The Alaska BAR RAG

VOLUME 34, NO. 3
July - September, 2010

Dignitas, semper dignitas

Nikole Nelson selected as ALSC's new Executive Director

The Alaska Legal Services Corporation (ALSC) board of directors recently announced that they have selected Nikole Nelson to replace Andy Harrington as Executive Director of the corporation. Mr. Harrington served in different capacities since 1982 and was executive director since 2001. He is now working for the Alaska Department of Law in the Consumer Protection unit.

"We are very excited about Nikole's new role on behalf of our clients and look forward to continuing a proud tradition of providing high-quality legal services to Alaskans in need" said ALSC President Vance Sanders of the selection. Nikole Nelson has been working for ALSC since 1998 and was the Supervising Attorney of its Anchorage Office for the last six years. Ms. Nelson has a degree from Willamette University College of Law and a BA in English Literature from the University of Utah. Before moving to Alaska, she worked as a staff attorney for Oregon Legal Services.

Ms. Nelson stated "I am very honored to have the opportunity to lead this organization. ALSC has a committed group of great lawyers and staff, tremendous support from the private bar, and almost universal respect from the state and federal bench. My hope is to grow an already strong program and make meaningful access to justice a reality for low-income Alaskans across our great state."

Nikole Nelson

Alaska Legal Services Corporation is a non-profit organization established in 1966 and the largest statewide provider of free legal services in Alaska. For additional information, please visit their website at www.alsc-law.org, or contact Erick Cordero at the above number.

Pamela Scott Washington visits the Color of Justice display during Martin Luther King Day activities in Anchorage in January 2010.

Pamela Scott Washington appointed to bench

Pamela Scott Washington was appointed to the Anchorage District Court by Governor Sean Parnell on Aug. 9.

Washington is the first African-American woman to join Alaska's judiciary, and only the second African-American judge in the Alaska Court System's history. Anchorage Superior Court Judge Larry Card (Ret.) was the first African-American judge in Alaska, serving from 1993-2005.

Prior to her appointment to the bench, Judge Washington served as a domestic violence prosecutor for the Municipality of Anchorage. She earned an undergraduate degree in Telecommunications from Northern Arizona University in 1984, and a law degree from Arizona State University in 1991. Early in her legal career, she served as a law clerk for the Alaska Public Defender Agency and for Anchorage Superior Court Judge John Reese (Ret.). She then worked in private practice for thirteen years, including ten years as a solo practitioner in Anchorage, before joining the municipal prosecutor's office in 2006.

Throughout her career, Washington has been active in the Anchorage community. At the time of her appointment, she served as a Legal Advisor with Anchorage Youth Court, as Board Vice Chair of Crisis Pregnancy Center, and as an adjunct professor at the University of Alaska Anchorage.

Continued on page 3

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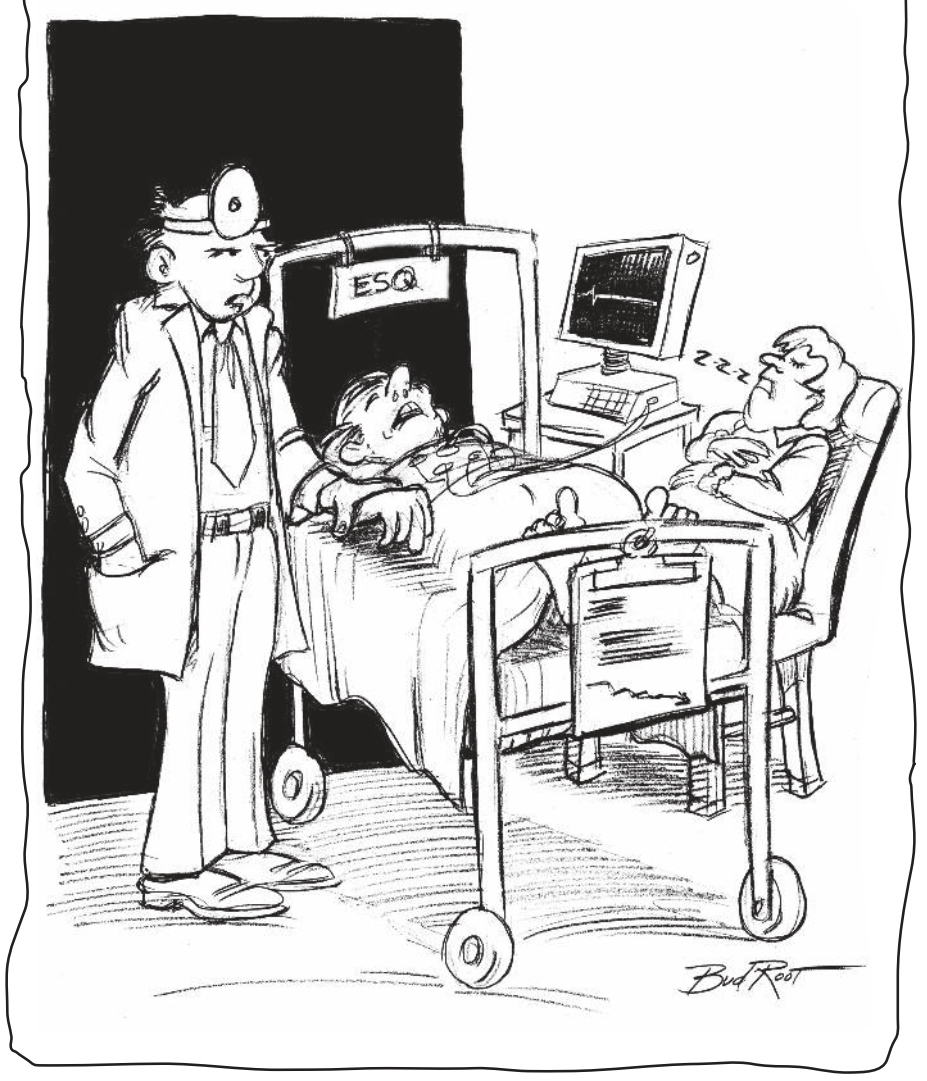
BE ALERT FOR THE BIG ONE! -- PAGE 20



IN THIS ISSUE

Territorial Lawyers Dinner

PRESIDENT'S COLUMN

Professor John Yoo to speak at 2011 Convention

By Jason Weiner

It is with great pleasure that we are able to announce the keynote speaker for the 2011 Bar Convention – Professor John Yoo from the University of California at Berkely. His new book is *Crisis and Command: A history of Executive Power from George Washington to George W. Bush* (2010). He has published more than 75 scholarly articles on foreign affairs, national security, and constitutional law. His other books are *The Powers of War and Peace* (2005) and *War by Other Means* (2006). He has contributed to the editorial pages of the *Wall Street Journal, New York Times, Washington Post, Los Angeles Times, Philadelphia Inquirer,* and *Chicago Tribune.*

While the above accomplishments are impressive, Professor Yoo is best known for his work as a deputy assistant attorney general in the Office of Legal Counsel of the U.S. Department of Justice, where he worked on national security and terrorism after the September 11 attacks. Professor Yoo drafted memoranda that President Bush relied upon to justify the use of force when gathering intelligence to fight the war on terror. Professor Yoo's view of executive power is particularly relevant today as we continue with the war in Afghanistan. Professor Yoo will also be presenting a CLE on the Friday of the convention addressing the interplay between military force and the use of law enforcement.

The Bar Association has always tried to cater to all members of the Alaska bar when planning the convention. This year, in addition to searching for CLE topics that will interest the private attorney members of our bar association, we have approached the leaders of several state agencies for ideas on a CLE that will appeal to all members. We are also working with the leaders of our young lawyers to help us arrange an event to bring the newest members of the Alaska Bar Association together. We appreciate the input we have received thus far, and would love to hear from anyone who may have additional suggestions.

"We will continue to do all we can to keep costs down while providing value to every member of the Alaska Bar Association."

We have been looking at the budget in preparation for the Board of Governors meetings in the fall. The Board made the decision three years ago to draw down the surplus and set the bar dues at a level to accomplish this. Now that the surplus has been depleted, the dues need to be set at a level to cover expenses. While the Bar Association has worked diligently to be efficient, we believe we will need to go above $600 in bar dues in the near future. Even if we were to decide to cut every arguably "optional" expense we have, it would still only save approximately $50 in bar dues, and while we may have some "optional" programs, they are also vital to accomplishing the mission of the Bar Association and serving its members. We will continue to do all we can to keep costs down while providing value to every member of the Alaska Bar Association. As always, we are open to ideas on how to increase efficiency while continuing to provide high quality service to our members.

Finally, I would like to briefly discuss proposed amendments to Alaska Rule of Professional Responsibility 3.8. This rule would arguably impose additional responsibilities on state and federal prosecutors. The changes were first proposed in August 2009 after the Rules of Professional Conduct Committee considered an American Bar Association report. At present, after going before the Board of Governors twice and being published twice in the Bar Rag, the rule is with a subcommittee of the Rules of Professional Conduct Committee for additional study. The Committee plans to submit a report to the Board at an upcoming meeting, probably in early 2011. On the one hand there is the concern that prosecutors will be inundated with potentially exculpatory information that they formerly had no duty to act upon. On the other hand there is the desire of all participants in our justice system that we convict only the guility, and the hope that proposed amendments to Alaska Rule of Professional Responsibility 3.8 will ensure that all exculpatory information is explored both before and after trial. The proposed amendments have been published in this month's Bar Rag, and the Board of Governors will be looking for your comments on how to proceed.

As always, it is a pleasure to serve you as your President, and please do not be shy if you have any questions or concerns. I want to hear from you.

EDITOR'S COLUMN

Implying good faith in offers of judgment?

By Thomas Van Flein

Well it's official now: Offers of judgment under Civil Rule 68 now have an implied value requirement imposed. Rule 68, and its corresponding statute, A.S. §09.30.065, are rather simple and, in my view, blessedly straightforward when textually reviewed.

It was that simplicity that made it useful in advising clients of the potential impact of an offer made or received. Both the rule and the statute drew a bright line and that line was easy to discern: Was the final verdict or judgment more or less than the offer (with a 5% buffer)?

But recently the Alaska Supreme Court started toying with the idea that the validity of an offer could be determined by the amount of the offer, whereas previously the amount of the offer simply determined who the prevailing party was. Validity was never at stake by the value of the offer. Prior to the most recent announcement, it did not matter if you made an offer of judgment for $1,000, $500, or $100. All that mattered was whether, after the dust had settled, one party beat that offer to trigger the fee shifting for the rule.

The court, in a series of decisions[1] that recently culminated with an opinion in *Anderson v. Alyeska Pipeline Service Co.* 234 P.3d 1282 (Alaska 2010), concluded that early "nominal" offers are not valid as a matter of law, and therefore will not trigger the fee shifting of Rule 68.

In *Anderson*, the defendant "made an offer of judgment . . . in the amount of ten dollars" plus add-ons. With the offer, the defendant explained by letter why it thought the plaintiff's claim was weak and likely to be dismissed. It turned out that the defendant was prescient and in fact the case was dismissed for the reasons foreseen by the defendant and explained in advance with the offer. As noted by the court, the claimant "did not accept the offer." Nevertheless, the court decided that the $10 offer was nominal and thus the offer was not valid and the fee shifting of Rule 68 was not triggered.

I understand the reasoning stated in the majority opinion, that an early "nominal" offer does not do much to settle a case, and Rule 68 was intended to resolve cases without a trial. It is just not that persuasive.

It is tautological to determine that an offer's validity must be sufficient to trigger the receiving party's financial interest to settle, since it assumes the receiving party is rational, capable of evaluating the facts and the law that will apply, and fair. Further, the implied requirement of a good faith (my term, not the court's) offer is highly subjective. What is or isn't "nominal" is subjective and always outcome dependent. A $250 defense settlement offer may seem nominal when the claimant seeks $50,000, but if the defendant obtains summary judgment who is to say it really was nominal? (I know, the trial court now, but stay with me on this).

"...recently the Alaska Supreme Court started toying with the idea that the validity of an offer could be determined by the amount of the offer, whereas previously the amount of the offer simply determined who the prevailing party was."

Likewise for the plaintiff. A tactically oriented plaintiff may serve a low, if not nominal, offer of judgment with the complaint, knowing the likelihood of the defense being able to act upon it within 10 days is slim. But up until now, the defendant ignored that opportunity with some peril, and the plaintiff who made a low-ball offer at the outset, may need the enhanced fee award of 75% of actual fees if the matter at issue is under $75,000 or so.

In other words, the enhanced fee award assured the plaintiff that if the defendant was not reasonable and forced a trial, and the plaintiff prevailed (by definition, by beating the low offer of judgment), that alone may have made the case economically viable for the plaintiff. Further, even a "nominal" offer of judgment can force the receiving party to revaluate the merits of a claim and possibly compel settlement.

More importantly, the court has not defined the parameters of what is or what is not "nominal." $1 sure (*Beal*). $10 yes (*Anderson*). But what about $500 or $1,000, or $2,500, especially when the claim involves far more than that? When serving an offer, it is done for tactical reasons by both plaintiffs and defendants. Plaintiffs typically have the advantage on early offers of judgment since they should be prepared on the merits of the claim, and damages, long before the defense. Without clear guidance, Rule 68 may be relegated to a post trial proceeding to determine if $500 was nominal, or $750, or even $2,500.

Assume for example a plaintiff made an offer of judgment for $5,000, but at trial obtains $80,000. Assume that 75% of actual fees under Rule 68 far exceed the Rule 82 award. Can the defense contend that the offer was too low, thus nominal, to trigger a valid offer? Conversely, assume the Plaintiff sought $80,000 and the defense offered $5,000 by Rule 68, and the jury comes back with $4,900. In light of the claim for $80,000, isn't $5,000 nominal in that it is only 6% of the value sought? Certainly an offer of 6% of the claim is arguably in the range of nominal and does not promote early settlement. The beauty of the old method was that none of this mattered. No one needed to question the amount, as the result determined the answer.

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The Alaska BAR RAG

The *Alaska Bar Rag* is published quarterly by the Alaska Bar Association, 550 West 7th Avenue, Suite 1900, Anchorage, Alaska 99501 (272-7469).

Publication Dates	Editorial Deadlines
January-March	Feb. 10
April - June	May 10
July - September	Aug. 10
October - December	Nov. 10

Board of Governors meeting dates
September 9 & 10, 2010
October 28 & 29, 2010
(July Bar Exam results & budget)
January 27 & 28, 2011
May 2 & 3, 2011
May 4 – 6, 2011
(Annual Convention – Fairbanks)

NEWS FROM THE BAR

Board of Governors Action Items September 9 & 10, 2010

- Voted to accept the Area Hearing Committee's "Finding of Fact and Conclusions of Law" and "Final Report of the Hearing Committee and Recommendations re: Sanctions" in the Disciplinary Matter of Wevley Wm. Shea, which recommended that Shea be suspended for 25 months, and that prior to reinstatement he be required to comply with Bar Rule 29(c)(1), and be required to demonstrate, via evidence from a psychiatrist or psychologist, that he is mentally fit to return to the practice of law.
- Voted to accept the revised stipulation in the Disciplinary Matter of Kevin Morford which states that the five year suspension commenced on the effective date of Morford's interim suspension.
- Voted to recommend nine reciprocity applicants for admission.
- Voted to reimburse, from the Lawyers' Fund for Client Protection, a total of $19,575 to seven clients in Lawyers' Fund for Client Protection matters involving two attorneys.
- Voted to adopt the Area Hearing Committee's order to dismiss James Hanlon's petition for reinstatement without prejudice.
- Voted to adopt the Area Hearing Committee's recommendation for disbarment in the Disciplinary Matter of Dennis Acker; Bar Counsel should file a motion for attorney fees and costs.
- The Board asked Bar Counsel to compile a matrix of discipline imposed by the Supreme Court so that the Board can see the range of discipline by category of conduct.
- Bar Counsel reported that the Alaska Rules of Professional Conduct Committee formed a subcommittee that will be reviewing the proposed amendments to ARPC 3.8, "Special Responsibilities of a Prosecutor," and they will report back to the committee in the next few months.
- Voted to send to the Supreme Court a proposed amendment to Bar Rule 10(f) providing for the appointment of more than one Board Discipline Liaison.
- Voted to send to the Supreme Court a proposed amendment to Bar Rule 36(a) correcting appointing authority language.
- Voted to send to the Supreme Court a proposed amendment to Bar Rule 40(f)(11) changing Fee Arbitration proceedings recorded "on tape" to recorded "electronically."
- An amendment to Bar Rule 34(b), which would have required Fee Arbitration when the client has agreed to arbitration in an agreement, died for lack of a motion.
- Voted to send to the Supreme Court a proposed amendment to Bar Rule 39(d)(2) clarifying waiver of the right to request or maintain arbitration.
- Voted to appoint Andy Harrington to the alternate position for the 4th Judicial District on the ALSC Board of Directors.
- Voted to approve the meeting minutes of the April 26 & 27, 2010, May 6, 2010 and June 3, 2010 board meetings.
- Voted to table the Family Law Self Help Center's request for a $5,000 grant for Spanish translation of videotaped topics.
- The Board had a mini-retreat to discuss a variety of upcoming issues.
- The Board met with the Alaska Supreme Court and informally discussed items of common interest.

