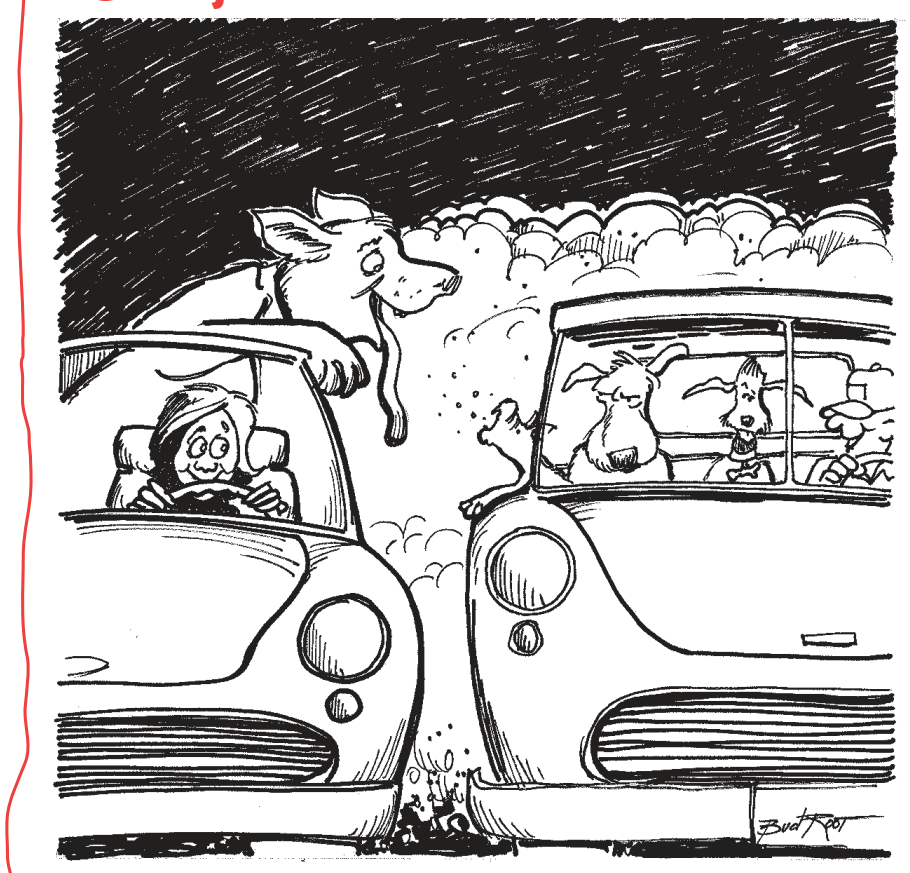
The Alaska BAR RAG

Dignitas, semper dignitas

VOLUME 37, NO. 3 July - September, 2013

Court's decision on voting rights act long overdue

OUR JOURNEY WITH DOGS --PAGE 2



By Kevin Clarkson

On June 25, 2013, in *Shelby County v. Holder*, the United State Supreme Court struck down § 4(b) of the Voting Rights Act of 1965 ("VRA"). Given Alaska's exceptional track record in the past several decades, regardless of what one might think of elections and voting in other states, the decision seems long overdue for Alaska. Because the Court's decision, authored by Chief Justice Roberts and joined by four other Court members, has great significance to Alaska, I would like to examine the ruling, together with the Court's reasoning, and make an effort to explain it. Then, I would like to briefly explain what the decision will mean for Alaska.

Historical Background.

The Fifteenth Amendment, ratified in 1870 in the wake of the Civil War, provides that "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude," The Amendment gives Congress the "power to enforce this article by appropriate legislation." But, as The Chief Justice explains in Shelby County, the first century of congressional enforcement of the Amendment can only be regarded as a failure. Toward the end of the 19th Century, several states began enacting literacy tests and other methods designed to prevent African Americans from voting. These states were primarily in the south and included Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Virginia. In response, "Congress passed statutes outlawing some of these practices and facilitating litigation against them. . . ." "[B]ut litigation remained slow and expensive, and the States came up with new ways to discriminate as soon as existing ones were struck down." Absent an effective solution, these discriminatory state practices continued for decades to come.

In this respect, I am sad to report that Alaska's history is somewhat tainted. Jim Crow laws predominated

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Dispatch from Huntsville: The end of a story

By Susan Orlansky

On June 10, 2003, my partner Jeff Feldman and I committed to represent a Texas death row inmate named Elroy Chester in a post-conviction relief case based on his mental retardation. On June 12, 2013, 10 years and two days later, we lost the case as definitively as lawyers can ever lose a case: Our client was executed.

Bar Rag readers may recall the occasional series Jeff wrote for this periodical, describing some of the earlier stages in this case where we learned, in trial by fire, about litigating in the state courts in Texas and before the Fifth Circuit Court of Appeals, neither of which is a friendly venue for a convicted murderer seeking to avoid execution. Jeff could not make the final trip to Texas, so sharing the last chapter of our journey into death penalty representation falls to me.

Naively, when we began 10 years ago, we believed that this was a relatively straightforward, winnable case. Mr. Chester had been diagnosed as mentally retarded by a psychologist who testified at his punishment trial; the prosecution had not really contested the diagnosis – but had instead argued to the jury that being mentally retarded could be a reason for imposing a death sentence rather than a life sentence. Prior to that, Mr. Chester had been tested as mentally retarded by the Port Arthur, Texas school system and by the Texas Department of Criminal Justice, which put him in its Mentally Retarded Offenders Program when he was incarcerated at the age of 18.

However, after the United States Supreme Court decreed in 2002 in *Atkins v. Virginia* that states may not execute mentally retarded murderers, Texas decided that Elroy Chester wasn't mentally retarded. (Because "mentally retardation" was the term in use when we started the case, and the term used by the Supreme Court in *Atkins*, I've persisted in the use of that term, although the preferred label now is "intellectually disabled.")

The short version of our case is that we lost at every stage, despite uncontradicted evidence that our client met the standards for diagnosing mental retardation established in the American Psychiatric Association's Diagnostic and Statistical Manual and the generally similar standards established by the American Association on Mental Retardation, the two national authorities recognized in *Atkins*. In a 2003 decision called *Ex parte Briseno*, the Texas Court of Criminal Appeals decided that, in capital cases, the courts shouldn't follow these standard medical definitions of mental retardation but should apply a set of factors the court invented, which focus heavily on whether the defendant could plan a crime.

In 2004 we had a four-day evidentiary hearing in Beaumont, Texas, the county seat for Jefferson County. Because our client was capable of the simple planning involved in committing some very ugly crimes, the trial judge disregarded our evidence and determined that, under *Briseno*, our client was not mentally retarded.

In 2007 we lost our appeal to the Texas Court of Criminal Appeals, which deferred to the trial court's findings of fact. Our first petition for *certiorari* to the U.S. Supreme Court challenged the Texas definition of mental retardation as an end run around *Atkins*. Our petition made the SCOTUSblog Petition of the Day as one that the Supreme Court might grant, but the Supreme Court denied cert.

We started over in federal district court. Our *habeas* petition renewed the challenge to Texas's way of determining mental retardation. We lost again in a ruling issued in June 2008. We appealed to the Fifth Circuit. Jeff's last article on the case described the oral argument we had in New Orleans in November 2009.

With that as background, here is the end of the story.

We received a decision from the Fifth Circuit on December 30, 2011, denying the appeal. It was a 2-1 decision, with a great dissent by Judge Dennis, who understood all that is wrong with the way Texas determines mental retardation in capital cases. A great dissent is satisfying for a lawyer, but it does the client no good at all. We filed a petition for certiorari with the U.S. Supreme Court. We made SCOTUSblog again. Our case was one of several presented to the Supreme Court around that time that challenged the way states were applying *Atkins*. Some commentators believed the time was ripe for the Supreme Court to take steps to enforce *Atkins* and to stop states'

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Uniform bar exam proposal: See Page 15.

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PRESIDENT'S COLUMN

Being ~~there~~ present

By Mike Moberly

I ended my last column by encouraging everyone to identify things outside their practice of importance to them, and to devote more energy to those things. Boy, with the summer we had, I hope everyone did that and then some. If so, we all should feel better for it. Now that we've all hopefully done something for ourselves (which I explained should have positive benefits to those around us), I would like to encourage everyone to focus on doing something for those around you (which should have positive benefits for you in return).

I am sure we have all experienced this: While sitting at the table—be it conference room table, dining room table, or other—your mind is in a different place. You become lost in replaying or anticipating one event or another that comprises a good part of your personal or professional life. Your mind is, therefore, not where it ought to be: present. Whether distracted by the professional or personal, you lose awareness of the moment.

When I first considered what I would say in this column, I thought of a title something like "Being There." But, as I thought more about it, that title was exactly what I wanted to write about not doing: being physically there but not being mentally present. Specifically, being present allows you to appreciate and meaningfully engage with whatever is happening now. This is usually important to those around us, particularly those closest to us.

I reflected on times with my family where I was there but not present—times when my mind wandered to other tasks at hand, recounting the happenings at work that day, or worried about work to come. I was not "being there" for them or me (which is how I came up with my original title). I, for one, cannot multi-task (there, I've admitted it), and in doing so I do neither task effectively. Not being able to do more than one thing at a time should inspire me to focus on doing that one thing more wholeheartedly. When that one thing happens to involve my family, it should be an easy call. But, as with most things in life, that's easier said than done, and achieving this goal takes work.

"Your mind is, therefore, not where it ought to be: present. Whether distracted by the professional or personal, you lose awareness of the moment."

When I tried to better articulate this concept, I found that I was not on to anything unique (surprise) but that an appreciation of "now-ness" permeates many of the world's religions. Zen Buddhism, Hinduism, Taoism, Judaism, Islam, Christianity and other teachings urge us to studiously appreciate our role in the present. Many such teachings emphasize that, in contrast to being present, if we live in the past we may hold onto regrets or draw ourselves into explaining past events in terms of our own or someone else's actions (possibly leading to guilt or blame), or if we live in the future we can make assumptions and become attached to expected outcomes (possibly leading to disappointment or disillusionment).

One solution is to try and simplify one's life. If we spend too much time thinking about the past (instead of analysing past actions, learning from them, and moving on) or the future (letting over-preparedness supplant skilled improvisation), we are missing the best part—and the part we have most control over—the present. There's less to worry about or occupy our precious time if we consciously inhabit each moment.

Sometimes, life is overshadowed by challenges in our lives. Pause and pay attention to what is happening in the moment—and to those around you—by not allowing your thoughts to stray. When it comes to family, again, it should be an easy call. Professionally, one benefit of being present is that you can actually take the time to slow down and pay more attention to the present moment and the things that need doing—helping you make better decisions that, in turn, positively impact the future. This means taking time to do things better by being reflective and responsive rather than reactive or resentful. All of this makes you more "Fit to Practice" –being "fit" by doing something that makes you happy or promotes a more "healthy" you, which in turn can make you a better lawyer and a better person; a "healthier" you, meaning the benefits may trickle into your work, leading to a healthier legal community.

Good luck.

EDITOR'S COLUMN

Dogs

By Gregory S. Fisher

Dogs live in the moment, in that purest expression of "now" that the saints possess. Dogs don't care about clocks, schedules, or maps. They only want to be with you. So long as they are with you (and the pack) it doesn't much matter where you are. Most dogs don't know where you're going or when you'll get there, and they could frankly care less. It's you and them, here and now. They're okay with that. For dogs, time is simple. It's time to eat, time to sleep, time to run, or time to play, then it's time to eat again.

In some cultures, apparently, dogs are unclean. I wouldn't want to live there. In contrast to humans, dogs are smart, brave, hard-working, loyal, and honest. Dogs don't "friend" anyone. Dogs love brave with abandon. They won't lie, cheat, or steal from you, although, hey, that bag of chips on the couch is fair game if you turn your head. What's a little sharing between friends?

I'm pretty sure Alaska is the world's largest dog park. Dogs are everywhere. We take them biking, skiing, hunting, fishing, hiking, you name it, they're there. Alaskans tend to favor good old-fashioned "doggy-dogs"—thick-coated, panting lab-pointer mixes with muddy paws and happy eyes or shepherd-husky mixes with loping gaits and goat ears. Dogs are excellent trail companions. Dogs and kids just somehow go together.

Alaskans are undeniably dog-crazy. A beaver biting a dog in a local lake is front page news here in Anchorage. Once in jest I told a neighbor I was going to publish a calendar for Alaskans, "Dogs and Trucks." Each month would feature a dog in the back of a truck. We'd cover the truck's specifications (make, model, year, size, tonnage, load capacity, horsepower) and the dog's history and lineage. I was joking. People never get my jokes. My neighbor thought it was, like, one of the best ideas he'd ever heard. That's how insane we are about our dogs.

All great judges and lawyers have a dog by the fire, perhaps two or three.

The Law is a tough, "beat you down" profession. Dogs read brain waves. They sense moods. Dogs will get discouraged, but never depressed. Dogs will lift your spirits. It doesn't matter how bad your day was. You can have the worst kind of "plug in the mud" day, but your dog(s) will be waiting and happy to see you once you get home. Let's go for a walk.

We're pretty sure we know how dogs became so close to humans. At least we have a good working theory. Wild dogs or wolves followed hunter-gatherer packs. We tolerated their presence because dogs provided a sort of outer ring of defense around campsites. In exchange, the dogs scavenged remains we left behind. How long did it take before that first human offered his friend a scrap of meat or bone? What could he or she have been thinking? I mean the dog. From there it was a short 7,200 year hop to Sallie with the 11th Pennsylvania at Gettysburg. She stood with the first line, first rank and barked at Alabamans. She made Confederate battle logs ("They seem to have this dog. She barks.").

"October is Adopt a Shelter Dog month. Don't get confused. The dog is picking you."

Training a dog is really training yourself, only you probably don't realize that until years have passed. If you think it through what you are actually doing is training yourself to accommodate this other living creature in your world. Or maybe the dog is training you. That might be another way of looking at it.

Losing a dog is hard. You don't realize how much a part of your life they are until they are gone. A big part of the day is set aside to dog tasks. Suddenly, those don't need to be done. It hits, hard. They say it takes seven to ten days to sort the emotions out. I think that is about right. The loss itself leaves permanent scars, but those heal with fond memories. St. Francis taught that dogs have souls, all animals do. I'm sure of it—a soul or an animating spirit that we'll reunite with in the next world or life. Dogs and humans are inseparable.

All great journeys include dogs. I don't know of a more poignant sight than a dog team turning south on Long Lake as they escape Willow, launching into a thousand-mile odyssey across the wilderness. It's just that musher and his or her sixteen best friends. Sled dogs are not pets. But the love that mushers and their dogs share is pretty special. They are depending on each other.

