - In addition to the 3 hours of ethics, you are encouraged, but not required, to complete 9 hours of approved voluntary general CLE (VCLE) each year.
  - You are required to report whether or not you have completed at least 3 hours of mandatory ethics (MECLE) each year.
  - You are required to report whether you have completed 9 hours or more of approved general CLE (VCLE).
  - If you have completed less than 9 hours of approved general CLE (VCLE), you are required to report the estimated number of approved general hours (VCLE) completed.
  - You can carry forward up to a maximum of 12 approved CLE credits from the immediately preceding reporting period.
  - Any approved CLE credits earned January 1 - December 31, 2007 may be carried over for the reporting period of 2008.
  - The Bar will provide 3 free hours of approved ethics CLE each year.
  - Newly admitted lawyers report for the year immediately following the year of admission.
- FREE Ethics CLE - Ethics at the 11th Hour, Wednesday, November 5, 8:30 a.m. - 11:45 a.m. - Free Live CLE, Free Live Webcast and Free DVD.

**QUESTIONS? CONTACT THE BAR OFFICE AT  
907-272-7469 or e-mail [info@alaskabar.org](mailto:info@alaskabar.org)**

### ATTORNEY DISCIPLINE

#### Court orders a second disbarment of former attorney

The Alaska Supreme Court disbarred former Alaskan attorney Cathleen McLaughlin from the practice of law on June 5, 2008, for misconduct involving a federal felony conviction for wire fraud. Her felony fraud conviction established that Ms. McLaughlin violated Alaska Rule of Professional Conduct 8.4, which provides that it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer. The court disbarred Ms. McLaughlin shortly after Ms. McLaughlin become eligible to seek reinstatement from an earlier disbarment for misconduct involving many clients.

The facts underpinning this second disbarment arise from a debt collection. A corporation headquartered in the State of Washington referred a collection matter to Ms. McLaughlin who obtained a confession of judgment in 1999 in the amount of \$95,000, plus statutory interest. In April 2000 Ms.

McLaughlin accepted a settlement on the condition that \$95,000 be forwarded to her by a certain date. After receiving the money Ms. McLaughlin completed a Satisfaction of Final Judgment. She endorsed the settlement check and deposited it into her private bank account. Ms. McLaughlin continued to report to company representatives that she was trying to collect on the judgment. She never told her client that she had executed a Satisfaction of Judgment and that she had directed the monies to her own account.

In September 2002 a lawyer retained by the company to assist in the collection contacted Ms. McLaughlin's former law firm to inquire about the matter. He learned that Ms. McLaughlin on August 15, 2002 had stipulated to the discipline of disbarment for misconduct involving other clients. On September 27, 2002, the Alaska Supreme Court ordered Ms. McLaughlin disbarred from the practice of law to take effect immediately.

With respect to acts taken during the debt collection, the United States of America charged and indicted Ms. McLaughlin on two counts of wire fraud under 18 U.S.C. §1343. The government alleged that Ms. McLaughlin committed wire fraud by falsely informing the company representatives that a monetary payout in satisfaction of the debt could be expected in a few days.

On September 9, 2005, Ms. McLaughlin pled guilty to a single count of wire fraud. Following her federal conviction, Ms. McLaughlin was sentenced to a term of 22 months in federal prison, a sentence reduced to 20 months on appeal. The court ordered payment of \$10,000 in restitution.

In order to seek reinstatement to the Alaska Bar, Ms. McLaughlin must comply with Alaska Bar Rule 29(b) and she must affirmatively establish that any incapacitating conditions, emotional distress or personal problems leading to the felony conviction is explained and that any such incapacity or disability or emotional distress condition has been removed.

#### NOTICE OF PUBLIC DISCIPLINE

By order of the Alaska Supreme Court,

By order of the Alaska Supreme Court,  
entered August 7, 2008

ROGER D. OST, JR.  
Member No. 9411090  
Seattle, Washington

is disbarred from the practice of law,  
based on his disbarment by the  
Washington State Supreme Court  
effective August 7, 2008  
*nunc pro tunc* November 30, 2007  
for making a false statement to disciplinary  
authorities, altering a cashier's check, submitting an  
altered document to disciplinary authorities and  
failing to: diligently represent a client and make  
reasonable efforts to expedite a client's case;  
communicate with a client; respond to discovery  
requests; return unearned fees;  
withdraw promptly when terminated;  
and return client documents.

Published by the Alaska Bar Association,  
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Pursuant to the Alaska Bar Rules

#### NOTICE OF PUBLIC DISCIPLINE

By order of the Alaska Supreme Court,  
entered June 17, 2008

**KEVIN M. MORFORD**  
Member No. 8406040  
Anchorage, Alaska

is placed on  
interim suspension from the practice of law  
effective January 7, 2008, *nunc pro tunc*  
until further order of the Alaska Supreme Court.

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Pursuant to the Alaska Bar Rules.



## Court official named to national offices

Stephanie Cole, Administrative Director of the Alaska Court System, has been named president of the Conference of State Court Administrators (COSCA), a national organization that represents the top chief executives of the courts of the 50 states and U.S. territories. At the same time, Cole also was named vice-chair of the National Center for State Courts' (NCSC) Board of Directors. Both positions are one-year terms.



At the same time, Chief Justice of Massachusetts Margaret Marshall was named chair of the NCSC Board of Directors and president of the Conference of Chief Justices (CCJ). The appointments were made recently during the National Center's Board meeting and CCJ/COSCA's annual meeting in Anchorage, Alaska.

"Ms. Cole has long been a leader in the court community and she knows first hand the importance of the work of America's state courts. Her knowledge and experience are invaluable to the National Center," said NCSC President Mary C. McQueen.

Ms. Cole has served as a member of the COSCA Board of Directors since 2002, most recently serving as president-elect. Ms. Cole became Administrative Director of the Alaska Courts in 1997. She served as deputy director from 1983 to 1997. Prior to that, Ms. Cole served as Assistant Attorney General and Supervising Attorney for the Alaska Department of Law.

COSCA's other Board members also were named at the meeting and include:

- President-Elect, Steve Hollon, Administrative Director of the Ohio Supreme Court
- Vice President, Lilia Judson, Executive Director of the Division of State Court Administration of the Indiana Supreme Court
- Immediate Past President, Lee Suskin, Vermont State Court Administrator

COSCA is composed of the chief executive officer representing each of the state court systems. COSCA is committed to strengthening the judicial branch by improving the quality of the state courts. COSCA accomplishes this by developing best practices for improved court administration; identifying, researching and finding solutions to issues that affect our courts; and working closely with its colleagues in the legal and government communities to improve the justice system. By establishing more efficient and effective courts, COSCA strengthens the public's trust and confidence in the justice system.

The National Center, headquartered in Williamsburg, Va., is a non-profit court reform organization dedicated to improving the administration of justice by providing leadership and service to the state courts. The National Center, founded in 1971 by the Conference of Chief Justices and Chief Justice of the United States Warren E. Burger, provides education, training, and technology, management, and research services to the nation's state courts.

## Free PACER access at all Alaska Court System Law Libraries

By Catherine Lemann, State Law Librarian

The United States Administrative Office of the Courts and the Government Printing Office have launched a two-year trial of providing free PACER access in libraries that participate in the Federal Depository Library program. The Alaska Court System Law Libraries were chosen as one of only sixteen test sites nationwide.

PACER is an electronic public access service that allows users to obtain case and docket information from Federal Appellate, District and Bankruptcy courts, and the U.S. Party/Case Index via the Internet. The goal of the project is to determine if Federal depository library no-fee access expands usage to those who currently do not have access or would be inhibited by going to a courthouse to use the service. The library's application for inclusion in the test stressed the difficulty that many Alaskans have traveling to Federal court offices. With seventeen libraries throughout Alaska, the Court System libraries provide easier access to PACER.

Users will be asked to complete a short survey when using the service. The library will be reporting usage to GPO every two months. We hope that the trial will be successful so that free PACER access will be available in all FDLP libraries in the future. PACER is currently available in Anchorage, Fairbanks, Juneau, and Ketchikan.

HeinOnline (HOL) is available in all Alaska Court Law Libraries. Initially, HOL provided access to an array of scanned images of legal periodicals. There are currently over 1,600 law journals available. Users can search by title, author, or subject, limit the search to specific titles, and limit the search by date.

But wait, there's more. There is primary federal government information including the Code of Federal Regulations, the Federal Register, U.S. Statutes at Large, Congressional Record, federal legislative history information, and federal administrative material. Looking for an elusive provision in the Statutes at Large some time before Alaska's statehood? This is the place to look! Looking for the language of a CFR from the 1980's? HeinOnline is the resource we suggest.

And now, there's even more. Hein recently made available *Subject Compilations of State Laws* by Boast and Nyberg. If you're looking for an overview of the law on a particular subject, this is the place to start. Find law review articles and link directly to web based resources from your HOL search.

The Anchorage law library continues to subscribe to law reviews in paper, to retain the old paper CFRs, and to retain other federal material. HOL is a great example of how library resources extend far beyond what we can provide in print.

### Alaska Bar Association September thru December CLE Calendar

September 23 Live & Live Webcast	8:30 a.m. – 4:45 p.m.	Impeachment - with Terry Mac Carthy & Ray Brown CLE #2008-021 6 general CLE credits	Anchorage Hotel Captain Cook
September 26 Live	12:00 – 2:00 p.m.	Juneau Bar Assn – Ethics with Steve Van Goor CLE#: 2008-041 2 Ethics CLE credits	<b>JUNEAU</b> Gold Room
October 3 Live & Audiotape	12:00 noon – 1:45 p.m. (FREE Brown Bag)	Effective Use of Freedom of Information Requests CLE#: 2008-042 1.5 general CLE credits	Anchorage Atwood Building
October 7 Live & Live Webcast	8:30 a.m. – 12:00 noon	Voir Dire: Picking the Winning Strategy - with Larry Cohen CLE #2008-033 3.25 general CLE credits	Anchorage Hotel Captain Cook
October 7 Live & Live Webcast	1:30 – 4:45 p.m.	Pathology Reports: Forensic, Medical & Psychological - with Larry Cohen CLE #2008-032 3.0 general CLE credits	Anchorage Hotel Captain Cook
October 15 Live & Audiotape	11:30 a.m. – 1:30 p.m. (Buffet Lunch)	Historian's Cmte: Rough Justice - Judge Wickersham CLE #2008-036 1.5 general CLE credits	Anchorage Dena'ina Convention Center
October 16 Live & Live Webcast	8:30 – 10:30 a.m. (Breakfast CLE)	Elder Law & Estate Planning Ethics Issues CLE #2008-022 2 Ethics credits	Anchorage Hotel Captain Cook
October 23 Live & Live Webcast	8:30 - 11:00 a.m. (Breakfast CLE)	Recent Developments in Intellectual Property: What Your & Your Client Need to Know CLE#: 2008-012 2.25 general CLE credits	Anchorage Hotel Captain Cook
October 30 Live & Live Webcast	8:30 a.m. – 12:00 p.m.	Assessing True & False Reports of Abuse -- with Bill Eddy CLE#2008-039 3.25 general CLE credits	Anchorage Hotel Captain Cook
November 5 Live & Live Webcast	8:30 – 11:45 a.m. (Free CLE)	Ethics @ the 11 <sup>th</sup> Hour CLE#2008-009 3 ethics credits	Anchorage Hotel Captain Cook
November 7 Live	1:30 -3:30 p.m.	Off the Record: 4 <sup>th</sup> Judicial District CLE# 2008-011 2 general CLE credits	<b>FAIRBANKS</b> Morris Thompson Cultural & Visitors Center
November 21 Live	8:30 a.m. – 12:30 p.m.	14 <sup>th</sup> Annual Workers' Comp Update CLE#2008-008 3.75 CLE credits including .5 ethics credits	Anchorage <b>Downtown</b> <b>Marriott Hotel</b>
December 1 Live & Live Webcast	1:30 – 4:30 p.m.	Be a Lawyer, See the World Part II CLE#2008-035 2.75 general CLE credits	Anchorage Hotel Captain Cook
December 11 Live & Live Webcast	8:30 a.m. – 12:00 noon	Lawyers Assistance Committee – Substance Abuse Issues and Lawyers CLE#2008-026 3.25 ethics CLE credits	Anchorage Hotel Captain Cook
December 17 Live & Live Webcast	8:30 a.m. – 10:00 a.m. (Breakfast CLE)	Off the Record with the Alaska Appellate Courts CLE#2008-037 1.5 general CLE credits	Anchorage Hotel Captain Cook