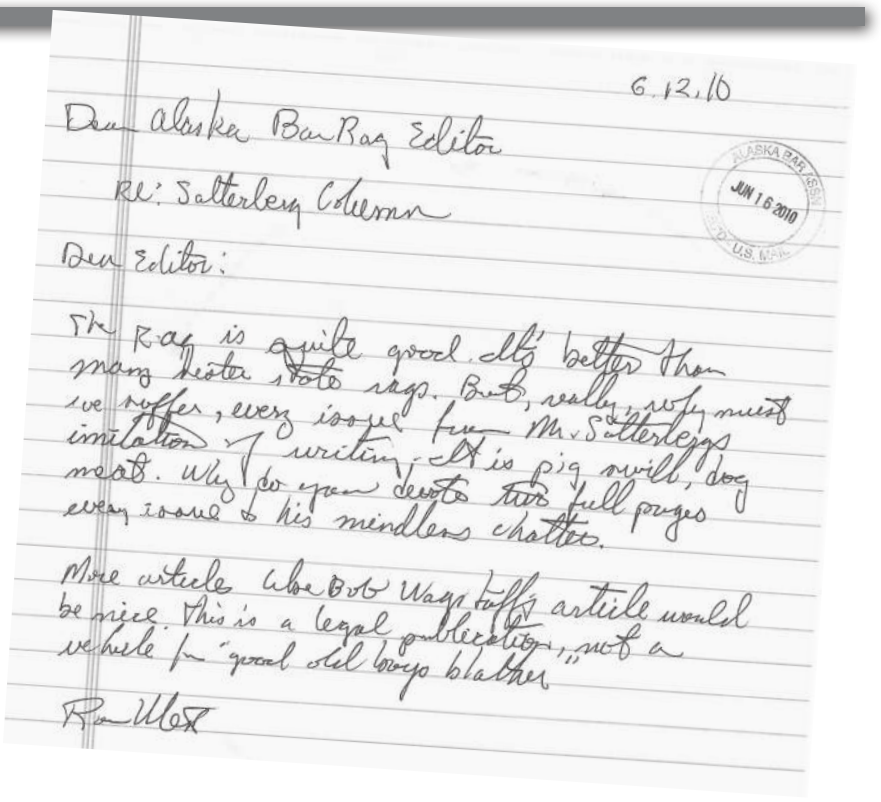
Washington appointed to bench

Continued from page 1

She is also a former board member of United Way. Washington has also served as a mentor at Mountain View Elementary School and the Youth Challenge Job Corp at Ft. Richardson. For several years, she has been a volunteer mentor/coach for Color of Justice, a program sponsored by the National Association of Women Lawyers that seeks to promote diversity in Alaska's legal profession and judiciary through law-related education.

In appointing Judge Washington to the bench, Governor Parnell noted that "her deep commitment to personal responsibility and community service demonstrate that she will serve the public well."

Letters



6.12.10

Dear Alaska Bar Rag Editor

RE: Satterberg Column

Dear Editor:

The Rag is quite good. Oh better than many Bester state rags. But, really, why must we suffer, every issue, from Mr. Satterberg's imitation of writing. It is pig swill, dog meat. Why do you devote two full pages every issue to his mindless chatter.

More articles like Bob Wagg's fluffy article would be nice. This is a legal publication, not a vehicle for "good old boys blather"

Ron Metz

ALASKA BAR ASSN. JUN 16 2010 U.S. MAIL

One of Bill Satterberg's fans was inspired to write to the Bar Rag editor....Satterberg's response? "Finally! Someone who actually reads and appreciates my column! Oh be still, my beating heart...Stern reply to follow."

Implying good faith

Continued from page 2

The court in *Anderson* stated it was not adopting a "good-faith test for offers of judgment." But by implying a nominal threshold, it is certainly on the road to evaluating the good faith of the offer, and that can only be done by weighing the claims and defenses—after all discovery and motions have been hashed out. ***Perhaps the lesson here is don't be too cute with the offers.***

On the defense side, offer real money to resolve the case, not $1 or $10, even if your evaluation is that you can obtain a defense verdict. On the plaintiff's side, the matter is more complicated, but logic suggests a nominal offer from the plaintiff may have the same problem.

It is more troubling, though, for a defendant to assert that a low-ball offer from the plaintiff was nominal and therefore invalid, if after a trial the plaintiff obtains more than what was offered. One could ask why the nominal offer was not immediately jumped on and the matter resolved? But, depending on the case and the clients, there are many reasons why defendants pass on early low-ball offers of judgments, especially since by definition the acceptance of the offer, no matter how small, requires judgment to be entered against the defendant. But that is an issue for another case.

Footnote

[1]In *Mitchell v. Teck Cominco Alaska Inc.*, 193 P.3d 751, 761 (Alaska 2008), the court noted that a $12 offer of judgment might be "nominal" but did not address it. In *Beal v. McGuire*, 216 P.3d 1154 (Alaska 2009), the court ruled that a $1 offer of judgment was nominal and invalid.

VOLUNTEERS NEEDED!

In February 2010, the Alaska Supreme Court launched a new educational outreach program, Supreme Court LIVE, to bring oral arguments in actual pending cases to student audiences at Alaskan high schools. Designed to help students better understand our justice system, this unique learning opportunity debuted at West High School in Anchorage on February 19, 2010, before 400 high school students from across the Anchorage School District. Now it's coming to Juneau!

Keys to the success of the program are the advance visits to classrooms by volunteer attorney teams. Attorneys provide both an overview of the legal system and appellate process and an in-depth review of the specific cases to be heard. As a result, students come to the arguments prepared and engaged, and leave with a good understanding of the process and the issues at stake.

We need volunteer attorneys! The court system will provide volunteers with case summaries and other materials so there is not a ton of work involved. And it is sure to be a great experience for all!

The program will be September 17th sometime in the morning (tba soon). Classroom visits will take place in the two weeks prior to the event (the court system will coordinate attorney schedules and classroom schedules).

Please e-mail or call Karen at
kgodnick@faulknerbanfield.com or 586-2210 to volunteer.
Thanks in advance for making this is success!

Substance Abuse Help

LAWYERS ASSISTANCE COMMITTEE — ALASKA BAR ASSOCIATION ©

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

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

Anchorage

Michaela Kelley Canterbury
276-8185

Dale House
269-5044

Mike Lindeman
245-5580

Suzanne Lombardi
771-8300 (wk)

John E. McConnaughy
343-6445 (wk)

Brant G. McGee
830-5518

Michael Sean McLaughlin
269-6250

Michael Stephen McLaughlin
793-2200

Greggory M. Olson
830-9792 (cell)

Anchorage

John E. Reese
345-0275
345-0625 (hm)

Jean S. Sagan
263-5414
929-5789 (hm)
952-1785 (cell)

Moira Smith
276-4331

Fairbanks

Valerie Therrien
388-0272

Palmer

Vanessa H. White
746-8170

FAMILY LAW

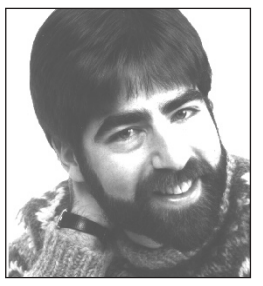
Running the small law firm

By Steven Pradell

Most family law attorneys are sole practitioners. Some have their own offices. Others office share or are in a suite of lawyers. An attorney may open as a solo lawyer fresh out of law school, while another may work for a firm before taking the plunge. In any case, opening up an office means that many decisions must be made as to how the practice is going to be handled.

A quarter of a century ago the Bar Association handed out a copy of Jay Foonberg's *How to Start and Build A Law Practice* to freshly minted Alaskan lawyers. I still have my copy. It's dog-eared and falling apart. But time and time again, after opening my office, I'd turn to it for sage advice. Foonberg, both a CPA and an attorney, saw the law office from more than one perspective. There's a lot more to it than helping clients with their legal problems. If you're opening up your own firm, purchase an updated copy. My version did not have anything to offer about the Internet, cell phones, or other recent developments. There are many resources out there for lawyers which address these concerns, such as *Flying Solo, a Survival Guide for the Solo Lawyer*, published by the American Bar Association, which has recently reduced its dues and increased its offerings for sole practitioners.

When I first opened up my office in 1993, I rented one room for little more than $100 a month and shared a copy machine with the Anchorage Youth Court. Previously I worked for one of the largest firms in town, where I dictated all my letters and almost never typed anything on my computer. When I became a solo lawyer, I had no secretary, paralegal, postage machine, courier, file clerk, office manager, or billing program. Consequently, I answered my own phones, typed the correspondence and monthly bills, licked the stamps, personally filed all the paperwork and made my own deliveries. I thought I was saving money. After one year of working twice as many hours and earning half as much income as I had the previous year, I realized that I was not saving money at all. Time is the asset most valuable to a lawyer. Delegating duties to others is essential to finding billable time to perform work for paying clients. But I learned how to do everyone else's job, and that experience has proved to be valuable in the long run.



"It may be wise to find a mentor and ask some questions before deciding whether or not being ultimately responsible for the administrative and the legal aspects of a law firm is something that you desire to do. "

Time is the asset most valuable to a lawyer. Delegating duties to others is essential to finding billable time to perform work for paying clients.

The following tips may assist a sole practitioner in running an effective office. First, some lawyers don't take credit cards. From a client's perspective, which lawyer would you choose when funds are tight, one that let you pay later using plastic now, or one that requires a large retainer of cash up front which you most likely do not have at the moment? Although there are fees involved, in the long run, it may make sense to offer this option.

Second, sending out bills a few days before the first of the month can assist with collection efforts. People often pay their bills around the first of the month. If your bill arrives after all the other bills have already been paid and funds are depleted, your bill may not get top priority. Payment may not occur until the next paycheck or the next month. Closing the billing cycle a few days early to ensure that the bills go out before the first of the month could result in more prompt payments and clients who are trained early on to expect your bill at a certain time and pay when they write checks for their other bills.

It may be wise to find a mentor and ask some questions before deciding whether or not being ultimately responsible for the administrative and the legal aspects of a law firm is something that you desire to do.

Third, as a cancer survivor, I was concerned that I would not be able to obtain health insurance. This was a very important issue for me at the time. Previously, as a member of a large law firm, I did not have to worry about this issue. In 1992, the Alaska Legislature passed laws which created the Alaska Comprehensive Health Insurance Association (ACHIA), which offered insurance to otherwise uninsurable Alaskans. This was what I needed to make the final decision as to whether or not to go it alone.

Finally, before I opened up my own office, I visited a colleague at his small office and looked around. We went to lunch and discussed the pros and cons of being in private practice as a sole practitioner. It may be wise to find a mentor and ask some questions before deciding whether or not being ultimately responsible for the administrative and the legal aspects of a law firm is something that you desire to do.

Call for nominations for the 2011 Jay Rabinowitz Public Service Award

MARK REGAN
2003 Recipient

ART PETERSON
2004 Recipient

Photo courtesy of the Juneau Empire.

JUDGE THOMAS B. STEWART
2005 Recipient

LANIE FLEISCHER
2006 Recipient

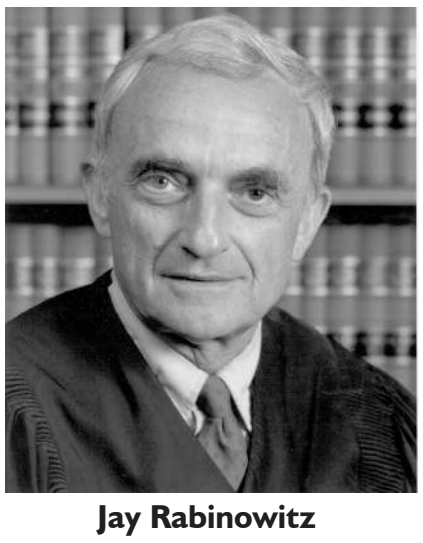
BRUCE BOTELHO
2007 Recipient

JUDGE SEABORN J. BUCKALEW, JR.
2008 Recipient

ANDY HARRINGTON
2009 Recipient

BARBARA J. HOOD
2010 Recipient

The Board of Trustees of the Alaska Bar Foundation is accepting nominations for the 2011 Award. A nominee should be an individual whose life work has demonstrated a commitment to public service in the State of Alaska. The Award is funded through generous gifts from family, friends and the public in honor of the late Alaska Supreme Court Justice Jay Rabinowitz.



Jay Rabinowitz

Nominations for the award are presently being solicited. Nominations forms are available from the Alaska Bar Association, 550 West Seventh Avenue, Ste. 1900, P. O. Box 100279, Anchorage, AK 99510 or at www.alaskabar.org. Completed nominations must be returned to the office of the Alaska Bar Association by March 1, 2011. The award will be presented at the 2011 Annual Convention of the Alaska Bar Association.

Since 1896
ALASKA BAR ASSOCIATION

ALASKA BAR FOUNDATION

ECLECTIC BLUES

Why do they hate us?

By Dan Branch

If you are reading this, most of your best friends are probably lawyers. The rest of you should consider another trade. We spend our days toiling alongside our legal brethren and our happy hours buying each other drinks. Some lawyers have even been known to marry within the trade. Why, then, do most folks love to hate us?

Evidence of animosity is thick on the ground. People blame criminal defense attorneys when someone pronounced guilty by the press is acquitted. Lawyers are blamed for the high cost of health care, big government, and the 2010 collapse of the L.A. Dodgers. (See, Lawyer Engineered Free Agency System). Doctors order us to submit to lots of expensive tests during yearly check-ups.

My father really disliked lawyers. To be fair he didn't think much of bankers either, but then he was depression-born and the bankers took away his parent's village store in Montana because he gave his neighbors credit when the banks would not. My decision to join the legal profession strained our relationship until he visited me in Bethel where I worked at the Legal Services Office. Guess he figured out I wasn't the kind of lawyer that evicts the poor to help bankers to more wealth.

Maybe the bar association should start a campaign to improve the image of our legal brand. It could be called the "we are not all that kind of lawyer."

Maybe the bar association should start a campaign to improve the image of our legal brand. It could be called the "we are not all that kind of lawyer." It would not help with the animals in my neighborhood.

Up on Chicken Ridge, once the winter home of Judge Wickersham, a gang of porcupines targets the gardens of lawyers for destruction. Ok, it is a gang of two but one is very large. The porkies killed the larch tree of one legal couple and are doing their best to consume all the apples on our golden delicious tree. I confronted the small one the other night as he munched away on our crop. He merely raised his nose in a sign of disdain and continued to eat.

A few years ago I tried to reason with a different porcupine as he made a meal of our Sitka Rose bushes. "Look," I said in the most civilized tone, "there is a perfectly delectable stand of raspberry bushes across the street – you know in the yard of the hardware store owner." The porcupine appeared to consider my suggestion until the neighbor in question came over to urge the predator to finish his meal in our yard. He did.

"Who in the legal profession hasn't had to convince some business person that, while they are licensed to practice law, they are not "that kind of lawyer."

Some of the domestic critters (dogs) on Chicken Ridge express apparent disdain toward the legal profession by defecating on the lawn surrounding a law office on 7th Street. In an attempt to reason with the loose-bowled hounds, the occupants put signs on their grass featuring a red line slashing across a crouching dog. The fact that dogs are color blind may have more to do with the failure of the sign campaign than canine anti-attorney tendencies. Or, maybe it was the attitude of the dog owners.

Who in the legal profession hasn't had to convince some business person that, while they are licensed to practice law, they are not "that kind of lawyer." My wife and I nearly had our application for a bike tour rejected because of how I earned our fee. We were only allowed to go on the tour after a mutual friend convinced the tour representative that I wasn't the whiny, demanding kind of lawyer. Sometimes I wonder if the conversation went something like this:

Tour Operator: You are from Alaska, have you heard of a lawyer named Dan Branch?