October is Adopt a Shelter Dog month. Don't get confused. The dog is picking you.

The Alaska BAR RAG

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

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 5 & 6, 2013
(Thursday & Friday)
October 24 & 25, 2013
(Thursday & Friday: July Bar Exam results & budget)
January 23 & 24, 2014
(Thursday & Friday)
May 5 & 6, 2014
(Monday & Tuesday)
May 7 – 9, 2014
(Wed. - Friday: Annual Convention)

NEWS FROM THE BAR

Board of Governors action items Sept. 5-6, 2013

- Voted to publish the proposed amendments to Bar Rules 1-5, which would adopt the Uniform Bar Exam (UBE.)
- Voted to adopt the proposed amendments to the Standing Policies of the Board of Governors, providing for the UBE, conditional on passage of the amendments to the Bar Rules, and setting the UBE transfer fee at $1,500.
- Voted to adopt the proposed amendments to the Law Examiners Committee Regulations, providing for the UBE, conditional on passage of the amendments to the Bar Rules.
- Voted to recommend the admission of 13 applicants based on reciprocity.
- Voted to adopt the Lawyers' Fund for Client Protection Committee's recommendation for reimbursement of $1100.
- Discussed the selection process for the New Lawyer Liaison; current liaison Leslie Need will write a Bar Rag article soliciting applications for the position for the Board to consider at the January meeting.
- Voted to add the Alaska Immigration Justice Project to the list of legal services providers, as qualified under Alaska Bar Rule 43.2 ("Emeritus Attorney"), who may attend CLEs at no charge (except for actual costs like meals or books.)
- Approved $660 under the Board of Governors budget for staff recognition, to be allocated at the Executive Director's discretion.
- Voted to approve payment to Trustee Counsel from the Lawyers' Fund for Client Protection for fees of $14,966.86 in the matter of 2012T003.
- Voted to approve reimbursement to the Alaska Bar Association from the Lawyers' Fund for Client Protection for legal assistant fees of $11,745 in the Trustee Counsel matter of 2012T003.
- Approved the Health Law Section name change to the Healthcare Law Section.
- Approved the Board minutes from the meetings of May 13 & 14, 2013 and June 4, 2013.
- Approved a stipulation for discipline by consent for a six month suspension, stayed, pending transfer to inactive or retired status, and a public censure by the Alaska Supreme Court.
- Invite three law schools which submitted proposals to publish the Alaska Law Review to make in-person presentations at the October board meeting. Law schools invited: Duke, Gonzaga and Willamette.
- Voted to publish a proposed amendment to Bar Rule 31(g)(3) which would remove the $10,000 limitation on compensation to Trustee Counsel, and allow the Board to make reasonable determination of fees to be paid.
- Voted to adopt a proposed amendment to Bylaw Article III, section 1(a) removing the Alaska Pro Bono Program confirmation requirement since that program has ceased operation.
- Voted to send to the Supreme Court a proposed amendment to Bar Rule 12(k) regarding the selection and assignment of Area Division members.
- Voted to publish a proposed amendment to Bar Rule 37(a)(1) eliminating the office requirement for Area fee dispute resolution division members.
- Voted, at the request of the Historians Committee, to pay half the cost of a system to measure and log the moisture content of rooms in the Boney Courthouse to determine the best environment for the Joint Court/Bar archives. The Bar and court will each pay $780.50.
- Asked a Board member to draft the edits to the informal ethics advice policy as discussed by the Board and to put this item on the October agenda.
- Approved a stipulation for discipline by consent for a private reprimand.
- Voted to adopt the pilot mentoring project as a continuing Bar program.

Letters to the Editor

Liked the articles

I would like to compliment two of your writers who submitted excellent stories to the April-June, 2013 Bar Rag. They are Cliff Groh and Ken Atkinson. Both knew their subject well and eloquently presented it in print. Cliff's account of John Rader's career beginning in the territorial days brought back many memories for those of us who admired and followed John's progress through the Alaska legislature. John was indeed a statesman. My husband, Russ, and I are 2 of the "old timers who recognize his name and know of his accomplishments." Thank you, Cliff, for taking the time to look back on the achievement of those who gave their all in territorial and early statehood days to make Alaska what it is today. You are a talented writer. Hope to see more of your work in future Bar Rags.

I was disappointed to see Ken Atkinson did not make it to the annual Bar Party for the Territorial Lawyers and their Spouses, for I had hoped to tell him in person what a great article he had written for the Historical Bar entitled "Remembering the Old Days." What a well thought out and very organized presentation on the facts of the legal practices of so many familiar names. This article should be kept in the archives somewhere because of its clarity and wealth of information beginning in 1948 when Ken arrived in Alaska. Thank you, Ken, for putting all of this wonderful history down for others to consume and enjoy. Do let's have more from you in the *Bar Rag*.

—Betty Arnett

Bar Rag complaint

For once, I was pleased that some subscribers apparently have read my latest article in *The Bar Rag* regarding the judicial selection process. Although offered as humor, the missive was also intended to highlight issues which exist in the judicial selection process in Alaska and, to a certain degree, of the hypocrisy that can arise. (For example, why would the purportedly independent Alaska Judicial Council fund an advertisement supporting a judge in a judicial retention election?)

Having received responses, I will agree that the judicial selection process in Alaska, although perhaps flawed in certain respects, is still better than the process which exists in many other jurisdictions. For example, where attorneys openly campaign to be an elected judge or an elected attorney general, the process becomes quite open to potential incompetence, vote buying, corruption, and political whim. Still, I do believe that the Alaska system is politicized to certain extent by those who respond to the surveys, and also by the selection process, itself. The debate will likely go on for a while, I suspect.

On another note, I was actually pleased to see that Larry Cohn was given space to write a rebuttal to my article, which he apparently was able to read even before it went to press. Effective and objective journalism should always welcome a diversity of opinion, and leaks to and from the press are an American tradition, as is NSA monitoring of communications. *See,* eg Wikileaks. But, I do have one complaint about Mr. Cohn's article.

Several months ago, *Bar Rag* Editor Gregory Fisher, put me on a length restriction, claiming that other people also had a right to contribute articles to *The Bar Rag*. No longer was I able to expound uncontrollably in my *The Bar Rag* articles, but actually had to share space. Generally, I am not used to sharing. Per Editor Fisher's edict, I was limited to a maximum of five double spaced pages. Since then, I now have endeavored to adhere to the arbitrary restriction that was placed upon my artistic talent, even though it has undoubtedly interfered with my free-flowing style.

Why, then, was Larry Cohn relieved of this five page requirement in his rebuttal? And why did Larry get coveted front page status? Specifically, when I compared the column inches of my column vs. Larry Cohn's, I noted that I had a meager 42 inches. Larry Cohn, in contrast, had 49 column inches. Simply stated, Larry had a full seven more inches than me! This is unacceptable, and raises a dangerous precedent.

As one may suspect, I am already suffering from serious self-esteem issues. This latest insult did not help the matter, and only strengthens my resolve to set matters straight in the future. I will not be beaten easily on this issue.

—William R Satterberg, Jr.

Comments invited

Rules changes to trustee fees, arbitrators

The Board of Governors invites member comments regarding the following proposed amendments to Alaska Bar Rules 31 and 37. Additions have underscores while deletions have strikethroughs.

Bar Rule 31(g)(3). Bar Rule 31 permits bar counsel to petition for the appointment of a trustee counsel to inventory the practice of a deceased or unavailable lawyer. Trustee counsel notifies clients of the lawyer's death or unavailability and assists with file transfer to the clients or new counsel. This valuable service protects the lawyer's clients, opposing parties and their lawyers, the court system, and the public in general.

Trustee counsel is compensated either from proceeds from the lawyer's practice on application by the trustee to the superior court or from the Lawyers' Fund for Client Protection on approval by the Board. Rule 31(g)(3) currently limits compensation from the Fund to $10,000 but there have been complicated appointments involving numerous clients where the reasonably incurred expenses have exceeded that amount. In those instances, the Board has exercised its discretion to pay in excess of the limitation.

Since the Fund is the exclusive responsibility of the Board, it should have the authority to make reasonable determinations of the fees and expenses to be paid to trustee counsel.

Rule 31. Appointment of Trustee Counsel to Protect Client's Interest.

…

(g) **Compensation.**

…

(3) In the event that the estate of the unavailable attorney is insufficient to compensate trustee counsel, an attorney appointed to serve as trustee counsel may submit a claim to the Board of Governors of the Alaska Bar Association. Reasonable compensation paid from the Lawyers' Fund for Client Protection shall be determined by the Board ~~and will not exceed $10,000~~.

…

Bar Rule 37(a)(1). The Bar has been very fortunate over the years to have experienced practitioners willing to volunteer their time as area fee dispute resolution division members. These lawyers serve as single arbitrators or on a three person panel depending on the size of the fee dispute. When the parties agree, they also serve as mediators.

The Court recently adopted an amendment to Bar Rule 12(a)(1) which permits a member in good standing to be a member of an area discipline division without maintaining an office for the practice of law.

The Fee Arbitration Executive Committee and fee arbitration staff propose a similar rule for fee arbitration panel members.

Rule 37. Area Fee Dispute Resolution Divisions; Arbitration Panels; Single Arbitrators.

(a) **Appointment of Area Division Members.** Members of area fee dispute resolution divisions (hereinafter "area divisions") will be appointed by the president of the Bar (hereinafter "president") subject to ratification by the board. One area division will be established in each area defined in Rule 34(f). Each area division will consist of:

(1) not less than six members in good standing of the Bar, each of whom resides ~~maintains an office for the practice of law~~ within the area of fee dispute resolution for which (s)he is appointed, and

…

Please send comments to: Executive Director, Alaska Bar Association, PO Box 100279, Anchorage, AK 99510 or e-mail to info@alaskabar.org by October 11, 2013.

Board proposes new bar exam rules

The Board of Governors invites member comments regarding the following proposed amendments to the Alaska Bar Rules 1- 5, which would adopt the Uniform Bar Examination. Additions have underscores while deletions have strikethroughs.

Rule 1. Board of Governors: General Powers Relating to Admissions.

Section 1. As used in Rules I-VIII:

(b) "Bar examination" means the general ~~or attorney's~~ examination~~s~~ which shall be offered to applicants for admission to the practice of law in Alaska;

***

Section 3. The Board shall examine or provide by contract or otherwise for the examination of all general applicants for admission to the practice of law and shall determine or approve the time, place, scope, form and content of all bar examinations.

Bar examinations may, in whole or in part, be prepared, administered and graded by or in cooperation with other states or the National Conference of Bar Examiners consistent with standards fixed or approved by the Board acting with the advice of the Committee of Law Examiners. No contract or cooperative agreement for the preparation, administration or grading of a bar examination shall operate to divest the Board of its authority ~~(1)~~ to ~~cause the Committee to review any examination, and (2)~~ independently ~~to~~ determine the eligibility of an applicant to be admitted to the practice of law. ~~The Board or any member thereof may require an applicant to appear before the Board, a committee or a master appointed by the President for such purpose, at such times and places as may be required, for oral examination and to furnish any such supplemental information or evidence in such form as may be required.~~

Section 4. There shall be appointed a Committee of Law Examiners. The appointments shall be made by the President~~, subject to ratification by the Board~~. Except as specified in this rule, members of the Committee shall serve for three years and until their successors are appointed. The terms of the members of the Committee shall be staggered so that the terms of at least one-third of the members shall expire on June 30 of each year. Any person who has served on the Committee within the previous three years may serve as an alternate member in the event that one or more of the regular members is unable to participate in a portion of the grading process. The President shall appoint the Chairperson of the Committee, who shall act as Chairperson for one year commencing on July 1. The Chairperson may be reappointed to successive terms. The Chairperson shall designate alternate members to serve, as necessary.

Section 5. The Committee shall ~~prepare and~~ grade~~, or administer~~ the bar examination ~~except the Multistate Bar Examination which shall be graded by the National Conference of Bar Examiners.~~ The Committee shall advise the Board concerning the ~~preparation,~~ grading or administration of bar examinations as from time to time directed by the Board. The Board shall furnish to the Committee clerical and other assistance as may be deemed necessary by the Board.

Section 6. A majority of the members of the Committee shall constitute a quorum for the transaction of business relating to admissions. ~~Five~~ Seven members of the Board shall constitute a quorum for such business.

Rule 2. Eligibility for Admission Examination.*

Section 1. Every general applicant for admission ~~examination~~ shall:

(a) File an application in a form prescribed by the Board and produce and file the evidence and documents prescribed by the Board in proof of eligibility for admission ~~examination~~;

***

Section 4. An applicant who meets the requirements of (a) through (d) of Section 1 of this Rule and has achieved a scaled score of 280 or above on a Uniform Bar Examination (UBE) administered in another state, territory, or the District of Columbia within five years of the date of their application to the Alaska Bar Association may be admitted to the Alaska Bar Association.

*Editor's Note: Section 9, Chapter 119, Session Laws of Alaska 1978, provides that "Section 1-8 of this Act [Chapter 119, Session Laws of Alaska, 1978] have the effect of changing section 5 of Rule 2 of the Alaska Bar Rules of the Rules of Court by transferring the responsibility for the program of law clerk study under AS 08.08.207 from the Supreme Court to the University of Alaska."

Rule 4. Examinations.

***

Section 3. The committee shall, as soon as practicable after the bar examination, certify to the board its written report of bar examination. ~~Except to the extent that such material or information is unavailable to the committee under the rules or policies of the National Conference of Bar Examiners, t~~The committee shall submit to the board ~~a copy of the bar examination questions, the graders' analyses thereof, a representative sampling of passing and failing answers to the bar examination, and~~ a written report stating the total number of applicants examined, the number passing and the number failing the bar examination, the average performance of each as designated by the code number of each, the maximum possible point value of each bar examination part or section and other information the committee or the board may deem relevant.

***

Section 5. If written request is made to the board within one month following notice of failure to pass a bar examination, an applicant who takes and fails to pass the bar examination has the right to inspect his or her essay examination books, the grades assigned thereto, and a representative sampling of passing and failing essay answers to the bar examination at the office of the Alaska Bar Association, or at such place as the board may designate. *Absent an express prohibition by the National Conference of Bar Examiners (NCBE), ~~A~~an applicant who takes and fails to pass the bar examination has the right to inspect a copy of his or her Multistate Bar Examination (MBE) answer sheet or Multistate Professional Responsibility Examination answer sheet, scores, and the correct answer key to the form of his or her MBE examination or Multistate Professional Responsibility Examination under the procedures designated by the board. An applicant has no right to a copy of any of these MBE materials or Multistate Professional Responsibility Examination materials for removal from the place of inspection. An applicant who passes the bar examination is not entitled to inspect any examination books or discover the grades assigned thereto. However, a passing applicant may be informed of the applicant's MBE score upon written request to the Executive Director. (Amended by SCO 1487 effective April 15, 2003)

*The Court adopted this language in a rule change effective October 15, 2013.