Go to [www.alaskabar.org](http://www.alaskabar.org) for more CLE info.

### INTERESTED IN SUBMITTING AN ARTICLE TO THE

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The *Bar Rag* welcomes articles from attorneys and associated professionals in the legal community. Priority is given to articles and newsworthy items submitted by Alaska-based individuals; items from other regions are used on a space-available basis. Remember -- you get VCLE credit for substantive law-related articles printed in the *Bar Rag*.

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Use descriptive filenames, such as "author\_name.doc." Generic file names such as "Bar Rag September" or "Bar Rag article" or "Bar article 09-03-01" are non-topic or -author descriptive and are likely to get lost or confused among the many submissions the *Bar Rag* receives with similar names such as these. Use, instead, filenames such as "Smith letter" or "Smith column" or "immigration\_law."

#### Submission Information:

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By fax: 907-272-2932.

By mail: Bar Rag Editor, c/o Alaska Bar Association,  
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## Baby steps

By William Satterberg

"My name's Bill. I'm an addict," I mumbled.

"Hi, Bill!" came the loud, collective reply from the others in the room.

I tried to shrink into my chair. Sadly, it was made of wood. Escape was not an option. All eyes were upon me. Generally, I am unaccustomed to public speaking, and decidedly awkward. I am a shy, unassuming person. Besides, I am easily intimidated. In contrast, this was a well-dressed group of men and women. Yuppie-types. Young, upwardly mobile urban professionals. Gregarious types.

So why was I in this group of dedicated "twelve-steppers?" Clearly, it certainly was not the typical group (if there is such a thing) of "twelve steppers." Although there were no Carharts-clad construction workers, or North Pole cowboy-types present, there were several housewives and an abundant gathering of teenagers, complete with their backwards baseball hats. Strange brew, to say the least.

Withering under the group's unwavering gaze, I told my story...

"It began when I was a young child. I grew up in Kirkland, Washington. My mother probably didn't mean anything by it," I began. Then, I hesitated. Terrified, my eyes darted around the room. I struggled to control my breathing. Eventually, my fears faded. To my surprise, the atmosphere was kind. I was among friends. They seemed to understand. Strangers, perhaps. But friends, nonetheless. I continued with my saga...

"I was but four years old. I still loved Santa Claus. When I opened the first present under the family Christmas tree, I gleefully discovered a captivating toy. It was a red *Tiny Tykes* rotary dial phone, complete with pictures on each one of the numbers, and a loud bell which gave a reverberating "ding" each time a number was dialed. I was overjoyed. It was made from genuine plastic. I clapped my hands happily and jumped as high as my chubby little body would allow. It was love at first sight. I forgot my smoking Lionel train immediately. Abandoning my other presents, I dashed off to my room clutching the phone, to my chest. Fortunately, my mother saw the train just in time to douse the fire."

"For the rest of the day, I placed calls incessantly to my imaginary friends. They never seemed to answer, although I could hear their voices clearly. It is a problem, even to this day. Still, I was infatuated just doing the dialing exercise. Answers were not required."

I scanned the room. One kind person had sympathetic tears welling in her eyes. Someone else quietly sobbed behind me. Two slumbered, reminding me of my jury trials. The rest sat in rapt attention. So I continued.

"For years, I would dial my little phone and play with my ringer, pushing it up and down rapidly. One day, my ringer finally wore out. I figured I had beaten it too much. I asked Mom for another phone. Mom didn't seem to hear me at first. So, I waited until she took the cotton out of her ears one night, and then tackled the subject head on."

"Leave the subject alone, Billy," Mom scolded me. "(Subject was our family's mongrel dog.)"

"But, at least I had Mom's atten-

tion. 'You can't play with that phone again,' Mom told me. In the years to come, I found that statement also would have a familiar ring to it."

"Eventually, I figured that, since Mom would not let me play with my *Tiny Tykes* phone, I'd use the next best thing: Mom's phone."

"Being only ten-years-old at the time, I didn't have a good grasp of how to use Mom's phone. After all, it looked different. Instead of being red, it was black in color. I really loved my red *Tiny Tykes* phone, since I had treasured it for several years. But, this phone was new."

"First of all, Mom's phone was heavier. Secondly, it had a profoundly evil look to it. I immediately saw its potential as a weapon against my tough little sister, Julie. After all, I usually needed something to even the odds in a fair fight with her. Julie had won too many fights over the years. As far as I was concerned, she cheated. Besides, Julie would not hesitate to stoop to crying when in earshot of the parents."

"Secondly, I liked the phone because it buzzed."

"Thirdly, if you pushed certain numbers, you could speak to a nice lady, policeman, or a fireman, who would even come to visit from time to time."

"And, finally, to my delight, if you pushed a whole bunch of numbers, you could sometimes even talk to strange people who just gibbered and jabbered at you in baby talk in some stupid language without making any sense at all, and who sounded just like those people on the *National Geographic* television shows."

With that last comment, I received some concerned stares. Maybe I had gone too far. I wisely decided not to tell the group about all of the *National Geographic* magazines I still had hidden under my mattress. I returned to the topic at hand. One addiction was enough for this group, although the teenaged boys seemed interested in hearing more.

"My parents tried to keep me from the phones, but without success. When I was fourteen-years-old, they even installed a unit high on the wall. So, I asked Santa for a ladder. When that didn't work, I used a rake to dislodge it."

I continued. "During high school, I would sneak out at night. I would tell my parents that I was going drinking with underage friends. To convince them, before coming home, I would splash flat beer over myself. Another addiction—different group. But, it was all a lie. Instead, I would go to the corner store and spend my hard-earned quarters for hours on the pay phone. Little did I realize then that quarters could be used in video machines, also."

"Although I hoped to pull off my ruse for years, my parents eventually caught on. At first, like other codependents, they were in denial. However,



"I wanted to enter law because lawyers were able to be on the telephone all day long! In fact, lawyers were actually paid to do it."

mumbled.

The silence was excruciating. "But just once!" I hastily added. No one was fooled.

The stares continued, now boring relentlessly into me.

"OK! OK!" I confessed. "Maybe I was confronted several times. So what?"

"And what did you do?" another person probed.

"Nothing." I answered at first. But that answer was a sham, also. My excuses fell on deaf ears. There was no escape. "OK! I lied! I denied it! I told them I was drunk again!" I cried.

"So you got away with it?"

"Yes. Yes. They never knew."

"And, how did that make you feel, Bill?"

"Ashamed."

"Proceed, please."

"College was a difficult time for me," I continued. "I went to the University of Alaska. It was a poor school. Not Ivy League. More like Chickweed League. We only had a phone on each dormitory floor. That's when I first learned that certain others suffered the same affliction as me. For days, I would sit in the hallway, pretending to study, just to feel the warm, sensuous caress of the black plastic handset as it cuddled against my ear. On cold winter nights, I longed to hear the pulsating buzz of even a busy tone. But, the phones were limited. Others suffered, as well. I was with kindred spirits."

"Pay phones were out. Not only were the handsets usually cut off, but the change boxes had also invariably been violated as part of Alaska's Guaranteed Student Loan program. After all, how else did my parents expect me to pay for my weekend parties?"

"Although I studied chemistry for most of my undergraduate years, I soon realized that I was destined to be a lawyer. Where chemistry demanded analytical thought, law was promulgated by unbridled creativity. Besides, in my junior year, my organic chemistry experiment erupted in flames and forced an evacuation of the laboratory. But that, yet again, is another story. In time, I was captivated by the law. It wasn't the part that I could act like Perry Mason. Nor was it even the promise of a first real date. True, as a chemistry student, I didn't have a love life. For years, I had attributed my lackluster to the

pervasive smell of urea in my clothes. To this day, I question why the acrid smell did not subside when I left the study of chemistry. But that also is even another story for yet even another day."

"No. I wanted to enter law because lawyers were able to be on the telephone all day long! In fact, lawyers were actually paid to do it. And, this was in the nineteen seventies! This was in a time after the Vietnam War, but long before the days of cellular telephones and pagers, not to mention satellite linkages, text messaging, and the Internet."

The secret thoughts I had hidden so well for so many years overwhelmed me. It was too much. I finally had sympathetic ears, even if half of them were flattened like my own. I could not contain my excitement. I had to finish my story. As I talked about my Pilgrim's Progress to the modern age, I shuddered involuntarily, even at the mention of satellite telephones, real-time communication, and the Internet. I felt a compelling urge to excuse myself, but that was impossible. Still, someone in the room must have done it, if it wasn't me. Maybe it was the lunch.

The group let me compose myself. After a minute or two, I continued.

"I was a natural lawyer," I bragged.

"Initially, my fascination with phones as a lawyer was tempered. Push button phones had just recently come into style. Only the best of the phones had such technological features as redial, functions which I quickly came to love and adore. Instead, with older phones, a person was relegated to having to look up a number each time before it was dialed, or to cloud their brain with useless digits. As you can understand," I explained, "this temporarily slowed down the exercise of my addiction."

"Still, there was a side benefit. My memory improved, especially for numbers. In later years, when my eyesight began to fail, I realized just how beneficial it was to have a memory for numbers, even if I did think in terms of seven and ten digit sequences."