Kind Friend: Yes, why, what has he done now?

TO: Signed up for my tour of the carnation towns of Southern California

KF: Dan is great with kindness. He teaches non-violent crisis resolution at the Juneau homeless shelter and always waits until everyone at the table has been served cake before taking his piece. He doesn't mind making coffee or dropping off his neighbor's glass pop bottles at Recycling.

TO: Don't you have anything negative to say about him?

KF: Well, he does have an unexplained affinity for the Los Angeles Dodgers and he thinks the animals in his neighborhood dislike him because he is a lawyer.

THE KIRK FILES

Curb appeal, or the modern Maytag repairman of the future

By Kenneth Kirk

Oh, hey! Sorry, I didn't hear you come in. I was dusting in the back. Not that much to do around here. What can I do for you, anyway?

No, I'm sorry man, we don't accept papers anymore. Not up here at the appellate clerk's office, anyway. I think they still do that sort of thing downstairs. Nope, up here it's all electronic. You can file that stuff with our online system. If you want, there are some computer terminals you can use right over there. Ah... better let me dust that off for you first.

Okay, so you just enter the case number there, it'll automatically download the parties' information. No, no! Wrong button! See, that one is for child-in-need-of-aid appeals. That's why it got denied so fast. It just pops out "denied for the reasons given by the court below."

This one here is for civil cases, that's the one you want. Push this one to reset... there you go. Now just input your points on appeal. You want some coffee while you're doing that? We don't get too many visitors up here, but I can put a pot on.

All finished? Great. It'll probably be an hour or so before it e-mails the decision, since the server's kind of backed up. That always happens around 4:30. How do they decide it so fast? There's no "they" involved. Hasn't been for years. Appeals are all done by the computer now. There's really no human input at all.

Yeah, a lot of people find that surprising. I know way back in history they used to have a panel of judges who would sit around and argue about it, and then write out these long opinions. They wore these kinky black robes and I think had powdered wigs. I actually did some research on this because... well like I said, I don't have a whole lot to do around here. It was a really inefficient system, and even after they got computers refined to where the systems could do it, for quite a few years they still had these people sitting around a conference table. Even after the Microsoft/Apple merger they still had human judges for a good couple of decades.

Why did it take so long to change? As far as I can tell, the problem was that they had this archaic idea of "judicial philosophy." The idea was that these judge-types, they actually called them "justices," they had these different sets of beliefs which should factor into the decision. There was this really funny clip from a debate I saw on YouTubeClassic, where a guy named Joe something, I think he was actually the Vice President under Clinton or Reagan or someone, he was debating with some lady who apparently was Willow Palin's mom. Anyway he said that when he was making these decisions, he decided that judicial philosophy really mattered. I guess he must have been a judge once, I was never clear on that.

In the end the right-wingers lost the debate, because the various appellate courts declared that judicial philosophy doesn't matter in appeals anyway. They insisted that all they ever do is apply the law fairly according to the Constitution.

This whole judicial philosophy thing carried into the great Judicial Council debates of the Twenty-teens. There was this bunch of right-wing types who I guess must have been followers of that Joe guy, and they had this big argument that the Judicial Council shouldn't limit the number of candidates they sent up to the Governor to just a couple of people, because then the Governor couldn't choose somebody with the right judicial philosophy.

The Council wasn't supposed to consider the philosophy either, so basically nobody was in control of what judicial philosophies got on the bench. It was just random. Well not really random, what it meant was the judicial philosophies of a majority of the lawyers necessarily became the judicial philosophy of the bench.

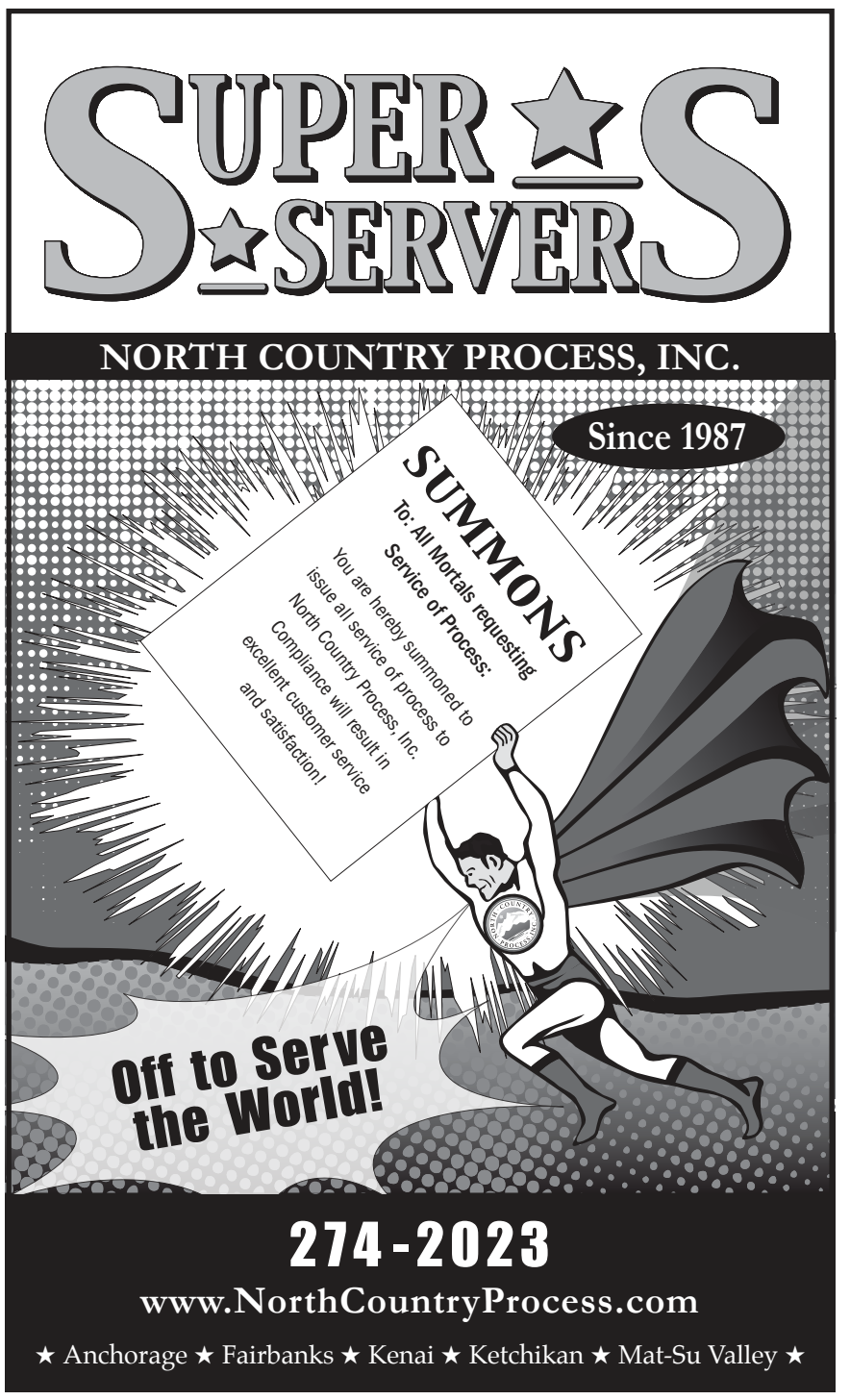
Why not what? Oh, why couldn't the Judicial Council consider judicial philosophy? I guess because that would have been undemocratic. Half of the Council members were chosen by the Bar Association Board of Governors, people didn't get to vote for the Board, so if you let the Council decide what the judicial philosophy of the people on the bench should be, you've just half-disenfranchised most of the public.

Imagine if you let the Board of Directors of the Kiwanis Club choose half the legislature. Okay, that's a little bit exaggerated, but not much. It's the same principle. The only way they could justify letting the lawyers choose half the Judicial Council, was that the Council insisted it was only there to evaluate credentials and ability. If they were considering judicial philosophy in their decisions, it would have undermined their argument.

In the end the right-wingers lost the debate, because the various appellate courts declared that judicial philosophy doesn't matter in appeals anyway. They insisted that all they ever do is apply the law fairly according to the Constitution. That became precedent, so it had to be accepted. And after a while, it was generally agreed that appeals were more-or-less mechanical. It was a short step from there, logically, to computerized appellate decision-making.

They actually do still have an Alaska Supreme Court. It's not really the same though, it's just a panel of tech guys over in India who deal with any software issues. They don't wear the robes or anything. At least I don't think so, they just shoot me an email when they need me to do something on this end, so I've never actually met them.

Last thing, which of the chips in your neck should we charge the filing fee to? Got it. Thanks for coming by. You can drop in and visit anytime, you know, you don't have to file anything. I can put on some more coffee. It gets kinda lonely up here.



Diary of two non-politicals: We'll miss Uncle Ted

By Jean Bundy

My husband Dave and I are not political. Like many Alaskans we vote independent and don't get asked on fly-in fishing trips. We're the parents who regularly provided pizzas for the debate team. Like Queen Elizabeth's sensible pumps and floppy hats, we are tagged reliable.

In the early '70s Dave was hired to work at Ely, Guess and Rudd by John Havelock who was heading to Juneau as attorney general. Gene Guess was Speaker of the State House and Dave and I began our careers as political voyeurs.

Sure, we've hob-nobbed. In the second grade, my father introduced me to Admiral Halsey, instructing me not to forget him…I haven't. President Eisenhower's doctor, Paul Dudley White, lived in our neighborhood and once followed me into FAO Schwartz curious about my interest in silly putty, he wanted some. Dave went to a birthday party for Richard Byrd's grandson and got a naval epaulette from the admiral.

I was performing the morning drill of loading the coffee pot when daughter Jenn phoned to tell us Ted Stevens had been in another plane crash. They say you remember where you were when you first heard of momentous events. I remember walking home from 8th grade when Liz, my worldly 9th grade neighbor, told me about John F. Kennedy's assassination. 9/11 happened when I was in graduate school at the University of Chicago. I can still see the mom at Ray Elementary, where daughter Maddy was a 5th grader, standing atop those hundred year wrought iron stairs shouting, "another tower had come down."

Dave and I would see Uncle Ted at Lucky Wishbone eating fried chicken with his grandchildren. Mr. Brown, the owner, along with café regulars would visit at his table. It always seemed reassuring to us newcomers to the Great Land that those who had contributed to statehood were still around town, eating burgers.

Our first glimpse of Ted was in the '70s at a World Affairs Ball. He and first wife Ann were celebrities--she wore big glasses and sported pigtails. In '78, I was sitting at the Dimond High pool watching my kids swim. Dave always came over after work but this time he brought bad news. His partner Joe Rudd had been killed and Stevens was badly injured. Joe hitched a ride from Juneau to Anchorage on the ill fated Lear jet hoping to bend Ted's ear about oil. Rudd's death left a vacuum in the firm as did Gene Guess' unexpected death. Young lawyers like Dave found themselves unexpectedly fast-forwarding their careers.

The VECO company became a key player in state politics after the Exxon oil disaster. Dave had handled the company's bankruptcy and helped with many of its acquisitions. We would be invited to holiday ballrooms of gowns and carharts or summer barbecues on tented lawns as local politicians connected with visiting congressmen. As a stay-at-home mom who supervised homework and drove endlessly to after-school lessons, any night out was welcoming. Ted would usually appear wearing a double breasted blazer and a bow tie. He'd talk about what he was trying to accomplish in Washington, finding a way to work in his experiences as a WWII fighter pilot.

Days before Stevens' second crash, I ran into Mark Begich in baggage claim at the Anchorage airport. We reminisced about one of Dave's first cases, the missing plane carrying his father. Hard to believe a few days later we would be experiencing another Alaskan tragedy.

Politics entered our home when middle child Elliott became school president at O'Malley Elementary. At West High he joined the staff of Perfect World, the Anchorage Daily News' teen page, routinely challenging authority for the right to print controversial narratives. Between summers at Columbia University, Elliott worked in Washington as an intern for Stevens and also Frank Murkowski, honing his communication skills. Ted always invited staff home for dinner and provided sightseeing excursions to Gettysburg. Our fourth child Oliver, a film major at Cornell, also benefited from an Uncle Ted/DC summer,

After college, Elliott returned to Stevens' Washington office but soon was sent back to Alaska to help Lisa Murkowski win her '04 Senate race. After Lisa won, he moved on to the McGavick for Senate campaign in Washington State and then to Florida for Giuliani's presidential run. By now Elliott had become a Republican which was perfectly fine with us, having raised our kids to think for themselves. Dave and I learned campaigns are managed by twenty-somethings who eat junk food, get little sleep and keep a packed suitcase. We also learned our metaphorical sideline seats weren't free from attacks as we received weird objects and threats in the mail and were verbally rebuked for raising

Jean Bundy's "Sensible Hat & Shoes," a metaphor for Uncle Ted's dependability.

a conservative.

Desiring a steady paycheck, Elliott moved into corporate PR after marrying Kristin, a communication expert; they met while working for Ted. Last week when he and Kristin were vacationing on the Kenai they cut short their trip and volunteered to help organize the funeral.

As parents we provided meals, while phrases like … lying in state, buses to the church, and security for dignitaries were heard across our kitchen table. Elliott hadn't brought business clothes so he borrowed a suit from Dave, oxford's from Kristin's dad, and a belt from brother-in- law Doug.

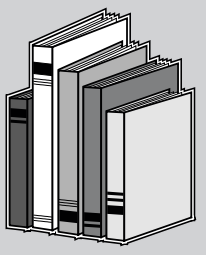
Dave and I debated walking the four miles from our house to the temple. "We'll arrive sweaty," concluding to watch the funeral on television. Late Tuesday after the final planning Elliott called to say he and Kristin had saved tickets for both sets of parents. Were we hypocritical to go? We remembered when Nick was at Inlet View and we wouldn't let him take a non-sanctioned field trip to Elmendorf for a Reagan stopover. Decision: Dave and I would attend Uncle Ted's funeral, as this was an unprecedented event like Woodstock, where many more claimed to have gone than actually went. We felt proud supporting Elliott and Kristin's endeavors and confident we would continue to be tagged reliable.

Jean Bundy, AICA/USA, is a writer/painter living in Anchorage 38144@alaska.net

Law Library News

More legal research on the cheap

By Catherine Lemann



In the April – June 2010, Greg Lambert wrote about cheap legal research options. He concluded that Casemaker, which is a benefit of membership in the Alaska Bar Association, is a good resource.

Being from Texas, Greg was not aware of the Alaska Case Law Service, http://government.westlaw.com/akcases/. This service, provided by the Alaska State Court Law Library, provides no fee access to all opinions of the Alaska Supreme Court and Alaska Court of Appeals from 1960 to the present. Public Access Westlaw is available to anyone who comes into the library. It includes published and unpublished opinions. Opinions can be searched by word, official citation, docket number, case name, judge name, counsel name, opinion type (i.e., majority, concurring, dissenting) and decision date.

West's editorial enhancements contained in the Pacific Reporter and Alaska Reporter (e.g., headnotes, synopsis, page numbers, etc.) are not included in this service.

And, while you need to leave the comfort of your office, Westlaw is available in all locations of the Alaska State Court Law Library. The content provided is all primary U.S. material, including U.S. Supreme Court, Courts of Appeal, District Court, U.S.C.A., Public Laws, CFR, Federal Register, and U.S. Code, Congressional and Administrative News for Legislative History research. It also includes primary resources for all 50 states, including cases, statutes, and administrative codes.

Westlaw also provides access to a variety of secondary sources including American Law Reports (ALR), American Jurisprudence 2d, American Jurisprudence Legal Forms, American Jurisprudence Pleading and Practice Forms, American Jurisprudence Proof of Facts and Trials, Jury Verdicts Northwest, Uniform Laws Annotated, Corpus Juris Secundum, and a database with journals and law reviews. You may email results to yourself and may print if the material is not available in your local branch. If you need technical assistance or help creating a search, you may consult the library staff in Juneau, Fairbanks, or Anchorage or call the Anchorage library at 888-282-2082.

The HeinOnline service provided in Anchorage, Fairbanks, Juneau, Kenai, and Ketchikan, was recently expanded with the addition of the Bar Journal library. This provides access to many state bar journals in a searchable format. The *Alaska Bar Rag* is included in the subscription with coverage from issue 1, published in 1978.

And, speaking of HeinOnline, the law library's subscription includes documents from the United States Department of Interior. The U.S. Statutes at Large are available. We recently added the Session Law Library. It will soon include all Alaska Session Laws from 1913 – present. All of these libraries are searchable.