Section 6. A scaled ~~combined~~ score of 280 ~~140~~ or above, as calculated~~determined~~ by the National Conference of Bar Examiners, shall be the passing grade on the bar examination.

***

Rule 5. Requirements for Admission to the Practice of Law.

Section 1. (a) To be admitted to the practice of law in Alaska, an applicant must:

(1) pass the bar examination prescribed pursuant to Rule 4 or be excused from taking the bar examination under Rule 2, Section 2 or transfer a UBE scaled score of 280 or above on a UBE administered in another state, territory, or the District of Columbia within five years of the date of their application to the Alaska Bar Association;

What is the Uniform Bar Exam?

Currently, 13 states administer the Uniform Bar Exam (UBE).

The UBE is developed by the National Conference of Bar Examiners (NCBE.) It consists of: 1) the Multistate Bar Exam (MBE); 2) the Multistate Essay Exam (MEE), six one-half hour essay questions; and 3) the Multistate Performance Test (MPT), two 90-minute questions in which examinees are provided resource materials to complete research and writing tasks.

A UBE score may be transferred from one UBE state to another, if the score meets the receiving state's minimum score requirement and their time limitations. An applicant may be eligible for admission without taking another bar exam.

What does the UBE mean for Alaska?

The UBE should not be confused with reciprocity or national licensure. If adopted in Alaska, the Alaska Bar will retain local control of certain elements.

- Alaska will retain control over who may sit for the exam and who will be admitted.
- The Alaska Law Examiners Committee will continue to grade the essay and MPT questions.
- Alaska will set its own passing score, currently set at 140, which translates to 280 under the UBE.
- Alaska will set the time limit that it will accept a UBE score transferred from another state. The Board recommends a five year time limit.
- Alaska will continue to make its own character and fitness evaluations and decisions.
- Applicants must still pass the MPRE and meet other admission requirements as stated in Alaska Bar Rule 5.

Changes to the Alaska Bar Exam

Alaska currently uses the MBE, the MPT and nine Alaska essay questions over a 2½ day exam.

The UBE is administered over two days, with the MBE given the last Wednesday in February and July, and the MEE and the MPT given on the Tuesday prior to that. The MBE is weighted 50%, the MEE 30%, and the MPT 20%.

Use of the UBE requires adoption of the MEE in lieu of Alaska essay questions. All UBE states administer a common set of six MEE questions. Graders apply uniform standards when grading using generally applicable rules of law rather than jurisdiction-specific law.

UBE Applicants are tested on six MEE subjects out of a possible 12 subjects: Constitutional law, Contracts, Criminal, Evidence, Real Property, Torts, Business, Civil Procedure, Family, Conflict of Laws, Trusts & Estates, and the Uniform Commercial Code (Negotiable Instruments and Bank Deposits and Collections; Secured Transactions.)

For more information on the UBE, see http://www.ncbex.org/multistate-tests/ube/.

THE KIRK FILES

Casino Medicale (or, you can check in, but you can't afford to check out)

By Kenneth Kirk

Judge: This is the time set for oral argument on the administrative appeal of *Blotnitz vs. State, Medicaid Division*. Both counsel are present. I have to tell you right off the bat, I read the briefs but I still don't think I understand what is going on here. Both sides refer to Mr. Blotnitz "gambling his life savings on one roll of the wheel", but what exactly does that mean?

Asst. Attorney Gen: It's meant literally, Your Honor.

Judge: Literally as in literally, or literally the way Joe Biden uses it?

Asst. AG: Actually, really, literally. He cashed out everything he had, he flew to Las Vegas, he got onto a high limit table, and he put the whole thing on 18.

Appellant's Counsel: Hold on, hold on. That isn't quite correct, Your Honor.

Judge: I'm glad to hear that!

App. Counsel: They wouldn't let him put the whole amount on one spin. He actually had to split it into fourths, which was $50,000 each spin because his life savings was down to $200,000 at that point.

Judge: I see. So he actually lost four times in a row?

Asst. AG: No, he actually won on the fourth spin.

Judge: He won? So the payout would be something like ....

Asst AG: 35 times the amount of the bet, since it was a straight, one-hole bet.

Judge: So he took a chance but he lucked out and made a lot of money. So why are we here?

App. Counsel: He let it ride.

Judge: You're kidding.

App. Counsel: And lost on one more spin.

Judge: And then, as I understand it, he turned around and applied for welfare? I still think I must be missing something.

App. Counsel: Mr. Blotnitz has been diagnosed with a serious, progressive neurological disorder. He's doing pretty well now, but they're telling him that within a few months he'll be in a nursing home, and will probably be there the rest of his life. Although that could be quite a few years staying there, since he's otherwise healthy. He had about $200,000 in assets, which meant he was not eligible for Medicaid. So he spent it, and now Medicaid needs to pay for his nursing home cost.

Asst. AG: And the State's position is that putting your life savings on the roulette wheel, does not allow you to qualify for Medicaid, which is essentially a welfare program.

Judge: As opposed to Medicare, which is more like an insurance program, right?

Asst. AG: Right, Medicare is what you pay a portion of your payroll taxes to get. Mr. Blotnitz was over 65 so he was already getting Medicare. But Medicare won't pay for long-term nursing care. You do have to pay out-of-pocket for that, unless you become eligible for Medicaid. And he had too much in assets for Medicaid.

App. Counsel: But Your Honor, the law allows someone to "spend down" their assets to qualify for Medicaid. And they can spend down any way they want to, as long as they are not giving money away.

Judge: Wasn't he essentially giving the money away at the roulette table?

App. Counsel: No, giving money away would be something like handing it over to your nephew. He was spending it, which is permitted. He may have been spending it frivolously, but nothing in the Medicaid laws prohibits you from doing that. People who are spending down can do whatever they want to with the money as long as they are getting something in return. They can eat at fancy restaurants, they can go on cruises, they can get weekly spa treatments, whatever they want to do.

Judge: They can take that sentimental journey back home?

App. Counsel: I'm not sure what you mean by that.

Judge: You're not old enough, never mind. But I think I understand your argument. Since he was spending the money, not just giving it away, he can now qualify for Medicaid? But what if, just hypothetically, he lucked out twice in a row? Could he have kept letting it ride until, inevitably, he lost the whole thing? And wouldn't that mean he is giving it away, since he has to lose eventually?

App. Counsel: That wouldn't have been necessary, Your Honor. The payout on a straight, one-hole bet in that casino was 35 to 1. If he won twice in a row, he would have had plenty enough to pay for his own care the rest of his life. He wouldn't have needed Medicaid.

"It reminds me of the old board game called Life, where you got a last chance to spin when you hit the end."

Judge: I don't follow the strategy here. Why not just pay for his own nursing home care until the money ran out, and then apply for Medicaid? Why go to Vegas?

App. Counsel: If he won, not only could he have paid for his own nursing home care for the rest of his life, he also could have left something to his kids. And he would have had money for extras in the nursing home. He would not have been able to do that if he slowly spend it down.

Judge: But he might have had some money left over if he went into a spend down? He had $200,000. And monthly payments from Social Security and a pension. How many years would that have lasted him, paying for his own nursing home care?

Asst. AG: Less than a year, Your Honor. Nursing home costs in Anchorage average $24,000 a month now.

Judge: $24,000? For one month? You're kidding me.

Asst. AG: I wish I was. Yeah, that's the average, so it all would have been gone in less than a year. Nonetheless, Medicaid is still supposed to be a welfare program, not an excuse for people who have money to gamble it away and then fall back on the State.

Judge: So if I overturn the administrative decision, the State has to pay for his nursing home care for the rest of his life. That could run into millions of dollars. Is that really the intent of the law?

App. Counsel: It doesn't matter what the intent is. The State set up this regime which allows someone to spend down any way they want, as long as they get something of reasonably fair value for the expenditure. Mr. Blotnitz got something of value in return. He relied on the law the way it is written, and the State can't just change the rules retroactively because they don't like the way he played his hand.

Judge: So to speak. But really, counsel, the roulette wheel? Isn't that a bit ... blatant?

App. Counsel: All the legal citations are in my brief. They all say that as long as he got something of reasonably equivalent value, it is a legitimate spend down. And he did get something of roughly equivalent value. For each bet, he had a shot at earning 35 times what he put down. The odds in favor of the house were less than 5%.

Judge: What about the 5%? Is that a giveaway?

App. Counsel: They did comp his drinks and hotel.

Judge: So he gets to gamble his life savings away and then have the State take care of him. But that does appear to be what the law says. It reminds me of the old board game called Life, where you got a last chance to spin when you hit the end. Well, does the State have anything else to add?

Asst AG: It's just so ... unfair!

Judge: Don't whine, counsel.

Asst. AG: Sorry, Your Honor. I didn't really anticipate some of the arguments today, and I'm wondering if we might have a chance to continue the argument to another day, or perhaps submit additional briefing?

Judge: This is the time set for the oral argument, counsel, and then the case gets decided. Why should I keep this open and let you have another chance?

Asst. AG: Double or nothing?

Alaska Bar Association
MEMBERSHIP BENEFITS GUIDE

Bar staff has compiled a detailed guide to benefits & services for members.

Included in the guide are services, discounts, and special benefits that include:

- Alaska USA Federal Credit Union for financial services
- Alaska Communication wireless discounts
- Copper Services virtual conferencing
- OfficeMax partners discount
- Alaska Club health and fitness enrollment options
- Premera Blue Cross health and dental plans
- LifeWise group discounted term life insurance
- Hagen Insurance disability insurance discounts
- Avis and Hertz rental car discounts
- Professional Legal Copy ABA member pricing
- Kelly Services staffing services special pricing

Also included are Alaska Bar Association and partner services that include ALPS, the Casemaker legal research platform, Lawyers Assistance, Lawyer Referral Service, Ethics Hotline resources, the ABA Retirement Funds program, American Bar Association publication discounts, and Alaska Bar publications (Bar Rag, CLE-At-A-Glance newsletter, and E-News).

For details on these benefits & services and how to access them, download the full Member Benefits Guide at www.alaskabar.org.

FEDERAL PROBE

Three calendars and an incomplete set of options

By Cliff Groh

Note: This is an installment in a series of columns on the Ted Stevens case.

The Department of Justice was in an uncomfortable place with the Ted Stevens case in July of 2008, the month the indictment was handed down.

The federal criminal investigation into the U.S. Senator's conduct had gone on for more than two and a half years and produced a draft indictment focusing on charges of failure to report gifts and/or liabilities. The probe had proceeded in fits and starts for more than a year, as the prosecution and defense had entered into a series of tolling agreements to extend the statute of limitations. The motivations of course differed for the parties in making these agreements in which the defense waived the right to claim that one or more counts in a future indictment should be dismissed on statute of limitations grounds. The prosecution was looking for more time to figure out how to proceed and to negotiate, while the defense was hoping use that time to persuade the prosecution to drop the case, perhaps with a referral to the Senate Ethics Committee.

Plea Negotiations Fail and Statute of Limitations Loom Large

The prosecution team was divided between Washington, D.C., and Anchorage, with the Alaska-based attorneys feeling out of touch with what was going on in D.C. Thinking that the Stevens prosecution would not proceed, one of those Alaska-based prosecutors who had worked the most on the case—Assistant U.S. Attorney Joe Bottini—took on a high-profile capital murder prosecution.

Back in D.C., the prosecutor's traditionally favorite method for resolving a case—the plea agreement—had not come together. The Justice Department's stick of a threatened felony indictment had not gotten Ted Stevens to plead guilty under a plea agreement, even when combined with the carrot of a guarantee of no jail time.

Far from pleading out, Ted Stevens seemed to be feeling pretty good about his chances, fortified by a firm conviction that he had done nothing wrong and a strong legal defense team. Representing Stevens was Brendan Sullivan—billing at a reported $1,000 per hour—and Williams & Connolly, probably the country's premier white collar criminal defense firm.

Given that the more than 1,000 total pages in the autopsies of the Stevens prosecution focus on how failures in providing discovery led to its dismissal, writing about the motivations in the decision to indict is difficult and inherently speculative. That said, three calendars seemed to complicate the Justice Department's decision-making.

The timeline that mattered officially was the statute of limitations. The charges under consideration dealt mostly with the Senator's failure to report as gifts or liabilities uncompensed expenditures made by VECO and/or its long-time CEO Bill Allen to improve Ted Stevens' official residence/vacation home in Girdwood, Alaska.

Those expenditures in that multi-year renovation process at the structure Stevens called "the chalet" were front-loaded in that most of them occurred before 2002. This meant that much of the conduct at issue was in a count most at risk under the statute of limitations (which for federal crimes would—absent a tolling agreement between the prosecution and the defense to extend the time period—run five years from the commission of the offense to the date the charge is brought). This also meant that a tolling agreement (or a series of tolling agreements) was needed to keep alive the possibility of the prosecution bringing charges against the Senator for failure to report his receipt of those things of value without paying for them as either gifts or liabilities. In July of 2008, another tolling agreement was needed to leave open the option of charging the Senator directly for the disclosure report he filed in May of 2002 for calendar year 2001.

Clock-Watching Election Day and Inauguration Day

Along with the statute of limitations, the other two calendars at play in this highly unusual case focused on November 4, 2008 (the day that Stevens stood for re-election for a seventh full term in the U.S. Senate, this time against a strong Democratic opponent) and on January 20, 2009 (the last day of the administration of President George W. Bush).

The imminence of the election made the Justice Department concerned about the political impact of the timing of any charges, as the Department's guidelines required that no charges should be brought to affect any election. The report of the Office of Professional Responsibility ("OPR") on allegations of prosecutorial misconduct in the Stevens case notes that Brenda Morris, Principal Deputy Chief of the Justice Department's Public Integrity Section, stated that line prosecutors had early on suggested that this issue be avoided by making Ted Stevens the first trial of the federal government's Polar Pen probe into Alaska public corruption, which would have meant that his trial would have come in 2007. Morris also stated that the higher-up who heard this pitch "was not comfortable with this approach and wanted to build momentum with other trials."

Ultimately, Matthew Friedrich, the Associate Attorney General in charge of the Criminal Division, made the call in July of 2008 to go ahead and seek an indictment of Stevens. Operating with the approval of Attorney General Michael Mukasey, Friedrich decided not to enter into another tolling agreement to extend the agreement beyond the July 31 date previously agreed on. Friedrich told OPR that his thinking was "[I]f we were going to move on this, we shouldn't be doing this on say November 1st[.]"