"All that was to change, however, when I realized that we were entering the vast information age of the second millennium. Telephones had truly become a work of art. My fascination with phones grew exponentially. In but a brief amount of time, telephones had progressed from the ugly, black things that used to sit on the table in my parent's house to, once again, the colorful little ringers, so reminiscent of my *Tiny Tykes* toys. Stylistic phones acquired the shape of animals, movie stars, the Starship Enterprise, and colors far too numerous to mention. I was hopelessly snared."

"Just about when I thought I could handle it no more, another technological revolution occurred. I discovered the cellular phone. The horizons were now limitless."

"I must confess that I was probably one of the first people to ever have a portable phone. You see, I had a friend who was an auto parts dealer. He was a Snap-On dealer and had a flashy mobile truck. And, in that truck, he had a radio telephone with a huge power supply. When he quit the business, he sold the phone to me for the then inexpensive price

Continued on page 19



## TALES FROM THE INTERIOR

## Baby steps

Continued from page 18

of only \$3,000.00. Even the phone without the power supply was a large apparatus. The transmitter and tower supply had to be mounted in the back of my SUV. A special antenna had to be installed, as well as heavy duty shocks. Still, it was a delight. I was totally seduced by this unit. It allowed me to stay in touch with virtually anyone, anywhere, as I drove single-handedly about town. Sometimes, I would simply cruise around the community for hours so that I could talk on my mobile phone, run up the bill, and impress people into thinking that I was more important than I really was. And, by staying in my car, my family never suspected my secret life. Only Judge Raymond Funk ever really witnessed my driving, wondering why I was meandering all over the road as he followed me down the highway one afternoon."

"Little did I realize that mobile telephones were simply the harbinger of the cellular phone. Two years after I bought my mobile phone, mobile phones had already become a thing of the past. Technology had passed me by. Before long, I began to envy those around me who could sit at a lunch table and suddenly reach for their purse, jacket pocket, or brief case and drag out some ugly looking thing the size of a log, slap it to their ear, and actually pretend to be talking to someone. Whatever it was, I needed to have one, too. Besides, the tumors that these people were growing added a nice touch in offsetting their otherwise flattened ears."

"At first, I was reluctant to purchase a cellular telephone. After all, I still had loyalty to my good, old, mobile phone. In addition, the service on the cellular phones was not as great as it was for the mobile phone. Soon, a secret mantra of sorts had developed, and I longed to be chanting like everyone else 'Can you hear me now?'"

"All of my skepticism would change in time. It was not long before I, too, succumbed to the same addiction as those around me. There was only one difference. I soon realized that size really did matter."

"With many things, the attitude is that 'Bigger is better.' The same is not true for cellular telephones. In point of fact, the competition in the cellular telephone is to find the smallest phone. But this competition, again, was to find the smallest phone with the greatest range. Sort of like the best wine at the cheapest price. In time, a competition emerged between the portable cellular phone which could fit within a backpack, and the mobile cellular phone which could sit inside a semi-truck. Still, both systems had their advantages. One advantage to the mobile phone was that, using the speaker format, people could drive on the street appearing to be talking to themselves and realize that they were no longer singing to themselves on their way to work. But, in the end, the cell phone would win me over. It was inevitable.

I confessed, "Unable to decide, and still having to feed my unfettered addiction, I bought two phones. One phone was a mobile, cellular phone with which I traveled with to various parts of the United States. The other one was my clumsy mobile, car telephone, which stayed in my

car. Fortunately, like American Express, I rarely left home without either of them. Later, I also bought a European cell phone. I clearly was out of control."

Emerging from my catharsis, I realized that the once-attentive group had transformed in character. The change was subtle, but there clearly was a change in the air. The members obviously were not interested in what I was saying. Nor did they seem to care anymore as to how I was saying it. Why couldn't they share my excitement? Why couldn't they see and experience the joy that was racking my body as I talked about my many phones? I was free at last. Yet, no one cared. Or, did they?

I became concerned. After all, I had only been talking incessantly for a little over an hour. That certainly was not long for ones accustomed to spending hours glued to an earpiece chatting about nothing in particular. Still, people were decidedly disturbed. Some looked furtively around the room while others glanced nervously at handbags, briefcases, and other items which presumably contained the object of my affections. Certain members even left unexpectedly, conjuring up feeble excuses for their rapid departures. Perhaps, I was not the only one feeling "the urge."

Perhaps out of a sense of the dark evil within me, I decided to lay the big one on them. "Have any of you heard about the new satellite phone system?" I innocently asked. Instantaneously all fidgeting and noise in the room ceased. I knew I had them.

"Satellite phones?" a quavering voice timidly asked.

"Yes!" I emphatically stated. "Satellite phones. They are made by a company called Iridium!" Clearly they were hooked. And, I was on a roll.

I began my sermon in earnest. "Once again, we can revert to living in the wilds. We can communicate with nature, and truly enjoy hunting and fishing. Common man and woman can realize and release the inner beast that dwells in all of us!" My joy was unbearable. "Come with me my friends!" "I exhorted." For I am the Pied Piper of Iridium!"

That did it. People leapt in joy from their chairs. Cries of freedom erupted and tears flowed freely from all in the room. Gleeful hugs were exchanged, and several hidden phonebooks were miraculously produced. It was then that I truly began to realize that so many of us had been tied to society by our telephones that we were simply unable to experience our true selves. We were slaves to technology—unable to enjoy the most simple pleasures of life such as the babbling brooks, clear mountain air, and glistening views in the forest because of our need to be near a telephone. For, even with cellular phones, the range simply was not that great until Iridium!

But, with Iridium satellite phones, all had changed. Praise be to Iridium! Iridium had now freed us. No longer were we tied to organized civilization. For, with Iridium, we were free to roam the earth at will, although certain mandatory roaming charges would still apply. But, such charges were often contained in the free minutes that had to be purchased. Humankind could once again reclaim its natural domain in the wilderness, tethered to humanity only by the length of the recharger cord, or the

number of spare batteries one could carry.

The meeting abruptly adjourned, as if on cue. Before leaving, everyone circled around, held hands, and recited the now familiar mantra, "Can you hear me now?" Followed by, "Keep calling back – it works!" In scarcely seconds, I was left standing alone in a vacant room, once filled with vibrant people...

That was then. Several years have since passed and life has gone on. With time, I have finally overcome my obsession with the telephone. Maybe it is denial, but I am no longer totally stuck on the things. There still are admittedly some inherent risks, but I am able to handle them when they arise, as long as I concentrate on what I am doing. Admittedly, however, my concentration can still occasionally improve.

For example, recently, while driving home and jabbering away to a friend, I was driving too fast through a posted construction zone. Fortunately, I had an excuse. To the trooper's dismay, I wasn't intoxicated and it wasn't the proverbial "two beers" defense. Rather, I quickly confessed to the trooper that I was actually on my cell phone. Because I have often seen cops driving around town presumably talking to their friends and family on their own department-issued cell phones, I figured the trooper would act kindly towards me as a kindred spirit from the criminal defense bar. Sort of a professional courtesy thing. But, contrary to my reasonable ex-

pectations, the trooper would have nothing of it. It was soon clear that I was destined to receive a citation, and not for bravery. Moreover, because a construction zone was involved, the result was: Double your pleasure, Double your fine! Still, \$259.00 in fines and a defensive driving course later, I am still not about to give up my cell phone.

But, I will definitely address the issue. Some one must always be open to the possibilities of relapse. Fortunately, I expect that technology, once again, will undoubtedly come to my rescue and may have already done so. I now plan to avoid such embarrassing moments in the future thanks to a small, innovative device known affectionately as a "Blue Tooth," which looks like a hearing aid on steroids. With a Blue Tooth stuffed into my ear, I theoretically can now keep both hands on the wheel and appear to others to be actually concentrating on my driving while talking to myself like the other crazies in Fairbanks. (When technology allows, someday, I also hope to have the first aural implant. Who knows? Maybe it will be in the middle of my forehead complete with a "666" prefix. Eventually, such devices might even be inserted into unsuspecting babies at childbirth.)

In closing, if you are also compulsive, why not call me sometime? If you are able to get through to me, we can talk about it, rush hour traffic in posted construction zones and purchased free minutes willing, of course.

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## In Memoriam

### James Dennis Grandjean



James "Jim" Dennis Grandjean entered this life on April 17, 1940 in Slaton, Texas to parents Jules and Tillie Grandjean. He was called to be with the Lord on June 30th, 2008, while cradled in the arms of his wife and sons.

Jim came from humble beginnings, his father a boilermaker-welder for the Southern Pacific railroad and his mother a supermarket checker and waitress in Trona, California. His family struggled to make ends meet, but instilled in him the value of education and the opportunity for change it might bring. Jim lived on and off with his parents and siblings, attended numerous high schools in California and New Mexico during periods of family uncertainty, and was eventually graduated by Trona High School in 1957 (his proudest achievement).

Jim worked as a chemical control technician while attending college before taking active duty in the U.S. Navy reserve in 1963. As a yeoman on the cruiser / flagship U.S.S. Providence, he traveled the world while his ship transported dignitaries like Henry Cabot Lodge to far-eastern locations such as Japan, Australia, Thailand, and Vietnam. Upon his return to California in 1965, Jim resumed his studies at San Francisco State University and was graduated with honors in creative writing. He continued his studies at Hastings College of Law, and was awarded the degree of Juris Doctor in a ceremony attended by Chief Justice Earl Warren of the United States Supreme Court.

Jim's love of travel took him to Alaska shortly after graduation, where he served as chief counsel and executive director of Alaska Legal Services, an agency dedicated to civil representation for the indigent. He also served as counsel to three separate committees of the Alaska State Legislature, where he advised and participated in the legislature's formation of an oil and gas lease policy for the State of Alaska. He practiced as a civil trial attorney on the side when he met his wife (and "best friend") Susan Schaefer in Anchorage. Their marriage in 1977 was blessed with three wonderful sons: Jules, Alain, and James.

Influenced by his early struggles against poverty, Jim returned to the southwest in 1983. In New Mexico, one of the poorest states in the nation, he began work as a public defender in 1985 while simultaneously working in three other government positions. In 1988, he began practicing concurrently in both Arizona and New Mexico, running a practice which involved tedious tasks but he often refused to bill clients for the services provided. Ultimately he and his family settled in Prescott, Arizona. Considering himself a "humble country lawyer," he spent the last 20 years of his life tirelessly providing those who could not afford an attorney with legal representation in both civil and criminal matters.

Family was exceedingly important to him. He worked around a busy schedule to coach sports teams for his sons, participated in scouting activities with them, and enjoyed spending time teaching all three of his sons to drive well before their teenage years — a likely source of gray hair! He loved deeply and those around him knew they were loved by him. He was proud of his

family, and could not be heard bragging about anything else.