The law library is a repository for older material. Some of our most frequently used resources are those that are not available in electronic format. This includes old Alaska Administrative Code Registers, administrative decisions, and Attorney General Opinions.

And, don't forget that Alaska Bar members may borrow items from the law library. If the material isn't available for you locally, we will mail it to you. The library staff will also fax or scan and email law review articles, book chapters, or other material.

The law library strives to make available information that meets the needs of its diverse users. I have a question for you: What are you working on? What types of cases? Have you checked the library's catalog to see if there is a treatise that might help with your issue? Please let us know if there are materials you would like to see in the Law Library. You may email suggestions to: library@courts.state.ak.us.

The 2010 Color of Justice high school participants and presenters gather in the Supreme Court courtroom at the beginning of the second day of workshops, which were held in the Anchorage courthouses.

Color of Justice to expand in 2011

The 8th annual Color of Justice program, which promotes diversity in the legal profession and judiciary through law-related education, was held June 16-18 in Anchorage. Events began with the "College & Career Track," which offered workshops on the law school admission process and pre-law support services to college students and other interested adults. The National Association of Women Judges (NAWJ) is the prime sponsor of the event.

The 2010 mentoring reception at Snow City Café followed the workshops, and featured NAWJ's new program "MentorJet: A Speed Mentoring Experience." MentorJet brought 15 diverse attorneys and judges together with 35 COJ participants for a festive evening of shared stories about law and legal careers. The next day, the "High School Track" kicked off with a luncheon at UAA, hosted by UAA Provost Michael Driscoll, and an afternoon of workshops in the UAA Consortium Library.

Following the workshops, students were divided into mock trial teams and practiced their mock trial roles with volunteer mentor/coaches from the Anchorage legal community. On the second and final day of the high school track, students attended workshops in the Boney Courthouse in downtown Anchorage, then participated in mock trials in the Nesbett Courthouse. Presenters throughout the 2 ½ day event included representatives from the American Bar Association's Council on Legal Education Opportunity (ABA/CLEO), professors and admission officials from Pacific Northwest law schools, UAA officials, and Alaskan attorneys and judges.

In addition to the NAWJ, co-sponsors included the Alaska Bar Association, the Alaska Court System, the Alaska Native Justice Center, ABA/CLEO, Gonzaga University School of Law, the Law School Admission Council, the Northwest Indian Bar Association, Seattle University School of Law, University of Alaska Anchorage, and University of Washington School of Law. The Color of Justice program has reached hundreds of Alaskans over the past eight years, and continues to offer an invaluable learning opportunity for both youth and adults who see a future for themselves in a legal or judicial career.

In 2011, Color of Justice will expand to two locations statewide. In February 2011, a new one-day program initiated by First District Presiding Judge Patricia Collins will be launched at Mt. Edgecumbe High School in Sitka. In June 2011, the 9th annual Color of Justice program will take place again in Anchorage. The tentative dates are June 22-24, 2011.

Members of the legal community are encouraged to refer interested students to the program. For more information about Color of Justice, please visit the website, www.courts.alaska.gov/outreach.htm#coj, or contact program coordinator Barbara Hood at bhood@appellate.courts.state.ak.us or 907-264-0879.

High school track participant Chris Hawk of Anchorage enjoys the view from the bench during the COJ mock trials.

Anchorage Superior Court Judge Sen Tan, a long-time presenter for the COJ program, offers his popular workshop "Top 10 Reasons Why You Want to Be a Judge."

Standing Master Jonathon Lack of Anchorage visits with Gabriela Gligoroska, an intern with the North Slope Borough Attorney's Office in Barrow, during the MentorJet Reception.

Anchorage attorney Leslie Hiebert, a voluntary mentor/coach for one the COJ mock trial teams, talks strategy with two members of her team.

Color of Justice

Miranda and Mindy Andrews from Mountain Village attended the 2010 COJ program. Travel assistance was available for students traveling from outside the Southcentral region through support from the Law School Admission Council, the Alaska Bar Association's LRE Committee, and the Alaska Native Justice Center.

Anchorage Superior Court Judge Stephanie Joannides, (L), has served as the chair of NAWJ's Color of Justice program in Alaska since its inception in 2003. She was recognized for her efforts by Justice Dana Fabe, NAWJ president, at the 2010 MentorJet reception held on June 16 at Snow City Café.

The University of Alaska Anchorage continues to play a major role in the Color of Justice program, hosting the first full day of workshops and activities at the UAA Commons and the UAA Consortium Library. Here, UAA Provost Michael Driscoll, R, joins students in the COJ High School Track for the opening luncheon on June 17. With Provost Driscoll is Monica Kane, executive assistant to the provost and member of the Color of Justice planning committee.

Chief Justice Walter Carpeneti served as one of the 15 mentors from the legal and judicial community at the MentorJet Reception.

Law professors from Pacific Northwest Law Schools present workshops during the Color of Justice program, along with national speakers from organizations devoted to increasing diversity in the legal profession. Presenters at the 2010 High School Track included, (L-R): Michele Storms, executive director, Gates Public Service Law Scholarship Program, University of Washington; Lynda Cevallos, pre-law advisor, American Bar Association Council on Legal Education Opportunity; Cassandra Ogden, executive director, ABA/CLEO; Prof. Lorraine Bannai, Seattle University School of Law; and Prof. Jay Kanassatega, director, Federal Indian Law Program, Gonzaga University School of Law.

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 2010

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

Vara Allen-Jones, UAA Vice Chancellor Academic & Multicultural Student Svs
Ella Anagick
Kevin Anderson
Prof. Lorraine Bannai, Seattle University
Maude Blair
Rex Lamont Butler
Judge Larry Card (Ret.)
Chief Justice Walter Carpeneti
Lynda Cevallos, ABA/CLEO
Rebecca Charles, Seattle University
Erin Dougherty
Michael E. Douglas
Provost Michael Driscoll, UAA
Whitney Earles, Seattle University
Cynthia Franklin
Stephanie Galbraith-Moore
Yessenia García-Lebrón, LSAC
Judge Sharon Gleason
Joy Green-Armstrong
Jeff Groton, NAWJ
Bernetta Hayes, ABA/CLEO
Leslie Hiebert
Barbara Hood, Alaska Court System
Barbara A. Jones, Chair, LRE Committee
Cheryl Jones, Alaska Court System
Prof. Jay Kanassatega, Gonzaga U
Monica Kane, UAA Provost's Office
Master Jonathon Lack
Natalie Landreth
Susan Lee, Gonzaga University
Theresa Lyons, UAA ETS Program
Dr. Sandra Madrid, University of Washington
Prof. Natasha Martin, Seattle University
Vonda Martinez, UAA Upward Bound
Cheryl McKay
Kadell Moore, Alaska Court System
Denise Morris, AK Native Justice Center
Margaret Newman, Alaska Court System
Prof. Stephanie Nichols, Seattle U.
Troy Nkrumah, Anchorage Urban League
Cassandra Sneed Ogden, ABA/CLEO
Kyan Olanna
Prof. Deb Periman, UAA Justice Center
Lesa Robertson, Alaska Court System
U.S. Magistrate Judge Deborah Smith
Michele Storms, Gates Public Service Law Scholarship Program, UWLS
Judge Sen Tan
Long Truong, Alaska Court System
UAA Educational Talent Search Program
UAA Upward Bound Program
Pamela Scott Washington
Amy Wheaton, Alaska Court System
Deborah Wing, AK Native Justice Center

NAWJ-Alaska COJ Committee:
Justice Dana Fabe
President, NAWJ
Judge Stephanie Joannides
Chair, COJ Alaska 2010
Judge Beverly Cutler (Ret.)
COJ Alaska Co-Founder

Alaska Bar Association
Seattle University School of Law
Gonzaga University School of Law
Alaska Native Justice Center
Northwest Indian Bar Association
LSAC
CLEO — Promoting Excellence in Legal Education through the Thurgood Marshall Legal Educational Opportunity Program
UAA University of Alaska Anchorage
Alaska Court System
UW School of Law — University of Washington School of Law, Seattle

ESTATE PLANNING CORNER

Estate planning letters: Part 4

By Steven T. O'Hara

At Will and Trust signings, we often give the client a folder with letters on certain subjects that we had previously discussed. Then the client has written reminders of certain matters to which to refer from time to time, and additional time is not used at the signing to review previously discussed items.

Following are sample letters. Feel free to incorporate them into your practice. Previous issues of this column included other sample letters. For a copy of those articles, please call Karen Burgess at Bankston Gronning O'Hara, P.C. (907 276 1711). Subsequent issues of this column will include more sample letters.

These letters are for illustration purposes only and, in any event, must not be used without being tailored to the applicable law and the circumstances of the client.

Cover Letter

Dear Client:

Enclosed in this folder are numerous reminder letters relating to your estate planning.

As time permits, please study each of these letters and let us know if you have any questions or directions.

Thank you for giving us the privilege of assisting you in your estate planning.

Beneficiary Designations

Dear Client:

This is to remind you to have all your beneficiary designations reviewed. Please review all insurance policies, pension and profit sharing plans, annuities, IRA's, Keoghs, nonqualified deferred compensation agreements, pay-on-death accounts and the like.

Please review both the primary beneficiaries and also those who would take if the primary beneficiaries die before you.

Please assure these designations are consistent with your estate plan and your current intentions.

We also recommend you have your insurance and other plan documents reviewed to assure any desired form of benefit is elected and the adequacy of the product.

"Indeed, individually purchased disability insurance could be the most important insurance you own."

Married Client to Avoid TOD / POD

Dear Client:

This is a reminder to avoid TOD (Transfer on Death) forms and POD (Pay on Death) forms.

If all assets were to pass to your husband in the event of your death, then he would own all. Later on his death the only tax "exemption amount" available would be his. So your exemption amount would be completely wasted. With a 45% estate tax in 2009, for example, that waste could mean at least $1,575,000 in unnecessary estate tax (45% times $3,500,000).

In other words, the only recommended beneficiary designations you and your husband have are for your retirement accounts and any annuity contracts. Please have no other beneficiary designations. For all other assets please title them in the name of the owner without saying on any TOD (Transfer on Death) form or POD (Pay on Death) form where the assets go on death. Please let your and your husband's Wills and Revocable Living Trusts do the work in order to minimize estate tax.

For example, consider your after-tax bank and brokerage accounts (not retirement accounts). In the event of your death, your husband (if he survives you) would be in charge of everything as your successor fiduciary. He would then transfer your assets as your Will and Revocable Living Trust provide. In order to save at least $1,575,000, for example, your documents place $3,500,000 into trusts (for your husband). Suppose your husband then lives to the age of 100 and the $3,500,000 appreciates to $20,000,000 (assuming your husband is able to live off other resources). Now that $20,000,000 would, under current law, pass free of federal estate tax at your husband's death.

In sum, in order to save taxes, you need to let your and your husband's Wills and Revocable Living Trusts operate by receiving assets. Please avoid designating each other under TOD or POD forms.

Disability Insurance

Dear Client:

Experts who have run the numbers tell us that, statistically, we are substantially more likely to become disabled than to die during our working years. Thus income replacement insurance, known as disability insurance, is worthy of close examination.

We recommend you explore the advantages of individually purchased disability insurance in addition to employer provided or group disability insurance. The advantages of individually purchased disability insurance may include tax free benefits and portability. "Portability" means being able to keep the insurance wherever you work, even if your employer goes out of existence.

Indeed, individually purchased disability insurance could be the most important insurance you own.

Please remember to give the purchase of disability insurance serious consideration.

LLC / LLP Ownership of Real Estate

Dear Client:

We recommend you consider obtaining a limited title report from a title company in order to verify, to your satisfaction, that your LLC is the 100% owner of the real estate you believe you have transferred to it. As you know, sometimes these reports are called "litigation reports" or some other similar name.

The LLC could also take this opportunity to purchase title insurance on the various properties since the title insurance you originally purchased will not carry over to the LLC.

As always, my very best.

American Bar adopts new model trust rules

The American Bar Association House of Delegates adopted new rules in August for record keeping regarding client trust accounts, reflecting changes in banking laws and technology, and evolving methods of legal practice.

The Model Rules for Client Trust Account Records, dated August 2010, will be promulgated to state high courts for potential adoption as practical guidance for compliance with ABA Model Rule of Professional Conduct 1.15, requiring lawyers to maintain complete records regarding their client trust accounts and to render a full accounting of the receipt and distribution of trust property. The requirements of Model Rule 1.15 have been adopted in every U.S. jurisdiction, and 28 jurisdictions have adopted additional rules or comments outlining the types of records lawyers must maintain. Five other jurisdictions direct lawyers to the 1993 ABA Model Rule on Financial Recordkeeping for guidance. The new Model Rules for Client Trust Account Records supplant the 1993 model.

As explained by the ABA Standing Committee on Client Protection, key sponsor of the new model, it responds to a number of changes in banking and business practices that may have left lawyers "inadvertently running afoul of their jurisdiction's rules of professional conduct."

One key change was Congressional adoption in 2003 of the Check Clearing for the 21st Century Act, commonly referenced as Check 21, allowing banks to substitute electronic images of checks for canceled checks. The previous ABA model rule required lawyers to maintain original canceled checks.

The change also addresses the increasing prevalence of electronic banking and wire transfers or electronic transfers of funds, for which banks do not routinely provide specific confirmation. The new rule acknowledges those issues, addressing record-keeping requirements after electronic transfers and clarifying who can authorize such transfers, record maintenance and safeguards required for electronic record storage systems.

A second change details minimum safeguards lawyers must implement when they allow non-lawyer employees to access client trust accounts. A third rule allows lawyers to maintain client trust account records in electronic, photographic, computer or other media or paper format, either at the lawyer's office or at an off-site storage facility. But it requires that the records be readily accessible to the lawyer and that the lawyer be able to produce and print them upon request.

For lawyers using third-party or Internet-based file storage, the rule requires that the lawyer ensure the company has established reasonable procedures to protect client confidentiality and ensure the files can be accessed by a disciplinary authority, client or interested third-party in response to a subpoena or other court demand for production.

For lawyers using third-party or Internet-based file storage, the rule requires that the lawyer ensure the company has established reasonable procedures to protect client confidentiality and ensure the files can be accessed by a disciplinary authority, client or interested third-party in response to a subpoena or other court demand for production. The fourth and fifth rules address law firm partner responsibilities for storage of and access to client trust account records when partnerships are dissolved or when a practice is sold.

The Standing Committee on Client Protection promotes and enhances mechanisms to protect clients, including programs to reimburse clients for financial loss caused by lawyers' misappropriation of client funds, arbitration of fee disputes and mediation of other client-lawyer disputes, and identifies and comments on emerging issues in regulating the practice of law.

The changes may be found at the AmBar website at http://www.abanet.org/cpr/mrpc/model_rules.html

—ABA press release

Abraham Lincoln's advice to the Alzheimer's caregiver

By Pamela R. Kelley

We don't know what advice Honest Abe would have given to us as caregivers for a loved one with Alzheimer's. Yet Lincoln's famous remark about the "better angels of our nature" comes to mind. I've thought on occasion that Lincoln's quote contained within it some wisdom for me as an Alzheimer's caregiver.

First, there's the entire quote as lifted from Abraham Lincoln's first Inaugural Address in March, 1861.

"The mystic chords of memory, stretching from every battlefield and patriot grave to every living heart and hearthstone all over this broad land, will yet swell the chorus of the Union, when again touched, as surely they will be, by the better angels of our nature."

Lincoln spoke of a future moment when the country would once again be united and its tragic civil war ended. He looked forward to a time when harmony and peace would resume. As an Alzheimer's caregiver, I dream of the day when my mother will regain the harmony and peace she once demonstrated with her kind heart every day as she took care of me in my youth. I know that won't reoccur while she lives this life.

I first thought of the Lincoln's oft-misquoted phrase about "the better angels of our nature". I know that when I am most successful in caring for Audrey, it's because I've reminded myself to step back and think about compassion. I ask myself what would be the most compassionate thing to do in the circumstance. Whatever the circumstance is: her refusal to take medication, her refusal to see the doctor, her rejection of a dear friend, her disdain for the myriad ways in which my way is not "her way", her criticism of my husband.

I accept that it will be good enough if she gets morning pills before noon. I write down anew the identity of the pills I push. I accept the grumbling that goes with a doctor's visit. I count myself lucky to have a primary care practitioner at all. I slow my quicker wit and simply answer the questions, over and over. I listen with my heart and ignore the content of her remarks that sting.