One of the line attorneys who would actually be "doing" the prosecution did not see the timing the way Associate Attorney General Friedrich did. Lawyers for Assistant U.S. Attorney James Goeke told Henry Schuelke, the special counsel probing the prosecution, that for "some of the Department's then highest ranking officials" the timing of the indictment was "possibly driven by exogenous political factors…."

The chief lawyer for Goeke declined an opportunity to elaborate on that reference, but developments in the news separate from the four corners of the Stevens case file seemed to shape the actions of Justice Department brass. Those "highest ranking officials" were new in their jobs and well aware of the limited time they would be in those jobs. Mukasey had been Attorney General less than a year as of July of 2008, and Friedrich had then only been in his job for two months. Both men had had to testify before Congress regarding the controversy over unusual political influences on the removal of U.S. Attorneys during the tenure of Alberto Gonzales, Mukasey's predecessor as Attorney General.

Known as a no-nonsense judge who had served in the 1970s as Chief of the Official Corruption Unit of the U.S. Attorney's Office for the Manhattan-based Southern District of New York, Mukasey had a reputation for toughness on public corruption. That reputation led one commentator to note in September of 2007 that Mukasey's nomination as Attorney General was probably bad news for Ted Stevens, whose Girdwood home had already been searched that July by federal agents. In a speech delivered in March of 2008 that cited the Justice Department's Polar Pen probe, Mukasey said that "We have and we carry out a duty to ensure that the Department's investigations of public corruption are conducted without fear or favor, and utterly without regard to the political affiliation of a particular public official…. Let me be clear: Politics has no role in the investigation or prosecution of political corruption or any other criminal offense…."

In practice, wrote *New Yorker* writer Jeffrey Toobin, the constraints on Mukasey created by the circumstances of his arrival as Attorney General meant that he "was more or less obligated to defer to the judgments of career prosecutors like [Nicholas Marsh of the Public Integrity Section]. If the leaders of the Justice Department had been more politically secure, they might have asked harder questions about whether the facts justified the criminal charges against Stevens."

Another factor loomed—the rapidly approaching end of George W. Bush's presidency. It is not just that politically appointed superiors always have less power over career professionals at the end of an administration; political cycles can have effect in another way. "One of the things that happens in a political or high-profile case like this is that there's a huge push to get it done before a change in the administration," a former prosecutor told writer Steven Andersen in an article about the collapse of the Stevens case appearing in *InsideCounsel* magazine in 2009. "As government lawyers think about re-entering the private sector at the end of an administration, they want to leave a mark with a big case."

Continued on page 7

Last stop Fiji & Vanuatu; first stop Alaska-bound

By Laurence Blakely

Alaska attorneys Laurence Blakely and husband Mark Ward departed Homer in May of 2012 on their sailing vessel Radiance, on a planned 2-year journey to circumnavigate the Pacific Ocean. This is a third installment of their travels.

When May, 2013 rolled around in Opua, the little town in Northland we had mostly called home during our six months in New Zealand, winter was approaching. Scallop season was over, our diesel cabin heater was on, and the winter low pressure systems had begun shooting out of the Tasman Sea across New Zealand. We had hauled Radiance out of the water in April and given her some much needed attention, replacing the rudder bearings, cleaning the bottom, and applying three fresh coats of bottom paint. She looked great with a new mainsail, new graphics, and even waxed topsides. It was time to go.

Sailing north from New Zealand to the South Pacific islands is a sort of mad rush sandwiched between hurricane season to the north and the onslaught of the winter to the south. In the end, after analyzing the various forecast models, you don't really know what you're going to get, and you just go. Except on a Friday—never leave on a Friday. We left on a Wednesday—May 29. We had decided to sail first to Fiji to spend several months, and then east to Vanuatu. After Vanuatu, we would begin making our way back north.

A couple of days out, we began to feel the effects of a low pressure that was deepening south of Fiji before moving to the southeast. We soon had three reefs in the main, sustaining wind gusts of over 40 knots and beam seas of 5-plus meters. This made for fast sailing, and seven days after leaving Opua, we arrived in the small town of Savusavu on Vanua Levu, the northeastern of the two bigger islands of Fiji. We were back in the tropics, and it was hot.

Because my first order of business, after clearing customs, was to find some sort of internet connection to check on a few work items, I strolled into town to look for leads. I was surprised to find the main street full of Indian shops. Bollywood music blared from the open doors and colorful saris hung alongside the sulus (Fijian for sarong). After some inquiring, I discovered that what I needed was a dongle from the local mobile phone network. So I went to the Fiji Vodafone kiosk to get set up. At the counter was a petite young Indian woman to register my dongle. "What's your profession?" "Attorney." "What?" "Lawyer." She giggled. "I like lawyers." Well, that's a first, I thought. I like Fiji.

The large Indian population in Fiji originates from the sugar cane industry around the turn of the century. The British—the colonial presence in Fiji—brought Indian workers to Fiji through an indentured labor system to address a labor shortage left by the abolition of slavery and the curtailing of blackbirding. (Blackbirding was a common business in the 1800s which involved luring people, usually native populations, onto ships in some way or another and taking the them to Australia, New Zealand, Fiji, or elsewhere in need of laborers).

Between 1879 and 1916, over 60,000 Indians came to Fiji under five-year contracts. Today, many of the small business owners, shop keepers, and professionals are Indians, but there are still laws restricting Indians and other non-indigenous Fijians from buying land.

Fiji regained its independence from the British in 1970 and has had a rocky go at democracy. The 1980s and 90s saw several political coups brought about by racial tensions between the indigenous Fijians and the Indo-Fijians. Although the current government is not democratic, I heard several people, Indo-Fijian and indigenous Fijian, refer to it as a "benevolent dictatorship."

As a visitor, I observed a strong central government with an agenda. We were greeted by customs with a booklet for yachties which included instructions on how to behave and dress in outer villages, what to look out for in and on the water, and information on services and restrictions. There seemed to be a concerted effort to manage tourism in a way that preserves both natural resources and traditional culture and lifestyle.

We found a healthy mix of tourism and tradition in several of the villages we visited. On the island of Naviti, we went ashore to pay our respects to the chief and ask permission to anchor, snorkel, hike, and visit. We were greeted by a youngish woman named Laurene as we pulled the dinghy onto the beach. As she walked us through the village toward the chief's house,

Leaving the Fiji Islands.

she told us she had three children: a ten year old and thirteen year old twins. She explained that the main reason villagers needed money was to send their children to school and to seek medical attention when needed.

When we arrived at the chief's house, Laurene turned to face us. "It is a lady chief," she said. A statuesque young woman with an impressively high crown of hair greeted us at the door. I glimpsed a flash of gold in her smile. This was the chief's granddaughter, and she carried a baby on her hip. We entered and sat cross-legged on the woven mat on the floor.

A very old woman emerged from the back room and sat with us. This was the chief. We set our bundle of kava root on the mat in front of us, explained that we had come on our sailboat from Alaska, and asked her permission to visit the village. She accepted our kava and asked us to sign the guest register, a simple notebook of lined paper. Written in the front page of the notebook was a note asking for a monetary donation to support the school. We were happy to part with the suggested donation of 5 dollars per person. We were given papayas, oranges, and coconuts. Laurene told us that they see several sailboats per week during the non-cyclone season. Once the formalities with the chief were over, we were welcome to stroll around the village.

Off the eastern end of Vanua Levu are two islands that, although they are a part of Fiji, have an exceptional history. The people living on Rabi are Micronesians, originally from the island of Banaba, in Kiribati. After World War II, the British government bought the island of Rabi from Fiji for the Banabans, whose island had been devastated by phosphate mining. Today, the people of Rabi live hundreds of miles from their traditional home in Micronesia but maintain their culture distinct from the surrounding Melanesian Fijians. Sure enough, when we sailed by, we noted the outrigger sailing canoes that we have not seen since we left Fanning Island, also part of the nation of Kiribati.

Kioa, to the southwest of Rabi, is also populated by displaced Micronesians. The people of Kioa are originally from Vaitupu, an atoll in the nation of Tuvalu rendered uninhabitable by a combination of overpopulation, rising sea levels, and, once again, destruction from World War II. The people of Vaitupu took affirmative action themselves, buying Kioa and moving the entire population hundreds of miles. We plan to sail through both Tuvalu and Kiribati in the coming months—perhaps we will see what is left of Banaba and Vaitupu.

When Captain Cook sailed into a tiny little cove on the southeastern shores of the second-southernmost island in the Vanuatu chain, he was immediately drawn to a nearby active volcano. Mt. Yasur rises only 378 meters from the sea, making it the most easily accessible active volcano on the planet. On an evening tour to the rim of the volcano, the Blakelys experienced KA-BOOMs and eruptions of molten lava. "Yes-Sir, it was amazing. Top ten, bucket list, must do before you leave this earth."

Two and a half months after our arrival in Fiji, we anchored Radiance in front of Lautoka to complete clearance procedures and sail to Vanuatu. With Vanuatu on the brain, I noticed that the three fishing boats at the Lautoka wharf, unloading enormous yellow-fin tuna, were all flying Vanuatu flags. But they all had similar names: "Chung Kuo No. 88," "Chung Kuo No. 273," and "Chung Kuo 482." As I watched the crews winching up the huge fish to the dock, some easily bigger than my eleven-year-old stepdaughter, it was sobering to imagine the catch of all 482 (at least) Chung Kuos.

We left Fiji bound for Vanuatu on Aug. 17 and have just arrived in Port Vila. This is as far west as we will go—after spending some time here, we will begin the long journey north and east, back to Alaska.

Three calendars and an incomplete set of options

Continued from page 6

A Constricted Set of Choices

Setting aside the various possible motivations for charging Stevens (including the belief apparently shared by the line prosecutors that the facts and the law justified an indictment), it seems that Matthew Friedrich unjustifiably limited the options he considered in July of 2008. The man in charge of making the final call on the indictment seemed to see three choices:

1. Indict Ted Stevens immediately on more serious charges of accepting bribes or honest-services fraud;

2. Indict Ted Stevens immediately on less serious charges of failure to disclose gifts and/or liabilities; or

3. Not indict Ted Stevens

With the Justice Department having squelched line prosecutors' push for option (1), Friedrich appeared to think that option (2) was the moderate middle ground and thus the "safe" choice. The choice of "Wait to indict Ted Stevens until we are more organized and prepared" did not seem to come up. Granted, absent another extended tolling agreement with the defense that would run for some months—even to a date after the election in November of 2008—waiting to indict would have meant that the indictment could not have directly charged the Senator with failure to report the bulk of the allegedly unreported expenditures. But the prosecution would still have had the benefit of the low reporting threshold—never more than $305 per year for the relevant time period—as well as the ability to get the evidence of uncharged crimes before the jury.

Instead of taking this course, Friedrich and his chief deputy Rita Glavin seemed to think that success could be secured for the prosecution by pouring the special sauce of Brenda Morris over the case.

Next: Brenda Morris takes first chair and the miscalculation over the Speech and Debate Clause

Cliff Groh is an Anchorage lawyer and writer who has worked as both a prosecutor and a criminal defense attorney. He has blogged about the "POLAR PEN" federal probe into Alaska public corruption for years at www.alaskacorruption.blogspot.com, which in its entry for May 14, 2012 features an expanded and updated list of disclosures. Groh's analysis regarding the Ted Stevens case has appeared in media as diverse as C-SPAN, the Los Angeles Times, Alaska Dispatch, the Anchorage Daily News, and the Anchorage Press. The lifelong Alaskan covered the five-week Ted Stevens trial in person in Washington, D.C. in the fall of 2008. He welcomes your bouquets, brickbats, tips, and questions at cliff.groh@gmail.com.

Off the paved road and onto the beaten path

By Teresa Buelow

"What did I get myself into?"

This is probably what my friends and family thought went through my mind when I touched down in Barrow five years ago. Surely, I must have realized this was crazy. No one could comprehend that I wanted to be in rural Alaska. When I lived in Kenai and Kodiak, I would get friendly "I would love to visit sometime, but I could never live there" comments. But Barrow? The first part of that sentence was rarely uttered again.

My time in Barrow has taught me that the idea of living in rural Alaska is daunting, if not unthinkable, to many people, not just attorneys. But I have met a fair share of people who are excited about the possibility. A few people eager to embark on this journey have an almost romantic vision of living in the bush. They envision the experience will be the thing of movies. They will become true Alaskans, roughing it in the back country, hunting for survival. This scene rarely plays out (has it ever?). But then, every once in a while, an attorney comes along who just wants to be in rural Alaska. There is nothing wrong with them. They just prefer a life off the paved road system.

Being one of those attorneys, I am probably not the best person to diagnose if there is something crazy about us, or if there is really something appealing about life in the bush. I know I have been called crazy more than a few times, although I am sure a majority of those comments have not been related to my choice of hometowns. But if you are a new attorney, or even an experienced attorney, I can say this: finding yourself in rural Alaska is not a negative prospect, nor should it be your last choice in careers. In fact, you just might find that winding up in the bush is the best thing that could happen to you.

Knowing many people would question my qualifications on giving life advice, I am not writing this to "sell" anyone on rural Alaska. Just take this as one person's experience of living and working in rural Alaska, and things I have learned along the way. This by no means is meant to be a comprehensive guide to living off the road system. But if you are considering a move, these are the pieces of advice that I have found to be the most important.

Before getting into that advice, however, there is one thing a new lawyer considering a move should know: you do not need to start in rural Alaska. When I was a law clerk, I was told by multiple sources that "everyone starts in the Bush" and that you need to have rural experience. It was stressed routinely that I should begin in Barrow, Bethel, Dillingham, Kotzebue, or Nome. I just thought that it was something expected of me, and to this day, I am still occasionally asked to talk a law clerk into moving to the Bush. While rural experience is certainly good to have, and understanding life in rural Alaska is invaluable, it may not be for you. So this advice is meant for people genuinely interested in living in rural Alaska, not for people hoping to survive for a year or two and then get out (although maybe a few of these tips will apply to those attorneys as well).

First and by far and away the most important thing I can stress to anyone considering a life off the road system: realize and embrace the adventure that it is. Is this a romantic adventure? Probably not. Is this a rugged adventure that will become the subject of the Discovery Channel's new show? With how many new reality shows are created about Alaska every year, maybe, but don't bank on it. But it is an adventure. For a lawyer who probably grew up outside rural Alaska, you are exposed to an entirely new way of life. An attorney moving from Portland, Maine to Savannah, Georgia might complain of culture shock. But this is something far different. It is a new world. In much of rural Alaska, traditional languages are still spoken. English is still the second language for many in rural communities, and Inupiat is readily spoken during meetings on the North Slope. While a grocery store is present, many people still rely on subsistence hunting for food. Traditions dictate life. Every spring and fall, people take to the waters around the North Slope for whaling. If a whale is landed during a work day, you can be sure that some business will need to wait until the harvest is complete, and you might be expected to help in that harvest. Come June, work will halt occasionally to celebrate in the whale harvest, called Nalukataq.