He had a broad palette of passions and interests including film, theater, and jazz music, particularly the music of Django Reinhardt, whom he began writing a book about which he never got to finish. He was an avid critic of theater in Alaska and published regular reviews in Anchorage's paper, the *Daily News*. He loved sports, especially baseball, and could handicap victoriously at the horse races. His heroes were unlikely people: Sandy Koufax, John Steinbeck, and some of the colleagues he worked with, to name a few.

All who have known Jim have been invariably influenced by him in some way. Though he thought of himself as a "regular guy" we all thought of him as so much more. Inspiring and unique are two of many adjectives that can help to describe him, but also gentle, patient, charitable, witty, humble and compassionate. He leaves us with indelible memories, feelings of love and admiration and a slew of warm laughter-filled stories. His "Jim-isms" have been woven into our language including, "standard" (as a response to, "How are you doing?"), "stop tying knots in my tail" (when asking someone to tell him the truth), or his friendly title of "western gentleman" for those he respected most.

Jim is survived by his wife, Susan, and his three sons, Jules, Alain, and James. He is also survived by his brother Darrell (Angie) Grandjean, sisters Sandie (Ron) Lane and Claudia (Rios), and a wonderful extended family of aunts, uncles, nieces, nephews, and cousins.

His heart was full of love for his sons, and for his wife, whom he often referred to as his guardian

angel. He will be greatly missed by all who knew him.

### Suzanne Powell

Wasilla attorney Suzanne C. Powell, 41, died July 21, 2008, at Providence Alaska Medical Center in Anchorage.

Suzanne was born Aug. 14, 1966, in Salzburg, Austria, and raised in Portland, OR. She graduated from Vassar College in 1988. From there, she joined the Peace Corps and was sent to Tonga, where she met her husband, with whom she had two beautiful, precious daughters.

She graduated from the University of Oregon School of Law magna cum laude. She passed the foreign service examination and was invited to train in Washington, D.C., but the events of 9/11 gave her pause for the safety of her family, leading her instead in 2003 to join her twin sister in the Alaska District Attorney's Office as a prosecutor.

Foremost, Suzanne loved spending family time with her daughters. Camping and participating in subsistence activities with them, including dipnetting and gardening, were among her favorites. She had a quick wit, ready smile and warm heart. Suzanne enjoyed her work with law enforcement and took immense satisfaction in helping to protect the people of Alaska.

She is survived by her husband, two daughters, twin sister, sisters, brothers, mother, father, nieces and nephew, but requested their names not be published.

In lieu of flowers and in keeping with her priorities, donations may be made to a scholarship fund for her two daughters. Please make checks payable to Fidelity UGMA and send to: P.O. Box 110384, Anchorage 99511-0384.

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## Changes to custody orders

By Steven Pradell

Most legal cases end within a predictable period. However, in the area of family law, a contested custody case can continue until the child reaches the age of majority. Attorneys are often faced with a request by a client to modify an existing custody order. This article examines that issue.

AS 25.20.110 provides:

(a) An award of custody of a child or visitation with the child may be modified if the court determines that a change in circumstances requires the modification of the award and the modification is in the best interests of the child. . . .

The change in circumstances doctrine requires that the parent seeking modification of custody show that circumstances have changed significantly since the prior custody order was entered before a court will consider modifying custody. *See, e.g., Lee v. Cox*, 790 P.2d 1359, 1361 (Alaska 1990); *Garding v. Garding*, 767 P.2d 183, 184-85 (Alaska 1989). Once the movant meets that burden, he or she is entitled "to a hearing to consider whether, in light of such changed circumstances, it is in the child's best interest to alter the existing custodial arrangement." *Long v. Long*, 816 P.2d 145, 150 (Alaska 1991) (quoting *Lee*, 790 P.2d at 1361).

The showing of a change of circumstances is required to maintain continuity of care and to avoid disturbing and upsetting the child with repeated custody changes. The Court has cautioned that [c]hildren should not be shuttled back and forth between divorced parents unless there are important circumstances justifying such change. *See, McLane v. Paul*, Opinion No. 6295 (August 1, 2008).

Once a substantial change of circumstances is shown, pursuant to AS 25.24.150(c), the court determines custody in accordance with the best interests of the child using the same factors that the court would consider in any other custody proceeding, however the court generally focuses on the time period since the prior custody order was put in effect.

But how does an attorney prove that there has been such a change of circumstances? The Alaska Supreme Court has given few bright line tests and some rules of thumb for practitioners to advise their clients regarding this issue.

For example, an out of state move by a parent constitutes a substantial change of circumstances for purposes of custody modification as a matter of law. *See House v. House* 779 P.2d 1204 (Alaska 1989). Also, the standard of proof is lower for a change of visitation than of custody. In *Hermosillo v. Hermosillo*, 797 P.2d 1206, 1209 (Alaska 1990) the Court stated that the change in circumstances need not rise to the level sufficient to warrant a change of custody.

In *Kelly v. Joseph*, 46 P. 3d 1014, (Alaska 2002) the court reiterated the view that

"[a]ctions by a custodial parent which substantially interfere with the noncustodial parent's visitation rights [are] sufficient

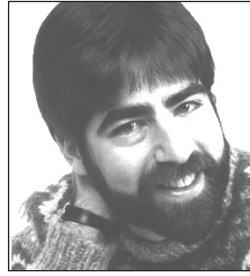
to constitute a change [in circumstances]." These actions include "a detrimental and well established pattern of behavior on the part of [the custodial parent] to 'erode the bonds of love and affection between the [other parent] and the children.'"

In *Morino v. Swayman*, 970 P.2d 426 (Alaska 1999), the court explored the issue of parents who informally make changes to a custody agreement. The issue, which often arises, is when does a temporary change become a change of circumstances sufficient to reopen the custody case?

On the one hand, the court recognized that "[c]ustodial parents should have the flexibility to experiment with new visitation schedules without fearing that every temporary change could be the basis for modifying visitation." The court noted that "Alaska's family law encourages custodial parents to be flexible in experimenting with visitation schedules, and in most cases parents should feel free to end such experiments if they conclude that they are not working." *See Gaston v. Gaston*, 954 P.2d 572, 574 n.4 (Alaska 1998). As the court noted, if temporary variations in visitation schedules always constituted a substantial change in circumstances, primary custodians would be discouraged from allowing any favorable deviation from the visitation order.

The court in *Morino* recognized that at some point, informal or de facto modifications of custodial or visitation arrangements should be formalized. There is a relationship between child support amounts and the number of visitation days allotted to the non-custodial parent. Since child support amounts based on the time the children spend with each parent, this can only be accomplished where the decree reflects actual practice. The court found that de facto changes relating to custody and visitation of a child may be a change of circumstances for the purpose of changing a decree of custody.

However, the court also noted



"A client who desires to modify an existing court order may increase the chances of a favorable ruling by attempting to put as much of the agreement as possible in written form . . ."

that experimental changes lasting only a few months should not qualify as a change in circumstances, but that de facto changes of a lengthy duration, especially when they are such as to change child support payments should qualify.

A decade later, the court recently revisited this issue in *McLane v. Paul*, Alaska Supreme Court Case No. S-12872, opinion No. 6295 decided August 1, 2008.

In *McLane*, parents informally discussed reversing a court approved custody settlement agreement which allowed a mother to have physical custody during the school year and a father to have out of state summer visitation. The mother refused to formalize the custody change and insisted that the child be returned to her, and the parties filed cross motions, the mother seeking enforcement and the father modification. The Alaska Supreme Court reversed the Superior Court's decision to modify, finding that no substantial change of circumstances was shown.

Relying on prior precedent, the court stated that "it is important to allow parents leeway to cooperate and experiment with custody. Characterizing a short-term temporary and informal custody arrangement as a substantial change in circumstances could discourage parents from being generous with each other in custody matters and, to that extent, run[] counter to the goals of Alaska's family law and the needs of Alaska's children of divorce."

In *McClane*, the court found that the informal agreement lasted only approximately three weeks. Because modification of primary physical custody was at issue, the court set a higher bar to prove a change in circumstances. The court rejected the father's argument that there was an actual agreement to modify custody, finding that the informal agreement was not only short-lived but experimental, and that informal, experimental agreements with duration of a few weeks are insufficient to warrant a custody modification

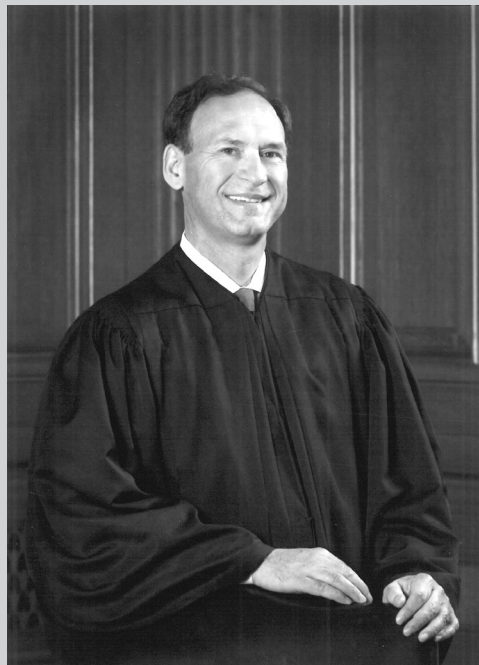
under Alaska case law.

A practitioner may want to consider giving different advice to clients depending upon whether they are requesting or responding to a request for an informal modification of an existing court custody order. On one hand, a client who agrees to a temporary change may not want to put anything in writing, and may desire to decide whether the experimental change is working within weeks rather than after many months have passed.

On the other hand, for those parents seeking to initially informally modify a court custody order in hopes that a court might later agree that there has been a change of circumstances, an attorney may desire to review the dissent in *McClane*. In the dissent, Justice Carpeneti, joined in part by Justice Winfree, focused their attention on the emails between the parties which, in their view, confirmed the lower court's conclusion that the parties had unequivocally agreed to a change of custody. The dissenters also noted that the mother had relied upon the agreement by, *inter alia*, purchasing school clothes for the child and sending them to the father, sending money to pre-register the child in school, prepaying five months of child support payments to the father in advance and allowing the child to start school in another state. The dissenters felt that the failure of the mother to sign a formal agreement should not be dispositive, in light of the mother's remarkable performance in taking substantial steps to put the agreed upon plan in motion. The dissenters questioned the majority's holding that the informal agreement had only been in effect for a three-week period.

A client who desires to modify an existing court order may increase the chances of a favorable ruling by attempting to put as much of the agreement as possible in written form, preferably in a formalized agreement, and/or consider waiting until enough time passes, if possible, before filing any motion so that the court does not merely consider the change to be temporary or experimental.

© 2008 by Steven Pradell. Steve's book, *The Alaska Family Law Handbook*, (1998) is available for family law attorneys to assist their clients in understanding domestic law issues. Steve's website, containing additional free legal information, is located at [www.alaskanlawyers.com](http://www.alaskanlawyers.com).