My mother, in her diminished state, still teaches me. She's taught me to get reacquainted with the better angels of my nature – forgiveness, acceptance, kindness, patience, empathy. She's taught me to let go of my insistence on being right. She's taught me what it's like to live in the moment. If this isn't the work of the better angels of our natures, then I don't know what could be.

I'm tested every day, and I hold fast to all of the supports that surround me. In this household, the angels don't contest between union and slavery. Here it's patience and irritation, acceptance and useless acts. These stand in opposition. These I hope to reconcile. I win some; I lose some. It's a life I've embraced. This is what it's like for me to be a caregiver to an Alzheimer's sufferer.

Pamela R. Kelley

Pamela R. Kelley is the full-time caregiver for her mother, after serving as her long-distance caregiver for more than four years. Before her caregiving role took primacy, Ms. Kelley directed an American Bar Association-approved paralegal education program at the University of Alaska Anchorage from within UAA's Justice Center. As she transitioned to full-time caregiving, she prepared a resource manual and presented lectures on long-distance caregiving to her UAA colleagues. She is a 25-year member of the Alaska Bar Association, and concentrated her years of active practice in the areas of commercial transactions and creditor representation in complex bankruptcy cases. Over the years, she has published many articles on topics as varied as cyber-stalking and antitrust law. Ms. Kelley lives, works and writes in Anchorage, Alaska. This article was originally written for the AlzheimersReadingRoom.com

Reprinted with permission from the Chicago Sun-Times, June 23, 2010

ALSC to assist in BP gulf spill

The Gulf State Regional Consortium of Public Interest Lawyers and Advocates reached out in August to the Alaska Legal Services Corporation ("ALSC") to lend a hand in training Gulf states public interest lawyers responding to the BP oil spill crisis in the Gulf of Mexico.

ALSC is a 40-year old non-profit law firm whose mission is to provide meaningful access to justice in resolving civil legal problems for low-income Alaska clients, thus promoting family stability and reducing the legal consequences of poverty. ALSC serves a poverty population of about 80,000 and has 10 offices throughout the State of Alaska.

Over 20 years ago, ALSC attorneys were some of the first responders to the Exxon/Valdez oil spill. Then-Governor Cowper, a former ALSC Board member, called on ALSC to participate in the Disaster Assistance Information Center. ALSC sent attorneys and a paralegal to Cordova, Alaska, for several weeks immediately following the spill to assist those with spill-related legal problems.

Current ALSC Board President, Vance Sanders of Juneau, Alaska, was one of the attorneys initially sent to Prince William Sound following the 1989 spill. Then the Supervising Attorney of ALSC's Juneau office, Mr. Sanders vividly remembers flying into the Native villages of Tatitlek and Chenega Bay mere days after the spill to help assess the situation. "Having witnessed first hand the destruction and devastation of the Exxon Valdez spill, my heart goes out the Gulf residents; I want to be able to assist in anyway we can", said Sanders.

Mr. Sanders will travel to Pensacola, Florida in September to meet with and participate in the Consortium's training conference geared toward legal aid attorneys, non-profit public interest lawyers, and community advocates in the Gulf Coast region engaged in addressing claims and collateral legal matters arising out of the BP oil disaster.

Mr. Sanders hopes to help those in the Gulf Coast region avoid the pitfalls of affected Alaskans. More than anything, he wants to convey to the advocates that they must be in it for the long-haul as there is unlikely to be any quick resolution.

Historical Bar 13th Annual Territorial Lawyers summer get-together

More than 60 lawyers, spouses and friends attended the 13th annual dinner.

More than 60 attorneys, spouses and friends gathered in June at Aladdin's restaurant in Anchorage for the 13th annual Territorial Lawyers dinner, celebrating those who were practicing law at Statehood 51 years ago—or those who have been in practice in Alaska 40 years or more.

This year, the group was joined by two "reporters" from the Anchorage Bar Associaiton's Historical Committee, and reportedly enjoyed their first exposure to the off-the-cuff Story Hour after dinner. "The War Story Corps," Mike Schwaiger and Kelly Taylor, interviewed and filmed members of the Territorial group for the committee.

Fewer than 60 of the Territorial lawyers survive among the nearly 4,000 members of the bar, but each year the party welcomes its extended family widows, widowers and children of these Alaskan pioneers.

The annual gathering began more than a decade ago with an impromptu , backyard barbeque and potluck, and in the following years, invitations went out to others of the era. It has grown from backyards and open houses to catered dinners and an open bar at various restaurants in Anchorage.

Judge Russel Holland, Joe Palmier & Judge James Wanamaker

Interviewing Barry Jackson

Sandra Singleton, Judge Jim Singleton and Judge Russel Holland

Vivian Mendenhall & Jim Johnston

Historical Bar 13th Annual Territorial Lawyers summer get-together

Jamie Fisher & Lenora Pepin

Bob Lowe & Bob Erwin

Jim & Judy Powell

Verona Gentry & Jim Delaney

Susan & Ev Harris

Ames & Connie Luce

A much smaller group of lawyers, spouses or widows of those in practice at or before Statehood 51 year ago.

Sitting: Ken Atkinson, Don Burr, Charlie Cole, Dan Cuddy, Judge James von der Heydt, Bob Opland, George Hayes & Jim Delaney. Standing: Jamie Fisher, Barry Jackson, June Robson, Lucy Groh, Verna von der Heydt, Mildred Opland, Louise & Charlie Tulin, Verona Gentry.

Photos by Barbara Hood

Clair & Ted Pease

Dave and Bernie Ruskin

Historical Bar 13th Annual Territorial Lawyers summer get-together

Letha & Bob Flint

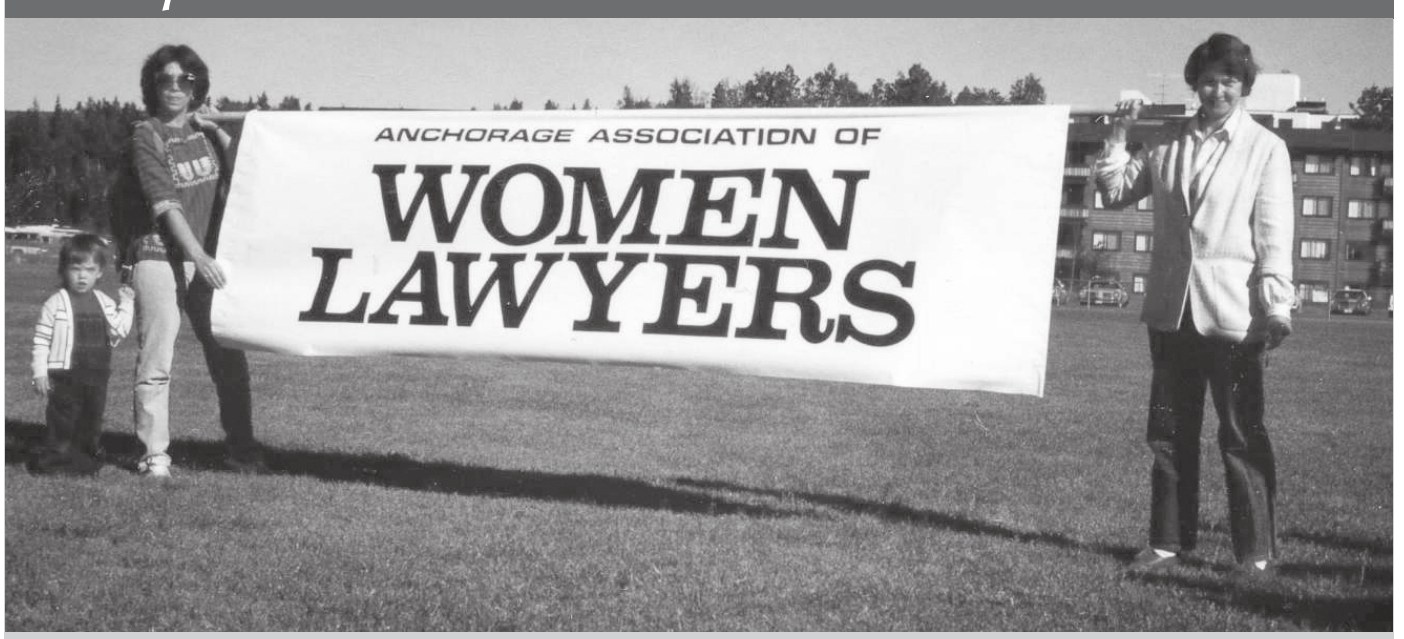
Collin & Timothy Middleton

Charlie and Louise Tulin

Bar member and Historians committee member Mike Schwaiger and Bar applicant and law clerk to Justice Fabe, Kelly Taylor (who grew up in Cordova.)

Sheila & Bob Erwin

The Historians Committee of the Alaska Bar Association presents the annual Bar Historians Luncheon



AAWL members Linda O'Bannon & Kathleeen McGuire with the AAWL banner, circa 1980.

BUT CAN SHE TYPE?

Reflections on the Early Years of the Anchorage Association of Women Lawyers

Thursday, Oct. 21, 2010 • 11:30 a.m.
Dena'ina Center, Anchorage

1.0 General CLE Credit • Registration Fee: $35 (includes lunch)

Open to the public

Jessica Carey Graham, moderator
Judge Elaine Andrews (Ret.)
Judge Karen Hunt (Ret.)
Linda O'Bannon

Register online: www.alaskabar.org

Verna & Judge James von der Heydt

Stan Reitman

Because justice has a price.

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The Annual Campaign
for Alaska Legal Services Corporation

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Our 2010-2011 Robert Hickerson Partners in Justice campaign will begin in September. If you would like to join your colleagues in supporting this worthwhile cause, please send your tax-deductible contribution to:

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For information or to request a pledge form,
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NEWS FROM THE BAR

Board of Governors action items for April 26 & 27, 2010

- Voted to refer ARPC 3.8 back to the Alaska Rules of Professional Conduct Committee.
- Voted to adopt the Report and Recommendations of the Area Hearing Committee in the Disciplinary Matter of John Rice.
- Voted to send to the Supreme Court an amendment to Bar Rule 65(g)(11), adding service on the Area Discipline Divisions and Area Fee Dispute Resolution Divisions as qualifying for MECLE credit.
- Voted to publish an amendment to Bar Rule 10(f), providing for the appointment of more than one Board Discipline Liaison.
- Voted to publish an amendment to Bar Rule 36(a), correcting appointing authority language.
- Voted to publish an amendment to Bar Rule 40(f)(11), changing Fee Arbitration proceedings recorded "on tape" to recorded "electronically."
- Voted to publish an amendment to Bar Rule 34(b), requiring Fee Arbitration when the client has agreed to arbitration in an agreement.
- Voted to publish an amendment to Bar Rule 39(d)(2), clarifying waiver of the right to request or maintain arbitration.
- The Board concurred with the recommendations of the Law Related Education subcommittee, to not award a grant to ALSC, and to ask for further information supporting the Family Law Self-Help Center's grant request.
- Considered a request from the Public Defender Agency, the Attorney General's Office, Office of Public Advocacy and the Alaska Court System, to contribute funding for the 2010 Fall Criminal Justice Conference. The Board voted to fund $200 per spot that is open for registration by private Bar members up to $8,000. The Bar would recoup costs by charging an appropriate registration fee. (The agencies declined the Board's offer.)
- The Board reaffirmed its decision in the Disciplinary Matter involving Ra P. Shipps and indicated that they would issue a written opinion.
- Voted to approve the recommendation for reimbursement in two Lawyers' Fund for Client Protection matters, in the amounts of $2,824 and $6,995.
- Voted to appoint Julie Willoughby to the Alaska Judicial Council.
- Voted to appoint the following to the ALSC Board: 1st District: Janell Hafner, regular; Janine Reep, alternate; 3rd District: Greg Razo, regular; 4th District: Natasha Singh, regular; Board representative: Gabrielle LeDoux, regular; Chuck Robinson, alternate
- Voted to recommend eight applicants for admission by reciprocity.
- Voted to adopt the ethics opinion entitled, "Ability of Lawyer Not Admitted in Alaska to Maintain Alaska Office for Federal Immigration Practice."
- Approved the minutes of the January board meeting.
- Voted to support the two resolutions being presented at the annual business meeting.
- Voted to recommend the following slate of officers: President-elect, Don McClintock; Vice President, Krista Stearns; Secretary, Don McLean; Treasurer, Peter Maassen.
- Decided to remand "In the Reinstatement Matter Involving Mark Nunn" back to the Area Hearing Committee.

Alaska Bar Association 2010 CLE Calendar
MARK YOUR CALENDAR!

Date	Title	Location
October 5 Live & Webcast	ANCSA Lands: Navigating the Uncertainties CLE # 2010-003 6.5 general CLE credits Price: $179 Sponsored by: Native Law Section	Anchorage Hotel Captain Cook
October 14 Live & Webcast	(AM) Social Networking Site: The Latest & Greatest Investigative Tool (But Beware of Ethical Traps) (PM) The Cybersleuth's Guide to the Internet CLE#2010-012 2 general, 1 ethics CLE credits Price: AM/PM: $119 or All Day: $179 Sponsored by: New Lawyers Section	Anchorage Dena'ina Civic & Convention Center
October 21 Live & Webcast	Historians Annual Luncheon: "But Can She Type?" CLE#2010-009 1 general CLE credit Price: $35 Sponsored by: Historians Committee	Anchorage Dena'ina Civic & Convention Center
October 28 Live & Webcast	"Environmental/Natural Resources" CLE#: 2010-035 TBA CLE credits Price: $TBA Sponsored by: Environmental/Natural Resources Law Section	Anchorage Hotel Captain Cook
November 5 Live	What Every Alaska Lawyer Should Know About Trusts CLE#: 2010-048 3 general CLE credits Price: $99 Sponsored by: Estate Planning and Probate Law Section	Juneau Westmark Baranof Hotel
November 9 Live	What Every Alaska Lawyer Should Know About Trusts CLE#: 2010-049 3 general CLE credits Price: $99 Sponsored by: Estate Planning and Probate Law Section	Anchorage Hotel Captain Cook
November 10 Live	What Every Alaska Lawyer Should Know About Trusts CLE#: 2010-050 3 general CLE credits Price: $99 Sponsored by: Estate Planning and Probate Law Section	Fairbanks Westmark Hotel
November 18 Replay	REPLAY: Ethics: No Rewind In The Real World CLE#: 2010-311A 3 general CLE credits Price: FREE	Anchorage Atwood Building Room: 240
December 2 Replay	REPLAY: Making Your Case With A Better Memory CLE#: 2010-051A 6 general CLE credits Price: $109	Anchorage Atwood Building Room: 240
December 3	"Workers Compensation" CLE#: 2010-004 Credits: TBA Price: $TBA	TBA
December 9 Replay	REPLAY: Making Attorneys Stronger and Improving Critical Skills CLE#: 2010-035A 3 general CLE credits Price: $79	Anchorage Atwood Building Room: 240
December 14 Live & Webcast	Guantanamo and *The Response* CLE#: 2010-015 3 general and 1 ethics CLE credits Price: $119	Anchorage Hotel Captain Cook
December 16 Free Replay	REPLAY: Ethics: No Rewind In The Real World CLE#: 2010-311B 3 ethics CLE credits Price: FREE	Anchorage Atwood Building Room: 240

All programs subject to change without notice.
Go to www.alaskabar.org for more CLE info.

The Alaska BAR RAG

SUBMITTING A PHOTO FOR THE ALASKA BAR RAG?

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- Ensure it is in high resolution (aka, "fine," "superfine," "high res" or "best") setting on your digital camera, scanner, or photo-processing software.
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DON'T

- Send photos with numbers for filenames, such as IMG-1027, DSC-2321, IMG08-19-08, etc.

Bar People

Bar People: if you have changed firms or relocated to another city, and would like this information listed in the Bar Rag, send an email to oregan@alaskabar.org or info@alaskabar.org.

Leroy Barker has relocated to Portland, Oregon.....**Brennan Cain** is now Corporate Counsel for The Eyak Corporation.....**Heather Grahame**, formerly with Dorsey Whitney, is now General Counsel and Vice President for NorthWestern Energy in Helena, Montana.....**Andy Harrington**, former Executive Director of ALSC, is now with the Attorney General's Office in Fairbanks.

Thomas Jantunen and **Kelly Jantunen** have relocated from Juneau to Anchorage. Tom is now with Perkins Coie and Kelly is with OPA..... **Ed McNally** is now with Kasowitz, Tenson, Torres & Friedman in NYC.....**Amy Gurton Mead**, formerly with Hoffman, Silver, Gilman & Blasco, is now with the City & Borough of Juneau Department of Law.