The culture of Native Alaskans is prevalent. It flows through every aspect of life. On the North Slope, Inupiat values dictate how people act and operate, and as an attorney, you are expected to live your life and your work by those values. Ask an attorney from another rural community, and the same is likely true for them. For me, this has been one of the greatest positives of working in rural Alaska, because it demands something that seems occasionally forgotten in legal practice: civility.

Teresa and friends enjoy cross-country skiing on the tundra.

Core values might differ between locations, but when practicing law, they all come down to requiring civility, and that is something an attorney absolutely must keep in mind when working in rural Alaska. You are in a small town with a small bar. There are few judicial officers, maybe just one or even none. You will not be tolerated if you come into the legal community with a cut-throat attitude, and you do your clients no favors by having a "take-no-prisoners" approach. Of course, you still must protect your client's interests and be a zealous advocate, but you must do so in a manner that is polite and never demeaning to the opposing party. If you come into court and want to put on a "show" for your client by attacking the prosecutor, trying to teach the judge, disparaging a local officer, or slamming the victim, you will have problems. I have met attorneys traveling to Barrow from Anchorage, Fairbanks, Seattle, and other outside locations who act the same way that they do in the city, only to receive horrified looks from their clients and stern glares in the courtroom. Even if you are clearly in the legal right and the other party is clearly in the legal wrong, you absolutely must be civil or you will get nowhere in your practice. Trust me; practicing law in an area where civility is demanded is very relaxing, and far better than any alternative.

I helped transport one three baby walruses that were abandoned in Barrow last summer (this one was named Mitiq and has since made its way to a New York City zoo, I believe).

In order to enjoy your adventure, however, you must avoid one of the greatest threats to life in rural Alaska: the temptation to stay inside and isolate yourself from the community. It is not always a smooth transition coming into rural Alaska. You do not step off the plane and instantly become part of the community. You are still an outsider for awhile, and it takes some time for people to trust that you are here to stay. Also, there is the climate. Adjusting to the light if you come in the summer, or the dark if you come in the winter, can be difficult. The cold is extreme. And at times, there seems like there is nothing to do outside work. If you get into an isolation mindset, you will not last and you will be throwing away an otherwise wonderful opportunity.

While it might be hard to consider when it's dark, negative fifty, and the wind is howling, the best thing you can do for yourself is get outside. Be part of cultural events. Get to know people. Get to know their families. Go cross-country skiing across the tundra. Get a four wheeler and trek the shores of the Arctic Ocean. You will get to do what few people could ever dream. You will see wildlife most people will never see outside a zoo. There are few things as cool as watching a snowy owl in a turf battle with an arctic fox, except maybe a few snapshots to share with your friends on Facebook when they question your sanity for living in the bush. And once you get a call from that person you met at the recent Nalukataq that there is a polar bear wandering around the gas station and you are welcome to hop in their car, you will realize why it's so important to be connected in the community.

Despite the adventure, the culture, and the civility, there are some downsides to life in rural Alaska. These factors are why rural life is not for everyone, and they are factors a person must consider before deciding on a life off the road system.

The most obvious is that the amenities of the city are not present. This is important to consider, because traveling out of rural locations is expensive. A round trip ticket out of Barrow costs anywhere from $600-700, not including room and board, so do not think that you can live anywhere and make up the difference by making frequent trips back to the city. If you cannot go long without readily available shopping, movies, and four star restaurants, living in rural Alaska is probably not for you. Further, residents of the community will not be receptive to your complaints about how you need to get out for your sanity because their home is not "civilization". If you are taking local money and then turning around and fleeing to Anchorage at every opportunity, you will not be well received.

Another consideration is cost of living. While a government salary being offered in rural Alaska might appear larger than the government salary offered in Anchorage, the cost of living will eat up that difference rather quickly. It's difficult to look at grocery prices most days (my last carton of orange juice was $9, and it was on sale), and getting out of the store with a week of food for under $100 is near impossible for a single individual. Large portions of your paycheck will go to heating your house in the endless winters, and if you happen to own a vehicle, the gas prices will be a bigger sticker shock than Nightly News could ever dream.

But there are aspects of life that are cheaper. Taxes and fees are generally less than in the city. A vehicle is not essential when the entire town is only a few square miles, and taxis are prevalent for a cheap set price (usually $6 one way in Barrow). Plus, the social scene in rural Alaska will usually entail activities that are free-such as hanging out at friends' houses, playing games, or doing something outdoors. These might be minor cost savings, but they do help to offset an otherwise expensive life.

Housing is also something every new attorney must consider before accepting a job in rural Alaska. Housing is very difficult and expensive to obtain. Few agencies are able to provide housing, and even when agencies can provide assistance, many will not have an option if you have pets. I have known professionals who were forced to leave, or unable to return, to rural Alaska because of the housing shortage. Do not assume that housing will just fall into place, or because you know someone currently in rural Alaska, housing will materialize. Many people are in competition for the limited number of available houses and apartment units, and not all units will meet standards that you consider "tenable". I spent my second

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Bar People

Douglas Baily has been appointed to Oregon's Access and Habitat Board, which cited his "breadth of knowledge and experience" for the position. The Oregon Legislature created the program in 1993 to improve public hunting access and wildlife habitat on private lands. The program's motto, "Landowners & Hunters Together for Wildlife," conveys the program's basic mission to foster partnerships between landowners and hunters for the benefit of the wildlife they value. The program also seeks to recognize and encourage the important contributions made by landowners to the state's wildlife resource. Baily is currently living in Oakland, OR.

Gregory Fisher, also has been welcomed to the American Arbitration Association's Roster of Neutrals as an Arbitrator.

Robert H. Wagstaff has a new book due to be published in October by Oxford University Press: *Terror Detentions and the Rule of Law: US and UK Perspectives.* The publisher summarizes the book as an historical review of over-reactions of the U.S. and U.K. administrations to threats of terrorism and war. Among the topics are an overview of the jurisprudential discussion surrounding the Rule of Law and in-depth analysis of US and UK procedures and court decisions regarding indefinite detentions.

Jermain, Dunnagan & Owens, P.C. is pleased to announce that **Megan N. Sandone** has joined the firm as an associate. Ms. Sandone, formerly of an Anchorage-based law firm, practices in the areas of civil litigation, with a background in personal injury litigation and employment disputes. Ms. Sandone also worked as a judicial law clerk for the Honorable Sen K. Tan of the Alaska Superior Court in Anchorage.


Sandone

Lane Powell Shareholder **Michael J. Parise** was recently selected by his peers for inclusion in The Best Lawyers in America 2014 in the area of bankruptcy and creditor debtor rights/ insolvency and reorganization law. Parise concentrates his practice in commercial law, mergers and acquisitions, complex loan transactions, real estate, bankruptcy, loan restructuring, maritime vessel financing, business litigation, foreclosures and litigation under the Uniform Commercial Code. He also represents parties in negotiations and litigation concerning oil and gas exploration financing, mining lease and royalty agreements, and timber sale and logging contracts


Parise

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Stoel Rives LLP announced that three of its attorneys in the Anchorage office were selected by their peers for inclusion in the 2014 edition of The Best Lawyers in America. "Delivering exceptional service to our clients is a core mission of Stoel Rives," said Bob Van Brocklin, Stoel Rives Managing Partner. "We consider this recognition as reflecting on the commitment of our lawyers to this mission and congratulate our lawyers who were named for achieving this professional distinction." Stoel Rives Anchorage lawyers selected were **Joseph J. Perkins, Jr.** (mining, natural resources, and oil and gas law; **William H. Timme** (Native American law); and **James E. Torgerson** (commercial, environmental, M&A, and real estate litigation and natural resources, professional malpractice law-defendants).

Davis Wright Tremaine LLP had six of its attorneys selected for inclusion in the 2013 edition of *Super Lawyers in Alaska.* They include **Jon S. Dawson**, business/corporate law; **Gregory S. Fisher**, employment & labor law; **Barbara Simpson Kraft**, real estate law; **David W. Oesting**, business litigation; **Joseph L Reece**, business/corporate law; and **Robert K. Stewart Jr.**, employment & labor law.


Jamieson

Lane Powell Shareholders **Brewster H. Jamieson** and **Michael J. Parise** were named as 2013 "Alaska Super Lawyers" by Thomson Reuters' Super Lawyers magazine, in the areas of general litigation and business/corporate, respectively. This is Parise's fourth year and Jamieson's fifth year to be named as "Alaska Super Lawyers."

The Alaska Bar has some new faces and names. Due to a couple of weddings: CLE Director Mary Patrick is now **Mary DeSpain**; Executive Assistant Amy Curkendall is now **Amy Lance**. New staff people starting in September are CLE Coordinator **Lynn Coffee** and Accounting Assistant **Nicole Curman**.

Barbara Hood, communications counsel and well-known photographer for the Alaska Court System, retired over the summer after 11 years of service. **Mara Rabinowitz** (daughter for former Chief Justice Jay Rabinowitz) has been appointed as the new ACS communications counsel.

Lars Johnson receives Anchorage Bar Association's Ben Walters Award


Board member Ryan Fortson (left) presented the award to Johnson (right).

The 2013 recipient of the Anchorage Bar Association's Ben Walters' Outstanding Service Award is Lars Johnson. Lars has been a tireless volunteer for the Anchorage Bar Association Young Lawyers Section, where he has supervised both the Alaska High School Mock Trial Competition and the Race Judicata fundraiser for Anchorage Youth Court for the past several years. Lars's skills with logistics and shepherding volunteers have proven invaluable in the successful growth of these programs. Through his efforts, hundreds of Alaska teens from around the state have benefited from the opportunity to learn first-hand about the judicial system by experiencing simulated or actual courtroom trials.

Off the paved road and onto the beaten path

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year in Barrow in a house that was frozen throughout, using buckets for water and plenty of space heaters for warmth. Sewage came up through the pipes with disgusting frequency. But I had a roof over my head, and that is something you cannot take for granted in rural Alaska.

Further, if you plan on remaining in rural Alaska for an extended period of time, you must be prepared for a game that I call "last attorney standing". Here's how it goes: a new attorney gets into town, you become friends, you hang out, you start getting invested in the friendship…and they leave. Then a new attorney comes into town, you become friends, and you can figure out how it goes from there. Of course, you might be the attorney who is leaving town, but if you are the attorney who is staying, it becomes draining. Despite the constant influx, do not let this be an excuse to just stop investing in friendships. You get to meet many people from many walks of life, and with social media being what it is, you quickly form connections across the country and even the globe.

Finally on the list of possible downsides to living in rural Alaska, there is one consideration that is hard to write about, and I never thought would actually affect me before I moved to Barrow: senseless loss of life through suicide.

I do not know how many attorneys living in rural Alaska actually have personal experience with this issue. I want to believe that it is a relatively rare experience, and that my experience is the exception rather than the rule. But even understanding that you are unlikely to deal with this issue firsthand, the presence of this factor is undeniable in rural Alaska, and it is something you must be prepared to deal with.

When I was living in Kodiak, before seriously considering a move to rural Alaska, my mother sent me an article published in a major newspaper discussing suicide rates in rural Alaska. The article was focused on the alarming rate of suicides in the Yukon-Kuskokwin Delta region. I read the article with about the same interest that I read articles about the rising violence in Chicago. Sad, a hard reality, but not something that was impacting me personally.

That changed shortly after moving to rural Alaska. Soon after my arrival into town, I learned that a young man who I was loosely familiar with had committed suicide. While I was certainly not friends with this person, it hit me hard, because it was the first person I actually knew who died tragically and prematurely.

Not long after was another death, again through suicide. This one was a young man who made me laugh once. While it was only once, I still remembered it because he, a stranger to me at the time, lifted my attitude and spirits during a difficult situation.

Soon after, there was another suicide that hit me hard. Another young man. He had spent a good amount of time in my office just one day prior, requesting help setting up future court dates for an Anchorage case. This death still hurts in its complete senselessness.

And then another that is still too hard to write about.

Unfortunately, it does not end there, but the discussion of suicide and death in rural Alaska is something that could fill another several articles. I touch on the point not to scare anyone away from practicing law in rural Alaska, but to note a reality that exists in rural Alaska on an almost unthinkable scale. The positives of getting involved with the community and getting to know the people far outweigh any negatives, and many attorneys will find themselves far separated from the tragedies that occur. However, suicide is a very real problem that the community is constantly forced to address, and as someone practicing law, you must be prepared to handle these tragedies even if you are not directly connected to the family.

Despite any difficulties that I have experienced in rural Alaska, I would never trade it back for a career on the road system. There are still nagging doubts that I am sure many rural attorneys experience: the thought that other attorneys believe you are only in rural Alaska because you cannot make it in the city, or the thought that if you decide to move one day, you will have a difficult time adjusting to life in a larger legal scene. These thoughts surface every once in a while when I think about my future and if I should consider a move to a location that has trees that are not made out of baleen. But I know that I have experienced an adventure few other people can claim and my world expanded in ways that I never expected. For an attorney at the crossroads, deciding whether to venture to the bush or stay in the safety of the city, I leave you with a quote from Robert Frost: "Two roads diverged in a wood, and I took the one less traveled by, and that has made all the difference."

Teresa Buelow came to Barrow as the State Assistant District Attorney in 2008 and moved over to the North Slope Borough as an Assistant Borough Attorney assigned to contracts in 2011.

Alaska's got talent: Thanks to AS 8.08.207, we discover our inner 'marshall'

By Peter Aschenbrenner

We're walking to Club Paris via Fourth Avenue on a beautiful August evening.

"How are you and Joe Story getting along?" the Governor asks Jimmy.

"His *Commentaries* named me a 'distinguished statesman' in 1833," Madison responds. "And I was still breathing."

"I assume," the Governor muses, "you'd like to get even with him."

"Who wouldn't?" Dolley asides to Sarah. "And don't get us started on John Marshall," she continues, as John and Polly join our party. "Jimmy flip-flopped on the Bank of the United States," the Chief declares, "which I noted at the opening of *McCulloch*. 17 U.S. at 402. That's *Bank II*, as named in our councils most federal. And Jimmy was the one who appointed Joe to the Supreme Court! How'd that work out for you?"

"Actually that was our *third* national bank," I commence 'diversionary action,' "counting the one Hamilton got the Confederation Congress to charter. And only 85 days after the Articles swore off such adventures in 'convenience'."

