

The Alaska BAR RAG

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Dignitas, semper dignitas

Lawyers observe Alaska's Statehood

For 12 years now, Alaska's "Territorial" lawyers have gathered over the summer to keep in touch, reminisce, and eat good food, sort of an-adult version of sitting around the campfire telling tall tales. During the traditional Story Hour after dinner, vignettes of the past flowed as the microphone was passed around the room.

Over the years, what with the dwindling demographic of this generation, the party's been opened up to any lawyer who's practiced for more than 40 years in Alaska, along with their spouses (and, occasionally, children).

This year, being the 50th Anniversary of Statehood, it seemed natural for the *Bar Rag* to make use of the pre-dinner cocktail and social hour to obtain insights on the progress of our state from those who were here at the creation, so to speak.

At last count, 55 attorneys survive from those early years of Statehood, and a dozen were in Aladdin's restaurant in Anchorage for this annual party June 12.

A common reflection among Statehood-generation lawyers was the degree of change over the five decades since Alaska was admitted as the 49th state.

"It seems that we have a different Alaska every 10 years," said Bill Erwin. "The state has accomplished most of what we attempted to accomplish, but the times and personalities have changed the hopes of the original people to something vastly different than what we began to implement," he added. In his view, the consensus and unity of purpose that Alaska enjoyed at Statehood "dissipated after 20 years."

Erwin recalled that the members of the First and Second Legislatures "never had any idea that population would triple" from about 230,000 in 1959 to nearly 650,000. Or that the 40,000 student population statewide in 1959 would some day be less than that in the Anchorage School District (48,000 students).

Even with the complex task of putting the new state on the road to its future, the First Alaska Legislature lasted just 81 days, approving a budget of \$18 million, "spiraling" to \$123 million in the Legislature's third year, Erwin recalled. In Alaska's early and pre-Statehood years, "fish runs received substantially more attention" than the industries of today. "The idea was that Alaska could support itself" with its resources, and that goal and convincing argument to Congress has been attained.

As far as the day-to-day experience of living in Alaska, "I don't miss much from 1959; you couldn't drive from Fairbanks to Seward," Erwin chuckled.

Don Burr thinks the state's "doing fine." He sees the Bar as "constantly changing, but well organized. But I miss the camaraderie—we all knew each other back then."

Fairbanks' Charles Cole sees one of Alaska's greatest achievements as the functioning of the judicial system. "In Fairbanks before Statehood, you couldn't get a civil case to trial," he said. The judiciary was so small that judges heard 3-5 civil cases per year. In criminal matters, (convicted) defendants' cases were seldom heard on appeal; 50 years later, 3,000-4,000 cases are heard in Fairbanks per year. "The new court house is working very well," added Hugh Connelly. "But the books have disappeared"

Continued on page 16

Beistline moves up



Beistline

Fairbanks attorney and former *Bar Rag* editor Ralph R. Beistline has become Chief Judge of the U.S. District Court for the District of Alaska, effective Sept. 1. He succeeds John W. Sedwick, whose term in the 7-year position ended Aug. 31.

"I will have huge shoes to fill," said Beistline. His federal district court judicial duties have had him "spending time between Anchorage and Fairbanks, depending upon what the work requires (both are nice)," he said. "I am looking forward to this new challenge."

Beistline was in private practice for 17 ½ years and a former Alaska Superior Court Judge in Fairbanks for 9 ½ years and Presiding Judge there for 5 years before his appointment to the federal bench in 2002.

He also has served as president of the Tanana Valley Bar Association; president of the Alaska Bar Association, and, "most significantly," the winner of the Alaska Bar Association's 1978 Fast Food Poetry Award for the epic "Ode to a Chena Burger."

C-SPAN invades the high court

C-SPAN will air a new series on life inside the Supreme Court in October—including comments by justices on the arrival of a new member.

While Chief Justice John Roberts Jr. called it "an exciting part of life at the Court," Justice Clarence Thomas noted, "You have to start all over; the chemistry is different," and Anthony Kennedy added, "It's stressful for us, because we so admire our colleagues."

These are among comments from the Court that will be aired during Supreme Court Week starting Oct. 4. All the sitting justices except Sonia Sotomayor (she had not been confirmed when the taping was taking place) plus retired Justice Sandra Day O'Connor gave interviews for the series.

The shows also will offer footage inside the Court building, with rare glimpses of the justices' robing room, their private dining room, and justices' chambers. Court officials, historians and journalists are also interviewed.

C-SPAN has broadcast several excerpts from the series on YouTube at <http://www.youtube.com/watch?v=wUf19-cwJt4>

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Best Lawyer
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'TIS THE SEASON FOR VANITY -- PAGE 2



Clearing off their desks, attorneys throughout the country prepare their listings for Best Lawyers in America, Chambers rankings, Who's Who, Martindale-Hubbell, Super Lawyers, American Lawyer Hall of Fame, The Legal Yellow Pages, Facebook, MySpace, and Blogs.

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50 years of Statehood

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Take your prejudices out to lunch

By Sid Billingslea

I've been thinking a lot lately about personal prejudice. We all "pre judge" as we navigate our lives. Prejudgment is a timesaver – a shortcut – that we develop through life experience. It can be helpful, as well as limiting.

But what I've been thinking about is the kind of prejudice that may harm us as citizens and as lawyers. The kind of prejudice that holds us back as individuals and collectively. A friend of mine emailed me a speech that Senator Edward Kennedy gave in April of 1968 in Sitka, Alaska. It took place just days after Rev. Martin Luther King was assassinated in Memphis, and the Senator used the occasion to talk about what kind of country we had become, and asked the leadership gathered in that room – which included Senators Bartlett

and Gruening – to ask themselves what kind of people they were and what kind of legacy they wanted to leave the country. The eerie thing about that forty year old speech is that he could have given it yesterday for its relevance.

He talked about how all of the burnings and bombings and assassinations of the 60's were not caused by the American public, but by sick individuals. But then he said that these sick individuals came to the conclusion that killing civil rights leaders or bombing schools or burning churches would be tolerated by society.

The Senator observed that each comfortable individual, busy with his or her



"Each comfortable individual, busy with his or her life, bears responsibility to be part of something bigger than themselves, to be responsible for being mindfully alive in the world."

life, bears responsibility to be part of something bigger than themselves, to be responsible for being mindfully alive in the world. Because merely making laws or speeches is not sufficient to prevent awful things from happening. Individuals must act on principle; they must be proactive, not reactive in engaging wrong when they see it.

Discrimination creates victims. Nobody wants to be a victim, and nobody wants to create a victim. Lawyers know this equation well. The question is what kind of world do we want to live in, what kind of world do we as lawyers want to create? I encourage you to explore your personal prejudices:

meet them, hang out with them, take them out to lunch. Ask yourselves what do I want to be in the world? How does that play out in reality? What is holding humanity back? Who am I and what do I stand for? Whatever you come up with, please do not be passive. Senator Kennedy noted that apathy creates the vacuum that permits evil things to occur.

Toward the goal of engagement, the Alaska Bar will be heading up an MLK "Day of Service" in January, when we will ask lawyers to give some time and effort to our community. Be on the lookout for more information from pro bono director Krista Scully.

That speech by the late Sen. Kennedy? [Tpmtv.talkingpointsmemo.com/?id=3286050](http://tpmtv.talkingpointsmemo.com/?id=3286050). Worth a listen.

EDITOR'S COLUMN

Judging Judgepedia

By Thomas Van Flein

There is a web-based encyclopedia focusing on the courts called Judgepedia. You can see it at <http://judgepedia.org>.

By its own description it is "a wiki," which means that anyone--including you--can improve it by registering and then editing any article by clicking on the "edit this page" link that appears on every article on Judgepedia. By helping to edit, add information, and fix any mistakes you see, the quality and depth of the information steadily improves and grows over time. It is not clear who its intended audience is other than the "general public." But it appears that it could be broad enough for high school students researching the court system, or journalists seeking basic back-

ground, and it could be useful to lawyers who may be new to a jurisdiction or a particular judge. It is operated by The Lucy Burns Institute, which describes itself as "non-profit and non-partisan." (Lucy Burns, however, was quite the suffragette and activist in women's equality).

It seeks to adopt a "neutral point-of-view" editing ethic that seeks more fact, less opinion, and verifiable research and fairness of tone. This editing ethic by itself sets Judgepedia apart from most websites, and probably most that are wiki based. Since most websites are opinion-oriented and loosely based on fact, if not just completely



"See what we can do to fill out these 'stubs' and get a thorough content-based and fact-oriented database on our court system."

delusional, a website that tries to stay grounded in reality is a welcome addition. Overall, the idea is sound and its execution is good, but incomplete.

The operators of the site acknowledge that its entries for Alaska courts are thin and in need of assistance. If you go to the "Wiki Project Alaska" at http://judgepedia.org/index.php/Judgepedia:WikiProject_Alaska, you will see that it lists several areas "in need of improvement" regarding information about our court system.

I encourage those of you who are interested to see what information you can contribute about the federal court in Alaska, and the various judicial districts.

As regular readers of the *Bar Rag*, all of you know that we like a little flavor thrown in with our court history. It is the story behind the story that makes the Alaska court system and the lawyers and judges who work in it interesting reading. The goal would be to convey the unique attributes of our various judicial districts while complying with Judgepedia's "neutral point of view." I think it can be done.

It is also interesting to see it used as an election platform. Judge Volland has a "stub" (I think that means the beginning of an article) about him, relating to his application for the pending Alaska Supreme Court vacancy. http://judgepedia.org/index.php/Philip_Volland. In its two sentences it notes that Judge Volland "received one of the highest overall professional ratings" in the recent bar poll. So it appears that Judgepedia can be both retrospective and historical but also prospective and issue- or candidate-oriented. Time will tell the breadth and scope of Judgepedia, and the Alaska Project portion of it, but its potential seems broad.

There is also a section for judges "up for retention" in 2010 that is empty and needs content. Indeed, many of the areas listed for Alaska are in need of content.

Hence this article and my request to you. See what we can do to fill out these "stubs" and get a thorough content-based and fact-oriented database on our court system. If you don't write it, who will?

About the Index photo

The Index photo on page 1 shows Gov. Mike Stepovich (r) holding the front page of the Anchorage Daily Times edition of July 1, 1958, with President Dwight D. Eisenhower (l), who signed the declaration of Alaska's Statehood. Special editions of the iconic WE'RE IN newspaper were flown for distribution to Washington from Anchorage aboard a jet bomber. Photo from the Candace Waugaman Collection held in the Alaska and Polar Regions Collections, Elmer E. Rasmuson Library, UAF. UAF-2006-154-8

Need clients?

Join the Alaska Bar Lawyer Referral Service

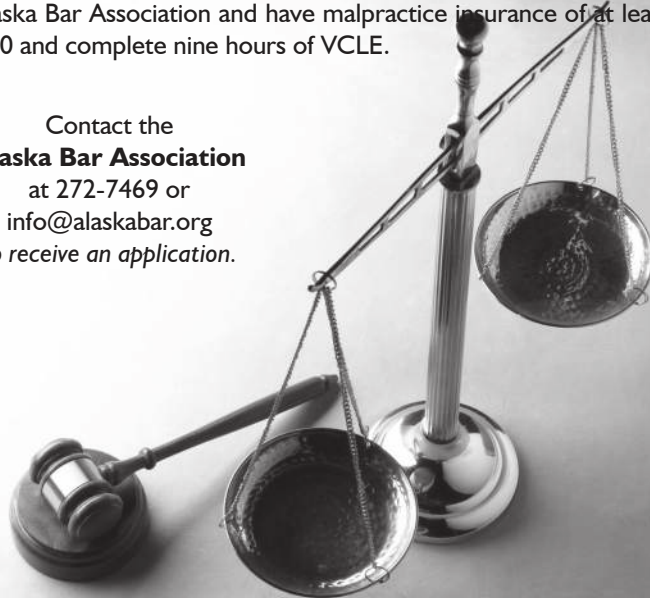
The Alaska Bar Association Lawyer Referral Service is a convenience for people who believe they may need a lawyer but do not know how to go about finding one. The LRS receives over 4000 calls a year from the public and makes referrals to lawyers participating in the program.

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.

Contact the
Alaska Bar Association
at 272-7469 or
info@alaskabar.org
to receive an application.



JUDGE PEDIA
an interactive encyclopedia of courts and judges

The Alaska BAR RAG

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ATTORNEY DISCIPLINE

2 attorneys suspended, 1 admonished, 1 disbarred

Court orders 3 year suspension for neglect

On April 14, 2009, The Alaska Supreme Court suspended Anchorage attorney Karen Weimer from the practice of law for three years, effective immediately. The court suspended Ms. Weimer for misconduct involving neglect, failure to communicate and failure to refund unearned fees in complaints involving six different client matters. The court also imposed conditions to fulfill prior to reinstatement that include taking continuing legal education programs, satisfying outstanding fee arbitration judgments and reimbursing the Bar Association for the expenses of retaining trustee counsel.

A superior court judge had earlier appointed a trustee counsel to protect Ms. Weimer's clients after ruling that Ms. Weimer was an unavailable attorney who had abandoned her practice. Ms. Weimer had previously been administratively suspended for her failure to pay fee arbitration awards and her failure to pay bar dues.

Public documents containing the complete discipline stipulation may be reviewed at the Bar Association office in Anchorage.

Court suspends Anchorage lawyer

The Alaska Supreme Court suspended Anchorage attorney Jody Brion from the practice of law for three years, with two of those years stayed, for misconduct that included knowing lack of diligence that resulted in substantial harm to Mr. Brion's

clients. The suspension became effective on August 17, 2009.

The Court's Order adopted discipline recommendations earlier made by an Area Hearing Committee and the Disciplinary Board for Mr. Brion's lack of diligence, failure to communicate, failure to account and failure to respond to the Bar Association for client grievances. When considering aggravating and mitigating factors as part of its disciplinary review, the Area Hearing Committee found significant Mr. Brion's substantial experience in the practice of law which meant he should have realized that he was mismanaging his time, his office, and his practice, and to a lesser degree the fact that many of Mr. Brion's clients lived out-of-state and were more vulnerable to conduct involving neglect and lack of communication. In mitigation the Committee found most significant the lack of a dishonest or selfish motive on the part of Mr. Brion.

The Disciplinary Board adopted the Committee's findings and recommendations with conditions that for two years after reinstatement that Mr. Brion retain a certified public accountant to oversee all general and trust accounts and provide annual written reports to the Bar; retain an office manager (who may not be a relative or person with a direct financial interest in his practice) with appropriate law-office experience to assist in billing, case management, and trust account management; and maintain a mentor relationship with an attorney bi-weekly for no less

than 15 minutes per meeting about case management issues. Prior to reinstatement Mr. Brion must complete twelve hours of continuing legal education classes relating to law office management and accounting.

Mr. Brion had appealed the Board's recommendations to the Supreme Court arguing that the period of suspension was too severe and that the Disciplinary Board proceedings lacked due process. In its July 17, 2009, Opinion the Court stated that Mr. Brion's sanction was justified and that several claims regarding lack of due process were without merit.

Under the Court's Order, the two years of suspension (that has been stayed) can be imposed if new misconduct by Mr. Brion is established.

Attorney X ignored doctor's lien and receives admonition

Bar Counsel issued a written private admonition, the lowest level of discipline, to Attorney X for failure to notify a doctor that settlement funds were available to satisfy the doctor's lien.

Attorney X represented a plaintiff who signed a doctor's lien prior to retaining Attorney X. Although Attorney X had not signed the lien to indicate his intent to honor the lien, Attorney X was aware of the recorded lien because the doctor sent it to Attorney X when the attorney-client relationship began. The doctor's office also periodically called Attorney X to monitor the status of the litigation and the settlement prospects.

When the case settled, Attorney X approved the form of the Release which contained language stating that plaintiff was responsible for medical liens, including the lien of the individually identified doctor. Attorney X turned over all the settlement money to his client without holding back any money to pay the lien amount. His client failed to satisfy the doctor's lien from the settlement proceeds.

Attorney X had a duty under Alaska Rule of Professional Conduct 1.15 and Alaska Ethics Opinion 92-3 to notify the doctor that he had received the settlement check and to withhold and segregate funds owed under the lien. Attorney X was not required to arbitrate any dispute between his client and the doctor but he had a duty to protect the funds to which the doctor claimed entitlement

under the lien until the plaintiff honored the lien or the court resolved the dispute. Alternatively, Attorney X could have notified the doctor earlier that he was not assuming responsibility for payment of medical bills; it was inappropriate for Attorney X to remain silent.

An Area Hearing Division member reviewed the matter and approved the administration of a written private admonition in this matter.

Ketchikan lawyer disbarred

On August 4, 2009, the Alaska Supreme Court disbarred Ketchikan attorney Willard Woodell from the practice of law effective immediately. The Court's order adopted the discipline recommendation made by the Disciplinary Board and the Area Hearing Committee which first recommended disbarment as the appropriate discipline for wide-ranging misconduct.

In matters involving complaints from seven clients, the Area Hearing Committee earlier concluded that Mr. Woodell violated duties owed to his clients when he neglected their legal matters, failed to communicate with his clients, failed to provide written fee agreements, failed to provide accountings for legal services, failed to safekeep client money, failed to return client files, failed to decline representation of new clients just prior to abandoning his practice, failed to avoid a conflict of interest and failed to respond to disciplinary charges against him. Noting that Mr. Woodell made no effort to make things right with his clients, the Committee was troubled by his failure to take any personal responsibility for his obligations to his clients, even after the Committee offered him an opportunity to provide a restitution plan to repay monies owed to clients.

In order to seek readmission to the Alaska Bar, the Court's order requires Mr. Woodell to make full restitution of any amounts owed to the Alaska Bar Association and the Lawyers' Fund for Client Protection. The Lawyers' Fund for Client Protection paid reimbursable losses in the amount of \$39,035 after finding that Mr. Woodell committed dishonest conduct as defined by Alaska Bar Rule 45(e).

The Clerk's File in this matter is available for review in the Office of the Alaska Bar Association.

Mandatory Continuing Legal Education in the Last Frontier

Much to the chagrin of many local lawyers, in 2008 Alaska joined the majority of states who mandate CLE. Minnesota was the first state to require CLE in 1975, and 43 states have now followed suit. Alaska's rule is less stringent than most jurisdictions.

Alaska Bar Rule 65 at a Glance

If you are an active member, you are required to:

- complete 3 hours of ethics CLE each year.
- report whether or not you have completed 3 hours of ethics each year.
- report whether you have completed 9 additional hours of CLE.
- report the estimated number of additional hours completed if less than 9.
- keep track of your own CLE record for the last two years.

Other things to know

- You can carry forward up to a maximum of 12 CLE credits from the immediately preceding reporting period.
- Any previously unreported CLE credits earned January 1 – December 31, 2008 may be carried over for the reporting period of 2009.
- Newly admitted lawyers report for the year immediately following their year of admission.
- The Bar provides 3 free hours of ethics CLE each year.
- To be on the Lawyer Referral Service you are required to report earning 3 credits in ethics and at least 9 additional credits.
- Sanctions for failure to comply with Rule 65 include administrative suspension and fines for reinstatement.