Curt Martin, formerly with Geico, has opened his own office in Palmer.....**Marie Marx**, formerly with Baxter Bruce & Sullivan, is now with Alaska Department of Labor/Workforce Development, Division of Workers Compensation.....**Nikole Nelson** has been selected as the new Executive Director of Alaska Legal Services Corporation.

Stephanie Pawlowski formerly with Palmier - Erwin LLC, is now with the Office of Public Advocacy.....**Mark Regan**, the Legal Director for the Disability Law Center of Alaska, has relocated to Anchorage.....**Susan Urig** has retired from the Attorney General's Office.....**Gregory S. Fisher** is now with Davis Wright Tremaine, "after five great years" at Birch Horton Bittner & Cherot.

The lawyers at Azar & Schlehofer P.C. have split into two offices. Azar & Schlehofer, P.C. has become Schlehofer Law Offices located at the same address. William G. Azar, Attorney at Law (William G. Azar and Wendy E. Duvall) is now located at 800 E. Dimond Blvd., Ste. 3-560, Anchorage, 99515 with phone numbers (907) 276-3600, (888) 907-2535 (toll-free) and fax of (907) 677-7711.

Elizabeth Wallace (Liz) Fleming

Barokas Martin & Tomlinson is pleased to announce that **Elizabeth Wallace (Liz) Fleming** has joined its Anchorage office as a Member. Liz is an experienced government contracts attorney and has served as an Army JAGC officer, an Assistant United States Attorney, and as a Trial Attorney in the DOJ's Civil Division. Liz spent several years in private practice in Washington, D.C., first with the DC office of Preston Gates. She later joined the boutique litigation firm now known as Trout Cacheris and then spent four years in-house at the Boeing Company. Liz still serves as a Colonel in the Army Reserves and is a veteran of Operation Iraqi Freedom. She specializes in general civil litigation in federal court, white collar issues, and government contract claims.

Paul Eaglin was presented his award by Federal Circuit Court of Appeals Chief Judge Randall R. Rader (on R in photo) and by Chief Judge William Greene of the U. S. Court of Appeals for Veterans Claims (on L in photo).

Eaglin receives award

The Pro Bono Leadership Award was presented to Fairbanks attorney Paul B. Eaglin of Eaglin Law Office on June 25, 2010 in Colorado Springs, by the Federal Circuit Bar Association Charitable and Educational Fund.

Eaglin was one of four recipients of the Pro Bono Leadership Award. Other recipients were Blair E. Taylor of the Washington, D.C. office of Covington & Burling; Ron Taylor of the Washington, D.C. office of Finnegan Henderson Farabow Garrett & Dunner, and Dion Messer of Limelight Networks of Tempe, Arizona.

In its press release, the Federal Circuit Bar Association indicated that the Award to each individual recognizes important contributions to pro bono service over a continuing period both within the Federal Circuit Court of Appeals community of appellate practitioners but elsewhere. These include the development of a pro bono program for veterans' appellate representation within the FCBA as well as government civil service personnel pro bono program.

William Pearson made shareholder

The law firm of Foley & Foley, P.C., announced this month that **William Michael Pearson** has been made a shareholder of the firm. Mr. Pearson's practice will continue to focus primarily in the areas of estate planning, probate, and post-mortem trust administration.

"Foley & Foley, established in 1987 by the husband and wife team of Richard H. Foley, Jr. and Susan Behlke Foley, is one of the pre-eminent estate, business succession, and wealth transfer planning firms in the Pacific Northwest," said the firm.

"Bill has been an important part of our practice since he arrived here six years ago," said Richard Foley. "We are pleased that he will continue to serve our clients for years to come."

Born and raised in Fairbanks, Alaska, Pearson is a graduate of Lathrop High School. Pearson received his undergraduate degree in finance from the University of Idaho and his law degree from the University of Iowa College of Law, where he also served as a law journal editor.

Pearson joined Foley & Foley in 2004 as an associate, after clerking for Superior Court Judge Michael A. Thompson in Ketchikan, Alaska.

Currently, Pearson is a member of the Anchorage and Alaska Bar Associations and is on the board of the Anchorage Estate Planning Council. He has served as Co-Chairman of the Estate Planning and Probate Section of the Alaska Bar Association and President of the Young Lawyers Section of the Anchorage Bar Association. In addition, Pearson has served as director of Race Judicata, an annual running event to raise funds and awareness for Anchorage Youth Court.

William Michael Pearson

Pearson has also presented locally on the topics of estate planning and probate law, including in 2009 at the Alaska Bar Association's annual convention on trusts and estates; in 2007 before the Alaska Bar Association on The Basics of Basic Wills; in 2007 for Lorman Education Services on Post-Mortem Trust Administration; and in 2006 before the Alaska Bar Association on Alaska's Special Estate Planning Techniques For You and Your Clients. Pearson has also presented at the Wealth Counsel National Convention on Alaska community property law.

The commitment to education shown by Pearson is integral to Foley & Foley, which offers its own estate planning workshop as a public service. For more information on Foley & Foley, visit their website at www.foleyfoley.com.

Perkins Coie named in Chambers

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

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

Hartig Rhodes adds 2

John D. VonLangen was recently admitted to the practice of law in Alaska and has been working for Hartig Rhodes Hoge and Lekisch, P.C. for about a year. His work emphasizes commercial real estate, commercial transactions, commercial lending, bankruptcy, Native law and commercial litigation. Prior to coming to Alaska, VonLangen practiced in Florida for 9 years.

Lisa Doehl has joined the firm as an of counsel attorney. Her practice emphasizes environmental and natural resources law, land use and rights, Native law, and administrative law. She has 15 years of legal experience, primarily with the U.S. Dept. of Interior and Office of the Solicitor in Alaska and Washington, D.C.

John D. VonLangen

Lisa Doehl

Col. Hamilton's quandary: 'Who's Your Daddy?'

By Peter Aschenbrenner

Erwin Chemerinsky and Manny Ramirez platter and pour.

"I touched on these points in the *Camillus* essays," the Colonel declares. "My last two, in particular, deserve your attention, Professor Aschenbrenner. Nos. 37 and 38."

"May I offer a fine Pinot?" Manny tempts our guest. "It's from Santa Barbara county."

"Try one of my canapés," Erwin Lord of Irvine (and Dean of all he surveys) suggests. "I made them myself."

Col. Hamilton indulges himself.

"Where were we?" he asks me.

" 'As to the sense of the Convention, the secrecy with which their deliberations were conducted,' " I quote our guest, " 'does not permit any formal proof of the opinions and views which prevailed … .' "

"Back to the *Camillus* essays, vintage ninety-five and ninety-six, if I may reminisce. I fought the good fight for the Washington administration and personally carried the day for the Jay Treaty." Col. Hamilton studies his nails. "And yet I had already entered immortality with my *The Federalist Papers*, seven years earlier. I couldn't resist the call of battle. 'Once more into the breach,' 1066 and all that."

"You are aware, Colonel," Manny points out, "that your last essay – of January, 1796 – inspired Washington to break his oath."

"See my *Bar Rag* article, April-June, 2010," I add, but no one is listening.

" 'As to the sense of the community in the adoption of the Constitution,' " Lord Irvine quotes Hamilton's essay, " 'this can only be ascertained from two sources, the writings for and against the Constitution and the debates in the state [ratifying] conventions.' "

"My work and so precisely sourced." The words swirl through the Colonel's brain. "Perhaps I did inspire the President," he ponders the possibilities. "He cited to the text of the convention's secret journal in March, 1796, when I did not in January, 1796. Hence, a paradox (or two) and the true beginning of the Citation Controversy of that year.

"But my writings, post-convention," the Colonel continues, "did not rely on the proceedings at the convention. Neither *The Federalist* nor my *Camillus* essays bolster my views by reference to specific debates therein."

"Perhaps the lack of citation arises from the fact that you were conspicuous by your absence," Manny points out. "If I may cite to Max Farrand."

"Yes, yes," the Colonel breezes along. "I left Philadelphia on June 29th and did not return until early September, with a couple of stray visits in between. I signed the Constitution on behalf of New York, however."

"Isn't there a rule about how many guys have to show up?" I ask. "One guy can't take the field by himself."

"Unless he's Satchel Paige," Manny corrects me.

"Yates and Lansing – my co-delegates – went home in July. When I came back, I subscribed to the constitution *by myself,* mind you, and Secretary of the Convention Wm. Jackson attested my signature."

"Didn't this violate the quorum rules for your delegation?" I ask.

"They were not incorporated into the convention's standing orders," the Colonel sniffs. "So New York's vote was recorded as I cast it."

"If 1 Farrand 4 correctly informs me," I point out, "this was the same Secretary Jackson whom you nominated – "

"How fascinating!" Hamilton rolls his eyes.

"Cross-ex?" Lord Irvine takes over. "If I may."

"Proceed, counsel," the Colonel waves the Dean onwards.

"What was the question your last two *Camillus* essays posed?"

"I have No. 38 right here," Manny studies his laptop. "You asserted that the convention approved treaty-making 'power [of] the most ample latitude to render it competent to all the stipulations which the exigencies of national affairs might require – competent to the making of treaties of alliance, treaties of commerce, treaties of peace and every other species of convention usual among nations and competent in the course of its exercise to control and bind the legislative power of Congress.' "

"In short, you deployed the Supremacy Clause of Article VI," the Dean asks the Colonel. "Right?"

" 'The power of treaty in the Constitution,' I said, 'control[s] by its stipulations the legislative authority,' if I may refer you again to No. 38."

"So the House of Representatives had no choice about passing treaty-fulfilling legislation," the Dean asks. "Am I correct, sir?"

"The Jay Treaty," I interject, "was ratified by the Senate, which would be June, 1795. In special, indeed, executive, session."

"The score was 20 to 10," Manny helps me out. "But why did you object to the House of Representatives taking up the funding bill?" he asks Hamilton.

"The House had no choice but to pass it."

"A money bill must originate in the House of Representatives," Manny interrupts the Colonel, "if I may cite to the Constitution, Article 1, Section 7. And the administration did not call the House into session in June, when the Senate was meeting. The Senate's ratification and the funding bill could have been considered at the same time."

"Madison had no right," Hamilton ripostes, "to oppose the administration's bill. And Washington was obliged to wait until the British accepted the Senate's insistence that American shipping get access to Caribbean markets."

"Which occurred on February 29, 1796," I reference Leap Day.

"Rubber-stamp Washington's bill," Hamilton declares. "That was Madison's only choice. The House of Representatives passed the administration's bill in April, over Madison's determined opposition. So you see, I did win the fight for the Treaty."

"51-48," Manny adds.

"But not apparently on the grounds you proposed in the *Camillus* essays," the Dean tips his laptop to Manny, who cites Annals, 4th Cong. 1St Session, p. 701, and asks the Dean, 'is the oracle coming up later?'

"So the President challenged Madison on the grounds that the federal convention rejected," Hamilton replies, "the House of Representatives' consideration of the merits of a treaty."

"The fallacy of the excluded middle," Manny points to the WikiParadox article displayed on *his* laptop.

"I suppose," Hamilton concedes, "it has been known by that name."

"You were quick to recognize Jefferson's mistake," I spell it out, "in his brief to President Washington over the Bank of the United States."

"I tagged the Secretary of State," Hamilton asks, "for making an argument based on 'the rejection of a proposition by the Convention to make corporations.' After I considered and rejected that argument in my brief on the bank bill. I can cite you to my draft."

"There's only one way to score a run," Manny observes. "And that's to cross home plate."

"Meaning?" Hamilton asks.

"You can't score points by taking a proposition that was rejected in the Convention, turning it inside-out, and then browbeating your opponent," the Dean declares, "with the ersatz proposition you have constructed."

"That's what Jefferson – "

"And Washington – " Manny interjects.

"Did. And what I did not do," he adds.

"How convenient that the President had possession," I observe, "indeed sole possession, of the official and secret journal of the convention. So he could cite to any of the ideas the Convention rejected."

"He shared the journal before he gave it over to Pickering, his Secretary of State, in 1796," Hamilton addresses me. "You are aware of that."

"It is not widely known," I reply, "that Washington loaned the secret journal to Madison so he could make a fair copy. In 1789."

"Despite the express injunction of the convention," the Dean responds. " 'The President having asked what the convention meant should be done with the Journals &c, whether copies were to be allowed to the members if applied for.' "

"He couldn't resist himself," Hamilton sighed. "Even though he promised to 'retain the Journal and other papers, subject to the order of Congress.' "

"2 Farrand 648," I cite.

"So he needed Congress' permission to show the journal to Madison, when Madison's Minutes were in a lot better shape than Jackson's Journal," I guffaw. "That's rich."

"Paradoxically, the supposed advantage in citing to the journal," Manny

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Col. Hamilton's quandary: 'Who's Your Daddy?'

Continued from page 18

suggests, "may be to extract ideas that were rejected. If you think about it, the ideas that were accepted are expressed in the Constitution's eighty-seven sentences."

"I would never do a thing like that," Hamilton agrees. "Cite to the journal for that purpose."

"But you did," the Dean asserts, "something worse."

"Excuse me?"

" 'I aver that it was understood *by all* to be the intent of the provision – ' " Lord Irvine returns to cross-ex. "That's what you wrote, didn't you?"

"True, but – "

"Right after you declared that convention secrecy 'does not permit any formal proof of the opinions and views which prevailed …. .' "

"Like I said," the Colonel huffs. "I did not cite to the journal. And as for the 'opinions and views' of the delegates, I may certainly divine the intent of the convention as to the treaty-making power."

"Turn to the debate cited by the President," the Dean directs the Colonel's attention to 2 Farrand 382-383. "That is, on August the twenty-third."

"You weren't there on August 23rd, were you?" I ask.

"Not exactly," Hamilton ripostes, "altho' I did insist I had '*the best opportunity of knowing the fact*,' that is, the intent of the convention." Hamilton stares into his empty glass. "Without being there."

"Apparently," Manny shrugs, "you don't have to show up to know the score."

"Hey!" the Dean excuses our Secretary of the Treasury. "That's just Hamilton being Hamilton."

" 'But when,' " I cue Manny who reads from the text of *Foster v. Neilson*, 27 U.S. 253, 314 (1829), " 'the terms of the stipulation import a contract, when either of the parties engages to perform a particular act, the treaty addresses itself to the political, not the judicial department; and the legislature must execute the contract before it can become a rule for the Court.' "

"That was," Hamilton points out, "a bit after my time. How was I to know the Supreme Court would rule against me. And the President."

"America had a contract with Great Britain?" Manny studies the Annals of Congress on his laptop. "So this was a contract dispute?"

"Americans didn't pay for the furniture they bought," I explain. "This was back in 1783. The treaty of that year allowed British merchants to sue Americans to get paid. But state courts were dead set against British bill collectors using their courts, so Congress had to vote the money to pay off these debts. That's the administration's bill that Madison refused to rubber-stamp."

"How about a Chippendale Day at Dodger Stadium?" Manny asks. "Everyone in the Mannywood seats," 'Sections 127-129,' I aside to the Colonel, "gets a free end-table."

"My biographer," Hamilton ripostes, "has assured his readers that Madison's position on the treaty-making power was 'an astonishing proposition,' " Hamilton quotes, "and Madison's biographer concedes Madison's reading of the constitution is a 'reversal of its plain sense.' "

"Indeed, he does," Manny dips into Ron Chernow's volume, 'at 497' while balancing Garry Wills' *Madison*. "At 42," he appends the cite.

"Neither of them teaches law," the Dean winks at me.

"Never send a bunter to do a slugger's job," Manny concludes.

"To sum things up," Hamilton offers this assessment, "it is rather sad when the Chief Justice of the United States Supreme Court agrees with the President."

"But Chief Justice Roberts," I blurt, "took Madison's side in *Medellin's* case, 552 U.S. 492, 528 (2008)."

"I was speaking," Hamilton sniffs, "of President Washington's position that the intent of the convention is subject to oracular divination, by parsing through those many rejected propositions which grace the pages of the official and secret journal of the convention."

"You must be referencing," the Dean follows this lead, "Chief Justice Vinson's dissent in *National Mutual v. Tidewater*, 337 U.S. 582, 632 n. 8: 'The propriety of considering the proposals and debates of the Constitutional Convention was long ago considered by those most intimately concerned with its formulation. Washington, in his message to the House of Representatives [of March 30, 1796],' and so forth."