Collection, The Supreme Court Historical Society. Photo by Steve Petteway, Supreme Court



**Justice Samuel Alito, Jr.**  
**Supreme Court of the United States**

**Alaska Bar Association  
Annual Convention and  
Alaska Judicial Conference**  
Juneau, Alaska  
May 6 – May 8, 2009





The gang's all here. Rounding up 70+ people in front of the camera was a wide-angle lense challenge for photographer Barb Hood, but here they are in their 2008 finest.

## The 2008 Territorial party

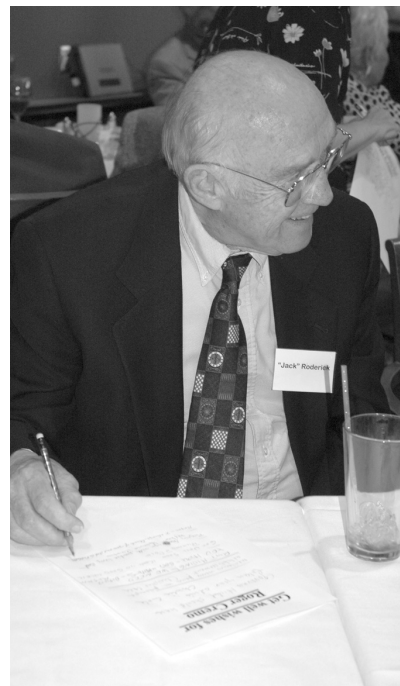
It was 11 years ago when a relative handful of venerable attorneys and their wives from Territorial days got together for dinner, got to discussing battles they'd fought, the good old days, and colleagues they'd known, and, wouldn't it be fun do it again next year and invite more old-timers for a Territorial Lawyers picnic.

Now, a decade later, the "picnic" has moved to the Petroleum Club venue, and has become an annual event for Territorial Lawyers, their spouses and guests, and other attorneys who have practiced in Alaska for 40 years or more.

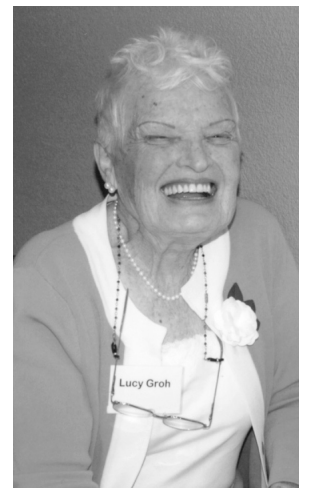
Nearly 75 people from around the state gathered June 24 for the 11th Annual Bar Party that featured tall tales, speaker reminiscences, good food and good company.



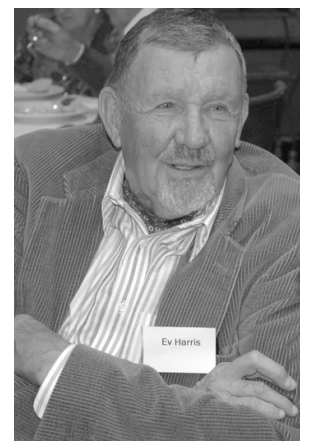
Bernie Ruskin and Jack Roderick enjoy dinner.



Jack Roderick joins many signing get well wishes for Roger Cremo.



Lucy Groh



Ev Harris

*Photos by Barbara Hood*



Charlie Cole holds court at the head of the table. Left foreground to right around the table: Bernie Ruskin, Ann Rabinowitz, Cole, Dan Cuddy (bringing a drink to), Christine Cole, Dave Ruskin, and Dick Cole.



Charles Tulin (right) makes a point at dessert, giving Don Burr a chuckle.



Jim Wanamaker



Planning committee members Verna & Judge James Von der Heydt join Siri & Harry Branson, and Suzanne Barker. (Left foreground to right around the table.)



Dan Cuddy (left foreground) and Ken Atkinson (right foreground) start through the line of the Petroleum Club buffet.



Barry Jackson





Leroy Barker speaks to a full house at the dinner, framed by an archive collage of a previous Territorial Lawyers party. At right, Betty Arnett tells a little story.

# 74 reunite for 2008 Territorial party



John Conway



Collin Middleton



Bill Fuld

## *Faces in the crowd*



Joe & Meridith Palmier



Joyce & John Strachan



Bill & June Tull



Justin Ripley



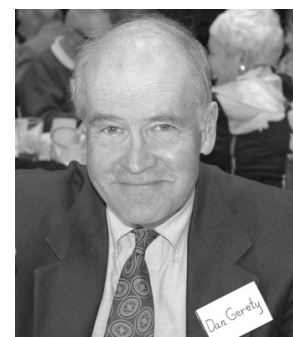
Donna & Herb Ross



Pat & Danny Moore



Frank Nosek & Vic Carlson



Dan Gerety



Russ & Betty Arnett relax after helping plan the dinner



Russ Arnett, Sheila Erwin and Bill Erwin



Verona Gentry & Jim Delaney



Karen Fitzgerald



# Historical Bar

## Anthony Dimond known as true pioneer



"A pioneer: One who goes ahead, marches in front into the wilderness of land or sea of thought or action and explores and clears the land, makes the roads, builds the bridges, so that others may safely follow."

— Anthony J. Dimond, 1923.

In territorial days the United States commissioners performed the functions of a justice of the peace along with other duties of lower court judges and they received no salary and had to rely on fees collected for services rendered. Dimond realized that the Chisana position would be a gamble — if the camp turned out to be profitable he could make a lot of money, but if it was a failure he would lose all the money it took to get him there — Chisana was one of the most remote gold camps in Alaska. Dimond decided to take the chance.

Dimond arrived in Chisana with Frank Hoffman, the new deputy marshal, in November 1913. By the spring of 1914, Chisana had a population of about 500, several stores, roadhouses, saloons and a hospital but the mining did not live up to expectations and many stampeders started moving away to new prospects. Dimond could not support himself on the fees he received, but a letter from Donohoe gave him an alternative.

John Ostrander, Donohoe's partner had died of stomach cancer and Donohoe wanted Dimond to join him in the Valdez office as junior partner! Donohoe agreed but stayed in Chisana until a replacement was found and arrived in Valdez in later spring 1914 deeply in debt.

Valdez in 1914 was hoping to be a boom town, but Cordova beat the community out for the railroad to the interior and the federal government's decision to use Seward as the port to run the government railroad up the Susitna Valley was another hard blow and the future for Valdez looked bleak.

Tony Dimond was part of the hard core that stayed in Valdez and he demonstrated his commitment when he married Dorothea Miller, whose father had been a prominent local merchant. After his marriage, Dimond became even more socially and politically active in Valdez.

During his first six years as Donohoe's law partner, Dimond earned enough to support his growing family, finance a trip to Seattle for more surgery on his leg, grubstake Murray, and payoff his debts. He also earned a reputation as a formidable courtroom lawyer.

While practicing law with Donohoe, Dimond became progressively more active in the Democratic Party. During President Wilson's tenure, Dimond was in charge of appointing marshals, magistrates, postmasters and other officials. Although, he resisted suggestions that he run for territorial office, Dimond soon became active in local politics and was elected to the Valdez city council in 1917, 1918, and 1919. Because he was the largest vote getter, that meant he got to be mayor two of those years as well.

Dimond continually said he expressed that he had no political inspirations, but he faith in the future of Alaska and hoped to contribute to the territory's growth. His time as mayor of Valdez taught him how to run a government efficiently with a very small budget. His positions with the courts and his travels allowed him to make friends with people all over the territory — friends who would be come part of his constituency. Dimond won his election to the territorial legislature in a time when Democrats were generally considered the weaker party.

His role in Valdez politics continued in 1924 when he was reelected mayor. He served as toastmaster at the annual Moose Christmas dinner; served in the Valdez Chamber of Commerce; rode in the car with President Harding during his visit in '23; was elected grand president of the Valdez Pioneers and gave the baccalaureate address at the agricultural college in Fairbanks. He was a busy man.

The territorial senate, as established by the 1912 Organic Act consisted of 8 members, two from each judicial district — southeast Alaska; southcentral Alaska; Nome and Fairbanks. The territory and its municipalities were very limited in their powers. As a freshman senator, Dimond served on the Mining, Manufacturing and Labor and chaired the Committee on Judiciary and Federal Relations. He spent a time dealing with efforts to resolve inconsistencies and gaps in territorial law and to strengthen legal codes.

One important change Dimond made included randomly selecting jurors from a pool of registered voters. He also introduced a bill to increase the bounty on eagles, which were harassing the fur farmers in Prince William Sound, from fifty cents to one dollar.

His legal practice was still his main means of supporting his family now consisting of a son and two daughters. In August 1923, Dimond and

Donohoe accepted a retainer from the Kennecott Copper Corporation to be resident legal representatives for enterprises which included the Copper River and Northwestern Railway and the Alaskan Steamship Company. People in Cordova commented that the Kennecott management was losing so many injury cases to Dimond that they need him on their side instead!

Dimond continued his service in the territorial legislature and by 1932 decided he would run for territorial delegate to congress. He faced James Wickersham, Alaska's former congressional delegate.

Dimond planned an extensive campaign with visits to towns throughout Alaska, most of which involved travel by plane. In September after stops at McGrath and Takotna, his plane landed on the river at Iditarod. While attempting to throw a rope to people waiting on shore, Dimond stepped on one of the floats, slipped and fell in backwards. He was struck on the head by the plane's propeller and got thrown into the river. He was rushed to Flat where he received first aid and was later flown to Fairbanks where he learned he had broken his scapula in three places.

Being injured didn't keep Dimond from the campaign trail and he continued to impress voters around the state. Dimond won the election easily with over 72% of the vote.

Dimond arrived in Washington at the same time as Franklin Delano Roosevelt and he quickly became an ardent proponent of the New Deal. As the territory's sole representative in the nation's capital, Dimond had the dual responsibilities of serving as an advocate for Alaskans when dealing with various federal agencies and of interpreting New Deal programs for his constituents back home. He took time to learn all about the new federal programs and how they would affect — good and bad — the territory.

Dimond's secretary was E.L. Bartlett and the two of them sent regular copies of the Congressional Record to interested parties back home. They sent reports to local newspapers nearly every week.

The Dimond and Bartlett families became close personal friends during their time in Washington, but Bartlett was not the only future Alaskan leader with whom Dimond worked. In 1934 President Roosevelt appointed Ernest Gruening to the newly-created position of Director of the Division of Territories and Island Possessions in the Interior Department Gruening and Dimond worked closely with Dimond particularly with the construction of a highway to Alaska and military and naval defense in the territory, Dimond was one of the first to recognize that Japan posed a potential threat to the United States, but congress ignored his repeated pleas for more military and naval present in Alaska until war with Japan was imminent Gruening and Dimond did not necessarily always agree on Alaskan matters, Dimond opposed the Interior Departments actions that interfered with the activities of Alaskans, such as the toll on truckers using the Richardson Highway from Valdez to Fairbanks (a move to stifle competition with the unprofitable Alaska Railroad,) Dimond regularly complained about the appointment of non-Alaskans to federal positions in the territory and pushed for the transfer of control over fish and game from federal to territorial management. Although Dimond did not see these changes, Alaskans applauded him for trying to make the changes!