During 2008, a total of 2125 of the 2893 active members (73%) reported completing 3 ethics credits plus the recommended 9 additional credits. Only 4 Bar members were administratively suspended for failure to comply for the 2008 reporting period.

The reporting deadline for 2009 is February 1, 2010. A list of attorneys in compliance with the 3 credits in ethics plus the recommended additional 9 credits and the reporting requirement will be published in the Bar Rag and posted to the Bar website.

Go to www.alaskabar.org and click on MCLE for more information or email questions to info@alaskabar.org.

Letters

Likes Sansone's book

I am a member of the Alaska Bar and have practiced law in Alaska since 1992. Recently, a friend and colleague of mine, Ms. Marie Sansone, published a novel titled *Stories of the Road*. Ms. Sansone practiced law in Alaska for many years. I met her when we worked together at the AG's Office when I first arrived in Alaska in 1992. If possible, I ask that you include the following review of Ms. Sansone's book in the Bar Rag:

For anyone who enjoys stories about travel, I highly recommend Ms. Sansone's new novel, *Stories of the Road*. Ms. Sansone is a fellow Alaska lawyer now living in Washington DC. Her book is a dandy. It is a delightful story about two young adults who embark on a bicycle trek across the country in 1976—an ambitious task for these two novice cyclists. The reader accompanies the adventuresome couple and along the way learns about the history, geology, and many other interesting facts about some of the most beautiful areas in the United States. The book is well written and does not sound like a lawyerly treatise. Congratulations to Marie with the publication of her new book! I encourage all to look for it at any major on-line retailer.

— Martin M. Weinstein

Federal Practice and Procedure:

Report on the 9th Circuit Judicial Conference

By Gregory S. Fisher,
Lloyd Miller, and
Ruth Hamilton Heese

The Ninth Circuit's annual Judicial Conference was held the week of July 20-24, 2009 in Monterey, California. Conference attendees included judges, lawyers, and court personnel from all districts in the Circuit. The Ninth Circuit is now authorized 29 judges, PL 110-177 adding one judge effective January 21, 2009. The Ninth Circuit is currently near capacity, with 26 regular active judges. There are currently 22 senior judges.

The conference's central theme concerned legal, social, and economic volatility. One workshop addressed Hollywood's image of cyber crime. Panelists included Scott Borg (Director and Chief Economist for the U.S. Cyber Consequences Unit), Ovie Carroll (Director of the USDOJ's Cyber crime lab), Sean Varah (CEO MotionDSP), and Professor Dorothy Denning (Naval Post Graduate School). Panelists discussed the extent to which the Nation's computer dependent systems are vulnerable, and whether movies have it right or wrong with respect to economic espionage and computer terrorism. Linda Greenhouse, Nina Totenberg, David Lat, and Hal Fuson were featured on a panel addressing changes in journalism, the impact of blogging on print media, and court reporting.

Another seminar focused on the current turbulent economy, and the extent to which government intervention has helped or hurt financial markets. Panelists included Richard Epstein (University of Chicago Law School), Joseph Grundfest (Stanford Law School), Ron Sugar (CEO and Chair of Northrop Grumman), and David Kaplan from Newsweek. A

fourth seminar focused on the judicial challenges that will likely come in the years ahead as a result of progressive state and federal regulatory and legislative initiatives taking shape to address climate change. Panelists included Richard Frank (Boalt Law), David Bookbinder (Sierra Club), Robert Wyman (Latham & Watkins) and Ellen Peter (California Air Resources Board). Dean Kathleen Sullivan presented a U.S. Supreme Court review. Of interest to litigators, she identified *Ashcroft v. Iqbal* as an important but overlooked case extending *Bell v. Twombly's* 12(b)(6) standards to all civil pleadings.

The Conference's Bench/Bar session examined district and circuit delays, concerns regarding judicial temperament, and problems related to inconsistency in local rules, both across districts and within districts. Districts were urged by the Circuit to continue work on these three areas at the district level in the coming year.

The conference closed with a discussion between Chief Judge Kozinski and Solicitor General Elena Kagan. In addition to discussing the work of the SG's office, Kagan discussed her personal preparation for her upcoming first argument before the Court in a case challenging the constitutionality of certain aspects of the McCain-Feingold campaign finance laws.

Of special interest to the District of Alaska, Chief Judge Sedwick's seven-year tenure as Chief Judge is drawing to a close and Judge Beistline will assume his duties as the Chief this fall. Also, District plans for the court's 50th Anniversary are progressing under the leadership of Clerk of Court Ida Romack and Leroy Barker. The District also recently appointed three new part-time magistrate judges, Leslie Longenbaugh (Juneau), Michael

Thompson (Ketchikan) and Scott Oravec (Fairbanks).

In other news, Gregory Fisher, current Chair for the District's lawyer representatives, has completed his three year term as a lawyer representative. Ruth Hamilton Heese will assume duties as the new Chair, assisted by Sara Gray, Frank Pfiffner, and newly appointed Kevin Clarkson. If you have a question or concern related to the recently concluded conference in particular, or federal practice and procedure in general, please feel free to contact Ruth Hamilton Heese (465-3600), Frank Pfiffner (263-8241), Sara Gray (753-2532), or Kevin Clark-

son (258-2000). In addition, Lloyd Miller (258-6377) is currently on the Ninth Circuit Conference's Executive Committee, and his wife Heather Kendall-Miller (276-0680) is an appellate lawyer representative. These attorneys represent and advocate the concerns of all federal practitioners in Alaska while also assisting the District Court and the Ninth Circuit on projects as requested. Federal practitioners are encouraged to contact these attorneys on any issues of concern involving federal practice. The LRCC website has additional information: <http://www.ce9.uscourts.gov/lawyerreps>.

Tennessee changes judicial selection

Under a new plan approved by the legislature in June, Tennessee is moving the dial on how it chooses judges, changing parts of the so-called merit selection method that has governed the state for decades.

The participation of the bar is a hallmark of the judicial selection method used by more than two dozen states. Sometimes called the Missouri Plan for its state of origin, a slate of potential nominees is chosen by a judicial nominating commission and presented to the governor for a pick. Designed to reduce the pull of politics on judges, the plan instead gave power to lawyers who sat on the commissions and pushed state courts to the left in Tennessee.

Under Tennessee's old version of this plan, commissioners were chosen from lists submitted by various legal special interests including the Tennessee trial lawyers association, the district attorneys general conference and the Tennessee bar association. Under the new system, all 17 mem-

bers of the Judicial Selection Commission would be picked directly by elected officials, rather than by the lawyers groups.

Tennessee is the latest state to push back against this insider "merit" selection amid widespread dissatisfaction. In 2006, Democratic Governor Phil Bredesen grew so frustrated with the subpar slates of nominees that he sued the judicial nominating commission for the right to consider others -- and won. The system was put on the path to extinction last year as lawmakers declined to renew it.

Tennessee would thus have automatically reverted at the end of June to the judicial elections required under its Constitution. The new plan buys the state two years to consider other alternatives. One would allow the governor to reject two slates of nominees and then choose a nominee from among anyone who applied for the position. Though likely a rare occurrence, the possibility of being rendered irrelevant would have a bracing effect on the nominators. That provision was excised from the state Senate's version of the bill.

In its best incarnation, a judicial commission is designed to serve a useful editing function, providing a short list of desirable candidates for the Governor, similar to the way staffers might under a federal system. When it's dysfunctional, the Governor is allowed to take the reins.

The Tennessee plan that was supposed to prevent the tawdry appearance of litigants and special interests involved in electing judges instead ended up with them selecting the judges behind closed doors. Tennessee's reforms will open the commission's meetings to the public and are touted as a good first step toward bringing transparency and accountability to those judging the judges.

--From the Wall Street Journal,
June 15, 2009.



The National Association of Women Judges would like to thank the following individuals & organizations for their invaluable contributions to the success of

Color of Justice 2009

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

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Shelly Andrew, Law Clerk, Ct. of Appeals
Ella Anagick, Law Office of Ella Anagick
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Kadell Moore, Alaska Court System
Denise Morris, AK Native Justice Center
Margaret Newman, Alaska Court System
Stephanie Nichols, Seattle U. SOL
Troy Nkrumah
Cassandra Sneed Ogden, CLEO

Prof. Deb Periman, UAA Justice Center
Robert Roehl, Southcentral Foundation
Brittany Stinson, Alaska Bar Assn.
Amanda Strong, Legal Intern
Disability Law Center
Judge Sen Tan
Keith Underwood, UAA Student
UAA Educational Talent Search Program
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The land before your time is up

By Kenneth Kirk

Littlefoot and Cera could see the lush greenery at the end of the ravine, and they scampered forth in anticipation. “Do you think this could finally be the Great Valley?” asked Littlefoot.

“I hope so,” replied Cera, “we’ve been searching so long for the wonderful place where estate planning dreams come true. Maybe this is finally the end of our journey.”

They came into the clearing and were amazed at the beautiful, orderly bushes and the lovely, paid-up-front trees. But then they stopped short, as there were others in the clearing. Big others! A large old Sharptooth and a grizzled Spiketail were squaring off against each other. They were undeniably fighting, snapping and pushing against each other, but they seemed to be fighting over something in the clearing, more than fighting with each other. But there was nothing there to fight over.

Littlefoot nervously cleared his throat. “Excuse me,” he interjected, “can you tell me if this is the Great Valley of estate planning?”

The two combatants stopped and turned toward him. “And who wants to know?” Growled the Spiketail. “We are fighting over this succulent piece of meat. There isn’t enough for you two little ones and, anyway, you don’t have the right kind of spikes for this kind of work.”

“Or teeth!” Interjected the Sharptooth. “You must have the teeth, or spikes, or something similar to carve up the meat properly. Not to mention the training and experience to know exactly where to tear it. You have to be able to tear the meat into separate shares, you see, that’s why you need the teeth for it.”

“Or the spikes,” said the Spiketail. “But either way, the whole idea is to tear the meat into separate shares. I refer to them as the A share and the B share.”

“Now myself, I prefer to call them the dead animal share and the deceased animal share,” countered the Sharptooth.

“But there is no meat there,” Cera chimed in. “You guys are fighting over nothing”.

The Sharptooth glared at her. “There is plenty of meat here, if you only look,” he said. “There has always been meat, and there will always be meat in the future. For 30 years we’ve been eating meat, we have advanced degrees in meat, and we’re not going to stop eating meat now!”

“But there is a lot less meat available now,” said Littlefoot. “Ever since Congress raised the estate tax exemption, there has been less and less meat every year. A married couple doesn’t even become meat anymore, unless they have at least \$7 million. Or \$3.5 million for a single animal.”

“Yes,” said Cera, “there was that big earthquake a few years ago. Didn’t you feel it?”

“So you big dinosaurs are fighting over a rapidly dwindling resource,” continued Littlefoot. “Don’t you think you should search for some other kind of food?”

The Spiketail looked a bit downcast. “I don’t know what else to do,

though,” he lamented. “I’ve been eating this kind of meat for years and years. After all this time, I can’t see myself chasing car crashes or handling divorces. This kind of meat is my life.”

“But look around you,” said Littlefoot, “at all this other food. Why there’s nuts and berries and fruit, there’s all kinds of food around for you.”

The Sharptooth snorted. “We leave that leafy stuff for these little rodents you see running around here and there. They eat practically anything, so we call them ‘general practitioners’. We leave the small stuff to them.”

“It’s not all leafy stuff,” retorted Littlefoot, “look at some of this. Medicaid planning, IRA conduit trusts, BIA allotments and ANCSA shares. This



“But there is a lot less meat available now. Ever since Congress raised the estate tax exemption, there has been less and less meat every year.”

You could really screw that up if you tried to eat meat without knowing what you were doing.”

“No problem,” said Cera, with just a tinge of sarcasm in her voice.

is almost as tasty and filling as the dwindling meat supply you’re used to. You can get a real bellyful with this food.”

“That’s poor people’s food,” replied the Spiketail derisively. “You can’t survive on that junk. At least, you can’t survive well.”

Littlefoot tried to ignore Cera, who was rolling her eyes. “Then I don’t suppose you’ll mind if we just kind of mosey around in the bushes outside of the clearing, and eat some of this other stuff you don’t want?”

“Do what you like,” said the Sharptooth, “but don’t you dare touch any meat.”

“If we see any meat, we’ll send it your way.”

“Just make sure you do,” said the Spiketail, “and remember, anything over \$7 million for a married couple is meat!”

Littlefoot and Cera wandered off into the lush vegetation and began gorging themselves. After a while, when they had to stop to let their digestive systems catch up, Cera wondered “Do you suppose this is a safe place to stay and eat? I mean, eventually those much bigger creatures are going to get awfully hungry when they can’t find enough meat, and they’re going to start crashing through the underbrush here and maybe gobble up all of this.”

Littlefoot thought about that a minute, burped contentedly, and said “I think they’ll probably die off before that happens. As my mother used to say, ‘you can’t teach an old dinosaur new tricks’.”



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Fishing with lawyers is not a philosophical undertaking

By Dan Branch

Fishing with lawyers is not a philosophical undertaking. You don't exhibit open signs of manly bonhomie. You don't end an unsuccessful trip to the backside of Douglas Island by saying, "it is always good to get out on the water." The hunger for the catch must be the only thing. At least that's how it is with most of the guys who fish off of Captain Jim's Boat. Then, there's the lawyer with the CB call sign *Legume*.

I've got to tell you up front there is no happy ending to this story. The Silver salmon fishing was poor in August. The kings came in fairly strong in May and Captain Jim caught more than his share but I had to wait for the fall run of Silvers. Past runs contained enough fish willing to be fooled by a hoochie to meet our winter fish needs. Not this year.

During Silver season Captain Jim, Legume and I worked the North Pass, the back side of Douglas, and down Admiralty Island to the usually fish-rich reef off of Cordwood Creek. We fished in sun and heavy rain. For hours we would rise and fall with chop or swell while our baited hooks trailed behind downrigger cables. All we hooked were pinks, Dolly Vardens and the occasional shaker king.

There were others sharing our misery. We trolled along charter boats loaded with cruise ship tourists and beater boats of long-time Juneau hands. For hours all was quiet. No flashers broke the surface, no shouts of excitement, no one reached for a net to boat a Silver. It was Oklahoma in 1936. We were the Joads. I dreamed of the place where the Silvers were holding—Lizard Head. That was our California.

Somewhere at the tail end of Lynn Canal near Icy Strait is a reptilian shaped rock named Lizard Head.

I've never seen it but have looked into the eyes of those who have and believe in its existence. It is said that in August the waters that bend around the Lizard Head are rich with Silvers and fat feeder Kings. With the right combination of flasher and bait you can limit out on Silvers and be home in time to catch the evening news.

One cold August day while a steady rain collected on the back deck of Captain Jim's boat, we worked the current flowing off of False Point Retreat.

As usual, there were no fish in the boat. I looked through the mist toward the lighthouse and thought of the long boat of Captain Vancouver's crew when they pulled for their lives around the point to escape warriors protecting their home lands at Auk Nu. The point was named to mark the crew's getaway. Looking at Captain Jim I wondered where we should make our own retreat back to Tee Harbor before the wind whipped up.

Legume wasn't on the boat. He had a golfing conflict. He was not putting in his rod hours. He had already finished golfing and was probably home watching NASCAR and drinking coffee. He was dry. We were wet. None of us had fish. These are dangerous thoughts when you are trolling in the rain. They might lead one to take up golf.

I tried to think of other things and put a new herring on my line. As the bait dropped with the downrigger ball to 60 feet, a parade of deep water fishing boats passed us. They transported warm happy fishermen. Their ice chests were full of fat Silvers and a few rich feeder Kings. They were returning from Lizard Head.



"We pressed on. This was the time for grim faces and unjustifiable hope. I told myself that one more run along the current line would do it."

They would eat well this winter.

"Where do you think they were fishing?" I asked the captain. He gave the expected answer, "Lizard Head." Wiping condensation and raindrops from my glasses I watched the boats pass. Should we have braved the exposed shore of Admiralty Island and followed these big boys down to the fabled fishing grounds?

If Legume were there he would have smiled, finished off the last of the coffee in his thermos and

suggested that we return to Tee Harbor. He would have enjoyed the day. For him a time with friends on the water was enough. Lizard Head was just a rough boat ride, not his

California. If he were on the boat we might have thrown him overboard.

We pressed on. This was the time for grim faces and unjustifiable hope. I told myself that one more run along the current line would do it. Then my rod bent once with a strike but the silver was gone before I could take up the pole. So was my bait. The tide would change in an hour to run cross grain to the wind. We needed to be around Point Retreat before that happened so we headed for the barn.

We were wet, fishless and frustrated, which gave us a moral superiority over Legume. He had had a good round of golf and was home dry. We would fish again and Legume would be there too. Everyone on Captain Jim's boat has to put in their rod hours.

Next year, though, some of our rod hours will be spent in our California. Load up the Model A Ford, Captain. Next August we are heading to Lizard Head.

Federal contractors required to use E-Verify

U.S. Citizenship and Immigration Services (USCIS) is reminding federal contractors and subcontractors that effective Sept. 8, 2009, they will be required to use the E-Verify system to verify their employees' eligibility to work in the United States. In July, Department of Homeland Security (DHS) Secretary Janet Napolitano strengthened employment eligibility verification by announcing the administration's support for the regulation that will award federal contracts only to employers who use E-Verify to check employee work authorization.

E-Verify, which compares information from the Employment Eligibility Verification Form (I-9) against federal government databases to verify workers' employment eligibility, is a free web-based system operated by DHS in partnership with the Social Security Administration (SSA). The system facilitates compliance with federal immigration laws and helps to deter unauthorized individuals from attempting to work and also helps employers avoid employing unauthorized aliens.

The E-Verify federal contractor rule extends use of the E-Verify system to covered federal contractors and subcontractors, including those

who receive American Recovery and Reinvestment Act funds. Applicable federal contracts awarded and solicitations issued after Sept. 8 will include a clause committing government contractors to use E-Verify.

Companies awarded a contract with the E-Verify clause after Sept. 8 will be required to enroll in E-Verify within 30 days of the contract award date. E-Verify must be used to confirm that all new hires, whether employed on a federal contract or not, and existing employees directly working on these contracts are legally authorized to work in the United States.

More than 145,000 participating employers at nearly 550,000 worksites nationwide currently use E-Verify to electronically verify their workers' employment eligibility. Since Oct. 1, 2008, more than 7.6 million employment verification queries have been run through the system and approximately 97 percent of all queries are now automatically confirmed as work-authorized within 24 hours or less.

More information on the program is available on the E-Verify Web site at www.dhs.gov/e-verify. E-Verify customer support is also available by calling toll free (888) 464-4218.

Bar People

Block joins Lane Powell's practice group



Matthew Block has joined Lane Powell as an Associate in the Litigation Practice Group.

Block has experience in a broad range of business and litigation matters, with particular emphasis on oil and gas, employment, Alaska Native Corporation and small business needs and copyrights and trademarks. Block has assisted clients with all phases of simple and complex commercial litigation, including document-intensive discovery, negotiated and mediated settlements and trials and appeals. He has counseled both large and small commercial clients in issues dealing with copyright, trademark, corporate issues and employment matters.