"This (and other such blunders) would suggest," the Lord of Irvine continues, "that *ex cathedra* statements as to the framers' intentions are also subject to the Earl of Russell's paradox. The oracle has sworn herself to secrecy and no one asserting to be the oracle's agent or spokesperson can overcome that difficulty."

"It is a constitution that is to be expounded," Manny consoles Secretary Hamilton. "Not a convention."

"Anyhoo," I raise my glass, "thanks for *The Federalist Papers*, Colonel. Without them, we would be angling for the 'best opportunity' to divine the intent of the convention. And *we* weren't there on August the twenty-third either."

"Hey, as they say in baseball," the Colonel replies, " 'Who's your daddy?'"

"Aschenbrenner," Manny turns to me, "you did explain to Alexander Hamilton that I'm not Pedro Martinez, right?"

I shrug off my goof.

"Didn't both you guys play for the Red Sox?"

TALESFROMTHEINTERIOR

The Big One

By William Satterberg

Whilst in college, I worked part time as a firefighter and ambulance attendant. The job had great benefits. I lived for free at the University of Alaska Fire Station, was able to drink beer in the station, and responded regularly to various calamities. It was also an exciting time. I was special. I got to wear an impressive uniform, drive recklessly, and some coeds even admired my bravado. I was a hero of sorts. At least in my own mind.

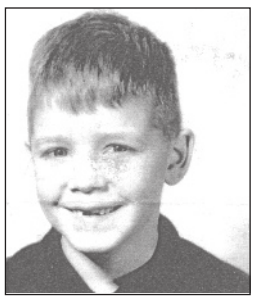
As a young firefighter, I was fortunate to be one of the first groups of medics to attend the Alaska State Trooper's Academy in Sitka, Alaska. At the Academy, I became certified as an Emergency Medical Technician I (EMT I). I attended an intensive course that taught techniques that have long since been abandoned from modern EMT curriculums. Then again, we were on the cutting edge – both figuratively and literally. This training included minor surgery, tracheotomies, removing appendixes, chest punctures to relieve pressure, and veinous cut downs for intensive IV therapy. Later, as my experience as a medic grew, I became involved with intravenous fluids therapy (IV), and subsequently with lifepack and advanced cardiac life support.

Attorneys also lead sedentary lives, although some pretend to exercise. But, I think the exercise stuff is mainly for show and to attract clients.

After law school, I joined the volunteer emergency service, working with both fire and ambulance crews. I became a co-founder of two Fairbanks volunteer organizations – Steese Fire and Interior Rescue. I continued to relish the action.

Over my thirteen years of service, I learned a lot about emergency medicine and firefighting. Moreover, as a fledgling lawyer, I soon appreciated that it was far more important to ride in the ambulance, rather than simply chase it like my unlucky cohorts. As a plaintiff's attorney, I pursued both professions aggressively. Mike McConahy, now a judge, was also active in the emergency service, as was attorney, Poke Haffner, (someday to be a judge), and Magistrate Alicemary Rasley (quasi-judge). Presumably, there are other lawyers who have also found the collateral benefits to such activities.

During my time as a medic, I became familiar with heart attacks. I studied the warning signs, and appreciated the dangers associated with such trauma. Medical knowledge has advanced remarkably over the past forty years, but many of the basics remain the same. When I was first licensed as an EMT, heart attack survivability was low. Fortunately, such is not the case now. In fact, even Alaska Airlines flight attendants allegedly can operate defibrillators, attesting to the simplicity of the devices.



"I was special. I got to wear an impressive uniform, drive recklessly, and some coeds even admired my bravado. I was a hero of sorts. At least in my own mind. "

Attorneys lead stressful lives, consumed by trying to find enough billable hours in a day, and are the proverbial slaves to the time clock. In addition, an attorney's day is often consumed by debate, adding to the stress – and this is often before they even leave the house in the morning.

Attorneys also lead sedentary lives, although some pretend to exercise. But, I think the exercise stuff is mainly for show and to attract clients. Still, there are some people that actually say that exercising is advantageous. I for one, do not accept that concept. In fact, I have read numerous articles where famous athletes have dropped dead of heart attacks while in the midst of exercising. As such, to be safe, I follow astronaut Neil Armstrong's theory of exercise. Neil's famous quote on the subject stated: "You only have so many heartbeats in life. Why waste them exercising?"

That being said, I have still tried to maintain a relatively healthy lifestyle. For example, I have cut down on my sugar intake to deal with the possible onset of diabetes. I have cut down on my fats and cholesterol intake in order to deal with blood clotting. I have cut down on my salt intake in order to deal with high blood pressure. I have cut down on my fish intake in order to deal with mercury poisoning. I have cut down on my vegetable intake in order to deal with regularity issues. And, I have cut down on my cheese intake in order to deal with regularity issues, as well.

In fact, I seem to have cut down on just about everything. Life is becoming boring.

In one respect, I am lucky because I enjoy a good friendship with my personal physician, Dr. Peter Marshall. Peter and I have known each other as very close friends since 1978. Because of this, I often find myself being the guinea pig for Peter's theories on how to improve my health. Fortunately, Peter has long since given up on insisting that I exercise, although he does suggest that a walk on a regular basis, since my thighs are "the sugar suckers" of my body. So I walk, rather than run, to the refrigerator. Poor health is not a family trait but, regardless, one still needs to be vigilant. Dad lived to be 77, but he still had some health issues. In fact, Dad had a whole bunch of them by the time he died.

Dad used to claim that if he had known he was going to have lived so long, he would have taken better care of himself. His theory on death was that, "The next world is better than this one. The lawyers have this one all screwed up". (Sometimes, Dad would substitute the Democrats for lawyers, but the theory was the same.)

For example, Dad had glaucoma. It came from diabetes, which is one reason why Peter says he is concerned about my sugar intake. From time to time, Dad would announce to people that, "I don't look so good". In response, some compassionate person would inevitably comment that Dad looked just fine, to which Dad would respond, "No, I got glaucoma. I don't look so good".

Dad used to claim that if he had known he was going to have lived so long, he would have taken better care of himself. His theory on death was that, "The next world is better than this one. The lawyers have this one all screwed up". (Sometimes, Dad would substitute the Democrats for lawyers, but the theory was the same.)

As for terminal illness, Dad's answer was simple: "When you get to the end of your rope, tie the knot and hang on".

And, upon meeting his Maker, "Can't you take a joke?"

Dad took life in stride and set a good example for me. Still, time eventually did catch up with him. Dad checked-out from what appeared to be a heart attack in 1977, with me at his side. It was, in many respects, a very precious moment in both of our lives. After all, Dad had been instrumental in bringing me into this world. As such, it was only appropriate that I should be instrumental in sending him on. Then again, when Dad decided to move on, I was busy talking to him about my latest exploits, apparently conclusively proving his long-stated theory that I could talk anyone to death. As usual, Dad had the final say.

Notwithstanding my desire to be physically fit, I have, instead become physically fat. Perhaps this is due to the onset of age. Perhaps, it is also due to the sedentary lifestyle. Perhaps it is because I like food.

An attorney who I especially admired in Alaska for many years was Cornelius "Neil" Kennelly. During his life, Neil ran the gamut from extremely obese to actually dropping down to rather good physical condition. Eventually, on D-Day in 2007, Neil passed on, dying of an apparent heart attack at age 70. When he was found, Neil was slumped over his desk with his boots on, working diligently as a lawyer should do. Hopefully, he was writing out time slips. If so, it was true dedication.

Admittedly, Neil's death, and the passing of other friends and attorneys, alerted me to the importance of staying physically active. With age, I have learned the benefits of sugar control, colonoscopies, regular eye checkups, dental checkups, upper-gastric checkups, lower-gastric checkups, skin cancer checks, blood pressure checks, cholesterol checks, and bad checks.

I have also learned the benefits of red wine, garlic, and a myriad of pills that are used for our life to go up, and our life to go down, along with other things. I have also learned that, if more than four hours pass, I had better call a doctor.

So, what is the point of this long introduction, which likely will only again upset some Old West attorney?

Recently, my wife, Brenda, and I celebrated our thirtieth anniversary. As part of that celebration, we agreed to take the family to Saipan for two fun-filled weeks. The planning, alone,

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The Big One

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was stressful to observe as my three ladies tried to stuff all of their belongings into their allotted two suitcases, each.

To relax, two days prior to the trip, Brenda and I enjoyed dinner at a local Italian restaurant with some friends. We enjoyed a rather not-so-healthy meal consisting of a large plate of lasagna, copious caesar salad, butter-slathered garlic bread, and red wine. It was a grand meal, with fun being shared by all. However, it was not a meal that any self-respecting cardiologist would suggest.

Following dinner, we returned home. As was customary in my middle age, I went directly to bed. Brenda, on the other hand, stayed up, frantically re-packing for the trip, and energetically cleaning house.

At about 1:30 a.m., I awoke with a strange sensation. There was a weight in my chest. This time, it was not the fat family cat. The strange feeling, clearly, was not something that I should tolerate for four hours before instituting self help. Nor was it something to brag about.

I decided that I would lie down and let the feeling pass. After all, this was how I handled my rare urges to exercise. But, the discomfort did not leave. Instead, it became more annoying. After a few minutes, I again sat up. I was becoming concerned that, just perhaps, "The Big One" was on the way. I concluded that this was definitely not a good thing with a family vacation scheduled in two days. Not to mention legal proceedings in the morning. I remembered when Dad used to warn me that, "One of these days, Billy, you are going to wake up dead!" The prospect was not enticing.

My obsolete medical knowledge came back to me. I recalled that one of the symptoms of a heart attack, in addition to the more classic physical symptoms, was a mental symptom known as denial, where a person having a heart attack will often deny the event, assigning it, instead, to indigestion. Still, I chalked my discomfort up to bad indigestion. After all, denial was for the other guy.

My mind raced. I quickly went through the liturgy of symptoms as I recalled them from my training. To my consternation, some applied to me.

So here is the socially acceptable part of this article:

The predominate symptoms, for those of us over age 50, are:

- Chest discomfort – usually in the center of the chest, and may come and go
- Uncomfortable chest pressure
- Chest squeezing
- Chest fullness
- Chest pain

Upper Body Discomfort – It is not necessarily just the chest that gets pain or discomfort

- Pain radiating to left arm
- Back discomfort
- Back pain
- Forward pain
- Discomfort in one arm
- Discomfort in both arms
- Discomfort in all three arms
- Neck discomfort
- Jaw discomfort
- Stomach discomfort

Symptoms of full cardiac arrest

- Loss of consciousness
- Cyanosis
- Pallor
- Absent pulse
- Tardy pulse
- Dilated pupils
- Dilated teachers
- Smelly corpse
- Funeral procession
- Funeral recession

Other signs

- hortness of breath
- Sweating
- Cold sweat
- Hot sweats
- Nausea
- Shortness of breath
- Vomiting
- Light-headedness
- Fainting
- Repetition/memory problems
- Tiredness
- Extreme fatigue
- Anxiety
- Palpitations
- Paleness
- Upset stomach
- Dyspnea
- Diaphoresis
- Electrophoresis
- Panic

Common features of heart attack symptoms

- Uncertainty about symptoms – Most people are unsure whether they are having a heart attack. Doubt is common.
- Progressive symptoms – The pain often starts mild and gets worse.
- Intermittent symptoms – Sometimes the pain or discomfort will come and go.
- Sudden severe symptoms – Sometimes the symptoms start out severe and sudden rather than mild.
- And just about anything else, including hangnails.

Eventually, I recognized that I was exhibiting at least three of the listed symptoms. Yet, true to form, I still denied all of these symptoms. I then realized that I was exhibiting another symptom – denial. So I denied that symptom, too.

Swallowing my ego, as well as a piece of crusted garlic bread caught between my teeth, I called to Brenda. I told her that we should go to the hospital. To my mind, it was not a matter that required an ambulance, since I was still breathing. Besides, I did not want the fanfare in the neighborhood which would come with red lights and sirens. Nor did I want a bunch of strangers tromping through my house in greasy boots, smashing gurneys into my furniture, and attaching suckers to my naked body while casing the place for a break-in. On the other hand, I did not want to wait in the house for more drastic events to take place, either. After all, I was familiar with the process.

After getting dressed, so I would look my best, Brenda drove me expeditiously to the Fairbanks Memorial Hospital (FMH). Summoning up my machismo, I walked into the emergency room while Brenda parked the car. I told the receptionist that I was having some chest pains. I said I would like to be checked out, if it was not too much of a bother. Following the obligatory giving of my name, required insurance information, and filling out related paperwork, the staff leapt into action.

For one of the first times, people actually took me seriously. Immediately, I became important. My self-esteem improved. I made a mental note that I should actually do this more often. In short order, a wheelchair was brought out and stuffed under me. I was told to sit. The staff would do the rest. I next took a fun ride down the corridors to a nearby room. I was pleased to find it was a private room. To me, privacy was important. Moreover, I did not have to wear one of those tacky gowns that opened in the back, further protecting my privacy. I was then loaded onto a bed. Before I could even relax, a trio of nurses began to attach funny little sucker things to various portions of my body. In the end, I looked like a lovesick octopus had attacked me. I laid complacently waiting for the next act, while wondering how I could rationally explain twelve new hickeys in strange locations.

For one of the first times, people actually took me seriously. Immediately, I became important. My self-esteem improved. I made a mental note that I should actually do this more often.

The EKG machine was fired up and my heart rhythm was observed. I was encouraged to see that I did, indeed, have rhythm, despite what my black law school friends used to tell me. Better yet, I was not exhibiting any of the telltale signs of full cardiac arrest. Following a few minutes, the physician's assistant, a rather cute lady, assured me that my heart rhythm "appeared normal". Still, she wanted to make sure that everything was okay, since heart rhythms could be masked.

By then, I was beginning to become just a bit embarrassed about having pushed the emergency button, only to find I had a normal heart. However, as a lawyer, I was also happy to see that I actually had a heart, given some of the recent blogs about me.

In response to questions from my physician's assistant, I disclosed that I had a unique heart condition known as Lown-Ganong-Levine Syndrome. It is a rare condition similar to another heart condition known as Wolff-Parkinson-White syndrome, both of which have as their trademark the onset of sudden death, an event which I have yet to experience, to the best of my knowledge. Not that sudden death develops. Rather, it just occurs, and is irreversible, absent tight religious connections. When diagnosed with my syndrome thirty-five years ago by a cardiologist, who since also

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The Big One

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died of a heart attack, I was told it was no big thing and not to stress out. To the contrary, I was still licensed to fly aircraft and, if something ever did happen, I was assured that the end would be quick and relatively painless.

"Like V-Fib (Ventricular Fibrillation)?" I asked the kindly Oriental doctor.

"No, more rike frat rine," he replied, "You just dead. Blain dead. Prain dead. No pain. No leestart." Soothing words, perhaps, but bad bedside manner, nonetheress.

The assistant dutifully took note of this. She then asked if I would give her one of my veins. Fully compliant by then, I exposed myself. A true professional, she said that an arm vein would be sufficient and much easier to find. Once again, my self-esteem deflated.

My blood was drawn, and sent to the lab. I then was told to rest for a while. In retrospect, I believe that the instruction was designed to see whether or not I really would have the proverbial Big One.

After thirty minutes, during which Brenda understandably nodded in and out of sleep, apparently comfortable that my immediate future existence was assured, I was wheeled into an x-ray room. Another cute technician carefully asked me to expose only my chest. Apparently, she had been forewarned. Two x-rays were taken, apparently to confirm that my heart still existed. Either that, or to help defray the costs of the new system.

It was not until then that I realized how many cute ladies worked at the hospital at such late hours of the night. Unfortunately, they all appeared to be disinterested in an old fat guy or perhaps were wary of my wife of thirty years, who was only appearing to be asleep in the corner but was well known to rouse quickly when circumstances demanded. I concluded that the younger, unmarried guys should have the heart attacks, and not the old fogeys.

I was returned to my emergency bed. I had been advised in advance that the entire evaluation would take three to four hours, and to plan on a late night. True to form, it was just about three hours before a nurse came in and ordered me to drink a foul smelling concoction. The witch's brew, I later found, was comprised of lidocaine, belladonna weed, and some sort of antacid. It was humorously called a "gastric cocktail".

I reminded my caregiver that I had come to the hospital in order to live. As such, I did not appreciate the concept of being given a dose of belladonna, a traditional poison, as a cure. I began to worry that perhaps Brenda had some subtle input on this matter, since I had mentioned to her at one point that I had found both my physician's assistant and the x-ray tech to be somewhat attractive. Then again, it was just a passing comment in what could have been the final hours of my life. Aren't deathbed confessions subject to some sort of evidence rule?