"Well played, sir," the Governor compliments my adroit near-citation to the Bank of North America (1781).

"So, Governor, when do we get a tour of Alaska's law school?"

"You needn't rub it in, Mr. Chief Justice. You know that we're the only state in the Union not so endowed."

"Bill Rehnquist bobbled that point when Aschenbrenner interviewed him," the Governor replies. "This recollection takes *The Bar Rag* back to September, 2000 and his visit to the magnificent reception suite adjoining the Court's private conference room."

"But you must have plenty of men and women eager to read law in Alaska," Polly puts us back on track. "If this article be not mistitled."

"Tuck into your father's Blackstone, as I did," the Chief Justice counsels. "Then take a semester's worth of lectures on law and natural philosophy at the College of William and Mary. That was 1780 and just before we ran away from the British."

"That was quite cheeky, John," Polly applies the marital corrective. " 'Old Silverheels' was his nickname. And there *I* go again," Polly adds, for the Madisons' benefit.

"But you *can* do better than reading law. I certainly hope so."

"The legislature won't vote the funds for the program," the Governor answers. "It's been a stand-off for 37 years."

"There are judges and lawyers willing to serve as tutors," I explain. "But here's the catch. They must teach 'the branches of the law [as] prescribed by the course of study adopted by the university.' If I remember AS 8.08.207(c) correctly."

"And *that's* stopping you?" Polly snorts. "Doesn't that strike you as odd, Dolley? Hello?"

"You have a hotel ballroom?" the Chief turns to the assembly. "Of decorous, if not throughly Napoleonic, proportions?"

"*The Empress of Alaska,*" the Governor fields the question, "is renowned for its ambience. This edifice has staged many a significant event, including both my inaugurations. The incoming and the outgoing," she adds.

"And you may count men and women of ambition in this Territory?"

"John was really on fire in the Burr trial," Polly purrs at her husband's cross-examination. 'Richmond's still burning,' she whispers to Dolley.

"Fill the ballroom with tables and chairs and parcel out the tasks of writing course outlines," the Chief declares. "How many are required?"

"Two dozen, I reckon," dropping into the vernacular.

"And how long – ?"

"Five, ten pages. Max," I mumble.

"So that's a day's work."

"With time off for good behaviour," I concede.

"So it's really all your fault," Polly drills the lot of us. "Are there not village and regional corporations, non-profits without number and companies of every size and scope in your state?"

"Big ones, little ones, sort-of in-between ones," the Governor pedals backwards.

"And is not the spirit entrepreneurial a signal feature of your *last frontier's* lawscape?"

"Pretty much," I babble.

"So writing course outlines should be a day's work," Polly declares. "As my husband just put it to to you."

"I suppose," I surrender, "there should be hundreds of candidates, waiting for their chance to read law. In life's mature experiences they would start their course of studies, as a matter of fact, far in advance of students hailing from 'the lower forty-nine'."

"The law of *immobilium* features, I hear," the Chief declares, "intricacies quite devilish, and unique to your Alaskan neck of the woods. I hope that one day, for example, someone will explain 'Decision of Interim Conveyance' to me."

"Me too," the Governor blurts.

"Alaskans," I put my shoulder to the task, "are prodigious wielders of corporate power through their directorships in business and non-profit corporations, not to mention other organizations in their myriads, altho' the rules of ordered discourse do not appear in any law school curriculum."

"The Professor's referring us to 'parliamentary procedure'," Dolley tenders her *sotto voce* to Polly.

"As for this discourse, that is, advocating, attacking and defending Shouldness, the boardroom kinetics thereby entailed also constitute the warp and woof of classroom Socratics."

"Discourse in any boardroom," the Governor continues, "when turned inside out also confers a natural fluency with titles, offices and their intersections, which understudies exposure to corporate, property and contract law."

"The rules governing *mobilia* and *immobilia* are quite different," I interject.

"Teach that to Roger B. Taney," Marshall chortles.

"When you're stuck on the Haul Road in winter," the Governor joins in, "*situs* can mean the difference between life and death."

"That pretty much wraps it up," Marshall guides us into the Club de Paris. "Six," he signals the maître d'hôtel, deploying English and French simultaneously.

"I'm enthralled," Dolley asides to Polly.

"I'm his biggest fan," Polly agrees.

"The vintage bubbly, Garçon," our Chief intones, "and put it on ice."

"We're celebrating – !" Jimmy asks up. "But what?"

"Polly and I are pulling up stakes and moving to Alaska," Marshall proclaims. "Goodbye First Avenue N.E. My current haunt."

"Nooo," Polly emits a wail of Bibli-cal proportions.

"It is every wife's wish to bury her husband with full honours," Dolley shrugs. "Teaching law school in Alaska will only give your husband another excuse to postpone mortality."

"Bridge, gardening and, dare I say it, yoga exercises in the company of young guns, barely swath'd, bodies glistening in the summer sun of a Virginia morning."

"Ah," we ahh.

"You all wish John immortality," Polly declaims. "And for this, I shook the hands of thousands."

"It is a chance to wear the 'glad rags' of a married woman," the Governor offers her consolations. "We're all doing something else until something better comes along."

"You have no idea what it's like being married to the Supreme Court!" Polly exclaims. "The soggy canapés, the stinky cheese, the ordered spines!"

"This is a curse," the Governor warns us, one and all. "Take note, as I do."

"I hope someday a man suffers like me," Polly declares. "Faculty meetings overlooking the mudflats of Cook Inlet, my foot!"

"Would now be a good time to offer my chapeau to your local museum?" Madison speaks up. "The one I wore at Bladensburg?" Jimmy draws our attention to the famous feather annexed thereto. "Joe Story's already got my sword."

"Just take my advice," the Governor tries the battle-hat on for size, "and don't mention the war."

Court decision: The demise of § 4(b) of the voting rights act

Continued from page 1

in Alaska prior to the enactment of the Anti-Discrimination Act in 1945. "No Dogs or Natives" signs were common in the windows of businesses. Fortunately, however, Alaska did move in the right direction sooner and at a faster pace than other parts of the country. Although no one person can lay total claim to Alaska's progress toward civil rights for Alaska Natives, Elizabeth Peratrovich, President of the Alaska Native Sisterhood, and William Paul, Alaska's first Alaska Native attorney, played large parts. But, despite Alaska's early progress the State's original Constitution, drafted and ratified in 1956, contained a literacy test, a requirement that voters must be able to "read or speak the English language."

The Voting Rights Act of 1965. In the midst of the civil rights movement, Congress passed the VRA in 1965. Section 2 of the Act forbids, in all 50 states, any "standard, practice, or procedure . . . imposed or applied . . . to deny or abridge the right of any citizen of the United States to vote on account of race or color." At present Section 2 forbids any "standard, practice, or procedure" that "results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color." Litigation, including injunctive relief, is available under Section 2 to prevent voting laws from going into effect. Section 2 is permanent, and applies nationwide.

Other sections of the VRA, by contrast, targeted only some parts of the country. Section 4(b) created a coverage formula for Section 5. Section 5 provided that no change in voting procedures could take effect until it was approved by federal authorities in Washington, D.C. – either the Attorney General or a court of three judges. This prior approval, referred to as "preclearance," could be obtained only if the jurisdiction proved that the change had neither "the purpose [nor] the effect of denying or abridging the right to vote on account of race or color."

In 1965 the jurisdictions covered by Section 5 were those States or political subdivisions that had maintained a test or device as a prerequisite to voting as of November 1, 1964, and had less than 50 percent voter registration or turnout in the 1964 Presidential Election. Such tests or devices included literacy and knowledge tests, good moral character requirements, and the need for vouchers from registered voters. The covered jurisdictions in 1965 included the States of Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Virginia, as well as 39 counties in North Carolina and one in Arizona. Alaska escaped coverage under the VRA at that time and eventually removed the English language literacy test from its Constitution in 1970.

Sections 4 and 5 of the VRA, which the Court has described as "strong" but "justified" "medicine," were intended to be temporary. Originally, Sections 4 and 5 were set to expire in 5 years. But, in 1970 Congress reenacted the VRA for another 5 years and extended the coverage formula to jurisdictions that had a voting test and less than 50 percent voter registration or turnout in 1968. In 1975, Congress extended the Act for another 7 years and expanded its coverage to jurisdictions that had a voting test and less than 50 percent voter registration or turnout as of 1972. By amending the definition of "test or device" to include the practice of providing English-only voting materials in places where over 5 percent of voting-age citizens spoke a single language other than English, the State of Alaska became a covered jurisdiction. In 1982, Congress reauthorized the Act for 25 years. Then in 2006, Congress again reauthorized the Act for 25 years while amending Section 5 to prohibit more conduct. Section 5 currently forbids voting changes with "any disccriminatory purpose" as well as voting changes that diminish the ability of citizens, on account of race, color, or language minority status, "to elect their preferred candidates of choice."

The Court and the VRA. In 1966 in *South Carolina v. Katzenbach* the Court upheld the VRA against constitutional challenge, explaining that it was justified to address "voting discrimination where it persists on a pervasive scale." The "blight of racial discrimination in voting," the Court explained, had "infected the electoral process in parts of our country for nearly a century." Shortly before the enactment of the VRA, only 19.4 percent of African-Americans of voting age were registered to vote in Alabama, only 31.8 percent in Louisiana, and only 6.4 percent in Mississippi, roughly 50 percentage points or more below the figures for whites. The Court found the VRA to be a "permissibly decisive" remedy, "[u]nder these unique circumstances."

The Court upheld the reenctment and expansion of the VRA in 1970, 1975, and 1982. But following the 2006 reenactment, the Court expressed serious doubt about the continued constitutionality of Sections 4 and 5. In Northwest Austin Municipal Util. Dist. No. One v. Mukasey, eight Members of the Court acknowledged that there were then serious "constitutional concerns" "underlying" Sections 4 and 5, and expressed serious doubts about the Act's continued constitutionality. The remaining Member of the Court, the sole African-American Member– Justice Thomas, would have held Sections 4 and 5 unconstitutional at that time. The effectively unanimous Court explained that Section 5 "imposes substantial federalism costs" by differentiating between the States "despite our historical tradition that all the States enjoy equal sovereignty." The Court noted that "[t]hings have changed in the South" with "[v]oter turnout and registration rates now approach[ing] parity" and "[b]ltantly discriminatory evasions of federal decrees . . . rare." The Court also questioned whether the problems that Section 5 meant to address were still "concentrated in the jurisdictions singled out for preclearance." For example, Alaska and Arizona, two covered jurisdictions, had never had any successful reported Section 2 suit brought against them.

The Shelby County Decision. In summary, Shelby County struck down the VRA's coverage formula. The Court left intact the permanent, nationwide ban on racial discrimination in voting found in Section 2, as well as the substantive provisions of Section 5. But because the coverage formula has been struck down, Section 5 currently has no application. The Court left it to Congress to draft another coverage formula that is based upon current conditions in the Country, rather than upon the historic conditions that prevailed in 1965. Justice Thomas, who concurred in the Court's opinion, remains of the view that he expressed in Mukasey that Section 5 is unconstitutional. Resoundingly agreeing with the majority that "no one can fairly say that [the record] shows anything approaching the 'pervasive,' 'flagrant,' 'widespread,' and rampant discrimination that faced Congress in 1965, and that clearly distinguished the covered jurisdictions from the rest of the Nation at that time," Justice Thomas believes that there is no justification for "the considerable burdens created by § 5."

The Majority's reasoning rests heavily upon concepts of federalism and state sovereignty. The Constitution and laws of the United States are supreme. But, this does not give the Federal Government a general right to review and veto state enactments before they go into effect. A proposal to grant the Federal Government the authority to "negative" state laws was considered at the Constitutional Convention, but rejected in favor of allowing state laws to take effect subject to later challenge under the Supremacy Clause. By our system of federalism, States retain broad autonomy in structuring their governments and pursuing legislative objectives. And, by the Tenth Amendment, all powers not specifically granted to the Federal Government are reserved to the States and the People. This structure of federalism, the Shelby County Majority explains, "preserves the integrity, dignity, and residual sovereignty of the States." Sovereignty which is fundamentally required to be equal among the States. As the Court explained, our Nation "was and is a union of States, equal in power, dignity and authority."

Sections 4 and 5 of the VRA "sharply depart[] from these basic principals." Despite the tradition of equal sovereignty, the Act applies to only nine States and several counties. For covered jurisdictions, preclearance "not only switches the burden of proof," but also applies substantive standards quite different from those governing the rest of the nation." This "stringent" and "potent" remedy was justified by the conditions prevailing in 1965. As the Court explained in Katzenbach, "legislative measures not otherwise appropriate" could be justified by "exceptional conditions."

But, the Court in Shelby County explained that although justified historically, the selective and unequal coverage of Section 5 could no longer be upheld based upon current conditions. As the Court stated, "things have changed dramatically." Voter registration rates in covered jurisdictions now approach parity. Blatantly discriminatory evasions of federal decrees are rare. And minority candidates hold office at unprecedented levels. The tests and devises that blocked access to the ballot have been forbidden nationwide for over 40 years. Congress itself, even while expanding and reenacting the VRA for another 25 years in 2006, recognized that "[s]ignificant progress has been made," including increased African-American voter registration and voting–sometimes surpassing white voters, and increased numbers of African-Americans serving in elected office–a 1,000 percent increase since 1965 in the six States originally covered. The current state of the Nation, the Court held, no longer justifies disparate treatment amongst the sovereign States, at least not based upon the historic coverage formula.

The Impact of Shelby County on Alaska.

In summary, the Court's ruling relieves Alaska from the preclearance requirements of Sections 4 and 5 of the VRA. The one most immediate impact is that the Alaska Redistricting Board, which has been working to re-draw Alaska's legislative voting districts for over two years, no longer needs to factor Section 5 into its deliberations or seek preclearance of its adopted district boundaries. Despite the Court's ruling, however, Alaska remains subject to Section 2. No "standard, practice, or procedure . . . imposed or applied . . . to deny or abridge the right of any citizen of the United States to vote on account of race or color" is permitted in Alaska. Given Alaska's early progression towards civil rights and its clean voting and election record since at least 1975, it is gratifying to see our State removed from VRA preclearance coverage.

Dispatch from Huntsville

Continued from page 1

efforts to circumvent the rule – but the Supreme Court was wholly uninterested. The Supreme Court denied cert in our case in October 2012 and in all other cases challenging states' implementation of *Atkins*.

The Beaumont Assistant DA went to a judge and asked for a death warrant. We received the papers in the mail in December. They were the spookiest legal documents I'd ever seen, saying, essentially, Elroy Chester, you will die at 6 p.m. on April 24, 2013.