Block earned his J.D., cum laude, from Duke University School of Law and his B.A. from Pepperdine University.

Reeves joins Holmes Weddle & Barcott

The law firm of Holmes Weddle & Barcott is pleased to announce that Jim Reeves joined the firm, Sept 1, 2009. Mr. Reeves recently completed three years of service Anchorage Municipal Attorney after many years in private practice in Anchorage. He has a broad range of experience in commercial transactions and real estate, civil litigation and appeals, Alaska natural resources and administrative law. Holmes Weddle & Barcott is one of the oldest law firms in Alaska, maintaining offices in Anchorage and Seattle, serving local, regional and national clients.

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Sizing up life insurance

By Steven T. O'Hara

Life insurance is great. When available it is nothing less than essential for many families in their estate planning and for many businesses in their succession planning.

Life insurance is flexible. Examples include changing insureds within a policy, insuring more than one individual within a policy, making tax-free exchanges of policies (IRC Sec. 1035), obtaining income-tax free proceeds where transfer-for-value rules are avoided (IRC Sec. 101(a)(2)) and estate-tax free proceeds with irrevocable trust ownership (IRC Sec. 2042), obtaining some disability insurance where waiver-of-premium option makes sense, using premium payments as a forced-savings tool to build cash value, making lump-sum contributions to increase cash value and death benefit, insuring the insurability of children, obtaining a death benefit possibly through mortgage insurance even where the borrower is otherwise uninsurable, etc., etc. Here "cash value" includes an amount of cash from which the owner may borrow from time to time, using the policy as collateral.

Every life insurance policy has risk. An obvious issue is whether the insurance company will remain solvent. If nothing else, the last year has taught us that no company is too big to fail.

There are companies in the business of rating insurance companies. These ratings may be worthless. Consider the ratings that insurance giant AIG (American International Group, Inc.) enjoyed before it nearly failed in September 2008. Remember the ratings of Executive Life Insurance Company? Remember the ratings of General American Life Insurance Company?

Insurance companies issue projections -- also called illustrations -- with respect to its policies, including policies that have been in existence for some time. Projections are particularly important for policies that are intended to develop cash values. These projections may be worthless. Consider the number of clients who have received life-insurance projections that have not panned out.

A company's ratings and a policy's projections are only as credible as the assumptions on which they are based. Thus prospective buyers of life insurance, and persons who own existing life insurance policies, might want to dig until they find a reasonable comfort level with the applicable assumptions.

Towards this end, the following is

offered as a humble attempt at a list of rules:

Rule #1: Find one or more life insurance professionals whom you trust and understand.

Look for indicators of commitment such as years in the business, future plans for staying in the business, continuing education, and avoidance of conflicts of interest. An experienced life insurance professional will have seen many failed projections issued to his or her customers. Explore with the life insurance professional exactly why actual performance was below projected results. If you cannot understand or do not trust what he or she is saying, keep looking for a life insurance professional.

Rule #2: Spend time on projections to understand what they say. What does the company guarantee, if anything? Is the guarantee an unsecured, general obligation of the company? Does the company offer a policy whose cash value is a separate account not subject to the general creditors of the company? Is this a so called variable policy? What type of policy is suitable for you?

Rule #3: Look behind the projections. Are they based on the company's actual performance at this time? How well has the company done with its own investments? Has the company been able to keep expenses down? What does the company's book of business look like? Are there a large number of customers who let their policies lapse? Has the company been successful in finding insureds who generally live to their life expectancy? Does the company use reinsurance to minimize its risk? Note that projections do not take into account the time value of money -- in other words, that premiums are paid at different times. With respect to existing policies, consider sitting down annually with your life insurance professional to review current performance and updated projections.

Rule #4: Learn what long-time customers have to say about the company. Ask for references. Talk to people you know who have owned, on



"A company's ratings and a policy's projections are only as credible as the assumptions on which they are based."

a long-term basis, policies issued by the company. Has the company been sued in connection with its projections? If so, how many times?

Rule #5: Remember Rule #1.

Rule #6: Consider the nature of the company. Is it a stock company? In other words, does the company have shareholders separate and distinct from its policyholders? Is the company a mutual company which is owned by its policyholders? How did the company perform during the economic meltdown of 2008? Was this performance or lack thereof affected by the company's nature as a stock or mutual company?

Rule #7: Consider what other insurance companies think about the company. Fortune magazine features an annual survey of life insurance companies.

Rule #8: Consider whether diversification makes sense, such as buying insurance from two or more companies rather than all from one. If it is projected that the policy will have a significant cash value, clients may want to spread that cash value over two or more companies, recognizing that access to cash value would be lost if the company failed.

Rule #9: Consider what the rating companies have to say about the company. This rule may be

worthless but is obligatory lest negative information is missed. Expect the ratings to sound positive but look for any negative outlook. Determine the independence of the rating company. Does the insurance company pay to be rated? Contact information on the rating companies is as follows:

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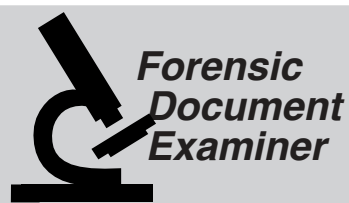
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Final Rule: **Remember Rule #1.**
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Taking the pain out of foreign document review

By Lillian Clementi

The attorney was frantic. With trial only days away, she had just remembered that she had to stipulate to the other side's translations of key French documents – and the material filled several boxes. "I [messed] up," she said ruefully. "I simply forgot about the French."

With non-English material increasingly prominent in US legal proceedings, this kind of scenario has become more and more common – and not because of incompetence or negligence. For many attorneys, working with documents they cannot read is a headache, and managing foreign-language documents can be a challenge even for a well-organized law firm. The good news is that if you follow four common-sense guidelines – 1) planning ahead; 2) using a professional; 3) setting up a realistic budget; and 4) listening to your translator – you can handle non-English material more effectively, avoid disaster, and get the most for your translation dollar.

Plan ahead

The temptation to set non-English material aside for later is perfectly natural, but – as in the real-life example above – yielding to it can be dangerous.

Solution: inventory foreign-language documents right away, especially if you don't know what you have. Even if you and your team are too busy to deal with them early in the case – and almost everyone is – the right linguist can help. With a few background documents and a quick briefing, an experienced translator can get to work right away, reviewing and analyzing your foreign material while you focus on other priorities.

Planning is equally important for the back end of your case. If you are a litigator, think ahead to depositions. What documents will need to be translated in advance? Will you need to have an interpreter present? Be sure that your team's pretrial checklist gives you plenty of time to stipulate to the other side's translations, prepare your own certified translations, and – if any of your witnesses are

uncomfortable testifying in English – book a competent interpreter well in advance. A small up-front investment in planning will save significant time, money and stress later.

A little learning is a dangerous thing.

It's natural to turn to a bilingual colleague when non-English material surfaces. But "knowing some Spanish" doesn't necessarily qualify a paralegal or even an attorney to translate or review foreign-language documents, says Thomas L. West III, owner of Intermark Language Services and former president of the American Translators Association (ATA). "A lawyer I know got a fax from his Latin American subsidiary and gave it to his Spanish-speaking secretary," he recalls. "Three words stood out: *celebración, asamblea, and social*. 'Relax, they're just having a party,' she said. It turned out to be an invitation to a shareholders meeting."

Go with a pro

Bottom line: translation errors can be costly – even disastrous – so it pays to work with a professional. But how do you find the right language services provider? The ATA offers free, searchable online databases of its member translators and translation agencies at www.atanet.org. With the Advanced Search function, you can tailor your search to the language pair and subject area you need, and even specify geographical distances for in-person review.

Getting the right people is important: some "bilingual" reviewers are a waste of money at any price. Marjon van den Bosch, a professional linguist with extensive experience in document review, recalls several litigation matters involving thousands of pages of Dutch. "A staffing agency was tasked with finding competent Dutch-speaking reviewers," she recalls. "But in each case it filled out the team with amateur bilinguals recruited from social networking sites and temp attorneys who had taken German in high school. Google Translate was their tool du jour." Solution: if your linguists will come from a staffing or

translation agency, ask for specifics on its recruiting standards and the credentials of the people who will handle your documents.

Bang for the buck

Quality translation does not come cheap, but you can save time and money by thinking through your needs. To draft a reasonable budget, ask a few key questions up front.

Does all of your foreign language material really need to be translated? A few hours of review time from the right translator or a pass through the right computer translation software can help you identify the documents that matter most. Irrelevant documents can be weeded out, and less important material can be gisted or summarized in a few lines or paragraphs – saving time, translation costs, and document-handling headaches over the life of your case.

If you are managing a large litigation, it is critical to determine how much non-English material you have, and in how many languages. Using a unicode-compliant review platform to work with electronic documents such as e-mail messages and Microsoft® Word documents is one solid answer, says e-discovery expert Conrad Jacoby, founder of efficientEDD. "One of the biggest challenges for a litigation team is simply knowing what they have," he notes. "Fortunately, unicode – a computing industry standard that allows computers to encode and display most of the world's writing systems – has made it dramatically easier to find unexpected foreign-language documents and treat them appropriately during processing or review."

Size matters

Once you know what you have, you can develop a cost-effective strategy for review based on volume. "If I have 200 documents in a given language, I'll likely have a linguist do a document-by-document review," says Jacoby. "If I have 5000, I'll have the linguist work with review software and use his or her language and subject matter expertise to help winnow the material. A competent reviewer

can tell very quickly if something is completely irrelevant or needs further attention."

Scalpel or bludgeon?

How accurate do your translations need to be? Fast and relatively inexpensive, computer translation is often useful for brute-force gisting and first-pass review, but you will almost certainly need specialized human review and translation for your most important documents. "At best, computer translation will only be about 80% accurate," says Joe Kanka, Vice President of Corporate Development for eTera Consulting, a litigation support firm based in Washington, DC. "So we want a professional translator at the table from day one. That, to us, is absolutely critical."

And 80% accuracy looks a lot less impressive when you realize that you don't know which 20% of your translation is inaccurate. For sensitive documents, a qualified human linguist is usually the best solution. "Once the material has been winnowed down," says Jacoby, "a qualified translator or native speaker with the right subject knowledge will almost certainly do a better job analyzing non-English material than a monoglot reviewer working from computer translations."

Listening for added value

A good translator should also be able to connect the dots, seeing each new document as part of a larger whole. Your documents tell a story, and if you are willing to listen, experienced linguists can help you piece it together.

Too few legal teams take advantage of this added value. To tap into it, simply provide translators and foreign-language reviewers with the background documents your attorneys and reviewers are using, and keep related English-language documents with foreign material when sending it out for translation. If you are working with more than one linguist, make sure that everyone on the team is sharing background and terminology. Stay focused on the big picture, and insist that your translators do the same.

Strong relationships

Strong relationships and institutional memory generally help a law firm serve its clients more effectively, and the same is true for translation providers. In the Case of the Last-Minute Stipulations, the frantic attorney called a translator who had worked on the litigation for several years. She quickly proposed a damage-control strategy, and translators, paralegals and attorney were able to work together to complete the review in time for trial.

Surprises are inevitable in legal work, but thinking critically about your timeline and budget and working closely with qualified linguists can make your project run more smoothly. Veteran patent translator and ATA President-Elect Nicholas Hartmann has seen this first-hand. "Ideally, the law firm, its client, and the translator work together, forming an effective partnership that enables all of us to keep our customers, earn their respect, and enhance our professional reputations."

The author provides translation, editing, and document review for Lingua Legal and is a member of the American Translators Association (ATA) Washington D.C. chapter.



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Interpreters provide access to justice in Alaska

By Robin Bronen

Alaska is home to diverse cultures and languages, indigenous and foreign. Providing qualified interpreters to limited English proficient Alaskans is crucial to ensuring that victims have meaningful access to our system of justice. This article will explore some of the issues that attorneys should think about when working with clients for whom English is a second language or who are non English speaking.

Do I need an Interpreter?

The first thing that you will need to assess with your client is if you need an interpreter. If your client speaks no English, then the decision will be quite easy.

However, if your client speaks English as a second language, the decision will be more difficult. It is important to remember that discussions about legal issues are difficult even under the best of circumstances. Most individuals will find it easier to speak about traumatic events in their native language. Communication through a qualified interpreter will be more accurate.

You should assess whether your client needs an interpreter during the first meeting. Ask yourself these questions when meeting with your client. Are you able to effectively communicate with your client? Ask the client open ended questions so that you can be sure that they are not just giving you “yes” or “no” answers to questions that they do not understand.

Make sure to read their nonverbal body language. Does it indicate that they understand or do they appear puzzled? Do their answers match your questions? If the client speaks some English they may feel shame at having to ask for an interpreter. Convince them that the interpreter is for you, the attorney, to ensure that you are able to effectively communicate your important information to them.

How Do I Find/Choose an Interpreter?

The Language Interpreter Center (LIC) housed at the Alaska Immigration Justice Project is providing a referral service for qualified interpreters who work through their agency. This training process includes adhering to the interpreter’s code of ethics and following a training program of a minimum of 24 hours with Professor Holly Mikkelson. Cur-

rently, the LIC has interpreters qualified to interpret in the 26 languages listed below:

Arabic	Bosnian	Cebuano	Chinese	Croatian
Czech	Danish	Farsi	Hmong	Ilocano
Inupiaq	Japanese	Korean	Lao	Malaysian
Nuer	Portuguese	Russian	Samoan	Serbian
Slovak	Spanish	Tagalog	Thai	Ukrainian
Vietnamese				

Never use family members or friends of your client to interpret. These individuals do not have the impartiality necessary to interpret for clients. You can call Barb Jacobs, 279-2457 to schedule an interpreter. She will also ask you to sign a contract prior to working with the Language Interpreter Center that outlines the responsibilities of the interpreter and the customer.

Tips for Working with Interpreters

Once you have determined that you need an interpreter, what next?

Most individuals will find it easier to speak about traumatic events in their native language. Communication through a qualified interpreter will be more accurate.

It is a best practice to have a “pre-session” with the interpreter to discuss the substance of the conversation that you will be having with the client so that the interpreter can be familiar with the terminology.

It is better not to have this discussion with the limited English speaking client present as it may make them uneasy.

Once the session has started, converse with the client as you would an English-speaking client, looking at the client rather than the interpreter.

Use first person language when speaking to the client. Make sure to speak in short and simple sentences and pause frequently so that the interpreter can adequately interpret your exact words.

Interpreting is hard work so you should take frequent breaks and generally not go longer than ½ hour without a break.

If you are taking notes during the conversation, you should document that an interpreter was used, indicating the name of the interpreter.

Monitor the client’s behavior to ensure that the interpreter is adequately relaying the conversation. Warning signs that you might be mis-communicating with client could include a disconnect between the client’s verbal responses and actions and indications that the client appears withdrawn.

Special Tips for Working with Interpreters in the Courtroom

If you are using an interpreter in a courtroom setting, there are some additional things to keep in mind. Many of the general tips listed above will also apply in a courtroom setting. However, it is especially important in the courtroom to prepare the client to speak to the judge or the attorney rather than the interpreter when in the courtroom.

If you are the attorney, you will need to work out a signal to tell the client to stop talking when an objection is raised so that the client doesn’t answer until the court rules on the objection.

You also will want to make especially clear that both you and your client speak slowly and that no one is speaking over anyone else to ensure that there is a clear record of the proceeding in the event of an appeal.

Ensuring access to all Alaskans, regardless of their language skills, should be the goal of our profession. Effective work with interpreters will ensure that limited English proficient Alaskans have access to justice.

Agency trains 90 interpreters in 26 languages

A new multi-agency collaboration has trained approximately 90 interpreters speaking 26 languages to increase the access to justice for non-English-speaking Alaskans.

In October, the Alaska Court System and Language Interpreter Center will facilitate a written certification test, the first step of a four-step court certification process. This will be the first time in our state’s history that the court certification test has been offered to interpreters.

The Language Interpreter Center had facilitated the first medical interpreter training program in March, funded by a generous donation from the Norton Cruz Family Foundation. Approximately 90 interpreters speaking 26 languages have been trained.

The Language Interpretation Center was formed in August, 2007 through the collaboration of the Alaska Court System, Alaska Bar Association, the Anchorage Neighborhood Health Clinic, Alaska Department of Transportation, Alaska Department of Health and Social Services, the Municipality of Anchorage, Public Defender Office, Office of Public Advocacy, Anchorage School District, United Way, the Alaska Network on Domestic Violence and Sexual Assault, ConocoPhillips and a substantial contribution from the Rasmuson Foundation.

The Center was established with 3 goals: To

1. Train interpreters on interpretation skills and the ethics of interpreting;
2. Train professionals on the roles and responsibilities of working with interpreters; and
3. Provide a referral service for businesses, government agencies and non-profits in need of qualified interpreters.

Training interpreters has been the primary focus of the Center, which has sponsored five trainings. Professor Holly Mikkelson, a federal and state court certified interpreter, has facilitated four of these trainings. She is also a professor of the Monterey Institute of International Studies, one of two graduate interpreter degrees in the United States.

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Declaration governs common interest community

By Daniel B. Lord

Part II

In Part One, I briefly described a common interest community, emphasizing the inclusiveness of its definition and forms. A hallmark for common interest communities in Alaska is the common expense for the upkeep and maintenance of common property. In Part Two, I will touch on the creation of a common interest community, specific to the declaration.

So, how is a common interest community "created"?

Whether a development project can be described a "common interest community" is one thing, whether a common interest community is actually created is another.

Neither a "unit" nor an "ownership of a unit" can exist until a common interest community is created. *Peck v. Milford Hunt Homeowners Ass'n, Inc.*, 953 A.2d 951, 955 (Conn. App. 2008). But see *Gurdon H. Buck, Drafting for Planned Unit Developments, Golf Course Communities, and Condominiums* 215, 219 (ALI-ABA 1990) (introducing concept of "The Zero Unit Condominium" where "developer, as a single declarant, files a condominium declaration for the entire site prior to the completion of the buildings and creation of the units therein").

Alaska Statutes 34.08.090 provides, in part, that "[a] common interest community may be created . . . only by recording a declaration executed in the same manner as a deed and, in a cooperative, by conveying the real estate subject to the declaration to the association." AS 34.08.090(a); cf. *Black v. Municipality of Anchorage*, 187 P.3d 1096, 1100 (citing AS 34.08.170(a) that plats and plans "are required for all common interest communities except cooperatives"). A declaration is "an instrument, however described that creates a common interest community; and includes amendments to the declaration." AS 34.08.990(13). What defines a declaration, as the instrument creating a condominium or planned community, is in its being "executed in the same manner as a deed." See also 15A Am.Jur.2d *Condominiums and Cooperative Apartments* § 7, at 779 (2000) (noting that in some states, "a declaration is referred to as a 'master deed'"), citing *Nahrstedt v. Lakeside Condominium Ass'n*, 878 P.2d 1275 (1994).

As with the "common interest community," the definition of "declaration" under AS 34.08.990(13) is broad. The definition is similar to that found in Section 1-103(13) of the uniform act, and the official commentary to that section states,

. . . the term would not only include the traditional condominium declaration with which most practitioners are familiar, or the declaration of covenants, conditions, and restrictions (CC&Rs) so common in planned unit developments. It would include, for example a series of deeds to units with common mutually beneficial restrictions, or to any other instruments that create the relationship which constitutes a common interest community. . . .