Roosevelt's New Deal monetary measures though had increased the price of gold to the benefit of Alaskan mining ventures and Public Works Administration projects provided work for Alaskans making Dimond very popular!

Dimond was so popular with Alaskans that many sought to emulate his style and personal. Both Bob Bartlett and Bill Egan, Dimond's godson who grew up with Dimond's children in Valdez.

Delegate Dimond's popularity in Alaska was so great that he was frequently mentioned as a candidate for appointment as federal judge or as a possible successor to Governor Troy. Dimond was truly considered the Democratic leader in Alaska.

From *"The Discoverer", late Winter 2008, Cordova Historical Society; submitted by Erling Johnson*

## Bolger appointed to state appeals court

Gov. Sarah Palin appointed Kodiak Superior Court Judge Joel H. Bolger on Aug. 29 to fill the vacancy on the Alaska Court of Appeals created by the retirement of Justice David C. Stewart.

Bolger, 53, has lived in Alaska for 28 years and practiced law for 30 years. He worked for Alaska Legal Services in Dillingham and Kodiak, as assistant public defender in Barrow, and as a private attorney in Kodiak from 1982 to 1997, including 14 years as municipal attorney for the Kodiak Island Borough. He then served as a Valdez District Court judge from 1997 to 2003, and has been a Kodiak Superior Court judge since 2003. He received a bachelor's degree in economics from the University of Iowa in 1976, and a law degree from the university's College of Law in 1978.

Judge Bolger clearly has the experience necessary to be an exceptional appeals court judge, Gov. Palin said. His work as a trial attorney in rural Alaska, combined with his work as a judge at the district and superior court levels, has made him a seasoned, knowledgeable and thoughtful judge who will continue to provide exemplary service to Alaska in his new position.

The Alaska Court of Appeals is a three-member judicial panel established in 1980 with jurisdiction to hear appeals in cases involving criminal prosecutions, juvenile delinquency, extradition, habeas corpus, post-conviction relief, probation and parole, bail, and the lenience or excessiveness of sentences.

In accordance with the Alaska Constitution, Palin filled the appeals court vacancy by selecting Bolger within 45 days of receiving the list of the applicants nominated by the Judicial Council to fill the vacancy created by Stewart's retirement, effective on Sept. 23.

Bolger will be subject to voter approval in the 2012 statewide general election, and in statewide elections every eight years thereafter.

## 7 apply for Anchorage District Court

Seven attorneys have applied for the vacancy that will occur on the Anchorage District Court when Judge Sigurd Murphy retires at the end of September.

Suzanne R. Cole is an Anchorage Superior Court master and Patrick Hammers is a Fairbanks magistrate/master. Paul Olson is a pro tem district court judge in Anchorage. Bruce Roberts is a federal attorney; David R. Wallace is in private practice in Anchorage; Jennifer Wells serves as an acting district court judge in Kenai; and Taylor E. Winston is an assistant district attorney in Anchorage. Biographical statements by all of the applicants will be online at the Judicial Council's website. The Judicial Council distributed the bar survey in August and has scheduled its public hearing and interviews in Anchorage for mid-December.



## Bethel trip promotes new legal guide for seniors

*Continued from page 1*

I had a lunch at the Eddie Hoffman Senior Center. I left some guides. I spoke to the seniors and impressed them by eating half-dried fish - Friday is Native food day.

I dropped off some guides at the Bethel Chambers of Commerce; no one to speak to, however.

I spoke to a relatively new lawyer in Bethel at the Alaska Legal Services office, and left guides with him.

I spoke to Dawn Dillard at the OPA office and left just a few guides with her. (Her office fed me ice cream.)

I stopped into the Alaska Public Health office and spoke to Tim and dropped off some guides.

Orutsararmiut Native Council (ONC) was my next stop. ONC represents Native interests in Bethel. I had to wait for about 30 minutes before I could speak to any ONC representative. So to pass the time, I spoke to a gentleman in the waiting area who taught me how to tenderize and cook brown bear meat and where on the river I might find a good spot for salmon. Once I was able to speak to ONC representatives, I had an audience of Michael (the director) Bing, and Vicki (the ICWA worker). Michael scrutinized the guide and assured me that he would contact the AK Bar with ideas as they came to him. They also received some guides.

Next on the list was the Tundra Women's Center (shelter) where I met with Leah and Kayla (the legal advocate). I left them with some guides.

I went to the Association of Village Council Presidents (AVCP), the organization that serves 56 federally recognized Native Alaskan tribes in the Yukon-Kuskokwim Delta, where I spoke to Pat Samson and provided him with guides. Pat had some remarkable insight to how higher fuel costs might also lead to higher rates of respiratory illnesses in the very young and the elderly. I'll save that

story for now.

**6/28/08**

I went up the river to Kwethluk, and met some elders. My host translated. Because of rain and my host's input about how to best utilize the guides, I did not bring the guides with me up the river. I did tell the folks I met where the guides were and gave examples of how the guide might help. I ate more fish.

We continued up river and stopped at a fish camp. I talked about the guides. Somehow I was put to work cutting fish. When I asked if I was cutting the fish correctly, the fish camp hostess said, "I can fix it." Cleaning the cutting table became a job for me that needed no fixing.

On the way down river I had to wrap up in a blue tarp because the rain really came down and it stung. I would have enjoyed a picture of me wrapped up in the tarp, but there was no one to take the picture.

**6/29/08**

I attempted to meet with a church group but they decided not to hold services that day because of fish camp. A local doctor heard that I was looking to meet with the church folks so she came to the church to take me back to her home to talk about the guide. We did just that and I left some guides with her.

I also left about 30 guides behind for Thor to give to Lauri Owen in case I missed a group.

The family I stayed with, Thor and Joanna Williams and their children, was great and allowed me the ability to get up river and visit with people I would not have otherwise had contact with.

*Note: Zach volunteered his time writing, editing, and traveling this summer on behalf of the newly published senior law guide. The project took place over two years and included*



Zach Manzella at Bethel Senior Center with longtime Bethel resident.

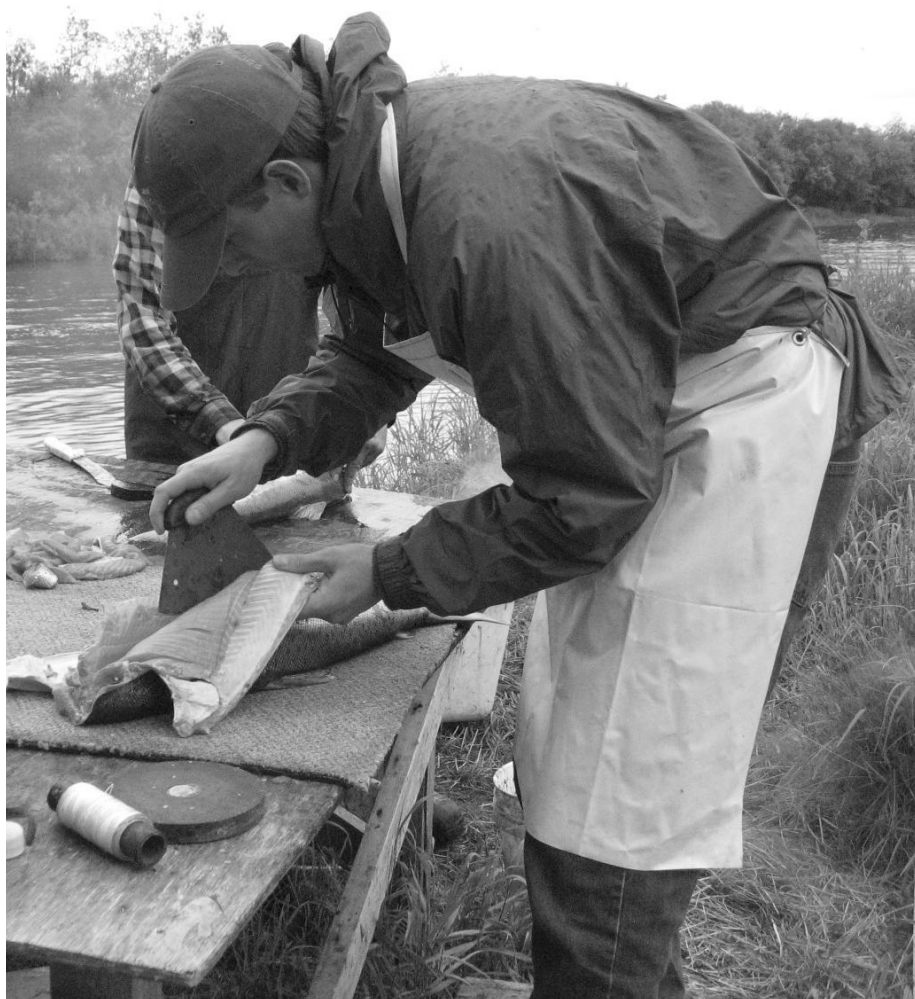
the volunteer efforts of more than 20 attorneys, six state agencies, numerous non-profits and the kindness of strangers to ensure that Alaska's seniors, their families, and caregivers are provided with accurate and accessible information about aging in Alaska.

Zach is one of four volunteers who traveled to a rural community to share the guide and get feedback from its users. Other volunteers—Blair Christensen, Bill Falsey, and Greg Dorrington—have traveled to Nome, Dillingham, and Fairbanks (includ-

ing the village of Fort Yukon) to carry the guide to those located outside of Anchorage.

The project was supported by the American Bar Association's Partnership in Law in Aging Program, and was done with the cooperation of the Young Lawyers Section of the Anchorage Bar Association, and members of the following sections of the Alaska Bar Association: Alaska Native Law, Bankruptcy, Estate Planning & Probate, Elder Law, Employment, Health, and Law and Community Health.

— Krista Scully, Pro Bono Director



Zach cuts fish before getting demoted to table cleaning.

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## Readability levels and legal literacy skills

# Are you smarter than a Flesch-Kincaid 52?

By Kristen De Pena

This is not an article about change in the sense of changing the world, changing who is right and what is wrong or revolutionizing politics. Change is often so aggrandized and all-encompassing that the word loses its once powerful intimation. In an attempt to bring success to this dying concept, I propose a small, doable change; a fine-tuning that may go unnoticed by many, but may change the lives of a few.