I wrote a clemency petition, understanding full well the chance of that succeeding with Governor Perry. I had to tell the client we were out of legal options.

In April, about two weeks before the scheduled execution date, I got a phone call from the Beaumont Assistant DA. The Texas Assistant AG who handled the case in federal court had alerted him that the death warrant was signed by the wrong judge – by the state judge who succeeded the judge who heard our *Atkins* hearing in 2004, rather than by the state judge who succeeded the judge who heard the original trial. The ADA helped me get the first death warrant withdrawn so that a new death warrant could be issued by the right judge. That got us a new execution date of June 12.

Around that time, in early April, I heard of a speech given by Judge Edith Jones, the author of the majority Fifth Circuit decision in our case. According to the affidavit I saw, in February 2013 Judge Jones gave a speech at a law school that disparaged *Atkins*, denied that the death penalty is racist (blacks and Hispanics are over-represented on death row simply because they are more prone to commit crimes, she said), and explained that exempting the mentally retarded from execution does them a disservice because it denies them an opportunity to face God. She referred to an article she'd read on the internet called *Hanging Concentrates the Mind*. She discussed several cases by name – including Mr. Chester's – and conveyed disgust that people like him had dared to claim they were mentally retarded.

I learned that others had undertaken to investigate Judge Jones's speech further, with the hope of developing corroborating affidavits. I learned that some people likely would file a Judicial Misconduct Complaint, based on this speech, if the original affidavit could be corroborated.

On June 4, eight days before Mr. Chester's scheduled execution date, a Judicial Misconduct Complaint was filed with the Fifth Circuit, supported by six affidavits. On the same day, having done all I could do in advance to prepare pleadings based on a document I had not seen, I filed a Motion to Recall the Mandate, A Motion to Stay Execution, a Motion for Recusal by Judge Jones, and then a Motion to Accept Supplemental Exhibits when I received the remaining exhibits supporting the Judicial Misconduct Complaint. While I waited for the Fifth Circuit to rule, anticipating that we would lose, I drafted a cert petition seeking review of the still-hypothetical ruling and a motion to the U.S. Supreme Court for a stay.

On Monday, June 10, I flew to Texas. Thankfully, I did not have to go alone. My long-time friend Averil Lerman came with me. She promised she would take care of me so I could take care of my client. She was fabulous.

We learned en route that the Motion to Accept Supplemental Exhibits was granted – but the order was signed by Judge Jones, signaling that she was not going to recuse herself.

Once I left Anchorage, I realized I could not actively participate in the last round of legal filings. Time zone differences, sleep deprivation, lack of good internet access, and the emotional exhaustion of dealing with a client about to be executed meant that my brain would not let me assist in any meaningful fashion with further briefing. Luckily, I had a stunning back-up legal team who manned the computers in three states. My team included Gavin Kentch in Anchorage (a young lawyer with law school experience opposing a cert petition), Bob Bacon (a former Alaska attorney who does death penalty cases in California and who was a mentor and guide throughout the *Chester* case), and two experienced death penalty attorneys in Texas. Gavin coordinated his own work and input from the other three and met all of our filing deadlines with grace under pressure.

We (or they) determined that we could challenge Judge Jones's refusal to recuse herself by filing a petition for an extraordinary writ of mandamus with the U.S. Supreme Court. So that document was prepared for filing. The team also reshaped the cert petition to give more emphasis to the improper participation by Judge Jones. Then, truly moments before the mandamus petition was due to be filed, on Tuesday the 11th (the day before the scheduled execution), the Fifth Circuit surprised us, and the remaining two judges on the panel overruled Judge Jones and asked to have the case assigned to a new panel. Judge Dennis wrote a concurrence stating his view that the original panel should grant the motion for a stay of execution, because in the 24 hours that remained there was no way a new panel could acquire the background to evaluate the motion to recall the mandate. But he was only one vote for that position.

An hour or so later, the new panel asked for supplemental briefing, posing a series of generally unfriendly questions on the court's power to recall a mandate. The panel required a response before close of business, less than two hours away. While I visited at the prison and spoke with my client's family, my legal team did some fast research and met the filing deadline. They also rewrote the cert petition yet again.

On June 12, I visited my client one last time on death row in the Polunsky Unit at Livingston, Texas, where he had lived for 15 years. Visiting means talking by scratchy telephone line through bulletproof glass. The only time I ever touched my client was during the evidentiary hearing in 2004. I told him the odds were not good, but we had a sliver of hope from the Fifth Circuit or the Supreme Court. He was surprisingly at peace. He wanted no crying. He appreciated our efforts. We talked about bears breaking into my cabin and how he'd never been on an airplane.

Around noon on the day of an execution, an inmate is transferred 40 miles to the old prison at Huntsville, where the death chamber remains. Strange that a man who has not been outside the prison in nine years (since our *Atkins* hearing in 2004) gets one last car ride on the last day of his life.

Shortly before I had to leave for Huntsville, the new Fifth Circuit panel issued a short decision stating that the three new judges had reviewed the entire file (10 years worth of litigation) and determined that Mr. Chester's habeas application was properly denied, and therefore the motions to recall the mandate and to stay the execution were denied. We'd been expecting a ruling denying authority to recall a mandate or finding no injustice because the motion was brought too late. The notion that the court would redecide the entire case in less than 24 hours was something we had not expected. My team rewrote the cert petition again and got it filed with the Supreme Court in about two and a half hours. By then Gavin was on a first name basis with Danny Bickell, the "death clerk" at the Supreme Court, who was always pleasant and helpful. We'd first contacted Danny a week before the execution date, and learned then that the Supreme Court was already aware that it might see last-minute filings and it had, on its own initiative, obtained all the recent Fifth Circuit pleadings.

Averil and I drove to Huntsville. I was scheduled to visit Mr. Chester one last time at 3 p.m. I was told, first, by a chaplain that I couldn't do that because I had to be somewhere else at 3 p.m. to be briefed as a witness to an execution. Later the chaplain decided he could brief me separately; the briefing took three minutes. Then I learned that I actually wasn't on the execution witness list my client had submitted, and I had to plead my case to the warden. I explained I'd come from Alaska, my client expected me to be there, and he's mentally retarded so he doesn't fill out forms well. Before I'd left for Texas, my paralegal had called the prison more than once to confirm I was on the list – but it turns out I was on the list for attorney visiting and not on the witness list. Obviously, we didn't speak the language and did not know the right questions to ask.

I visited the client who was in a cage-like cell adjacent to the death chamber. He knew the Fifth Circuit had turned him down and we were waiting to hear from the Supreme Court. He knew the chances were small, but it was good to have a teeny bit of hope and the sense of going down fighting to the end. He was pleased to be in clean clothes, and nicer clothes than death row inmates typically wear. He was remarkably peaceful and accepting of whatever would happen. He found comfort in a religious belief that God works in strange ways; if God wanted him to have a stay, that would happen, and if God wanted him in heaven, so be it. He realized that heaven might be a better place than the Polunsky Unit.

At 5:30, the other witness and I were escorted by the chaplains into the prison. We waited in a staff break room and watched the clock tick toward the appointed execution hour of 6 p.m. When we still sat there at 6 p.m., I figured we were waiting on the Supreme Court. I'd been told that Texas would not carry out the execution until the Supreme Court ruled. At 6:20, we were told "it's time." I learned later that, after the cert petition was filed at approximately 1 p.m., in short order the State filed an opposition, my team filed a reply, and the Supreme Court issued its order denying a stay and denying cert at 5:57 p.m. Texas time.

I witnessed the execution standing in a small room separated by glass from the execution chamber. Victim family witnesses were in another room, behind one-way glass. They could see, but the client could not see them.

My client spoke last words. He offered apologies to the victim families, thanks to his lawyers, and love to his family. He said at the end, "Warden, I'm ready." From a mentally retarded and emotionally disturbed man, it was a very dignified and moving statement.

The killing happens without visible human action. The defendant has been strapped to a gurney, with an IV in his arm. All of a sudden, he shudders violently and shuts his eyes. It's over. It is an unspeakably horrible thing to see: the intentional killing of a human being.

Afterwards, I talked with the family and told them what their brother had said. They got a chance to touch the body at a nearby church a little later in the evening, the first time they'd touched him since his arrest in 1997. After that, they had the body brought to Port Arthur and held a funeral and burial there. Not all families stick together like this. Many executed inmates are buried at Huntsville.

And I came home to Alaska, grateful to live in a state that does not kill people to prove that killing is wrong.

The day I traveled, the day after Elroy Chester died because the Supreme Court would not grant a stay, I learned that Chief Justice Roberts had accepted a request from the Chief Judge of the Fifth Circuit to assign another circuit to investigate Judge Jones. I'm glad the court system cares about preserving its own image and protecting both the appearance and actuality of impartiality. I'm sorry the court system did not care more about an individual who seems to have been a victim of biased judging.

For all the pain of losing a case, I have no regrets that we took this case or stayed with it to the end. Inmates remain on death row throughout the country without counsel to represent them in post-conviction relief matters. I expect to get involved in another case some day. We had enormous support from a community of dedicated attorneys who devote themselves to trying to save lives, and I will help some of them as a way to repay their generous support for us. I'd be pleased to provide contact information to the ABA's Capital Representation Project for anyone else who is willing to consider taking a case.

ATTORNEY DISCIPLINE

Alaska Supreme Court censures Juneau attorney for neglect

Juneau attorney Campbell Jackson undertook to file appeals on behalf of two defendants in criminal proceedings. The Bar alleged that Jackson provided ineffective assistance to each client on appeal. Specifically, Jackson failed to comply with court deadlines, failed to file opening briefs that met court criteria, and failed to seek permission to withdraw in accordance with appellate rules after he learned that a client allegedly wanted to end the representation. Jackson's conduct delayed appellate proceedings and threatened to deprive defendants of their rights to have their appeals heard. Jackson acknowledged that his failure to timely file an appeal on behalf of his client in one proceeding fell below the standard of care that he owed to his client.

ABA standards for imposing lawyer discipline recommend a reprimand, also known as public censure, when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to the client. Bar Counsel and Jackson agreed that a public censure was an appropriate discipline for the failings that occurred. The Disciplinary Board approved the stipulation and recommended its adoption to the court. The Court approved the stipulation for discipline by censure on June 3, 2013.

Alaska Supreme Court suspends prosecutor for discovery failure

The Alaska Supreme Court suspended Juneau prosecutor Patrick J. Gullufsen from the practice of law for eighteen months, effective July 17, 2013, for failing to turn over an expert report to the defense during a criminal trial.

In 2010, Gullufsen prosecuted Jimmy Eacker for the first degree murder of Seward resident Toni Lister who went missing in the spring of 1982. Eacker was a suspect in 1982, but he was not charged with any crime in connection with her death. In 2006, evidence from the Lister investigation was submitted for updated testing of limited DNA samples. Laboratory testing revealed two partial male profiles: one consistent with Eacker's profile and one belonging to an unknown male. The unknown partial profile shared markers with a lab employee, suggesting that the lab worker had contaminated the profile during testing procedures.

Additional testing got underway approximately a week before trial in an attempt to determine whether the lab worker contaminated the profile. Gullufsen understood from talking to one of the State's experts that any testing results should not be relied on for the purpose of determining whose DNA, if anyone's, was in the vials originally back in 1982.

The expert report was turned over to Gullufsen at the start of a trial day. Gullufsen reviewed the entire report and concluded that new swabs had been tested and the results had no evidentiary value to the case. He requested that more testing take place. In fact, the appropriate extracts had been tested and the report concluded in part that results showed a partial male DNA profile that belonged neither to Eacker nor the male lab assistant.

The defense theory at trial was that another man killed Lister. The defense expert stated that the profile of an unknown male supported the defense's theory. The defense cross examination of the State's experts and direct examination of its expert would have been different if the expert report had been turned over.

During trial, the defense asked whether the testing was done and whether results were available. Gullufsen answered that additional work was being done and didn't disclose that the report had been delivered to him and reviewed by him. He told the court that there was nothing to give the defense. The State did not turn over the report before the end of trial. The case was submitted to the jury which later returned its verdict of guilty. Eacker was sentenced and began to serve 99 years for the first degree murder of Lister.

Defense conducted some post-trial interviews of the lab supervisor and learned that a report had been given to Gullufsen during the State's case. Defendant filed a motion for dismissal with prejudice, or in the alternative, a new trial, alleging that the State violated its discovery obligations. The court ordered a new trial, finding that Eacker was prejudiced by the State's failure to turn over an expert report after it was received mid-trial. Noting that the case relied heavily on DNA evidence, the court found that a new trial was necessary to secure a fair and just trial on the merits and to meet due process requirements. Some months after the court ordered a new trial, Eacker pled guilty to manslaughter and was sentenced to 20 years with two years suspended.

Gullufsen and Bar Counsel stipulated that he breached ARPC 3.3(a)(1) which prohibits a lawyer from knowingly making a false statement of material fact or law to a tribunal. Even though he believed the report was not exculpatory or relevant, he knew that he had a report. When he withheld the expert report, Gullufsen misled both the court and Eacker that there was nothing to give the defense.

Gullufsen violated ARPC 3.4(d) when he failed to comply with a legally proper discovery request from defendant for the expert report even if Gullufsen thought results were not exculpatory.

Gullufsen and Bar Counsel agreed that the misconduct warranted suspension from the practice of law. However, several factors served to mitigate the term of suspension. Mr. Gullufsen had no prior disciplinary record; he had a reputation for fairness and integrity among Bar members who evaluated him; he was remorseful and made full and free disclosure to the Bar; and he had a sudden acceleration of adverse symptoms for leukemia, a disease he had been diagnosed with approximately a year earlier. Gullufsen believes that the significant increase of cancerous white blood cells contributed to the extreme fatigue he experienced which may have adversely affected his judgment and patience during the Eacker trial.

Gullufsen retired earlier than he had planned due to health issues. In the event that Gullufsen seeks to return to the practice of law after the period of suspension, he will need to take and pass the Multistate Professional Responsibility Exam (MPRE), and comply with procedures under Bar Rule 29(c)(1) which requires Gullufsen to demonstrate by clear and convincing evidence that he has the moral qualifications, competency, and knowledge of law required for admission to the practice of law in Alaska and that his resumption of the practice of law in Alaska will not be detrimental to the integrity and standing of the Bar, or to the administration of justice, or subversive of the public interest.