Unif. Common Interest Ownership Act §1-103, cmt. 13, 7 U.L.A. 213-14, (Sup. 1996). The definition subjects "an unforeseeable array of ownership arrangements" to the Act. *Wirth, op cit.*, at 890; see also *id.* (listing "garden-variety" mutual drive-ways and private road arrangements, as well as an Operational and Reciprocal Easement Agreement for a shopping center, and industrial, office or business parks, as possibly creating a common interest community).

Yet a declaration may be deficient to achieve such a purpose, as implied from the following from the official comment to the uniform act: "If those recorded instruments create [a relationship constituting a common interest community], then those documents constitute a declaration and must contain, for new projects, the information required by Section 2-105." Unif. Common Interest Ownership Act §1-103, cmt. 1, 7 U.L.A. 213, (Sup. 1996). Section 2-105 of the uniform act is similar to AS 34.08.130, which requires that a declaration contain information on the name of the common interest community and on the type, a legal description of the real estate, the maximum number of units, a description of limited common elements and of the developments rights, and so on. See AS 34.08.130(a) ("The declaration must contain . . .") (emphasis added). Cf. *Emerald Ridge Prop. Owners Ass'n v. Thornton*, 732 A.2d 804, 807 (Conn. App. 1999) ("the heart of the Common Interest Ownership Act relates to the declaration . . . and the data it must contain"). In the *Emerald Ridge* case, a Connecticut court ruled that because a particular declaration lacked "many of the essential provisions required by the Common Interest Ownership Act," it could not conclude that a common interest community was created. *Id.*

Emerald Ridge is considered an odd, if not baffling, case. See Rick McConnell, "You Can't Always Get What You Want -- But If You Try Sometimes, You Might Get What You Need": *The Search for Single Family Homeowner Protections in Missouri*, 69 UMKC L.Rev. 409, 416 & n.30 (2000) (describing *Emerald Ridge* case as "somewhat perplexing" and explaining that "court appears to be discussing the weight of evidence for a summary judgment motion"). It does underscore the importance of the provision in the Act requiring that a declaration contain certain information. See 15A Am.Jur.2d, *op cit.* (citing *Emerald Ridge* for proposition that condominium acts "generally set out certain information that a declaration must contain"). It cannot support the proposition, however, that recording a deficient declaration will avoid a common interest community from being otherwise subject to the Act.

The better view is that if a development project, and not strictly its declaration, satisfies the definition of a common interest community, it should be subject to the Act. See Katherine N. Rosenberry and Curtis G. Sproul, *A Comparison of California Common Interest Development and the Uniform Common Interest Ownership Act*, 38 Santa Clara L.Rev. 1009, 1026 (1998), citing Unif. Common

Interest Ownership Act §2-120(d) cmt. 3 (amended 1994), 7 pt. 1 U.L.A. 516 (1997) (concluding that "[a]lthough a common interest community is not created until the requirements have been satisfied, any project that satisfies the definition of common interest community . . . is subject to the Act, even if the requirements have not been met. Thus, a developer cannot avoid the Act by merely failing to record a declaration.>").

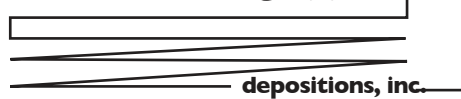
As a result, courts are likely take a course short of nullifying a common interest community, where a declaration may be deficient, yet "executed in the same manner as a deed." To take an instance, under AS 34.08.170(a), "Plats and plans are a part of the declaration and are required for all common interest communities, except cooperatives." See also *Black*, 187 P.3d at 1000, n.15 (citing AS 34.08.090(a)). Citing that provision, a Colorado court ruled that without filing a plat or plan with a declaration, a developer could not exercise its special declarant right under the declaration to withdraw real estate and develop the real estate of a common interest community. *Snowmass Land Co. v. Two Creeks Homeowners' Ass'n*, 159 P.3d 662, 663-64 (Colo. App. 2006). Cf. *Hall Manors Owner's Ass'n v. City of West Haven*, 561 A.2d 1373, 1375-76 (Conn. 1989) (concluding that units in a conversion project units remained as apartments, and not condominium units, and thus was not entitled to municipal garbage collection, because its declaration did not have "condominium" as name of development and it did not refer to land survey, as otherwise required under Uniform Condominium Act).

Nullification of a common interest community would be appropriate, therefore, where a declaration is not only deficient under the Act (by not containing plats or plans, or other required content), but also was not "executed in the manner of a deed." See, e.g., *Neck River Farms Homeowners Ass'n v. Town of Madison*, No. CV980414013S, 2001 WL 1661601 (Conn. Super. Dec. 7, 2001), at *2 (finding that an incorporation certificate for a unit owners' association failed to meet requirements of a declaration for its planned community as it was not witnessed, or "executed in the same manner as a deed," as well as not having several components required of a declaration).

Some measure of support for such a moderate approach may be found under AS 34.08.750, which provides, in part, "The principles of law and equity, including . . . the law of real property [and] . . . substantial performance . . . supplement the provisions" of the Act." AS 34.08.750.

With such considerations of these, drafters of a declaration for a common interest community would be well advised, not to start with any assumption that the development project does not fall under the Act, -- whether because of the project itself or the contents of its declaration, -- but rather the opposite, that it probably does, and then and only then contemplate if a particular exemption under the Act may be applicable.

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Video processing for digital photography

By Joe Kashi

Digital photography and desktop computing are fraternal twins. They're not exactly alike but have a lot in common.

Digital photography requires some pretty heavy duty computing and desktop printing power. At the same time, digital photography and videography add a great deal of clarity, power, and persuasiveness to presentations and written documents.

Digital photography and videography add a great deal of clarity, power, and persuasiveness to presentations and written documents.

Generally, a really fast, expensive video card is an unnecessary expense for most consumers and business users. However, if you plan to use your

computer for digital photography or make heavy use of the newest Adobe Acrobat 9 Professional, PhotoShop CS4, or other Adobe CS4 products, then you should consider getting a compatible video card that includes an Adobe-supported Graphics Processing Unit and at least 512 megabytes of fast memory installed directly on the video card. Digital photographers should avoid video cards that share memory with the overall computer and operating system.

Here's why a video card is becoming so important to serious digital photographers and technical users like engineers. Processing digital photographs, engineering drawings, and other technical files



"Replacing an older video card with a new, higher end video processor is not very difficult nor expensive. It's probably one of the best ways to upgrade a computer used for digital imaging"

demands a great deal of graphics manipulation and computing power. A general purpose CPU is not optimized for the sort of intense graphical processing required to process these high megapixel digital images. Even though the several most recent versions of Adobe's industry standard digital photo programs, Photoshop, Photoshop Elements, and Photoshop Lightroom, can recognize and use dual or quad core CPUs, they still tend to bog down when processing big image files.

Upgrading system memory to at least 2 gigabytes DRAM and installing a very fast hard disk and a quad core processor helps reduce long processing times, but it's still not quite enough.

There is another solution that happens to be fairly easy and inexpensive to implement. Starting with the very recent Adobe Photoshop CS4, Adobe now uses the Graphics Processing Unit (GPU) found on high end video cards to reduce Photoshop's processing times. GPUs are optimized for precisely the sorts of demands made by Photoshop. Recent high end GPUs are actually very fast computer cores that specialize in graphics manipulation, where general purpose CPU processors fall behind.

Replacing an older video card with a new, higher end video processor is not very difficult nor expensive. It's probably one of the best ways to upgrade a computer used for digital imaging.

Remember, though, that GPU processing only works with the most recent versions of Photoshop CS4, Photoshop Elements 7, and Lightroom 2.2. Older versions of Photoshop programs will not see any improvement. GPU processing of Photoshop images also works with Mac OS 10.5.4 and 10.4.11, 64 bit versions of Windows Vista, and 32 bit versions of Windows XP. The 64 bit version of Windows XP x64 is not officially supported and I have found that ATI's newest x64 software is unstable. You'll need to obtain and install the most recent Open GL 2.0 driver software for your new video card in Photoshop.

Not all video cards are suitable, though. To be supported, a video card can be any brand that is built around one of the supported GPU chipsets listed below and the card must support Open GL 2.0 or Open GL 3.0. A current listing of supported GPU chipsets can be found by searching www.adobe.com. We recommend that you download the later GPU chipset driver software from ATI and nVidia at these links: ATI video cards: www.ati.amd.com/support/driver.html ; nVidia video cards: www.nvidia.com/Download/index.aspx?lang=en-us.

Among the more common high end video GPU chipsets supported by Photoshop CS4 are:

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Legal technology guide published for solo and small law firms

Having the right technology in your law practice can be a valuable asset, but choosing the right technology can be a difficult decision. The best technology can save you time and money in the long run, as well as increase productivity, communications with clients, and your business.

A new guide by the American Bar Association Section of Law Practice Management, *The 2009 Solo and Small Firm Legal Technology Guide: Critical Decisions Made Simple*, offers the latest information and recommendations on computers, servers, networking equipment, legal software, printers, security products, smart phones, and anything a single lawyer or a small law office might need. This annual guide is the only one of its kind written to help solo and small firm lawyers find the best technology for their dollar.

Written by leading legal technology experts Sharon D. Nelson and John W. Simek, president and vice president of Sensei Enterprises, Inc., a computer forensics and information technology firm in Fairfax, Va., and Michael Maschke, Sensei's director of computer forensics, the second edition of this annual guide includes:

- A complete, unbiased overview of current legal technology products
- Step-by-step instructions for making sound technology decisions
- Guidelines on how to choose the right operating system and software for your office, including case management applications, billing systems, and document management solutions
- Information you need to determine what you need to go wireless
- Advice on how to protect your firm from security threats, including viruses, spyware, and spam.

This new and updated edition also includes an introduction and a new chapter, "Paperless or Paper LESS: The Quest to Sanely Manage Paper in Practice."

What others have said about *The 2009 Solo and Small Firm Legal Technology Guide: Critical Decisions Made Simple*:

What a timesaver! In a one-hour sitting, the information in this single and easy-to-read text enabled me to make five or six decisions regarding my offices computer hardware and software needs that would otherwise have taken me many hours of research!...Up-to-date, very accurate, and given in the context of the unique issues facing solo and small firm lawyers.

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"For those who are trying to wrap their arms around the technology giant, this is a tremendous resource to consult before you take your credit card out of your wallet and ask, "am I making the right choice?"

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The ABA Law Practice Management Section is a professional membership organization providing resources for lawyers and other legal professionals in the core areas of the business of practicing law — marketing, management, technology and finance — through its award-winning magazine, webzines, educational CLE programs, Web site and publishing division. For more than 30 years, LPM has established itself as a leader within the profession by producing ABA TECHSHOW, the world's premier legal technology conference and expo, and through its publishing arm, which has more than 90 titles in print.

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Morgan Christen installed as Justice in June

The newest justice on the Alaska Supreme Court, Morgan Christen, was formally installed during a ceremony held June 12, 2009, at the Center for the Performing Arts in Anchorage.

Justice Christen was appointed to the court on March 4, 2009, by Gov. Sarah Palin, and began serving on the court shortly thereafter. Previously, Justice Christen served on the Anchorage Superior Court from 2001-2009, and as Presiding Judge of the Third Judicial District from 2005-2009.

Justice Christen was born and raised in Washington and received a B.A. in International

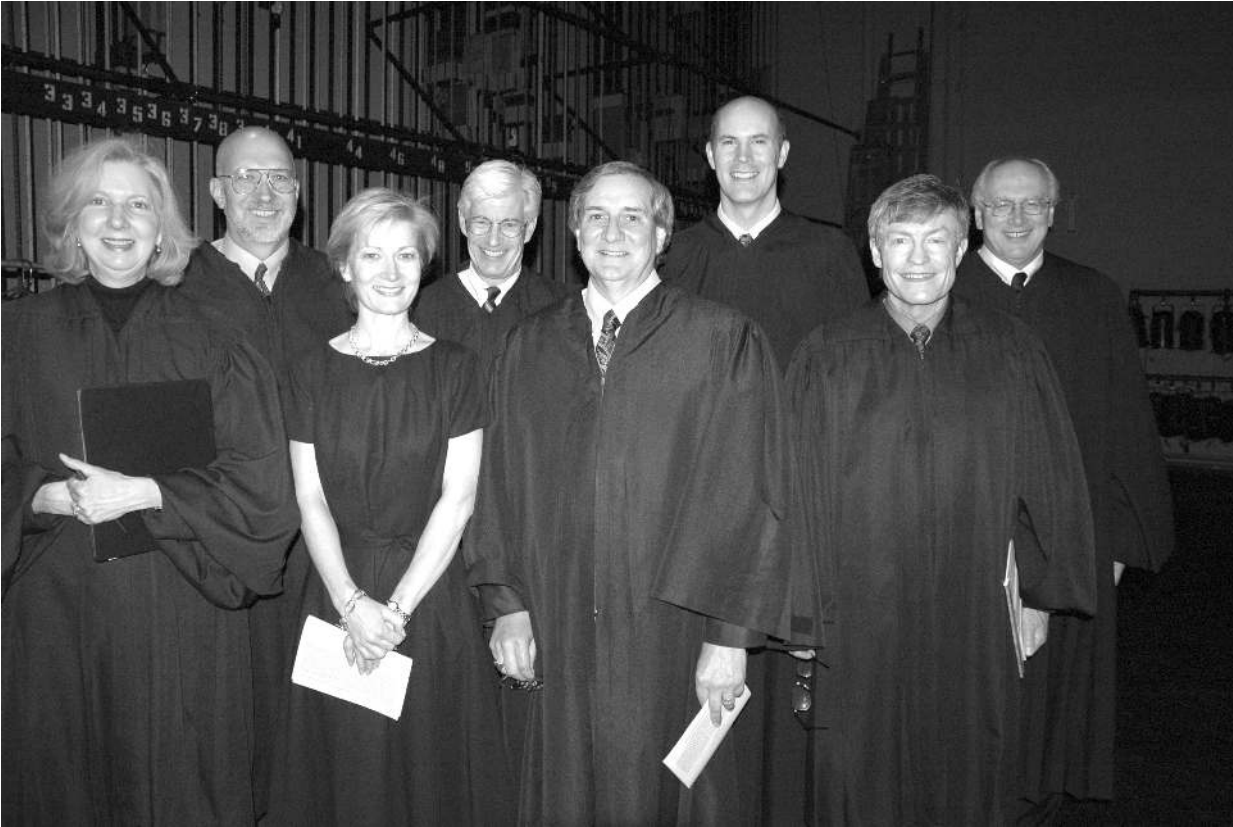
Studies from the University of Washington. She attended Golden Gate University School of Law in San Francisco and came to Alaska to clerk for Anchorage Superior Court Judge Brian Shortell (Ret.) after receiving her law degree.

After clerking, she entered private practice in Anchorage with the firm Preston Gates & Ellis (now K & L Gates), where she engaged in civil litigation for 15 years until her appointment to the judiciary.

In addition to her work in the legal community, Justice Christen serves on the board of directors of

the Rasmuson Foundation and the Alaska Community Foundation. She has received a number of awards for community service, including the Anchorage Chamber of Commerce's Athena Award, the CASA program's Light of Hope Award, and the Alaska Supreme Court's Community Outreach Award. In 2004, she and her husband, Jim Torgerson, were named Philanthropists of the Year by the Alaska Chapter of the Association of Fundraising Professionals.

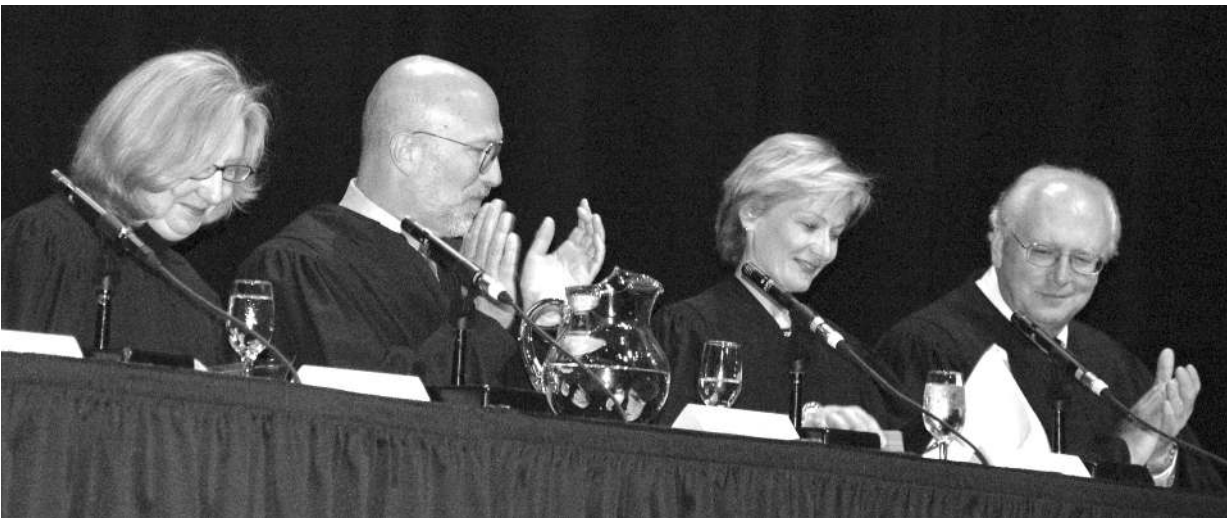
Justice Christen and her husband live in Anchorage, where they are raising two daughters.



Justice Christen visits backstage with colleagues who spoke at her installation ceremony, L-R: then Chief Justice Dana Fabe, Justice Walter Carpeneti, Justice Christen, Justice Robert Eastaugh, Justice Daniel Winfree, Anchorage District Court Judge Brian Clark, Court of Appeals Chief Judge Robert Coats, and Anchorage Superior Court Judge Peter Michalski.



Guest speakers at Justice Christen's installation ceremony included Vic Fischer, L, a delegate to Alaska's Constitutional Convention, who spoke on the importance of the constitution's Judiciary Article and Alaska's judicial selection process. In honor of this theme, everyone attending the ceremony received a pocket-sized copy of the Judiciary Article. Former state legislator Arliss Sturgulewski, R, spoke of her many years of friendship with Justice Christen and their travels together to the far corners of the state.



Chief Justice Fabe, Justice Carpeneti, and Judge Michalski welcome Justice Christen after her swearing-in.



Justice Christen is robed by husband Jim Torgerson and daughter Erin.

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Historical Bar

Territorial lawyers gathering June 12, 2009



More than 80 Statehood-era lawyers, spouses, widows and friends gathered for the 2009 Territorial Lawyers photo.



Jamie Fisher & Leonore Pepin



Mary & John Hughes



Leroy & Suzanne Barker



Verona Gentry & Jim Delaney

Dan Cuddy had other memories

Anchorage attorney and banker Dan Cuddy had other memories to share during Story Hour. The recent assault at Washington D.C.'s Holocaust Museum by James Von Brunn brought back memories of his military service in World War II, and caused him to comment on assertions that the Holocaust never occurred.