I recently finished my first year at the University of Iowa College of Law, and unknowingly became a graduate of one of the lowest (most difficult) Flesch-Kincaid Reading Ease Levels as well. The Flesch-Kincaid Reading Levels are readability tests designed to indicate comprehension difficulty when reading English. There are two levels, each designed to weigh different reading components. The Flesch-Kincaid Reading Ease Levels range up to 121

(easiest) and measure the general readability of a passage. For example, 60-70 is easily read by a 15 year old student. *Time Magazine* generally reads at a level of 52. The *Harvard Law Review* readability is in the low 30s. The Flesch-Kincaid Grade Levels indicate that those having completed the indicated grade should have the ability to read a similar passage. The reality is that it's not always true.

Upon arriving in Alaska, I began research to pilot a program improving the ability of individuals with low literacy skills to better navigate the legal system. If you understand this article, then it is unlikely illiteracy alters your everyday life, causing difficulty deciphering letters, sounds and words, challenges specifically exacerbated by language intended for those with a Juris Doctorate.

Particularly crucial for soon-to-be attorneys like myself is the ability to cultivate an openly communicative relationship with a client. Imperative to this communication is the ability to relate to one another verbally and in writing in order to best advocate for and represent a party. As an individual pursuing studies dedicated to justice, it is important for me to know that represented clients and pro se clients can take full advantage of the legal system without the added confusion associated with low literacy levels.

### Test yourself

*Sara da mãe disse-lhe para ir para a loja e comprar um pão de forma. Sara correu dois blocos no caminho para a loja, animado por ter recebido dinheiro extra a partir de sua mãe para comprar um cone de gelado também. Sara é cream Vanilla Ice's favorito sabor.*

Flesch-Kincaid Reading Ease Level: Portuguese speakers know this is a simple sentence; non-Portuguese speakers may think otherwise.

You may be surprised to know that Portuguese is hardly a lost language, but is the fifth fastest-growing language in the world and is spoken by over 218,000,000 people worldwide, making it the third most-spoken European language<sup>1</sup>. Is it easier, after

reading this passage, to imagine not recognizing commonly used words and vocabulary and not being able to comprehend a passage that millions of people can easily read?

### Round two

Sara's mother told her to go to the store and purchase a loaf of bread. Sara ran two blocks down the road to the store, excited because she received extra money from her mother to purchase an ice cream cone as well. Vanilla ice cream is Sara's favorite flavor.

Flesch-Kincaid Reading Ease Level: 74.5

Flesch-Kincaid Grade Level: 6.9

Easier? Maybe for you. In 2006, the U.S. Census Bureau reported that Alaska's population reached approximately 670,000 people and the

Literacy Council of Alaska reported that roughly 20% of Alaskan adults read English at or below a fifth grade level. This means that approximately

134,000 Alaskans lack the ability to read and comprehend the passage above.

Literacy encompasses the ability to read, as well as the ability to speak, write, compute and solve problems necessary to function in the workplace and in society.

There are five literacy levels including: (1) Pre-emergent, (2) Emergent, (3) Novice, (4) Experimenting, and (5) Conventional. Most illiterate Alaskans are logographic (reading and writing that relies on context) readers demonstrating literacy levels at the Emergent and Novice reading levels<sup>2</sup>. Novice readers are aware that printed text communicates messages and may be able to communicate very simply with written messages. Readers demonstrating skills at the Experimenting and Conventional reading levels are alphabetic readers, using sound-letter correspondences in reading and writing. Conventional readers and writers are often recognized as really reading and writing. Readers at this level can read

texts in a variety of forms, including prescriptions, job applications, and books. Generally, illiterate readers never adequately understand the alphabetic sounds and pronunciations necessary to reach Experimenting and Conventional literacy levels.

In addition to having low levels of literacy, people attempting to navigate the legal system experience high levels of stress associated with their reading difficulty and with their involvement with the legal arena. The legal system is imposing and creates nervousness, agitation, anxiety and self-doubt, which lowers the reading abilities of even Conventional readers, but overwhelmingly effects readers at the Emergent and Novice levels of reading, causing their communication skills to sink to inscrutable, detrimental levels.

### Round three

*The Tenant Agrees to pay the*

*Landlord interest on overdue Rent payments at the rate of 15% per annum, compounded monthly. The Tenant also agrees to pay the Landlord a service charge of \$30 for each check tendered to the Landlord that is not subsequently honored.*

Flesch-Kincaid Reading Ease Level: 47.3

Flesch-Kincaid Grade Level: 12+

Are you absolutely sure how much money is due, at what interest rate, and how often you must make a payment? The passage depicts one example of the highest levels of reading difficulty, but is common language used in landlord/tenant leases often contested in court. A lack of education and low literacy skills are not isolated issues in an adult's life, but are also connected to the justice and health systems.

Health system professionals are making progress on the health literacy front. Health literacy is the capacity to obtain, process, and understand basic health information and services needed to make appropriate health decisions; the need to make important legal decisions is just as significant. The health community recognized the need for health literacy based on a plethora of studies indicating that 65% of low income patients cannot properly take medication and 75% cannot determine their insurance or financial aid eligibility, leaving many low literacy patients uninsured and unable to obtain needed health services<sup>3</sup>.

Likewise, people have the right to understand the legal process, a right that has already been recognized by a Canadian program: Literacy and Access to Administrative Justice. In March 2004, the Canadian Judicial Council announced that "plain language" should be used in courtrooms, benefiting low literacy clients, judges, jurors, lawyers and strengthen the legal process overall<sup>4</sup>. A component of this program includes a literacy testing tool available to attorneys to help

assess clients' literacy needs if applicable.

And so it begs the question, "What can we do about it?"

Together, the Anchorage Literacy Project (ALP) and the Alaska Bar Association

propose to teach legal literacy skills to adults at or below basic reading levels in Alaska through newly developed legal literacy curriculum so that they may begin to understand how to approach legal issues as better consumers and clients of the justice system.

The ALP trains and supports



The author shows off the halibut she caught over the summer during a Homer charter excursion. De Pena is a University of Iowa J.D. candidate and was the bars 2008 pro bono summer intern.

volunteers to teach literacy skills to adults reading at or below basic levels in Alaska. In Anchorage, ALP provides literacy programs annually to more than 1,200 students and teaches word recognition and sight vocabulary at all levels, concept building, fluent reading, and strategies for comprehension and clear and effective written communication. In addition to basic literacy needs, it is important that students have the opportunity to learn to navigate the legal system as well.

There is a significant increase in self-represented individuals in the justice system and many of these people experience confusion, intimidation, ill-preparedness, and inefficiency in that experience. Boosting legal literacy levels will reduce the mystery of the legal system and increase the confidence and ability to successfully advocate pro se or with counsel. Educating individuals to become better resources for themselves and their communities has the potential to result in long-term, widespread change within Anchorage and surrounding communities.

There are many factors that tend to distract new lawyers from their original, idealistic goal of pursuing justice cultivated in law school. As newcomers to the legal field, it should be our commitment to pursue our individual goals, but also to protect and revolutionize the legal system to better represent the needs of every individual. Recognizing the needs of illiterate adults in Alaska must extend to include legal literacy to create better clients, develop a more efficient court system, and realize true justice.

(This article is):

Flesch-Kincaid Reading Ease Level: 29.8

Flesch-Kincaid Grade Level: 14.6

**Literacy issues** are swiftly becoming an emerging issue of concern for equal justice advocates on a national scale; its impact on the justice system is immense given the current and ever increasing number of self-represented litigants. Pro bono attorneys often face the challenges of assisting clients with literacy issues and we are striving to overcome some of those barriers.

If you have insight and/or interest in helping assist with the developing curriculum detailed in the below article, please contact Krista Scully, Pro Bono Director at the Alaska Bar Association at 907-272-7469 or scullyk@alaskabar.org.



## Alaska attorney creates pro bono program for military personnel

By Krista Scully

Anchorage attorney Margaret Stock has done in one year what it might take a normal person their entire career to accomplish: create a high functioning and effective program within the U.S. military. But then Margaret Stock isn't what you'd call normal at all; she's more like a "super star". It's through her work as an immigration attorney and her extensive military service—both as Lieutenant Colonel in the Military Police Corps and Associate Professor of Social Sciences at West Point—that Margaret discovered the need for immigration assistance to service members and their families.

It almost happened by accident. While teaching at West Point, word got out that Margaret was an attorney experienced in the complicated and ever-changing world of immigration law. She started getting phone calls from service members. Not just a few phone calls, but three to four phone calls every day over the course of several months. After a careful assessment of the need, Margaret decided to contact her colleagues at the American Immigration Lawyers Association (AILA) to seek advice and propose the idea of a potential partnership between AILA and the

U.S. military – the first partnership of its kind in the nation.

It is assuredly in the military's best interest to help its service members. Stock estimates that approximately 5% of the Department of Defense's employees are non- U.S. citizens. With a U.S. military presence in more than 120 countries, the military was becoming increasingly overwhelmed by the immigration problems by troops and their dependents were experiencing. Service members married and had children while abroad which created issues of the status of their dependents or a service member was in a legal status when admitted to the service, but status paperwork expired during duty tours. With no solutions in place, problems were plaguing the system.

But Margaret Stock had a solution. With Margaret's leadership, AILA and the military quickly developed a partnership that created a pro bono legal program to help service members with immigration issues. The partnership relies entirely on volunteer attorneys spanning the globe. Just as Margaret's presence at West Point had sparked interest in immigration issues, the new program's volunteer need spread like wild fire. Before long over 65 volunteers had signed up, with the list growing every day. Infrastructure was put into place to enable online client screening and refer-

rals are made on a geographic basis. A high number of the volunteers come from military backgrounds or have been in a similar situation and felt moved to help.

Word of the new program caught the attention of news media channels ABC and CNN. Each channel ran personal interest stories about military families impacted by immigration issues that included deportation or potential loss of employment. Stories aired in late 2007 and have continued making the news ever since.

In the wake of its creation, Margaret has continued her oversight of the program and was recently welcomed to the Editorial Board of "Bender's Immigration Bulletin." She has also been appointed as one of 18 members of the newly formed Council on Foreign Relations Independent Task Force on U.S. Immigration Policy. Stock was recently named the 2008 recipient of the AILA's prestigious Michael Maggio Memorial Pro Bono Award. These accomplishments and endeavors have all happened while she has continued teaching at West Point, lecturing to a variety of military and non-military organizations, and commuting from West Point to Anchorage to be with her family. See what I mean by "super star"?

## In Memoriam

### A remembrance of Bob LaFollette

By Russ Arnett

As it must to all, death came to Bob LaFollette on August 14, 2008.

In 1953 Bob came to Anchorage fresh out of law school. His grandfather was "Fighting Bob LaFollette," one of the founders of the national Progressive Movement. Bob's father was Phil, a popular three-term governor of Depression Era Wisconsin. Bob's uncle, who served in the U.S. Senate, was defeated by Joe McCarthy who ran-falsely--as a World War Two tail gunner.

When Bob arrived in Anchorage many of the local leaders, including Bob Atwood, encouraged Bob to enter politics. Bob's private opinion was that "politics is a mug's game".