As instructed, I drank the noxious substance. I was then told to wait for another half an hour. Hopefully, I would begin to receive some relief, although perhaps not significant.

In retrospect, it should be noted that I had noticed throughout the entire event that I was suffering from a certain amount of what can best be determined as upper-gastrointestinal upset. This was manifested by profound intermittent belching. Still, this was probably better then having lower-gastrointestinal upset, which would have been exhibited by other, less socially acceptable symptoms.

As early morning approached, my physician's assistant reentered the room. She announced that I could now get dressed. Apparently, I was not that impressive. Undoubtedly, "obese" would be in the medical notes, but I could handle such a moniker, having done so before. Most importantly, I was relieved. I was going home. Other, more deserving patients apparently needed the space.

I asked about the diagnosis. I was advised that the x-ray technician had located what could best be described as a "very large bubble of gas" in my upper stomach. This was the basis for my symptoms. I was offered a Vicodin to ease the pain. By then, however, given my miraculous recovery, my life had once again resumed its old priorities. Over the hours, I had grown suspicious of the hospital's billing procedures. After all, such elaborate physical plants and cute staff obviously did not come cheaply. Moreover, I knew that Vicodin could easily be bought cheaper on the street from one of my many clients, rather than through the hospital pharmacy. I politely declined the offer. There was no sense adding further financial insult to injury. If worse came to worse, I would tough it out.

In retrospect, it should be noted that I had noticed throughout the entire event that I was suffering from a certain amount of what can best be determined as upper-gastrointestinal upset. This was manifested by profound intermittent belching.

Sheepishly, I got dressed. I asked if it would be possible for me to discretely walk out of the emergency room, rather then be wheeled out in a wheelchair. To my surprise, and contrary to scenes which I have watched on hospital television shows, I was told that this would be perfectly acceptable.

Hiding my face as best as I could, I quietly slipped out of the treatment room. At the front desk, also to my surprise, I was told that I would receive my bill in the mail and did not need to wait for the invoice. Apparently, my credit was good. Either that, or FMH had other expectations. When I saw the bill three weeks later, I quickly understood the hospital's plan. It was enough to incur a repeat visit, if not stop a person's heart permanently.

On the way home, the gas bubble which was at the top of my stomach decided to loudly depart. The relief was immediate. A happy man, I realized that it was still too early for my big one.

Hopefully, when it does come time for me to check out, it will be with much greater fanfare. Ideally, I would like to make the national news, sandwiched between Sarah Palin and Tina Fey. Maybe I could even be caught in some scandalous event with the two of them worthy enough to make the front page of the National Enquirer or the Weekly World News.

In the interim, I have begun to realize just how important it is to keep track of one's physical condition. As I read the newspapers on a daily basis, I am turning more regularly to the obituary column over the comics. Maybe it is a sign of old age. Still, I am finding that more and more people of my age are transitioning unexpectedly to the next dimension. Someday, my turn, too, undoubtedly will come. But, I still plan on it being years off. Until then, hopefully, the Grim Reaper will understand and appreciate my sense of humor (if not that old guy in Anchorage) and let me have some more time to develop it. That is, if he can take a joke, of course.

Meanwhile, I plan to be one to learn from one's mistakes. Italian food is definitely on the back burner for a while. Moreover, even though garlic may be good for one's health, too much of any good thing can be bad. As such, I plan to give up the garlic one of these days, and concentrate on the red wine. After all, if a glass of red wine a day is good for the heart, I already should easily live to be 400 years old.

WARNING!
You and lots of people you know could be looking at this picture 25 years from now!

Val Van Brocklin, 1985

Val Van Brocklin, 2010

By Valerie Van Brocklin

I discovered something was FUBAR with my "25 years of Bar Membership" photo published in the May-June *Bar Rag* when Alaska's top federal prosecutor called me to suggest the picture looked like I needed a "Get Out of Jail Free" card. You know you've been around a long time when your friends ascend to high, very grown up places. I need such reminders. It sure doesn't seem like it was a quarter of a century ago that now U.S. Attorney Karen Loeffler and I met in the Anchorage District Attorney's Office as fired up young prosecutors. Karen was kind enough to also tell me that no one in her office had mentioned her 25 year old photo in the same issue but the place was abuzz with,

"Ohmigod, have you seen Val's picture in the *Bar Rag*?"

So I went and looked at it. The call from Karen should have prepared me. It didn't. It was like when I recently found myself caught between a full-length mirror on a hotel bathroom door and the mirror over the bathroom sink while brushing my teeth. I nearly had a heart attack. I thought a stranger had walked in — naked and backwards — because THAT WAS NOT MY BUTT!

But it was my butt. And it was me in the photo, although the brain cells that might've remembered what that younger woman could have possibly been thinking when the camera flashed are long lost flotsam on a river of Scotch. I didn't think it looked so much like a criminal as it did the photo of a kidnapping victim holding a newspaper to show she was still alive — barely. The kindest comment came from Susan Parkes, who joined Karen and me at the DAO not too long after we had started. Susan said she would never have recognized it as me without the name.

My second reaction to the photo was both lawyerly and patriotically American,

"Somebody's gotta pay for this."

Surely I had a cause of action for emotional distress, pain and suffering, invasion of privacy — something. I mean, where did they get that picture and who in hell gave them permission to publish it? So I called Deborah O'Regan, Executive Director of the Bar Association. With close to 4,000 Alaska Bar members, I figured I'd need to let her know who I was.

"Hi Deborah, this is Val Van Brocklin and I'm calling about my picture published in the *Bar Rag*."

"Oh, you mean the one with you in the bow trying to look like a grown up." Not exactly the fame I'd dreamed of 25 years ago.

Trying to keep "the lawsuit tone" out of my voice, I asked where they'd gotten it. Deborah gently explained that the photos were ones we'd sent in with our bar applications. WHAT?! Forget seeing my lawsuit start to slip away. I could NOT have willingly sent that photo anywhere but to a flame over a trash can. Where was it taken? Who took it?

I would've been in New Hampshire at that time, finishing up a one year judicial clerkship before moving to Anchorage to start my job as an Assistant District Attorney. Loeffler suggested I probably went to the nearest Post Office and had a passport photo taken. But how could I have lacked the vanity to send that shot? Wouldn't I have worried that the Alaska Bar would take one look at it and bring me up on a charge of moral turpitude for scaring young children and animals?

I thought I had something to take to a plaintiff's attorney. I might have to concede the possibility of Deborah's version that I'd provided the photo — since I had absolutely no recollection of it. But that didn't give them the right to publish it. That's when Deborah patiently explained that I'd RSVPed to an invitation to a 25-year pinning ceremony at the Bar Convention (I didn't go) which included checking a box giving them permission to use the photo.

Good-bye cause of action. I've never practiced civil law but I knew from my trial lawyer days that I wouldn't come across very sympathetic testifying to a lay jury that I, a lawyer, sign all kinds of things without really reading them.

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I couldn't let it go. If I couldn't cash in on my embarrassment maybe I could save someone else from the same nagging compulsion to change their name and leave the country. What about a warning label lawsuit? If the airlines think they need to cover their a---s with an exit row warning label in English that reads, "If you cannot read English please contact a flight attendant," surely the Bar Association has some duty to warn me about that photo.

It's like the hotel mirror situation. I practice due diligence in the placement of mirrors around my house. I have a right to expect the same from a place that offers its services to the public. And I would be willing to pay a little more for those services for a warning label on the bathroom door full-length mirror that reads,

"WARNING! Objects may appear larger than when last seen."

If a vegan advocacy group can file a lawsuit asking a court to compel Oscar Mayer to put a warning label on its hot dogs (that consuming them increases the risk of cancer) surely I've got a claim here. I've been personally damaged. It's not like the vegans — who don't even eat the damn hot dogs.

The Alaska Bar Association should have a warning label on their application that advises that the photo accompanying it may appear in its publication 25 years later — when you've forgotten you sent it and what it looks like. Actually, that seems like a good warning label for life. How will I feel about this if it's made public 25 years from now? That might've helped a lot of politicians and the kids who post videos of their drunken escapades on Facebook pages.

I will concede that once you get over the shock, it's not a bad thing to look back on your life every quarter of a century or so. I don't remember the flash bulb moment caught in my photo, but I do remember me back then. Deborah nailed it. I felt like I was only pretending to be a grown up lawyer and worried I'd be found out. It's not like I'd ever felt destined to be a lawyer. I was an older law student. I'd worked in Special Education for five years after college. I went to law school with the idea of getting out and working in the non-profit arena of disability law. Instead, I graduated at the height of Reganomics when such programs were laying off long-time staff attorneys. The only other thing I had any interest in was doing trials — and that was a naive interest.

At the end of a summer spent clerking for Burr, Pease and Kurtz in Anchorage after my second year of law school, I knew I wanted to return to Alaska and I'd bolstered my interest in trial work. In my simplistic view that meant criminal law, given the percentage of civil cases that settle.

I wanted to be an Assistant Public Defender but I also needed a job. So to double my prospects, I interviewed with then Public Defender Dana Fabe and District Attorney Vic Krumm. I told them both my preference. Vic asked me why I thought I wanted to be an Assistant Public Defender and I replied with some Craig Howard sounding rhetoric about my concern for the rights of traditionally underrepresented, disenfranchised accused people *vis a vis* the power of the government. Vic's answer was,

"Then why don't you come to work where that power is exercised?"

That helped assuage my ambivalence — along with a promise of moving expenses and a paid summer internship while I studied for and took the Bar exam. I wasn't flat broke back then. I was in debt — with law school loans weighing on me like this past July's weather.

Even as a full-fledged officer of the court representing the People of Alaska, I sometimes felt like a kid trying to look like a grown up. I remember a juror telling me after a trial that I shouldn't stand on my tip toes at the bench during side bars because I looked like a little kid. After that I made sure I stood flat footed and made the judges rise out of their lofty seats and bend over the bench, down to me, for whispered conferences. If only the rest of being a grown up lawyer had been that easy.

I'm grateful for my years practicing law as a prosecutor in Alaska. It let me spend time with some very fine folks — officers and agents who mentored me, secretaries and paralegals who saved my bacon, victims and their families who taught me what courage looks like, colleagues and bosses who never let me forget the responsibility that goes with power, defense attorneys who set the standard I would've strived for in their place. And it gave me my best friend and love.

Sometimes I still feel like that young woman in the photo — "the one in the bow pretending to be a grown up." But it doesn't scare me anymore. It's way more fun than actually being a grown up.

I guess this looking back has undercut the damage part of my claim. But I still think the Bar Association should use the warning label. Doesn't this count as some kind of prior notice that makes it foreseeable that those pictures could cause some real harm? I mean Scott Taylor did not look like Charles Manson in real life; John Novak cannot have wanted everyone to think of a 12-year-old McCaulay Culkin in glasses when they saw his picture; and Nancy Nolan can't have wanted us all hating her because she still looks like her 25 year old photo — which looks like the cover shoot on a Seventeen magazine.

And how come the photos for those with "50 years of Bar Membership" are NOW, not THEN photos? I bet the *Bar Rag* staff knew they might stroke some of those members out if they had a photo like mine.

At least give me fair response. Publish my NOW photo. Otherwise, I'll be hitting you up for a "Get Out of Jail Free" card.

Art in the Rain

By Jean Bundy

Act I, Scene 1: July, the Delacorte Theater, New York's Shakespeare in Central Park.

It is over 90 degrees and husband Dave and I are fanning ourselves with programs and drinking water, not too much or we'll have to stand in the bathroom line, an old stone shed. We've flown to see *The Merchant of Venice* starring Al Pacino. The back story, not of *Merchant*, but why we are sweltering on bleachers designed more for a tennis match, is about daughter Maddy who had a summer internship with Public Theater (continuing Joseph Papp's dream of free dramatics). Maddy fashioned puppets out of gym socks, sewed knee pads into sword-fighting duds and subway'd incessantly to Public's undisclosed costume warehouse in Brooklyn.

Darkness began falling around our seats for which we paid $350 not to queue-up all night for the free tickets. Below us on a round outdoor stage canned lights came rolling in on scaffolding. Concentric circles of black fencing also appeared, they would be rotated throughout the performance, serving as the only curtain. Suddenly Al Pacino jumped onto the stage as the Bronx-esque Shylock, his raspy voice in need of new bearings; the crowd roared.

Overhead the sky began to grumble while the wind howled shaking our seats and the park's vintage trees. Rain appeared. Imagine taking a cold shower for thirty minutes with your clothes on. Soap suds were bubbling up from our sneakers. Umbrella runoff from those above leaked onto our faces— OK…Alaskans don't have bumbershoots, our rain is dry. A voice seemingly from the heavens announced, "STOP THE SHOW." Actors scurried and people covered in plastic unplugged much voltage. Our tickets and playbills were mush and our feet made suction-y sounds as we slip/slided our way to a covered stairwell huddling with other wet art lovers. After an endless hour the rain subsided and we dripped back to our seats watching more people in plastic ponchos squeegee the stage. Al Pacino got loud applause and some laughs as he sprung onto the stage resuming *Merchant*…with the same line on which he had retreated, Act 1, Scene iii "Three thousand ducats……

We thought the next day would be drier, alas we were mistaken as we headed for a Circle Line Cruise on pier 83. I digress…. in September 1956, Dave took this same excursion around Manhattan with his grandmother's chauffeur, Barney. The day-cruiser traveled under the 138th St bridge when the swing portion of the span hit the boat, injuring passengers and forcing everyone including Dave and Barney to abandon ship. Fast forward to July 2010, add more thunder and rain and you'd find Dave back on another Circle Line Cruise, this time accompanied by two of our five children and me. As we backed into the Hudson, another deep voice from on-high announced the Amtrak bridge on the North end of Manhattan was malfunctioning, preventing Dave from circumnavigating, once again. Not to be discouraged, cruising part way on the Hudson and East Rivers is a great way to see "canyons of steel" and Brooklyn's recycled dockyards -- warehouses like Domino Sugar are morphing into yuppie developments. Art seeps in everything as Domino was once owned by Henry Havemeyer. He and wife Louisine collected bushels of Impressionist paintings with the help of friend Mary Cassatt. The Havemeyer family bequeathed them to the Metropolitan--which is where Dave and I would spend our next afternoon, at the Picasso exhibit. This show chronicles his various periods but lacked the energy of a nineties blockbuster. Back then curators had more money to search international collections rather than clean out their own closets.

Picasso worked fanatically, while juggling paramours, most of whom he painted. It is said that Gertrude Stein, obviously not a mistress, was the only woman who frustrated him. Stein's portrait, seen here, is a great example of Cubism meeting traditional portraiture and can be found in the Met's modern section sans exhibition crowds. Stein's head and torso are painted in faceted blocks a la Cubism but still manage to retain realistic features like a classical portrait. This show used drawings to fill up wall space. Don't get me wrong, Picasso was a master of rendering line but studying his alternating thick and thin diagonals while onlookers are giggling about sexual double-entendres can be problematic-- buy the catalogue, enjoy his mythical creatures at home.

Much fuss has been made about the rivalries between Picasso and Matisse, so heading to the Museum of Modern Art's Matisse show seemed appropriate. This Fauvist was a master of dividing space using bold colors but MoMA's best Matisse, Interior with a Violin was several flights down in their permanent collection. Too bad, as it's a fine example of Matisse's use of reds and mustards decorating a parlor while outside the flattened double doors is his beloved Mediterranean. Again, drawings were used as filler—the 1993 MoMA Matisse Retrospective was far superior, the catalogue is still available. MoMA is a fun place to spend a New York afternoon and their recent expansion features interior wall cut-outs so visitors on the different levels become framed art. MoMA's Café 2 has great tomato basil soup and chicken paninis eaten on wooden tables while viewing hundred year old architecture out big windows—Edith Wharton-esque brown stones with rooftop gardens reflected in the mirrored steel and glass of post war skyscrapers. A nice pause before hoofing across Park Ave heading to the Whitney.

The Whitney, exclusively American, was featuring the late Charles Burchfield. Although fanciful at times, think Disney, Burchfield illustrated factory workers and carpenters working Depression docks and train yards. He also designed sunflower wallpaper and even a Johnny Walker advertisement. Dirty watercolors in brick reds, and chocolate browns helped him render Hopper-like urban loneliness making this show the best of New York's summer season.

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New York's Brooklyn Bridge — Jean Bundy