"I was in the 3rd Army division when we released (detainees) at Buchenwald," he said. As the Army liberated the camp, they saw the evidence of prisoner conditions. "They slept on shelves 4 high, with 4 to a shelf. The 'shower,' we knew, was a gas chamber. The pathways were made of cinders, and you can guess what the 'cinders' were composed of. The wife of the commandant had a lamp with the shade made of human skin. The Holocaust was there. I saw it," said Cuddy.

(Ed. Note. Buchenwald was the first Nazi camp liberated in the War, by Patton's Army, as the 3rd Division was known, on April 11, 1945. It was one of the major forced-labor camps, where the Nazis conducted many of the notorious human experiments of their regime. An estimated 56,000 prisoners were put to death in the labor camp. As the 89th Infantry's 3rd Division began over-running the region, the commandants at Buchenwald began to "evacuate" prisoners on April 8; 28,000 prisoners were evacuated in these death marches, with an estimated one-third perishing. When the 3rd Army Division liberated the camp 3 days later, 48,000 detainees remained in the camp.)



Sandra & Hugh Connelly



Sheila & Bill Erwin



Jim & Judy Powell relax before Jim becomes the 2010 Territorial Party chair.



Ted and Claire Pease found themselves at an empty-glass station.

Historical Bar

Territorial lawyers gathering June 12, 2009



The lawyers who were admitted in the Territory before Statehood are in a class by themselves. Top row: Dan Cuddy, Russ Arnett, Jamie Fisher, Barry Jackson, Jerry Wade. Bottom row: Don Burr, Charlie Cole, Ken Atkinson, Bob Opland, John Hughes, Jim Delaney.



It had been a year or so since the last territorial lawyers dinner, and Betty Arnett took a moment before Story Hour to read the list of those who had died during the year.

- George Benesch
- Bill Bogess
- John Conway
- Alan Compton
- Roger Cremo
- Bob LaFollette
- Nancy (Mrs. Ken) Jensen
- Martha (Mrs. Jack) Roderick
- Jack Stern
- Randy Clapp
- Carolyn (Mrs. Brian) Brundin

Photos by Barbara Hood



Bob Lowe & Virgil Vochoska



Dan Gerety & Jim Christie



Roger Dubrock



Ed Niewohner

Wayne Ross adds another tale to his colorful resume

Attending his first Territorial lawyers dinner, Wayne Ross had more to the story of his short-lived tenure as Alaska Attorney General earlier this year.

The young Ross arrived in Alaska in 1967, received his law degree the next year, and went looking for a job. It was the 4th of July, 1968, and Dennis Marvin at the Department of Law "told me to come to work Monday. I had a brand new wife and put on my brand new graduation suit, took my new briefcase, and waited in his office from 8 to 10:30 in the morning." Finally, the secretary rang in to Marvin to tell him "a new attorney" was waiting in the office. "On the phone, she said 'very well,' hung up, and told me that Mr. Marvin did not have the authority to hire. So I went home to my new wife without a job."

Fast-forward to 2009. Now in private practice, Ross was appointed Attorney General by Gov. Sarah Palin. "Remember 1968," said wife Barb as Ross went off to Juneau. "Don't come home without a job."

"Don't sell my desk," replied Wayne.

Sure enough, less than a month later, a politically inclined Legislature declined to confirm the appointment. "In 2 1/2 weeks I came home without the job," Ross said.

"So I've been fired twice by the Attorney General's Office. (But being attorney general will look good on the resume.)"



Elaine Andrews



Lory Hahn



Mildred and Bob Opland

Historical Bar

Territorial lawyers gathering June 12, 2009



Stan Reitman & John Roderick



Dick & Barbara Cole dine with Christine & Charlie Cole



Priscilla Thorsness



Peter & Kay Bartlett



Lucy Groh



Russ Arnett



Pat Thorsness and Ghislaine Cremo welcome Ed Niewohner at the sign-in table.

50 years of Statehood

Continued from page 1

from the law library.”

The disappearance of Fairbanks' law books collection “is a bone of contention and serious mystery in Fairbanks,” said Cole. Back in the 1950s, he was clerking for Judge Vernon Forbes, and learned that the Territorial federal courts had a fund for the purchase of law books. “Previous judges had guarded that money,” said Cole. During his clerkship “I began buying a lot of books. Jay Rabinowitz followed me” in the clerkship, “and he continued buying them. Over the years, we built a fine library at the old courthouse” When the new courthouse opened (ironically, the Rabinowitz Courthouse) the books were not among the historical assets moved into it. “Hundreds of books. All gone. Probably dumped,” lamented Cole.



Charles Cole

Other than the law books collection, the Fairbanks group agreed that they miss most the bar lunches at the Model Cafe, the notoriety of Second Avenue, and the Persian Room, which has been supplanted by the modern Spring Hill Suites. They don't miss the brown water from back then. “When you poured booze into it, it turned into shades of black.”

The early days of Statehood were far more convivial and casual that they are in the 21st Century.

Back in the 60s, recalled Warren Taylor, Mike Stepovich, Ed Niewohner, Connelly and Cole, they were sitting in the cafe, and noticed newcomers: “We were wondering what those two guys across the street in suits were doing in our town.” They were apparently among the first of the “big” law firms moving into Fairbanks, where the attorney population is now 230.

John Havelock also recalled the “close club” nature of the past. “We would all eat together, but that atmosphere has disappeared,” he said. He thought about the “different cycles of lawyers who have come to Alaska.” The 1959-60 generation of “Statehood people,” followed by the next cycles of lawyers following “pipeline money, the insurgence of multi-state firms, and conservation lawyers who made politics a little more balanced.”



John Havelock

Overall, Havelock believes, “the constitution has held up well, our judicial selection process is excellent, and we have very good judges, but we have seen the growth of ‘professional’ legislators and monied influence.”

For Jack Roderick, the partnering of federal and state interests will some day recognize the protection of “wilderness as our greatest achievement.”

--Sally J. Suddock



Pat and Dan Moore



Sandra Singleton & Carolyn MeVeigh

Saving money at Statehood

Allen Jewell recalled the early days of the Department of Law in the new State of Alaska. We were setting up in the AG's office with just 3 staff,” he remembered, preparing to try cases left by the feds. “The first case that came to us was down on the Kenai—somebody hoarding (poached game) meat in the freezer.”

Upon investigation, the new state lawyers found that the case involved a widow who was found with a moose that had been shot out of season, “trying to keep her kids fed.”

“I was supposed to prosecute this lady,” Jewell said. “We didn't prosecute, but we didn't tell (Attorney General) Warren Culver.” When Culver learned of the incident, “he said that he thought we saved the new state some money.”



Allen & Sandra Jewell



Bolded names are current or past Council members or staff; non-bolded are guests. Italicized were at the Alaska Constitutional Convention.

First row, left to right: Susan Orlansky, David Baker, Emily Marrs, Louis Menendez, Bill Gordon, Paul Ewers, Nicky Eisman, **Christena Williams**

Second row: Mark Ashburn, Larry Cohn, Eleanor Andrews, Justice Danny Moore (Ret.), *Katie Hurley*, Teri Carns, Dana Fabe, Randy Simpson

Third row: E. J. Pavsek, Susan McKelvie, *Vic Fisher*, Jane Angvik, **Susanne Di Pietro, Elaine Andrews, Bev Cutler, Susie Dosik, Alex Bryner, Carol Crump Bryner, Tom Dosik, Shawne Fitzgerald, **Jim Cannon****

Last row: Bill Clarke, Alan McKelvie, Fran Ulmer, **Bill Council, Jim Arnesen, David Alexander, **Marla Greenstein**, Kathleen Wilson, **Bill Cotton, Kevin Fitzgerald****

Also attended, but not in photo: *Walter (Bud) Carpeneti*; Judge Seaborn Buckalew (Ret.)

Alaska Judicial Council Celebrates 50th Anniversary

Past and present members, executive directors, and staff of the Alaska Judicial Council gathered for a 50th Anniversary celebration on June 13, 2009, at the home of Chief Justice Dana Fabe. Also in attendance were two of the surviving authors of Alaska's Constitution, Vic Fischer and Seaborn Buckalew, and the chief clerk of the Constitutional Convention, Katie Hurley.

The Alaska Judicial Council was created in 1959 under the Judiciary Article of Alaska's constitution, and since that time has played an integral role in Alaska's judicial selection process. The Council has also authored numerous reports on the administration of justice in the state and conducted many evalu-

ations of judicial officers standing for retention. As a result of the Judiciary Article and the Council's efforts to fulfill its promise, Alaskans have more access to information about their judges than most citizens in the nation, and enjoy a judicial selection and retention system that has served as a model around the world.

Photographs by Barbara Hood



L-R: Randy Simpson, Judge Elaine Andrews (Ret.) and Louis Menendez worked together as staff attorneys for the Judicial Council during the late 1970's.



L-R: Larry Cohn, current Executive Director of the Council visits with Bill Cotton, his immediate predecessor.



L-R: Judge Elaine Andrews (Ret.); Justice Danny Moore (Ret.); and former Council staff attorneys Susanne DiPietro prepare to cut the Council's birthday cake.

Rare flag presented to state courts



Justices of the Alaska Supreme Court pose with the 49-star flag presented to the court system by Rep. John Coghill in honor of the 50th Anniversary of Statehood, L-R: Justice Robert Eastaugh, Chief Justice Walter Carpeneti, Justice Dana Fabe, Justice Daniel Winfree, and Justice Morgan Christen.

49-Star U.S. Flag
Presented to the Alaska Supreme Court
By Rep. John Coghill
February 11, 2009

Alaska became the 49th state in the union on January 3, 1959. For a brief period that year, the flag of the United States held 49 stars, and miniature 49-star flags were distributed to celebrate Statehood. A short time later, Hawaii became the 50th state, and the 50-star flag we know today was created. Flags with 49 stars became rare mementoes of state and national history.

In 2008, Rep. John Coghill discovered several old miniature 49-star flags in a Juneau souvenir shop. He was able to trace their source to a former Boy Scout official in California, who had received the flags on behalf of the Boy Scouts 50 years ago to sell for fundraising and had recently discovered an unsold supply in his attic. Ultimately, Rep. Coghill was able to obtain 64 of the unique flags to distribute statewide in celebration of the 50th Anniversary of Alaska Statehood.

The Alaska Supreme Court is honored to receive one of only five flags that were matted and signed in 2008 by the four surviving delegates to Alaska's Constitutional Convention, which was held in Fairbanks during the winter of 1955-56. The surviving delegates were: Jack Coghill of Nenana (Rep. Coghill's father); Victor Fischer of Anchorage; Seaborn Buckalew of Anchorage; and George Sundborg of Seattle. Mr. Sundborg has since died, and only three delegates now survive.

We are grateful to Rep. Coghill and the House Rules Committee of the Alaska Legislature for making the gift of this 49-star flag possible, and for preserving an important chapter in Alaska's history for future generations to enjoy.

Celebrating 50 Years of Statehood

Recalling the House of the 1st Alaska State Legislature

By James F. (Jim) Fisher

Political start - last Territorial primary- 1st state election



Fisher

After being separated from the U.S. Army in 1955, I ventured to Alaska, arriving July 25, 1955. This was a critical date, because I had to wait until July 25, 1958 to file for state office. I no longer had strings tying me to Texas and I had some motivation to become politically involved¹ in the Territory of Alaska. In the winter of 1955, I attended the Democratic convention being held concurrently with the Alaska Constitutional Convention in Fairbanks. The two conventions in December, 1955, provided my opportunity to become involved in Democratic Party activities which continued for many years and led me to run in the last Territorial primary in 1958. Although I won by 14 votes, it was an election mooted by the June 30, 1958 vote of the U. S. Senate authorizing statehood.

With the momentum provided by the Territorial election, I was easily nominated in the first state primary and the subsequent general election as one of the eight Democrats from Anchorage. We were all elected at large in an area extending from Cordova to Unalaska, which was designated a House of Representatives District in the Third Judicial division, now called the Third Judicial District.

Although some of this overview is from various document sources, most of it is my personal recollection². I had been in Alaska barely 3 years when elected, meeting a residence limit established by the Constitution. In retrospect it was a very fast ride. On the first day of legislative service in 1959, I found myself in a propeller-driven Constellation landing in Juneau on a misty January day, to serve in the House of Representatives of the 1st Alaska State Legislature.

Composition of first State House --33 Democrats, 5 the GOP & 2 Independents

We were a diverse cross-section peopling the newly admitted state. A 1959 sampling of the delegation would include: two women, 8 Natives, 10 fishermen, 7 businessmen, 5 lawyers, miners, government employees and others, the failed recollection of whom, prevents my enumeration here. A partial review of a few backgrounds of the 40 member House illustrate such variety as: Speaker Warren Taylor, a locomotive engineer turned lawyer; Majority Leader Peter Kalamarides, a former Anchorage police chief upgraded to a lawyer; Axel Johnson a Yup'ic fisherman from Kwiguk on the Yukon; Doris Sweeney, a bookkeeper, and Bob (nicknamed for his community, "Chicken") McCombe, formerly a small mine operator.

Independent Jay Hammond caucused with the Republicans while Independent Harold Hansen caucused with the Democrats. Possibly due to the lopsided political party composition, an aura of bipartisanship prevailed, probably smoothing the progress of organization as well as almost all of the other governmental structuring activities. The 1st Legislature accomplished a very large amount of legislation, as verified by its thick statute books, compared to the much thinner books compiled for several succeeding legislatures.

The bipartisanship on the first State Legislature was demonstrated very early when the committee members were selected on an apparently logical and evenhanded basis. The committee organization of the House of Representatives was guided by Richard J. Greuel, who served as a speaker of the last (1957) Territorial House of Representatives. It was a simple plan. Each representative was asked, with only one exception, as I recall, to name her or his first and second committee choices. Almost all of the selections were granted without protest. The members seemed largely satisfied. (It is difficult to challenge that statement since only four of the original 40 members are still living.) When the committee posts were assumed, most of us being "freshmen legislators" did not recognize the varied importance of the 10 committees to which we were assigned. That fact may have been responsible for little or no protest over the committee allocations.



A new 49-star flag flew over the state capitol entrance on July 3, 1959. P417-140 Alaska State Library Caroline Jensen Photograph Collection

Personally, I was not offered a choice of a first or second committee.

The experienced politicians, Greuel, Speaker Taylor, and Majority Leader Kalamarides (who years later while a Superior Court Judge, died in his own aircraft), decided I should be assigned to the Judiciary and Rules Committees. I was to "watch" Judiciary Chair John Hellenthal, suspicioned to be somewhat untrustworthy and something of a "loose cannon." It was a job that resulted in his retribution upon my personal bill to spotlight lobbyists! The Rules Committee assignment may have been influenced by Geuel's belief that he could influence me, mostly along the lines both he and Majority Leader Kalamarides wished. They always seemed a little wary and suspicious of Speaker Taylor's attitudes, outlook towards his job and personal aspirations.

Location of the 2 "bodies" then and now

(Both houses refer to the other as the other "body".) The House of Representatives and Senate met in the Territorial Capitol building, on the 2nd floor³. However, the desk space and arrangement for the House, composed of 40 members, now includes the area the 1st Legislature's House occupied, plus the gallery used in 1959 and for a few years thereafter.

The entire Senate met in the location now used as an antechamber for the House speaker's office! Today the State Senate's chamber, needing space for only 20 members, is located at the other end of the hall on the Capitol's 2nd floor. This Capitol building is the same building used by the Territorial Legislature, the First Judicial Division court, Alaska Communications Systems,⁴ U.S. Post Office, Attorney General's office, a small museum and several other offices and functions which escape my memory 50 years later.

The Judiciary Committee met around a table in the small museum housed within the Capitol. The entire museum was in a room probably not much larger than one used in a new classroom in KPC. I can't say with certainty that we pushed displays to one side to facilitate a place for our papers, but I do seem to recall we didn't use the entire table. Committee hearings were open to the public, but I don't remember any effort to encourage people other than committee members to attend. My presence possibly assured an open meeting and more importantly an accurate committee report. This was the primary reason I was consigned to be a member of the Judiciary Committee.

The House leaders, including Speaker Taylor, were afraid that absent pressure to hold formal committee meetings, Chairman Hellenthal would act in a characteristically high handed manner, by declaring his personal view on any matter on which the Judiciary Committee might report. The Judiciary Committee is almost always the last committee of referral for review, it is an important reviewer, as its report had a probable controlling finality for any legislative enactment and opinion, even though such opinion might not always square

with the law.

The First Legislature committee morning meetings were held before the daily floor sessions and were frequently convened after dinner.

Legislative committees are a critical part of the process⁵, where most all of the legislative deliberation on vast majority of all legislation is accomplished. Very little change is usually accomplished when the entire House of Representatives would convene for a floor session to either pass or reject any bill presented for a final vote prior to being passed to the other body.

A committee meeting would hear as many aspects of a bill as members had time for or, would tolerate⁶. After its deliberations, a committee would forward its written comments on a bill to the House for enactment. When the signed comments were called for on a bill, each committee member could specify his or her own recommendations, to pass, or not pass, or indicate no recommendation as to its passage. My presence assured more or less Judiciary Committee deliberation. The final written report served as a partial curb on Chairman Hellenthal --and what would probably have been his opinion rhetoric. Chairman Hellenthal's actions weren't totally self centered, however, since his advocacy secured passage of an administrative procedure act. That statute systematically guides the large amount of regulatory completion following almost every statute enacted.

The Rules Committee, the committee of final referral, schedules all bills and other actions. It serves as the gatekeeper for all matters considered by the entire House at floor voting time. Service on Rules allows its members considerable control over the flow of all legislative action. Such decisions are sometimes delegated to the chairman, as was the situation with Chairman Richard Geuel. He designated me a subcommittee chairman to hold hearings on all the governor's appointments. Such hearings were mostly a rubberstamp of the nomination, but if the nominee drew a bit of attention, there could be a considerable showing of interest.

Although I can't recall the exact person who I offhandedly questioned as being qualified, I remember the hearing session for his appointment nomination being filled to standing room capacity. Appearing on his behalf were senior legislators, and other prominent advocates to testify to his exemplary qualifications. The subcommittee chairman listened respectfully, with a few questions, and promptly recommended the appointee be approved!

All legislative consideration is not confined to Judiciary and Rules Committees. There were a total of 10 standing committees⁷. Examples of other committees would include Community and Regional Affairs, Finance, Health and Social Services, Resources, etc. Shortly after the legislative committee structures were in place, many committee sessions were commenced early in the morning

Continued on page 19

Recalling the House of the 1st Alaska State Legislature



Among the historical collection at the state library on Juneau is the House photo of the 1st Alaska Legislature. Legislature-1950's-07-Names, Alaska State Library Photograph Collection

Continued from page 18

and after dinner so as to accomplish and expedite the establishment of the entire structure of a new state government. In such committee meetings, a chairman would usually invite experts to testify first. After their presentations, other members of the Legislature and the public could comment, usually in that order. These night sessions were usually held in the most spacious places for the committee meeting. One example being the fifth floor courtroom⁸ in the Capitol, where the committee presiding over that hearing would sit at the counsel tables while other legislators and the public would await their turn in the gallery.