Bob served in the Army from 1944 to 1946. He laughed that he had been specifically denied the good conduct medal.

I met Bob when my employers, Hellenthal and Cottis, fired me and hired Bob. We immediately became close friends which lasted until his death.

In 1954 Bob lived with the Nunamiut in Anaktuvuk Pass. They hunted caribou on foot. Bob was frustrated that he could not keep up and received some kidding, but he induced the young men to wrestle and his confidence was restored. Bob traded a spotting scope for a caribou parka. It had been tanned in the village. Back in Anchorage you could tell from the smell when Bob was in the room.

Bob acquired a cabin in Girdwood and became a power skier. He was very popular with the ladies. When the subject came up, more than once he remarked with a wry smile, "They have no complaints".

Once Bob invited me to spend the night in his cabin. One of our friends had a log house that he intended to turn into a bar and restaurant. He

was blasting stumps for a parking lot, and of the process was to drink jug muscatel wine from foam cups. He called this a "double musky." With each explosion the remains of the stump would fall on the roof. We would cheer and empty our cups. The problem, we later learned, was the nitro fumes in the air expanded our blood vessels and when combined with the wine produced one hellacious hangover. The new owner of the property adopted the name "Double Musky," a name that has remained famous in Alaska lore to this day.

When Bob and Roger Cremona were partners, Roger heard strange sounds in Bob's office. Bob was learning Swahili from a record in preparation for his plan to go ski mountaineering to Europe and then to Africa.

In the Alps Bob and another American had been ski mountaineering for a couple weeks when a group of Germans arrived. It started to rain but the Germans went out every day anyway. The Americans stayed in and read. The Germans became contemptuous of the Americans. When the weather cleared Bob casually mentioned when they would leave in the morning. The Germans left thirty minutes earlier. Bob and his friend began gaining on the Germans who sped up and kept looking over their shoulders. The Americans passed them and then continued on to the top of the mountain. Because it was a nice day, they also climbed the next mountain. When they returned at dinner time the Germans were watching at the window. From then on, the Americans were treated with considerable deference.

The adventurer in Bob also made a mark in Africa. He was kicked out of Sudan because he was talking to blacks in the south where the government in the north kept the blacks down.



Bob LaFollette trained raptors in his leisure.

Bob once lived with the Masai who kept cattle. They would shoot an arrow into the neck of a cow and gather to drink the blood. The hole would be plugged with mud. Bob said it tasted like when you cut your finger and put it in your mouth.

When Bob lived with the Elgoni tribe he became good friends with an intelligent young man. And while he understood the operation of jet engines, the young tribesman still believed absolutely in magic. When asked about magic in America, and not wanting to shock the young man, Bob mentioned poltergeists. The Elgoni practiced circumcision of both teenaged boys and girls. While recovering they would live in caves and wear animal skins until permitted to return to polite society. The boys' genitals would usually swell to the size of a grapefruit.

While on the bench as a magistrate in Anchorage from 1961 to 1965, Bob

was a falconer and kept his hawks in his microbus. At noon he would cut raw meat at his desk to feed the hawks. The secretaries referred to him as "the barbarian."

Bob and I watched beavers with considerable interest in a pond near Girdwood. He raided a raven's nest and captured the chicks. His plan was to teach them to recognize different colors.

Ultimately, Bob quit law practice and obtained a degree in zoology and a master's in animal behavior. He spent the balance of his life researching and writing on that subject, as well as human behavior. I personally benefited greatly from reading some of his writing and always found it very interesting.

Though I do not often go into the back country, I have pondered that if I became lost, and Bob was able, that he would come looking for me. He was that kind of friend.



# The *Pro Se* Crackpot Index: 50 ways to clog the court system

By John Tiemessen

(With apologies to Dr. John Baez)

**First**, some disclaimers. Not all pro se litigants are crackpots. Many are good people who can't find, or afford, an attorney. This Index is not about them.

**Second**, many pro se litigants have legitimate claims. They are just of such low value that an attorney can't economically assist with them. Further, occasionally, just so often, a pro se litigant shows up who knows what to focus on. I know of one case where an elderly woman suing her dentist did a better job cross examining the dentist than half the trial lawyers I have seen. But, this is rare.

**Third**, this Index is to identify the pro se litigants who clog the courts with meaningless drivel, archaic Latin, Norman French, even more archaic Aramaic (how else to cite to the Code of Hammurabi?), and wonderful, albeit mythical, conspiracy theories. You know who you are. Or (you might want to thicken up the foil in your hat) because now WE know who you are . . .

**Below is a simple method for rating pro se litigants:**

<b>10-50 points:</b>	<b>Somewhat loony</b>
<b>51-100 points:</b>	<b>Crackpot</b>
<b>Over 100:</b>	<b>A real whack-job</b>
<b>Over 150:</b>	<b>Legendary</b>

1. A 5 point starting credit if you couldn't get a lawyer to agree to take this case for any amount of money. What does that tell you?
2. 1 point for every statement that is widely agreed on to be factually false.
3. 3 points for every statement that is logically inconsistent within the same sentence.
4. 5 points for each such statement that is adhered to despite careful correction.
5. 5 points for each word in any written pleading in all capital letters (except for acronyms or those with defective keyboards) or use of exclamation point.
6. 5 points for any made-up acronyms used to avoid Rule 5.
7. 5 points for each mention of "Blackstone", "Holmes" or "Hand".
8. 10 points for each reference to opposing party or counsel by any excretory or anatomical insult. 10 more points for repeated obsequious references to the judge ("This Most Honorable Court"), minus 10 if it results in satire.
9. 10 points for each claim that jurisprudence is fundamentally misguided—on second thought, we take that one back—there are dozens of tenured law school professors who make a living based on this theory.
10. 10 points for each claim that stare decisis is a conspiracy by the legal establishment to prevent new claims like yours.
11. 10 points for pointing out that you have gone to law school, as if this were evidence of sanity or competency.
12. 10 points for pointing out that you haven't gone to law school and that Abraham Lincoln also didn't go to law school.
13. 10 points for pointing out that "Papa done learned me good with his belt."
14. 10 points for beginning the description of your argument by saying how long you have been working on it. (10 more for emphasizing that you worked on your own, without any legal research or legal advice.) Minus 40 if this argument is made because you are the prevailing party seeking a fee award.
15. 30 points for mailing copies of your pleading to various non-party government agencies, such as the FBI, CIA, or DEA. A bonus of 10 points if you also copy any U.S. Senator or governor. A bonus of an additional 10 points if you also copy any major news anchor or organization (only 5 points if it's Fox News or C-Span).

16. A whopping 50 points if you claim to know the president or a presidential candidate on a first name basis.
17. 10 points for each new legal term you invent and use without properly defining it or citing any authority for it. (Unless you are an appellate federal court, in which case, go right ahead—you have life time tenure after all).
18. 10 points for each statement along the lines of "I'm not good at research or writing, but my argument is right, so all I need is for someone to express it in legal terms."
19. 10 points for arguing that a current well-established and supported legal argument is "only an argument" as if this were somehow a point against it.
20. 10 points for each favorable comparison of yourself to Jefferson, Madison, or Hamilton.
21. 10 points for claiming that your work is on the cutting edge of a "legal paradigm shift" in response to any Rule 11 motion.
22. 20 points for each reference to *habeas corpus* or *posse comitatus*.
23. 10 points for each citation to "Wikipedia," blogs, or other non-legal internet sources.
24. 20 points for every sentence that begins with "after my institutionalization."
25. 20 points for any reference to "tracking implants" abduction by terrestrial or extra-terrestrial authorities (including joint exercises) or "probing".
26. 20 points for basing any argument on portions of the Constitution or other founding documents that can only be read by using special tools or methods (e.g. moonlight, colored glasses (yeah, we all saw "National Treasure" too, it wasn't a documentary)).
27. 20 points for arguing any challenge to the court's jurisdiction based on the color, shape, or fringe on the flag or that it constitutes a de facto declaration of martial law.
28. 30 points for any reference to the Magna Carta. Minus 50 points if your reference to the Magna Carta is actually related to an historical discussion of a present day civil right.
29. 20 points for each favorable comparison of yourself to any Chief Justice of the United States.
30. 20 points for each reference to the fact that you have failed the bar exam thus demonstrating your freedom from the shackles of legal orthodoxy.
31. 40 points for each claim that your failure to pass the bar exam is due to some sort of conspiracy, testing bias or cultural bias.
32. 20 points for any reference to the gold standard or lack thereof.
33. 20 points for each reference to "unnamed sources" who dare not speak for fear of retribution by the "authorities." 50 additional points if any of those "sources" or "authorities" are aliens, alien/Bigfoot hybrids, or conspiring with aliens.
34. 20 points for every citation of legal fiction works (e.g. "Law and Order", "To Kill a Mockingbird" "Perry Mason", "Matlock") or myths as if they were fact.
35. 20 points for defending yourself by bringing up (real or imagined) ridicule accorded to your past arguments or lawsuits.
36. 20 points for each favorable comparison of yourself to "Gideon".
37. 20 points for each citation to the "Federalist Papers" in a non-constitutional case (E.g. divorce).
38. 30 points for any argument that starts with "Why Federal Income Tax is Unconstitutional."
39. 20 points for each *non sequitor* cut and paste quote from obscure, out of jurisdiction or more than century-old sources.
40. 20 points for any reference to Janet Reno, Elian Gonzalez, Terry Schiavo, Waco or Ruby Ridge.
41. 20 points for each use of the phrase "self-appointed defender of the orthodoxy".
42. 30 points for suggesting that a famous figure secretly disbelieved in a legal theory which he or she publicly supported. (E.g., that Thurgood Marshall was a closet opponent of affirmative action, as deduced by reading between the lines in his first year Constitutional Law textbooks.)
43. 30 points for claiming that your remedy lies in equity because you already lost (or expect to lose) a legal argument.
44. 30 points for suggesting that lawyers or judges take a "secret oath."
45. 30 points for each defendant who was a judge or opposing counsel in a prior case.
46. 30 points for each claim that was previously dismissed by a court but only because of an alleged conspiracy between the judge and opposing counsel.
47. 30 points for allusions to a delay in your work while you spent time in an asylum, or references to the psychiatrist who tried to talk you out of your theory.
48. 40 points for comparing yourself to Jesus or Joan of Arc, suggesting that a modern-day Inquisition is hard at work on your case.
49. 40 points for claiming that when your theory is finally appreciated, present-day jurisprudence will be seen for the sham it truly is. (30 more points for fantasizing about show trials in which lawyers and judges who mocked your theories will be forced to recant.)
50. 50 points for claiming that your prior losses would have been stunning victories but for Freemasons, Zionism, Papists, the Trilateral Commission, Bilderburgers, or any other alleged local, state, or international conspiracy.



*Karen Peterson* INTERIORS

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