Priorities for the House of Representatives of the 1st Legislature

We felt a sense of awe, history and some anxiety, because it was necessary to shape the entire structure of the state government. In order to accomplish this, we debated and testified upon the legislation, early and late. The costs were followed very closely by Representative Earl Hillstrand, Finance Committee Chair, which was not a primary preoccupation—probably due to the knowledge of a Federal appropriation of \$10 million to help with the transition to statehood. There was a huge volume of legislation to review and I can recall paging hastily through bills just prior to a vote, which can hardly be described as thorough deliberation! It was reported that one representative even looked to the gallery to determine how his wife viewed a bill. She would give a discrete nod which determined his vote!

On voice votes, I always tried to boom out my vote, causing some chagrin when a tally vote followed to more accurately determine the will of the House and show how few actually made such noise⁹. As I recall, I arrived at such loud voting on my own, not prompted by Greuel or the Majority Leader. Voice votes could, and did, shape the final version of a piece of legislation before final passage. It was not intended to be frivolous.

When considering the issues to be voted upon, there were issues across the entire spectrum of the legal structure required to guide the new state. Examples of final votes would be those enacting the State Organization Act of 1959, an exemption for REA utilities from taxation¹⁰, institution of an administrative procedure act, setting the penalty for some crimes, and, of course, appropriations for the various departments and activities to fund duties of the state government.

Although this overview has emphasized the serious attention to public interest, there were personal agendas followed. One example was the tax exemption pressed by Majority Leader Kala-

marides for the REA's, which he pushed through to final approval. Another example was the killing of my pet bill, which was really nothing more than a declaration of ethical guidelines for behavior by lobbyists. Judiciary Chair Hellenthal so effectively panned it in the debate that it failed to pass. This was his retribution for my being a "watchdog" on his actions in the Judiciary Committee. Another occurred when I appealed a ruling by Speaker Taylor, which was made to further his own personal interest. I called for an appeal from the ruling of the Chair and it was sustained by the House. This was the only time such action was taken or sustained during the entire 1st Legislature.

There were some lighter moments

Some of the more frivolous times occurred in the famous "Bubble Room" of the Baronof Hotel. I can remember remaining for the close of business on more than one evening; but I never missed the daily session of the House due to such antics. In addition to the Baronof, there were a few bars and a couple of restaurants. One being Mike's in Douglas, a \$2 taxi ride across the Gastineau Channel. We also attended a few receptions and celebrations. I showed up one morning with a black eye—which caused some pointed comments¹¹. However, our diligence paid off when we were able to adjourn after only 81 days for the first session and 60 days for the second session. Early speculation was that it would take 6 months!

It was a rewarding experience to realize you were a part of history. In the intervening 45-plus years, all but an estimated four of the initial membership of the first state House have died, while for those of us surviving that is a sobering thought. The state has changed greatly due to oil and gas, fisheries and tourism since those days.

As a personal matter, I wish at this time that we could achieve consensus as we did in that era, for a serious fiscal plan, for addressing social problems, such as the potential adverse impact on education, as well as health and public safety, all threatened due to funding level reductions and poor or no fiscal planning.

Conclusion on the historical impact of launching the State of Alaska¹²

Democratic values, freedoms, and liberties were all incorporated (attempted?) in the Alaska Constitution¹³, summarized in the footnote. Possibly I view those recitations as so obvious as to not require further comment.

Reform was a guiding principal for writing the Constitution by its Convention. It apparently was substantially accomplished—but has been twisted by some ideology, i.e., the homophobic theme of a recent constitutional amendment on marriage.

Race and ethnicity were dealt with in the Constitution, Article I, but omitted was mention of gender. Fortunately the presence of the diversity of the 1st Legislatures foreshadowed later enactments addressing those rights.

The West: Land, expansion and environment are all enunciated in Article VIII pertaining to "Natural Resources" and certainly illustrate the trend of a push for occupation demonstrated by Europeans from their first arrival in North America.

Finis

One of the first attorneys on the Kenai Peninsula, Jim Fisher called himself "the last Roosevelt Democrat standing" when he joined other Territorial lawyers for the annual dinner in Anchorage in June. His former law partner, Jim Hornaday, convinced him to send this paper to the Bar Rag in recognition of the Statehood anniversary. It was previously published by the Kenai Historical Society in 2008.

FOOTNOTES

- 1 I ran for office in Texas in 1950—that is another story.
- 2 At the time I was a 32 year-old lawyer, recently divorced, born in Ohio, more recently from Texas, with service in the U.S. Marines and U.S. Army.
- 3 The 2nd floor is actually on the 3rd floor level of the Capitol, since the 1st floor level is designated the "ground floor," for a reason I cannot recall at this time.
- 4 Provided the headquarters for all telephone and telegraph service for the entire territory.
- 5 "Legislative Process in Alaska" published in recent years by the Legislative Affairs Agency
- 6 If a hot-button issue was receiving very repetitive testimony, the Committee might cut it short.
- 7 There are now additional 11 special committees — each with its own chairman and staff—is this patronage in action?
- 8 This court room no longer exists, with its space now being entirely dedicated to the Senate finance committee.
- 9 Voice votes were not used for final enactments. A tallied vote could be requested by a very few legislators. With the advent of electronic voting almost no voice votes are used these days.
- 10 This tax exemption has continued uninterrupted from the date of its enactment until today.
- 11 The black eye resulted from an attack of vertigo in a bathroom in a room in the hotel where I really wasn't supposed to be. Those details I did not disclose.
- 12 Appendix A in the original manuscript of this paper is an excerpt from a directory privately published by Representative Allan L. Petersen. From the fact it reflects the service of Senator Seaborn J. Buckalew, is the indication that it was published in 1960, after the slightly changed Legislature's membership was altered when Buckalew, McSmith and Orbeck were appointed to vacancies in the Second Session of the 1st State Legislature.
- 13 Constitution of the State of Alaska, Article 1, Declaration of Rights, sections 1-20; The Judiciary, Article IV sections, 1-8; Article V and VI, Suffrage & Elections and Legislative Apportionment; Article VII, Health, Education & Welfare; Article VIII, Natural Resources, sections 1-4; Article IX, Finance & Taxation, sections 1-6; Article X, Local Government; Article XI, Initiative, Referendum & Recall.

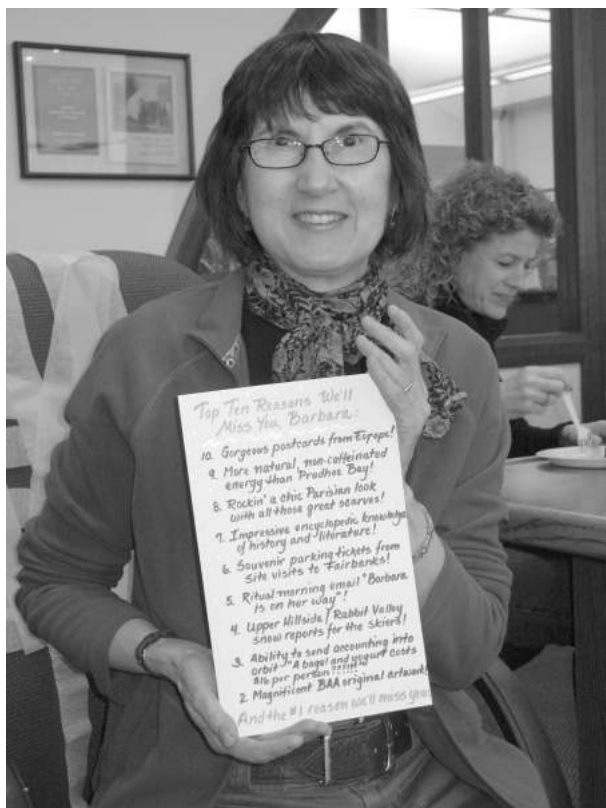
CLE in Transition: Armstrong, Bridge leave Bar; new CLE Director hired

Barbara Armstrong, who was CLE Director for the Alaska Bar Association since 1988, has left the Bar Association to take a position at the University of Alaska Anchorage Justice Center.

Barbara was on a one year leave of absence to vest in Tier 1 status with the State. During this time, she has been the editor of the Alaska Justice Forum, the UAA Justice Center's newsletter. The permanent editor's position was offered to Barbara this summer.

During Barbara's absence, Kara Bridge has been the Bar's CLE Director. She also now finds herself in transition; Kara's husband is an Air Force officer who is currently stationed in Korea. The family has relocated to Portland, Oregon, and Kara has been telecommuting since the Bar convention in May.

With the "loss" of two CLE professionals, Mary Patrick, currently Assistant CLE Director for the State Bar of New Mexico, has been hired as the new CLE Director. Mary has been with the New Mexico Bar for 7 ½ years. New Mexico is a mandatory Bar with about 8,000+ lawyers. Mary is moving to Anchorage in November, and is confident that she can adapt to the change in climate.



Little did Barbara Armstrong or the Bar expect that her "leaving" the Bar would become permanent during her Bye-for-Now party last year.



Kara Bridge and her daughter Riley wave good-bye.



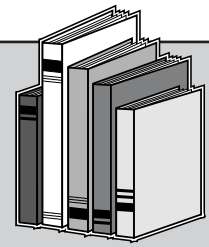
Mary Patrick will arrive in November.

Quote of the Month

“ I consider trial by Jury as the only anchor ever yet imagined by man, by which a government can be held to the principles of its constitution. ”

Thomas Jefferson

Law Library News



By Catherine Lemann

Palmer

The Palmer Law Library is open and ready for business! The library's new location is in the causeway to the Alaska State Office Building, near the grand jury room. The library offers a public computer with access to Westlaw as well as internet sites for the Alaska Court System, the Law Library, the Family Law Self-Help Center, and other resources. The new space has lots of windows as well as tables and chairs for extended research or a quick meeting with clients.

The library is stocked with print materials on a variety of subjects. There is a full set of Alaska primary law, including the Alaska statutes, reporter, digest, administrative code, state and federal rules, and municipal codes for Palmer, Wasilla, and the Matanuska-Susitna Borough. The library has selected Restatements in torts, contracts, and property, and the full U.S.C.A., updated through 2003 (current law is available on Westlaw).

The library's print collection also includes treatises on criminal law, constitutional law, torts, trial practice, and many other topics. Titles include Drinking/Driving Litigation, Tribe's Constitutional Law, LaFave Search and Seizure, Consumer Bankruptcy Law and Practice, Equitable Distribution of Property, Construction Industry Formbook, and many more. Come visit the new Palmer Law Library and see for yourself!

Self-Help Collection in Anchorage

Self represented litigants are one of the law library's main user groups. In Anchorage, there is now a collection of books next to the Family Law Self-Help Center computer to provide some help. Included is a set of Alaska statutes, Alaska court rules, Black's Law Dictionary, Guide to American Law, and Webster's Collegiate Dictionary. There are books from Nolo Press on a variety of topics, including: How to Represent Yourself in Court, Guide to Small Claims Court, Beat Your Ticket, Divorce, Social Security, Medicare, Landlord-Tenant, and more. Nolo's books are written in plain-English. While not Alaska specific, they do provide practical assistance. Some Nolo titles are available in Juneau, Fairbanks, and Ketchikan.



Alaska Legal History Series

Celebrating the 50th Anniversary of Alaska Statehood



Voices That Carried: The Framing of Alaska's Three Branches

The Annual Bar Historians Luncheon
Featuring audio passages from actual debates at
Alaska's Constitutional Convention, 1955-56.

Doug Pope--Moderator
Talis Colberg, Mayor, Mat-Su Borough--The Executive Article
Joe Josephson--The Legislative Article
Judge Karen Hunt (Ret.)--The Judiciary Article

Join us to recognize & honor members of the Alaska Bar Association
who have served in Alaska's three branches during the first 50 years of statehood.

Thursday, October 22, 2009
11:45 AM - 1:30 PM

Doors open at 11:30; Program begins promptly at Noon
Anchorage Hilton \$35.00 Call 272-7469 for Reservations or e-mail info@alaskabar.org

A Judiciary for Alaska

Justice Warren W. Matthews (Ret.)
Reprising his remarks at the 2005 Bar Historian's Luncheon

Thursday, November 12, 2009
Noon-1:00 PM

Brown Bag Lunch, Snowden Training Center, 820 W. 4th Avenue
Free & Open to the Public

Early Pioneering Judges of Juneau

Chief Justice Walter L. Carpeneti
Reprising his remarks at the 2009 Bar Convention in Juneau

Thursday, December 10, 2009
Noon-1:00 PM

Brown Bag Lunch, Snowden Training Center, 820 W. 4th Avenue
Free & Open to the Public

Co-sponsored by the Historians Committee of the Alaska Bar Association
and the Alaska Court System. For further information, please contact
Deborah O'Regan (272-7469) or Barbara Hood (264-0879).

NEWS FROM THE BAR

Board of Governors reviews items, acts on 22

- Voted to amend the 2009 budget by adding \$8,000 for contributions for statewide judicial retirements and installation events.
- Directed staff to investigate the cost of hiring a lobbyist to work with the legislature and the Judicial Council to introduce a bill to repeal the civil case reporting requirements.
- Voted to recommend two reciprocity applicants for approval to the Supreme Court.
- Discussed the character and fitness of a reciprocity applicant and requested follow-up and that the applicant appear before the Board.
- Voted to accept the Findings, Conclusions and Recommendations of the Area Hearing Committee to recommend to the Supreme Court that Willard Woodell be disbarred.
- Voted to approve the results of the February bar exam and recommend the admission of the 26 applicants who passed the exam.
- Voted to adopt amendments to the Bylaws, making corrections to Bylaws, Article II, Section 4(a)(1) and Article III, Section 3(c) and Article VII, Section 1(a)(9)-(12).
- Voted to adopt an amendment to Bylaw, Article IV, Section 8 defining "emergency" meetings of the board.
- Heard an appeal of a lawyer from the recommendations of the Lawyer Assistance Committee and determined that the lawyer could have an alcohol assessment by a state-licensed provider of those services. Name of provider and release to be given to Bar Counsel by 7/15/09. The lawyer should come back to the Board at its September meeting.
- Approved a three year contract with ExamSoft at a cost of \$47.50 per applicant taking the exam on laptop computer.
- Voted to publish Bylaw, Article IV, Section 10 regarding deleting this provision since it refers to action of the board without assembling.
- Reviewed an amendment to Alaska Bar Rule 41 adding service by e-mail with electronic confirmation to permissible methods of service in fee arbitrations and ratified Bar Counsel's memo on this issue.
- Took no action on the ABA's amendment to the Model Rule of Professional Conduct 1.10.
- Voted to adopt Ethics Opinion 2009-1, "Misleading to Characterize a Fee or Retainer as Nonrefundable." The Board asked that this opinion, which modifies 87-1, be put in the Bar Rag and E-News.
- Voted to adopt Ethics Opinion 2009-2, "Use of Membership in Lawyer Ranking System in Lawyer/Law Firm Advertising."
- Voted to reimburse Yale Metzger for his work as Trustee Counsel in the matter of unavailable attorney Dennis Acker.
- Asked Bar Counsel to draft a proposed rule to require lawyers to self-report convictions.
- Heard a report that four Bar members were suspended for non-compliance with the MCLE requirements in this first year of implementation of the rule.
- Approved the following appointments to the ALSC Board of Directors: 2nd District regular & alternate: Margaret Thomas and Conner Thomas; 3rd District regular & alternate: John Treptow and Tina Grovier; Board of Governors representative regular & alternate: Chuck Robinson and Gabrielle LeDoux.
- Approved the minutes of the January Board meeting.
- Voted to support the resolution by the Anchorage Bar Association seeking repeal of the civil case reporting requirements.
- Voted on the following slate of officers: President Sid Billingslea, President-elect Jason Weiner; Vice President Allison Mendel, Treasurer Hanna Sebold, Secretary Don McLean.

Bylaws amendment proposed

The Board of Governors invites member comments concerning the following Bylaw amendments. Additions have underscores while deletions have strikethroughs.

These two Bylaws refer to "special" meetings of the Bar Association membership called either by the Board or by 25% of the active members of the Association.

In light of the constraints on the types of meetings (regular and emergency) imposed on the Board under AS 08.08.075, these amendments change the reference from "special" to "emergency" meetings.

**Article VIII, Section 2
AMENDMENT CHANGING
"SPECIAL"
MEETINGS TO "EMERGENCY"
MEETINGS.**

**ARTICLE VIII. ASSOCIATION
MEETINGS
Section 1. Annual Business
Meeting.**

The annual business meeting of the Alaska Bar Association shall be held within the State at the time and at the place that is selected by the Board of Governors. Notice of the annual business meeting shall state the time and place scheduled for holding the meeting, and shall be provided to the members of the Alaska Bar Association at least six months before the meeting.

**Section 2. Special Emergency
Meetings.**

Special Emergency meetings of the Alaska Bar Association are defined as those meetings held at times other than the annual business meeting. Emergency meetings shall be called by the Secretary President upon a majority vote of the Board of Governors, or upon the receipt of a written application signed by not less than 25 percent of the active members of the Alaska Bar Association. The secretary shall issue the call for the meeting to be held not more than 20 days following the receipt of the written application.

Special Emergency meetings may consider only those matters that are specifically set forth in the call of the meeting. Notice of an Special emergency meeting shall be published electronically on the State of Alaska's Online Public Notice system and on the Alaska Bar's website, shall state the time and the place within the State where the meeting will be held, and shall be given as soon as reasonably practicable to the public press at least five days prior to that meeting the date of the emergency meeting. Each notice shall state specifically the matters to be considered at the special emergency meeting and shall be issued over the name of the Secretary, or in case of his or her failure or refusal to act, the President of the Alaska Bar Association.

**Article XII, Sections 1-2
AMENDMENT CHANGING
"SPECIAL"
MEETINGS
TO "EMERGENCY" MEETINGS.**

**ARTICLE XII. AMENDMENTS
Section 1. Amendments by the
Board of Governors.**

In accordance with the provisions of Bar Rule 62, these Bylaws may be amended by the Board of Governors at any regular meeting of the Board or at any special emergency meeting called for that purpose.

**Section 2. Amendments by the
Members.**

In accordance with the provisions of Bar Rule 62, any Bylaw adopted or amended by the Board of Governors may be modified or rescinded, or a new Bylaw adopted by a vote of the active members of the Association at any annual business or special emergency meeting.

Please send comments to: Executive Director, Alaska Bar Association, PO Box 100279, Anchorage, AK 99510 or e-mail to info@alaskabar.org by October 15, 2009.



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269-5044

Mike Lindeman
245-5580

Suzanne Lombardi
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John E. McConaughy
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Brant G. McGee
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Michael Sean McLaughlin
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Valerie Therrien
388-0272

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Vanessa H. White
746-8170



Liars and Lawyers Part Deux, a la dialog

By Peter Aschenbrenner

"Let me," Paul insists. "I've always wanted to introduce an article in the Alaska Bar Rag."

"Be my guest," I cede the floor.

"Alert readers – " 'how'm I doin'?" he winks at me.

"Don't drop your 'G's,'" I suggest. "Unless you're running for –"

Paul cuts me off.

"Alert readers will recall that I committed the World's Worst Logical Blunder in Scripture."

"That's true," I urge him on.

"So here I am, hanging out with the gang in Santa Barbara –"

"Enjoying the world's most beautiful weather," I interject.

"And they're going to redeem me."

"It's not an easy job," I add.

"Your apostle," he concludes, "is surrounded by celebrities and lawyers."

And we're off.

"I've always wanted to relive that moment," Augustine muses. "The moment I first believed."

"Not me," Paul remarks.

"I think it's that way for a lot of us. Especially if it came over you gradually. You'd really like to go back and do it all over again."

"Victor Mature did," I point out. "*In Metrius and the Gladiators*."

"Backsliding has its virtues," Paul points out. "Which does bring us back to Crete, and rather neatly," he adds.

"If I may?" I stay Paul. "Could I ask you something?"

I turn to Augustine.

"How come the Triunian religion changed so much from your century to your century?" I gesture from Paul to Augustine.

"By the time I started to write," Augustine replies, "and I wrote *Against the Academicians* in 387 AD, the Triune faith had become a state religion and the only one permissible. There's not much cachet in saying, 'I profess the only faith that the government allows me to profess.' Hence the necessity of undressing myself in public. Belief, or submitting to belief, was the only dangerous work around. Even if – 'or,' Paul adds, and cheekily so, 'especially if,' "if public acts of faith were legally compelled."

"Voilà, *The Confessions*," Paul speaks up. "And here I am, stuck with the Epistle to Titus around my neck."

"Which you didn't write," Augustine ripostes. "According to learned authors," and he adds the popular 'air quotes,' "and their much-beloved consensus."

"Disavow my authorship?" Paul asks. "That's not me," he tries it on.

"For heaven's sake, Paul," Augustine gets serious, "don't look to the logicians for help," he says. "We've had our hands full with the logicians."

"And still you've taken worse licks from the lawyers, although –" I note that the sommelier has joined us. "Diocletian à votre service," his badge proclaims – "the Romans conceded 'others pleaded causes better'."

"The burden of persuasion – as far as we're concerned – is not their highest art," Tertullian joins the crowd, shakes hands and orders up. "Falerian blush," he signals Diocletian, "any year before 200 AD."

"I'll bring you," Diocletian sniffs, "the best I have."

"Where did they say that?" Paul says, and asides to Titus, "I sure hope Nero's not in town."

"I hear ya, sister," Titus winks back and to me adds his 'demotic, don't you know.'

"I've always wondered about that," Augustine remarks. "If I may reflect on this point."

"Me too," Tertullian butts in, without, mind you, anyone asking for his opinion.

"'Parcere subiectis' is the phrase Vergil serves up. The Romans spare their subjects," Augustine riffs, "making those who are cast down the objects of a mercy –"

"Most political," Paul hotly rejoins.

"However," I counter, "your right of appeal to the Emperor was honored."

"You could have renounced your Roman citizenship," Titus joins me. "Liz Taylor turned in her passport. To avoid paying her taxes."

"We never gave up being Roman citizens," Tertullian and Cyprian chorus.

"And in a few years," Titus points out, "it all became a moot point. As soon as Constantine made the Triune the state religion."

"I knew that was coming," Paul rebukes his bishop.

"While the Aeneid, that hymn to civic duty and glory," Titus continues, "praises those who take down 'superbos' a notch, as in 'debellare superbos'."

"So that's," Cyprian ticks off the score, "*parcere subiectis* set off against *debellare superbos*."

"It puts the well-lettered," Tertullian pours another glass for himself and one for Paul, "in mind of Jerome's wordplay where –"

"Luke 1:51-52," Cyprian nods to one and all.

"'Superbos' is set off against 'humiles'."

"Yes, yes," The Bede forcefully signals with Charlemagne's mirror. "'Dispersit superbos,' as Jerome has it, against 'exaltavit humiles.' 'He has thrown aside the arrogant in the depths of their hearts,' if I may." The Bede supplies us a lively English translation, "'and raised the lowly in spirit'."

"The Magnificat," Cyprian titles the poem from which these lines are taken.

"But what you're saying," Paul scowls his conclusion, "is that a religion that offers better gods must compete with an empire that strives to make better laws."

"It must be conceded," Titus 'gives it up,' "that protection for the unfortunate victims of mundane events merits attention both divine and imperial."

"The motto might read," Tertullian mugs, "'better laws through better lawyering'."

"As a ship's physician," Augustine looks around for that apostle, "Luke was well travelled and well read."

"The Free Clinic," Antoninus Pius informs him and waves Augustine onwards. "Too bad you arrived on a Tuesday," he adds.

"Luke sets off – and better than Vergil's *super-* and *sub-* as contrasting prefixes – his Greek equivalents of same. 'Looking-down-on-everyone-for-the-sake-of-appearances' that is 'hyperephanous,' on the one hand, with 'hypsozen,' that is, 'the upraising of the lowly'."

"Those would be," Diocletian offers a trolley stocked with Falerian wines, "great names for Dalmatians. *Hyper* and *Hypo*, I mean."

"Or, on the other side of Split," Antoninus Pius, our maitre d' elbows Diocletian, "*Super* and *Sub*."

"So what's wrong with what I did?" Paul asks the assembly when the guffaws subside. "If I can bring the conversation back to my crimes, against literature or logic, as the case may be."

"Or both," Cyprian adds.

"Is there a rule," Titus joins us and takes the floor, asking me and Paul, "*sole* that lies outside anybody of writ and *that* extra rule dictates obedience to the body. Taken as command, of course. This is Paul's quandary," he concludes.

"The 'tyranny of the gaps' or 'anarchy of the gaps,'" Paul nods, "is what has always remained, riddled, as it were, for explication. Divine or human. Whoever-gets-there-first."

"Go on, Augustine," I urge him on. "You started it. Finish it."

"Or is it this: what is not expressly forbidden," Augustine taunts us, "is implicitly permitted?"

"So it's all permission," Titus winks, "'cept when it ain't."

"Why would you – or anyone – suppose there's there's something illogical about theology?" Paul muses.

"'Yo! Titus!' " Augustine adopts a salty seaside accent. "'Paul speaking. Lissen up!'"

Charlemagne signals for the floor.

Titus ignores him.

"When you find fat people," Titus goes on, "I mean, like really obese types, urge them to lay off the extra helpings. You'll be doing them a favor because healthy eating habits are an important first step on the road to disciplining your mind."

"You might say that there are folk who deny the 'portly' label."

"You may prefer 'pleasingly plump.'"

"For example, there's a Cretan who is revered as a prophet in Crete and he says his people are tubs. So don't let them deny their failings. The should-be converted. Just find one of them who will 'fess up and go from there.'"

"Yrs. Paul," Augustine concludes for Titus.

"I gave instructions to Titus," Paul begins. "On the subject of being a bishop. Of course, it's a bishop's job, directing his priests and deacons to join with unbelievers, and at close quarters."

"Hard to avoid," I point out. "Back then it wasn't illegal to unbelieve. Before 383 AD and all that."

"I was giving him advice," Paul ignores me. "'How to talk to an unbeliever.' You have to start where they are. What they say, what concerns them, what interests them –"

"Very sound advice. Very," I wave my hand over the spectacular seascape that washes the shore below us, "Mediterranean."

"The world," Paul concludes, "according to our – ahem, my – Triunian theology, is a messed up, confused and mixed-up kind of place."

"The world's full of contradictory remarks and statements. Each one considered as an event, a speech event," Augustine picks his way towards a notation, "like e this or e that."

"What you say is true. 'This testi-

mony is true,'" Paul sips his iced tea. "That's all I said. How could I get into so much trouble?"

"I don't know," I murmur, "that the Triunians have given you all you deserved."

"Augustine's the worst. And the first of my many critics," Paul sighs. "The western Roman Empire was tottering and he was –"

"Showing off?" I ask, "and I'm just taking a stab here. You've brought us around to 'Insolubia'."

"That very flimsy trick of theirs," Paul quotes Augustine. "'If a thing is true, it is false; if it is false, it is true.'"

"*Against the Academicians*," I am about to repeat myself but Cyprian is much too fast.

"Book 3.XIII.29."

He waggles his 'no no' at me.

"It's my job."

"I don't know," I return to Paul, "that your co-religionists dished the real dirt."

"You're saying," he takes what I offer, "that there's worse to come."

"Oh yes," I reply.

"If I may?" Augustine begins. "'He who is actually greater than the world can crave nothing, can desire nothing from the world.'"

"Cyprian," Xantippe nudges her husband.

"'How heavenly,'" Augustine concludes his quotation, "'to be loosed from the snares of this entangling world, and to be purged from earthly dregs.'"

"Letter to Donatus I.14," Cyprian intones, "if I may sail us to the safe harbor of the cybernauts."

Augustine glances at me.

I turn back to Paul.

"The floor is yours," I wave the Apostle on.

"And here's my counter-quote," Paul replies to Augustine. "'How can I persuade you if you enjoy the pleasures of the world?' Book One I.2, if I may provide the citation to your work, Augustine."

"But is it," Augustine ripostes, "a pleasure of the world – *in the world, from the world* – to teach how the world may be overthrown?"

"Does it not depend," Paul nods at me, "who is doing the heavy work of persuasion?"

"I put out," Xantippe declares, "a really mean 'New York style' cheese-cake."

"I'd be delighted," I reply, "if that's an invitation."

"I also do the punchlines," she adds.

"You appear quite," I turn to her husband, "what's the word I'm looking for? Spruced up."

"What did you expect?" Socrates asks me. "Flies buzzing around my head? That's Plato for you. Sooner or later someone will quote from *The Gorgias*. One of," he studies his nails, "my stellar performances."

"Speaking of your nephew," I ask, "where is he?"

"He's down on the beach," Augustine answers my question.

"The Academy. The Peripatetics. Arm-in-arm along the strand," I muse. "Imagine the dialogue they must be having."

"Actually," Paul brings me up short. "There's a go-cart track down there."

"Plato and Aristotle bet," Xantippe informs me, "on the races."

"They cheat," Socrates adds. "The one as bad as the other."

Color of Justice



Anchorage attorney Pamela Scott Washington, who served as a mentor and mock trial coach for Color of Justice 2009, enjoys the student's arguments.



U.S. District Court Judge Timothy Burgess speaks at the Color of Justice Mentoring Reception at Snow City Café on June 17. Fifteen attorneys and judges shared their stories and insights with participating students during "speed mentoring" sessions at the reception.

Color of Justice 2009 was held June 17-19, 2009, at the UAA campus and the Anchorage courthouses of the Alaska Court System.

Over 120 students and advisors participated in program events, which included a kick-off "Mentoring Reception" and three tracks of substantive workshops—one for high school students, one for college students and adults interested in legal careers, and one for adult advisors who work with diverse youth.

Now in its 7th year, the Color of Justice program

seeks to foster diversity in the legal profession and judiciary by encouraging young women and youth of color to consider careers as lawyers and judges.

The program is sponsored by the National Association of Women Judges, with support from the Alaska Court System, the University of Alaska Anchorage, the Council on Legal Education Opportunity [CLEO], the Law School Admission Council, the Alaska Native Justice Center, the Alaska Bar Association, the three major law schools of the Pacific Northwest—Gonzaga University

School of Law, Seattle University School of Law, the Northwest Indian Bar Association and the University of Washington School of Law. Planning is underway for next year's program, which will take place June 16-18, 2010, in Anchorage. Attorneys and judges interested in participating or referring participants are encouraged to contact the program coordinator at 907-264-0879 or visit the program's website to learn more: <http://www.state.ak.us/courts/outreach.htm#coj>.



Over 120 students and advisors participated in the 7th Annual Color of Justice program, which seeks to encourage young women and youth of color to pursue careers as judges. Here, the group gathers in the supreme court courtroom on the second day of the program.



COJ participant Breonah Jones receives her certificate of achievement from Judge Joannides and Judge Cutler at the closing ceremony.



South Anchorage High School Social Studies teacher Maria Skala, center, brought four students from her *We the People...The Citizen & the Constitution* ESL team to Color of Justice.



University of Alaska Anchorage Provost Michael Driscoll; Color of Justice Chair, Judge Stephanie Joannides; and University of Alaska Regent Kirk Wickersham visit during the Color of Justice Mentoring Reception at Snow City Café. UAA is a major co-sponsor of the Color of Justice program, the first full day of which takes place on the UAA campus.

Chitina revisited (These guys should just stay home)

By William Satterberg

I should have thought better about it. After all, I had barely survived the last trip. The physical injuries were yet to fully heal. The emotional damage was profound. Still, I could not resist the phone call that said, "Bill, let's go to Chitina again!"

"Why, Rick, would I want to subject myself to that type of brutality for yet another year?" I asked, vividly recalling the trauma of the previous year's ill-fated expedition.

"Because it's fun. Because it's what we do. Because we're Alaskans," he responded. (Rick has always boasted about his "Nativeness," openly chastising me for my wimpy, whining "white-man's" outlook on life in the wilds.)

Trying a different approach to weaseling out of the trip, I countered that fuel prices over the past year had escalated uncontrollably. The cost of purchasing salmon from the local fishmonger was now a far

better, more statistically successful option than driving 300 miles each direction to Chitina to dip some prop-eaten fish out of a treacherous river on the off chance that we might potentially "limit out".

On the other hand, there's always the lure of the quest. I was hopelessly trapped. I accepted the challenge.

We made two trips to Chitina that year. On the first trip, Rick, a crotchety, allegedly fragile 70-year-old and I drove the 6 hours to Chitina early in the morning.

Upon arrival, the plan was to hook up with a local friend of mine who had gone down two days previously with two other crew, and who had indicated that the dipping should be good.

Then again, he had based his report upon the reports that he had received from others, who had received their reports yet, still, from others, and on down the line. In short, by some standards, the reports were potentially unreliable.

Most of the drive to Chitina had been climate friendly. We were treated with partly cloudy skies,

and a gentle breeze. Unfortunately, the weather changed abruptly as we turned the final corner into Chitina. It became readily apparent as we descended into the Copper River Canyon that the winds which were earlier but a caressing breeze had become a full gale at Chitina. Trees were blowing sideways, sandstorms were everywhere, and whitecaps covered the river and lakes around Chitina Village.

Weatherwise, it was not going to be a good day. Rick and I debated for what seemed like an eternity, or at least a minute, and mutually decided against dip-netting. For one thing, we had not brought Rick's boat with

us. Instead, we planned to mooch off my friend's boat, adopting my time proven tactics, it is always better to break the other person's toys. My friend, however, was nowhere to be found, although his truck was parked near the boat launch--clear indications that he had gone "down the canyon," despite the typhoon conditions.

Rather than declaring the entire trip a waste of time, Rick and I drove to O'Brien Creek, a base for charter operations. We received a fish report from the local charter operator, Sam McAllister, who is widely respected for his honest fishing assessments. Sam candidly stated that the fishing was terrible. Sam was not running anybody else downriver that day and was shutting down for the weekend.

With chartering out of the question, Rick and I returned to the public boat launch at the Chitina bridge. I learned that my friend and his crew had returned from their downstream expedition. To our dismay, he reported that they had dipped earnestly for seven hours and had netted only five small fish.

The die was cast. Rick and I would return to Fairbanks and can the trip, if not red salmon. The following day,



"I could not resist the phone call that said, 'Bill, let's go to Chitina again!'"

my friend reported that scarcely one and one-half hours after we had left the area, the skies had cleared, the winds had died, a warming sun had emerged, and his scanty salmon catch had quickly reached the limits.

Let's try again

Three weeks later, Rick and I once again ventured to Chitina. This time, we had a back-up plan. Statistically, the odds were likely to be with us--no one ever

gets skunked twice. But if Chitina failed us, we would simply continue to Valdez, where the silvers were running.

Once again, I had thought about passing on the trip, but another reason for the journey had developed. An old college friend of mine, Eric Richardson, was also traveling to Chitina with a couple of his buddies that weekend. Eric and I could rendezvous and spend some quality time reminiscing about days gone by, as well as killing off a case or two of cheap boxed wine.

To my surprise Rick, a non-drinker, did not find much to like in that proposal. Perhaps Rick suspected that our plans did not include any fishing, whatsoever. Rick apparently knew well what "catching up on days gone by" really meant, but he graciously conceded.

This time, we took Rick's boat with us, despite the fact that Rick's boat had given us a few thrills on the previous year's trip to Chitina.

Following an uneventful drive, we arrived in Chitina. Predictably, Eric had yet to surface. I was not concerned. After all, Eric was coming from Anchorage, and had previously hinted that he probably would not be in Chitina until the late afternoon. To kill time, Rick and I decided that we would embark upon our own dipnetting adventure down the canyon to one of our favorite holes.

This trip was a peaceful mechani-

cal adventure, contrary to the previous year's trip, when the right wheel had fallen off of Rick's boat trailer when the wheel bearings failed for lack of grease, when the jet unit had broken off the back of Rick's boat for lack of bolt tightening, and when Rick's boat trailer frame had broken in half for lack of something.

The boat was launched without effort and actually floated. Someone had actually remembered to insert the drain plug this time. Even more remarkably, the engine started. Contrary to his usual practice, Rick also had remembered the keys. Soon, we were jetting happily down the narrow Copper River canyon, enjoying the scenery, but wondering why we saw no other traffic on the river.

Based upon good fish reports, we expected to have a successful trip. The lack of other fishermen could only mean that there would be more fish for us. In retrospect, had we been more logically inclined, and not blinded by desire, we might have realized that the reason nobody else was around was because, once again, the fish were gone. Either that, or the season was closed. Rick and I eventually found our favorite dipping hole. In less than a minute, Rick had a hit. Although the lucky fish got away, it was encouraging. Unfortunately,

with the exception of one other fish that we actually managed to land, that was the only hit we had for the entire afternoon. We cursed our luck. We had spent six hours of driving time, many gallons of valuable fuel, and risked our lives to catch one puny red salmon. Several hours later, dismayed by our total lack of success, Rick and I returned upstream.

Meeting the buddies

At the landing, I soon met Eric, and an old buddy from college known as Gary "Bucky" Buckman, and Bucky's already rather inebriated brother-in-law. Happy hugs were exchanged by all -- even with the schnoekered brother-in-law whom I had just met. Beer cans in hand, I was quickly welcomed into the clan like the long lost, prodigal son and made myself quite at home. After all, it was college days, once again, and they had brought the beer.

Much to Rick's growing impatience, Eric, Bucky, the well-tuned brother-in-law, and myself spent a significant amount of time on the banks of the Copper River reminiscing about the good ol' days, and drinking more than a few beers.

Since Chitina was clearly a bust, we debated the group's next plan of action. In time, a decision was reached. We would depart for Valdez. The fishing had to be better. Rick and I would leave that evening, the buddies to follow in their two motorhomes the next day, since none were fit to drive.

On to Valdez

Eventually, it was time to leave, with our one precious fish on ice. On our way out of Chitina Village, we crashed a wedding reception at the local bar, ate our fill of victuals, and I even kissed the unknown bride before

There's always the lure of the quest. I was hopelessly trapped. I accepted the challenge.

Based upon good fish reports, we expected to have a successful trip. The lack of other fishermen could only mean that there would be more fish for us.

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Alaska Bar Association

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Chitina revisited

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we were hastened out of town.

According to Rick, two hours later, we arrived in Valdez. Locating a half-star hotel, we checked into a basement unit, complete with asbestos-coated, banging heating pipes. Fortunately, the unit was large, the price was reasonable, and we were both exhausted and ready to sleep.

It was when we went to bed that I realized there was a reason why nobody ever liked to go camping with Rick. Rick snores with a gusto that would make an opera singer jealous. The room reverberated throughout the night. At various times, the decibels of Rick's snoring would increase or decrease, apparently based upon the excitement of his dreams.

Ultimately, after reaching the limits of endurance, I, too, succumbed to a most merciful sleep. But scarcely 10 minutes later, Rick was up, rummaging about the room and declaring loudly that it was time for us to go fishing. Rick said that I had no excuses, claiming that I had slept enough on the drive from Chitina to Valdez and that my loud snoring on that drive had kept him awake, too. So much for a good night's sleep. I was growing tired of him always accusing me of being a crybaby, even if it were true.

Following a calorie-ridden, carbohydrate clogged breakfast, we expertly launched Rick's vessel into the calm boat harbor on only the third try. Since Eric, Gary, and the drunken brother-in-law were not destined to show up until late that afternoon, Rick and I cruised out into the bay to do some fishing and fill our empty cooler.

Once again, the salmon gods unfairly tricked us. Within minutes, Rick hooked our first fish. Mentally, the cooler was already filled to capacity. Rick then lost the fish. For the rest of the day, it was hook/lose, hook/lose. Ultimately, Rick's technique improved, and we ended up landing our limit of fish.

(At one point, Rick and I both simultaneously saw a rod bouncing up and down after a fish had hit it. While we were debating who would try to land the bounty, the rod holder snapped in half. In seconds, Rick's prized Fenway graphite rod with its spendy Penn reel, all secured by his cheap Wal-Mart plastic rod holder, disappeared over the side of the boat. Rick vainly dove after the expensive rig, but missed capturing it. Running out of excuses as well as tackle, we returned to port and spent a bunch of money on replacement fishing gear and another cheap plastic Wal-Mart rod holder.)

As the sun set, we docked the boat and hooked up with my three friends at the local camper park for what was intended to be only a brief goodbye visit. But, the hallmark of a memorable outdoors expedition is flexibility.

Another day won't hurt

Rick and I had planned to drive back to Fairbanks that evening. Instead, following a few beers, and a couple of boxes of fine wine, accentu-

ated by the darkness, we decided to spend another night in Valdez, rather than risking a collision with a foraging moose. This time, we would sleep in Eric's motorhome.

Although Rick was sober, I was more than slightly relaxed. Rick did not want to listen to my snoring again. My friend Eric had developed the same affliction over the years. For the entire night, in the resounding din in the motorhome, I felt that I was a prisoner in a Sensurround theatre, even if both Eric and Rick later did blame the obnoxious noise on me.

The next morning, Rick and I voted to go fishing again. After all, the work day was clearly shot. Moreover, we now convinced ourselves that it was much safer to drive at night. Bucky, Eric, and the drunken brother-in-law, on the other hand, stayed in port to nurse hangovers.

After breakfast, we once again launched Rick's boat into the bay. To complicate matters, a dense fog had descended upon Valdez. But we knew that it would eventually clear, and we would get the jump on everyone else in catching fish.

As soon as we cleared the harbor's entrance, a thick mist enveloped us. Visibility was scarcely 10 feet. Not wanting to turn back and admit defeat, we slowly idled up and down the bay with the ghostly image of the nearby rock cliffs fading in and out of view. Despite our dedication, we had no luck along the bank. The fish simply were not there.

My frustration grew. My frustration gave way to panic when Rick unilaterally announced that we would depart the relative safety of the rocky shoreline for a distant location known as Gold Creek, where we had been successful the previous day.

According to Rick, there was no reason to believe that the tides had turned, figuratively speaking. Despite my warnings, Rick was committed. Rick assured me that his inherent "Nativeness" would protect him. Rick was on a divine mission. Being non-Native, however, I was not as confident in my future.

With an eerie, but uncharacteristic, bloodlust in his eyes, Rick gave me a simple order: At all times, I was to keep the nearby, phantomlike shoreline in view. Rick was the captain of our boat and, for that matter, our destiny that day.

Rick, as the driver, would focus his failing eyes straight ahead, trying not to slam into any boats, buoys, sea lions or other harbor paraphernalia. Collectively, as Captain and First Mate, we would seek our new world.

Predictable disaster ensues

In concept, the plan had some merit. However, neither of us had thought to watch the water directly beneath the boat for depth, weeds, or other hidden obstructions. Undaunted and confident in his strategy, Rick motored up the jet unit to three quarters throttle. Our little vessel soon planed itself up onto a fast cruise.

Five minutes into our imprudent high-speed venture into the fog, Rick's boat ground to an unscheduled and rapid halt. Our collective intellectual conclusion was that we had somehow

hit a hidden sandbar. To worsen matters, the boat's jet unit intake was now miserably clogged with weeds, dead fish and other repulsive ocean flotsam.

Fortunately, it was a quiet, warm morning. As we sat stranded on the sandbar, lovestruck fish could be heard happily splashing in the ocean water throughout the area, rejoicing in their newfound safety.

Rick and I debated on what to do. Stretching an oar into the water, I determined that the water was less than two feet deep. History had repeated itself in Valdez. I felt like I was marooned with *Exxon Valdez* Captain Joe Hazelwood.

Obviously, something had to be done. Rick suggested that I work first on the unit, but I reasoned it was the captain's job to save us. Rick eventually lost the standoff and "volunteered" to unclog the jet. If necessary, I could have walked ashore at that point, if I knew where the shore was in the thick fog. Moreover, as Rick's trusted lawyer, Rick knew that I was more than willing to abandon him on the sandbar. It was not a lack of loyalty. Rather, I figured it was like setting an old guy adrift on an ice floe. Two could play that Nativeness game.

Because Rick's boat was an in-board, the intake grate for the jet unit

was on the bottom of the craft, which was quite submerged. Fortunately, there was a top access cover, reachable by leaning out over the back of the boat. Despite the access cover, however, the inside of the unit was still submerged. The unit had to be lifted up somehow.

To solve this problem, Rick instructed me to sit at the very bow of the boat. According to Rick, my weight would lift the boat's stern out of the water just enough to allow Rick to lean out precariously over the back of

the boat and barely reach his arm into the narrow flooded auxiliary opening. In theory, Rick could then grab small handfuls of the tightly packed vegetation and eventually clear the unit. Although it would be a difficult and cold task, it was feasible. Since all I had to do was sit on the bow, the plan made sense.

All was going well until Rick, in one of his frantic efforts to reach the weeds, kicked our new fishing pole with one of his struggling legs. Once again, a valuable pole appeared destined to fly overboard and be lost forever in the surrounding two feet of clear, calm water. Having lost Rick's valuable pole the previous day, I was not about to let him lose another. Im-

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My assigned duty was simple. At all times, I was to keep the nearby shoreline in view. Rick was the captain of our boat and, for that matter, our destiny that day.

My frustration gave way to panic when Rick unilaterally announced that we would depart the relative safety of the rocky shoreline for a distant location.

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Chitina revisited

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mediate, decisive action was needed. Abandoning my station at the bow, I dashed to the back of the boat and grabbed for the pole. That is when the real problems began.

As I was racing for the pole, Rick was digging deeply for the impacted weeds, completely up to his gray-haired armpits in frigid saltwater. The old man's face was only a half inch at best above the pristine, icy waters of the majestic Prince William Sound. That half-inch, apparently, was created only by the fact that I had been stationed obediently on the bow.

Reconstruction of the ensuing event has now shown that the stern would have easily been several inches lower. But, none of this was

known to me at the time. Personally, my emergency response was most well-intentioned, and clearly without evil motives, even if Rick later disagreed.

When I reached the back of the boat, cause and effect quickly took its toll. The rapid shift of my weight

quickly translated the four inches of earlier clearance into six inches of present depth. As the boat sank into the water, so did Rick, his arm hopelessly ensnared deeply in the jet

drive. All that could be seen of Rick were his shoulders and back.

To my surprise, Rick's entire head had somehow suddenly disappeared beneath the water's surface. Although I was concerned, I concluded that Rick was likely okay because I could see his frothing bubbles and frantically

flailing feet. Still, I was conflicted. A decision had to be made: Whether I should save the new fishing pole, or Rick. Admittedly, it was a close call. I had to reconsider it twice.

Apparently, Rick was also trying to have input, since I heard increased burbling and gurgling sounds coming from under the water during my deliberative process. But, because I could not make out what Rick was saying, except for the occasional curse, I decided to save the new fishing pole. After all, Rick was getting old and could be replaced, even if there were no ice floes in the immediate vicinity. The pole, on the other hand, was new.

Once I saved the pole, I promptly walked to my appointed post at the bow of the boat, only pausing briefly to dig out a soda pop from the cooler rather than having to search for one later while Rick was busy.

With the balance shifted, Rick surfaced from his impromptu deep-sea diving experience. Although I thought he would be grateful, to my surprise, Rick emitted a cacophony of increased that made the surrounding waters boil and my already fragile self esteem suffer. Obviously, I had made a tactical error.

When the shouting finally subsided down, I explained to Rick that I was actually trying to save his valuable fishing pole, omitting the part about his advanced age. In the end Rick saw some logic behind my

actions. In fact, he agreed that he would do the same thing to me if ever given the chance in the future, which he promptly offered.

Once Rick dried off, he returned to unclogging the jet unit. One hour later, Rick extracted his ice-blue arm from the unit one final time. He then announced that the job had been completed. We could continue on our journey.

By then, the fog had lifted. For over 30 minutes, there had been a fleet of boats passing us en route to Gold Creek, with their rude occupants laughing loudly at our plight.

Fortunately, the remainder of the outing was uneventful. As the sun set that day, we returned to port, saddened only by the fact that we had only caught five fish.

In retrospect, we would have been better off returning to Fairbanks that morning. It was also clear that salmon fishing was over for the year, but that did not stop me from asking Rick about making plans for the following season.

Still, it appears wisest to simply sneak into the local supermarket and buy the fish. Before I return home, I can still roll them around in the sand for that "just caught" look and brag to Brenda about my successes. As an added bonus, the time saved from another fishing trip can be spent secretly partying with long-lost high school chums who enjoy fishing like I do.

No Google, Twitter, Text, or Phoning

The Michigan Supreme Court has banned all electronic communications by jurors during trial, including tweets on Twitter, text messages and Google searches, effective, Sept. 1.

The ruling will require Michigan judges to instruct jurors not to use any handheld device, including cell phones and PDAs. The state's high court issued the new rule in response to prosecutors' complaints that jurors were getting distracted by their cell phones, smart phones and PDAs, in some cases texting during trial or digging up their own information about a case and potentially tainting the judicial process.

Michigan's new rule follows a wave of recent cases in which jurors have blogged, posted Tweets or sent text messages during trials, infuriating judges and triggering mistrials, reported the National Law Journal July 1.

The journal reported mistrials, controversy, potential jury tampering, and other acts of electronic interference in Florida, Pennsylvania, Minnesota, Oregon, and Arkansas.

According to the National Center for State Courts, a number of states have grappled with the problem of allowing jurors to bring cell phones to the courtroom. A recent questionnaire sent to court administrators across the country showed that many courts are addressing the problem of potential juror misconduct through hand-held devices.

Alaska Bar Association Fall - Winter 2009 CLE Calendar

Date	Time	Title	Location
October 16 Live Webcast	8:30 a.m. - 12:30 p.m.	<u>Employment Law Update - What You Need to Know Now</u> CLE Number 2009-005 3.75 general CLE credits	Anchorage Hotel Captain Cook
October 22 Live Audio Only (?)	11:45 a.m. - 1:30 p.m.	<u>Historian's Luncheon - History of the Bench & Bar: Voices That Carried The Framing of Alaska's 3 Branches</u> CLE Number 2009-023 1.5 general CLE Credits	Anchorage Hilton Hotel
October 30 Live Webcast	8:30 a.m. -12:30 p.m.	<u>15th Annual Workers' Comp Update</u> CLE Number 2009-004 3.75 general CLE credits	Anchorage Hotel Captain Cook
November 4 Live Webcast (?)	8:00 a.m. - 12:30 p.m.	<u>Federal Rules</u> CLE Number 2009-021 TBD CLE Credits Sponsored by USDC	Anchorage Hotel Captain Cook
November 5 Live (NV)	3:00 - 5:00 p.m.	<u>Palmer - Off The Record</u> CLE Number 2009-028 2 general CLE Credits	Palmer Courthouse
November 10 Live Webcast	8:30 - 12:00 p.m.	<u>Ethics, Professionalism & Civility</u> CLE Number 2009-014 TBD CLE Credits	Anchorage Hotel Captain Cook
November 12 Live (Court to Video Record)	TBD	<u>Historian's Luncheon - History of the Bench & Bar: Justice Matthews</u> CLE Number 2009-026 TBD CLE Credits	Anchorage Snowden Training Center
December 9 Live (NV)	3:00 - 5:00 p.m.	<u>Palmer - Off The Record (ANC)</u> CLE Number 2009-029 2 general CLE Credits	Anchorage Hotel Captain Cook
December 10 Live (Court to Video Record)	TBD	<u>Historian's Luncheon - History of the Bench & Bar: Justice Carpeneti</u> CLE Number 2009-027 TBD CLE Credits	Anchorage Snowden Training Center
December 15 Live Webcast	9:00 - 11:00 a.m.	<u>Appellate OTR</u> CLE#2009-030 2 general CLE credits	Anchorage Hotel Captain Cook

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Russian delegation examines technology in Anchorage and Juneau courts

A delegation of Russian judges, court officials and university official, participated in the June 2009 Open World Program in Anchorage and Juneau. The event was hosted by the Khabarovsk/Alaska Rule of Law Partnership (KAROL3).

Managed by the independent Open World Leadership Center at the Library of Congress, Open World is designed to enhance understanding and capabilities for cooperation between the United States and the countries of Eurasia and the Baltic States by developing a network of leaders in the region who have gained significant, firsthand exposure to America's democratic, accountable government and free-market system.

While in Anchorage, the five delegates were introduced to the Alaska Court System's statewide automated case management system, reviewed electronic legal research available to the public, and observed the use of technology in trial court proceedings. The delegates also visited the U.S. Federal Court where a "state of the art" internet-based electronic filing system was demonstrated.

In Juneau, the delegation participated in discussions involving emerging technology issues, including prosecuting Internet child pornography cases, identify theft, privacy issues, court TV, and the use of technology by private law firms. The delegates toured the Juneau courthouse and visited the Alaska State Capitol to meet local legislative representatives.

The visiting delegates were from the Khabarovsk Region and included Chief Judge Yelena Yevgenyevna; Judge Yelena Borisovna; Anna Kolchina, Leading Specialist at the Department of Legal Organizational Support for Courts; Anatoliy Voronkov, Information Consultant and Pavel Zhiharin, a Department Head at Pacific State University. Yevgeniya Postoyenko from Krasnogorsk accompanied them as a facilitator.



Judge David Mannheimer, L, and Marla Greenstein, 2nd from R, listen to a toast by a member of the Khabarovsk Open World delegation at the June 23 gathering. The delegation's interpreter stands between them.



Members of the 2009 Open World delegation from the Khabarovsk Region of the Russian Far East gather for a picnic with Alaskan members of the Khabarovsk/Alaska Rule of Law Partnership [KAROL]. The gathering took place at the home of Anchorage attorneys Nancy Meade and Greg Miller on June 23, 2009.

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alaska judicial council

Anchorage District Court, Third Judicial District

Eleven attorneys have applied to the Alaska Judicial Council for a position on the Anchorage District Court.

Applicants for the judgeship will be evaluated by the Council's seven members (the Chief Justice, three non-attorney and three attorney members). Comprehensive background investigations, a survey of Alaska Bar members, and personal interviews with the applicants are all part of the evaluations, according to the Council's executive director, Larry Cohn. Interviews with applicants and a public hearing will be held in Anchorage. The Council will select two or more nominees to send to the governor. The governor will have 45 days to make an appointment from the Council's list.

Applicants are:

Daniel L. Cheyette: Mr. Cheyette is 39 years old, has been an Alaska resident for 12½ years and has practiced law for 10 years. He graduated from Northwestern School of Law, Lewis and Clark College in 1996 and is currently an assistant attorney general in the Office of Special Prosecutions in Anchorage.

John W. Erickson, Jr.: Mr. Erickson is 39 years old, has been an Alaska resident for 21 years and has practiced law for 9 years. He graduated from J. Reuben Clark School of Law in 1999 and is currently an assistant attorney general in Anchorage.

Patrick S. Hammers: Magistrate Hammers is 57 years old, has been an Alaska resident for 16 years and has practiced law for 29½ years. He graduated from the William Mitchell College of Law in 1979 and is currently a magistrate/standing master in Fairbanks.

Paul E. Olson: Mr. Olson is 60 years old, has been an Alaska resident for 32½ years and has practiced law for 31½ years. He graduated from South Texas College of Law in 1975 and is currently in private practice in Anchorage.

Carolyn Ann Perkins: Ms. Perkins is 41 years old, has been an Alaska resident for 5 years and has practiced law for 10½ years. She graduated from St. Mary's School of Law in 1996 and is currently a public advocate in Anchorage.

Keenan Powell: Ms. Powell is 53 years old, has been an Alaska resident for 27 years and has practiced law for 26 years. She graduated from McGeorge School of Law in 1982 and is currently in private practice in Anchorage.

Bruce Roberts: Mr. Roberts is 54 years old, has been an Alaska resident for 24 years and has practiced law for 22 years. He graduated from Golden Gate University School of Law in 1986 and is currently an attorney for the Transportation Security Administration, Office of Chief Counsel.

Pamela Scott Washington: Ms. Washington is 46 years old, has been an Alaska resident for 34 years and has practiced law for 15 years. She graduated from Arizona State University School of Law in 1991 and is currently a prosecutor for the Municipality of Anchorage.

Erin White: Ms. White is 45 years old, has been an Alaska resident for 11 years and has practiced law for 17 years. She graduated from

The University of New Mexico School of Law in 1990 and is currently a Special Assistant US Attorney for the Municipality of Anchorage and the US Attorney's Office.

Joan M. Wilson: Ms. Wilson is 44 years old, has been an Alaska resident for 19½ years and has practiced law for 12½ years. She graduated from Northwestern School of Law, Lewis and Clark College in 1996 and is currently an assistant district attorney in Anchorage.

T. Burke Wonnell: Mr. Wonnell is 39 years old, has been an Alaska resident for 29 years and has practiced law for 12½ years. He graduated from Washington and Lee School of Law in 1996 and is currently in private practice in Anchorage.

Public comment on the qualifications of these applicants is encouraged during the evaluation phase of the council's work. To comment, or for further information, contact Larry Cohn, Executive Director, Alaska Judicial Council, 1029 W. Third Avenue, Suite 201, Anchorage, Alaska 99501-1969, (907) 279-2526.



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