Substance Abuse Help

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

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

Anchorage

Michaela Kelley Canterbury
276-8185

Megyn A. Greider
543-1143

Dale House
269-5044

David S. Houston
278-1015

Mike Lindeman
245-5580

Suzanne Lombardi
770-6600 (wk)

Brant G. McGee
830-5518

Jennifer Owens
243-5377

Michael Sean McLaughlin
269-6250

Michael Stephan McLaughlin
793-2200

Greggory M. Olson
269-6037

John E. Reese
345-0625

Jean S. Sagan
929-5789

Moira Smith
276-4331

Palmer

Glen Price
746-5970

Fairbanks

Valerie Therrien
452-6195

Sitka

Amy L. Stus
907-747-7275

Arizona

Jeffrey A. Gould
520-808-4435

In Memoriam

John Reeder


Reeder

John Alexander Reeder, Jr., 71, noted Anchorage lawyer, community volunteer, photographer, and beloved husband of Loisann Reeder, died on July 23, 2013, at his home from cancer.

John was born in Dallas, Texas on Nov. 2, 1941 to the late John and Lyra Reeder. He graduated from high school at St. Marks School of Texas in 1959. After obtaining a BA in history from Wesleyan University in Connecticut, he attended law school at Southern Methodist University in Dallas. He spent two years as a Peace Corps volunteer primarily at the headwaters of the Amazon in Peru. Returning to Dallas, John served as house counsel for a small energy startup, Earth Resources Company, before the call of the mountains, and the Alaska Attorney General's Office, lured him and his VW bus north to Alaska in 1971. He met Loisann Lindemood within days of his arrival in Anchorage and they were married six months later.

John served three years as chief attorney in the Anchorage branch of the Attorney General's office, before joining BP Exploration as chief counsel in Alaska, a position he held for 22 years. He then worked several more years as an independent oil and gas consultant. His work with the industry spanned most of the major issues the industry has faced, from the early development of the Prudhoe Bay oil field through construction of the Trans-Alaska Pipeline System, the early years of oil production, and difficult taxation issues with the state and local governments.

One of his key accomplishments was helping negotiate the Prudhoe Bay Unit Agreement, which laid the foundation for the major North Slope oil producers working cooperatively to develop the large oil resources of northern Alaska. John was a highly talented lawyer, known for his encyclopedic knowledge of oil and gas law and his unfailing sound judgment. He served as a role model for those lawyers fortunate enough to have crossed his professional path.

In addition to his professional career, John was an active community volunteer who served on the boards of the Alaska State Council on the Arts, Anchorage Historical and Fine Arts Commission, the building committee for the recent expansion of the Anchorage Museum, Cook Inlet Historical Society, Alaska Photographic Center, Susitna Valley Association, and Alaska Common Ground.

John was passionate about exploring and photographing the beauty of Alaska. He was an avid fly-fisherman. He and Lois backpacked, hiked and skied most trails in South Central Alaska. But their most precious time was spent at the remote cabin they built in the Susitna Valley 33 years ago, accessible only by float plane or snow machine.

John will be long remembered for the intelligent, calm voice of reason that he brought to all of his professional and community endeavors, coupled with a personality that was rich with good humor, patience, and kindness.

He leaves behind his wife and life partner of 41 years, Loisann, and many beloved friends. His ashes will be scattered over the Susitna Valley, where he and Lois spent many happy days at their cabin.

Per John's wishes, there was no service, but a remembrance gathering of friends is planned in the fall.

Bequests in memory of John, may be made to either the Alaska Photographic Center or the Cook Inlet Historical Society.

Peter Ashman


Ashman

Peter Gregory Ashman, 61, died on Aug. 5, 2013 at his daughter's home in Menlo Park, California, after a 15-month battle with pancreatic cancer. He passed away peacefully with his two daughters and sons-in-law by his side.

Peter was born to Robert and Gloria Ashman in Amarillo, Texas on June 30, 1952. He was the oldest child and is survived by his five siblings: Mike, John, Mary, Paul and Rob. As a military family they traveled the world. He graduated high school in New York, studied at Dartmouth and then University of Maryland, where he received a Bachelor's degree in history. Peter had a great fondness for the book "To Kill a Mockingbird," which inspired him to attend the University of Virginia to study law.

In 1987 Peter was appointed as a District Court Judge in Palmer, Alaska. He was on the bench for 16 years and made a significant impact on the legal community of Alaska. His professional accomplishments are numerous and distinguished, culminating in the reception of the Judge Nora Guinn award in 2013 by the Alaska Bar Association for his work in pursuing aid to rural communities, especially the Alaskan Native population.

In 1983, Peter married Kay Rawlings in Anchorage. Though they divorced in 1992, they remained close friends while raising their daughters, Jenny and Elizabeth. Peter would always say that his greatest achievement in life was that of his girls, and the best choice he ever made was to be a father. He was an involved, compassionate, and loving dad. The calm, thoughtful, and just personality that permeated his courtroom was the same at home.

Peter was most alive when he was with his daughters, teaching them to love and appreciate all that he loved. While his girls were young, he made sure that they appreciated photography, poetry, music and art, taking them to museums and galleries, and always had a variety of music playing in their home. As a young man he joined the Bakers Street Irregulars, a Sherlockian society, that he remained involved throughout his life. His last great love was the ukulele. Peter was integral in the formation of a ukelele group of Alaskan judges and lawyers. While he would often say that he was an amateur at all these hobbies, his spirit and enthusiasm that drove those hobbies was that of a master.

He battled cancer bravely to have 15 more months with his family, to walk both his daughters down the aisle, and to uphold his character as one who preservers and fights up until the very end. He will be dearly missed as a father, son, brother, friend, and colleague.

A celebration of his life was to be held on Sept. 18 at 6 p.m. at St. Mary's Episcopal Church. Reception to follow. Please bring instruments to participate in a musical tribute to Peter.

In lieu of flowers please donate to: Mission Hospice: http://www.missionhospice.org; Pancreatic Cancer Action Network: http://www.pancan.org; Homeward Bound: ekazary@ruralcap.com

Gene Murphy

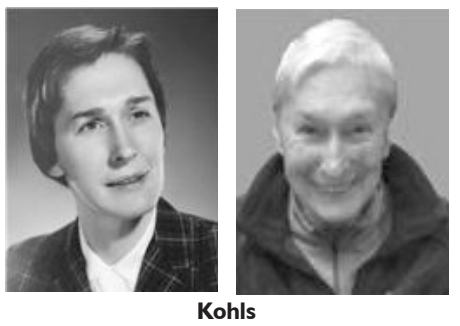

Murphy

Former Alaskan Eugene Patrick Murphy died on Aug. 6, 2013. He was born on Feb. 5, 1935 to Daniel and Dorothy (Toner) Murphy in Sioux City, Iowa. He lived in Nebraska until fourth grade when his family moved to Eugene, Oregon. In Eugene he went to St. Francis School and then on to the University of Oregon where he completed four years in business administration. In 1958, while visiting his family in Spokane, Washington, he met Marilyn Jo Macnab. They had a 6 week courtship and married in November of 1958. His children, Daniel John Murphy of Lake Oswego and Molly Ann Murphy Friess of Anchorage, Alaska, were born in 1959 and 1961. He has two wonderful granddaughters, Emily Murphy of Minneapolis, Minnesota, and Claire Murphy of Lake Oswego as well as his sister, Diann Murphy Appleton.

Gene had a wit that will long be remembered and his ability to tell jokes very few could top. He practiced law in Alaska and was a Criminal Prosecutor for many years. He retired to Sunriver in 2000 and died on Aug. 6, 2013 of an infection. The funeral will be on Aug. 24, 2013 at 3 p.m. at Holy Trinity Church in Sunriver.

Senior Judge Elaine Andrews said, "I was so sorry to learn of Gene's passing. He was one of my favorite lawyers. We practiced on "opposite sides of the fence". He was an experienced district attorney and I was a newly hatched public defender. He was a terrific lawyer and a kind and compassionate man. He always sought a just and fair solution. I also had the pleasure of having him appear before me when I became a judge. I always knew I could depend on his honesty and good judgment, and when needed, his good humor. He made a significant contribution to the justice system in Alaska and he will be missed."

Shirley Kohls


Kohls

Long time Juneau resident and attorney Shirley F. Meuwissen Kohls died peacefully Sunday evening, August 25, after a lengthy battle against cancer, surrounded by family members and friends who were singing "You Are My Sunshine" to her. She was 88.

At her request, no services will be held. Her ashes will be spread at a later date near her home at Tenakee Springs.

Shirley was born July 14, 1925, and raised in Chaska, Minnesota, with six siblings. She started her entrepreneurial career at the age of 11 as a newspaper carrier, and was a person of many talents and interests. In 1945, at the age of 19, she joined the Civil Aeronautics Administration (now the FAA) as a radio/traffic control operator, working for the next 11 years in Alaska in Anchorage and Kodiak before transferring to Juneau in 1947.

In 1956 Shirley left Alaska briefly to enroll in the University of Colorado, where she received a BA in political science in 1959 and then a law degree in June 1961. She returned to Juneau and, after a short period on the staff of the Legislative Council, Shirley became a law clerk for Supreme Court Justice John Dimond, serving from November 1961 to June 1963. In January 1962, Shirley passed the Alaska Bar exam, being the only female to do so that year. Shirley received her 50-year pin as a member of the Alaska Bar Association at the 2012 state convention in Anchorage.

She joined Gladys Stabler and Doug Gregg in June 1963 to form the law firm of Stabler, Gregg and Meuwissen. After she married Frederick F. Kohls (now deceased) in February 1966, the firm's name was changed to Stabler, Gregg and Kohls.

In December 1973 Shirley left the firm to open her own general solo practice, where over the past 40 years she represented three generations of some families. She had begun to ease out of the practice of law to spend time at her home in Tenakee Springs, fishing, playing cards, socializing, and occasionally cleaning halibut for friends. Shirley was an avid poker player and was a two-time champion of the Alaska Bar convention's annual poker tournament.

Shirley thoroughly enjoyed life in Alaska. In her earlier years she was an ardent skier and a member of the Juneau Ski Patrol. For many years she had a cabin, first on Lena Point and later on Spuhn Island (of which she was part owner), from both of which she was able to enjoy years of boating and fishing with family and friends. She served as president of the Juneau Bar Association, the Juneau Concert Association, and was a member of many other legal and civic groups.

In March 2001, Shirley was honored at a reception for her contributions to the practice of law and to the community and state in general. Then Supreme Court Justice Bud Carpeneti said, "I learned a lot from her about how to practice (law), especially with regard to how lawyers could be vigorous advocates for their clients while at the same time maintaining good relations with each other." He described Shirley as "just one of the neatest people anyone would want to know. She embodies all the virtues that come to my mind when people talk of 'the good old days': common sense, hard work, a helping hand to anyone in need, quiet competence, a strong sense of the common good."

Shirley was preceded in death by her parents, Paul and Mary Helen "Mae" Meuwissen; Her husband Fred; their son, Kevin, who died in 1983 at the age of 15 from a cancerous brain tumor; and her brothers, Kenneth Meuwissen, Robert Meuwissen, and Thomas Meuwissen.

She is survived by her brother,

Continued on page 15

Arbitration: Disputes regarding subpoenas and their issuance

By Gregory S. Fisher

How, and in which forum, should disputes regarding subpoenas and their issuance be resolved in arbitration proceedings? Specific rules vary depending on the Arbitration service (AAA, JAMS, NAM, FINRA, or other). However, generally speaking, Alaska law establishes that, once parties are in arbitration, the Arbitrator has discretion and authority to manage the proceedings. *See* AS 09.43.420 (Revised Uniform Arbitration Act). As one court observed in a related context: "[o]nce it is determined that the parties are obligated to submit the subject matter of a dispute to arbitration, 'procedural' questions which grow out of the dispute and bear on its final disposition should be left to the arbitrator. Reservation of 'procedural' issues for the courts would . . . not only create the difficult task of separating related issues, but would also produce frequent duplication of effort." *Thompson v. Zavin*, 607 F. Supp. 780, 782-3 (C.D. Cal. 1984) (citations omitted).

Arbitrators have discretion to "permit the discovery the arbitrator decides is appropriate in the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost-effective." *See* AS 09.43.440(c). All such discovery is governed by the normal rules of civil procedure. *See* AS 09.43.440 (d), (e), and (f).

Arbitrators may issue subpoenas for production of documents or other related purposes. *See* AS 09.43.440(a). In addition, "[a]ll laws compelling a person under subpoena to testify and all fees for attending a judicial proceeding, deposition, or discovery proceeding as a witness apply to an arbitration proceeding as if the controversy were the subject of a civil action in this state." *See* AS 09.43.440(f).

Issuance of a subpoena is reviewed for an abuse of discretion. *See Tesoro Petroleum Corp. v. State*, 42 P.3d 531, 535 (Alaska 2002) ("we commonly 'review rulings on discovery for an abuse of discretion'") (internal citation omitted). Reversal under this standard is warranted "only when, after reviewing the whole record, we are left with a definite and firm conviction that the superior court erred." *Lee v. State*, 141 P.3d 342, 347 (Alaska 2006); *see also* Alaska R. Civ. P. 26(c) (movant must show good cause to obtain protective order). The superior court or arbitrator "has broad discretion in determining the extent of discovery and crafting the scope of protective orders." *Jones v. Jennings*, 788 P.2d 732, 735 (Alaska 1990); *see also Grimes v. Haslett*, 641 P.2d 813, 822 (Alaska 1982).

Any objection regarding a subpoena or its issuance should first be brought to the Arbitrator for his or her review unless the matter is urgent and the Arbitrator cannot act in a timely manner. See AS 09.43.350(b)(2) ("After an arbitrator is appointed and is authorized and able to act, . . . (2) a party to an arbitration proceeding may apply to the court for a provisional remedy only if the matter is urgent and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy.").

However, although subpoena-related objections should be brought to the Arbitrator's attention first, Arbitrators lack authority to enforce a subpoena. Only courts may enforce a subpoena. *See* AS 09.43.440(a)(g). Arbitrators may issue a discovery-related sanction if a party refuses to honor a subpoena because they control discovery and may issue subpoenas, grant motions to compel, and grant protective orders in his or her discretion "to the extent a court could if the controversy were the subject of a civil action in this state." *See* AS 09.43.440(d) and (e). However, only a court has the power to enforce a subpoena or to exercise civil contempt powers.

Certain steps can be taken to minimize problems:

1. Where possible, counsel should try to secure voluntary compliance without a subpoena.

2. If a subpoena is necessary, counsel should consider serving the subpoena on the opposing party when submitting it to the Arbitrator for his or her review. This is not required for a court subpoena before issuance, and is technically not required for a subpoena in arbitration until after it has been issued. However, notice promotes transparency and cooperation.

3. Draft the subpoena as narrowly as possible.

4. Provide the Arbitrator and opposing counsel with an explanation as to what information is being sought and why it is relevant when the subpoena is submitted for review. This can usually be done without revealing work product, and, again, promotes transparency and cooperation.

5. Include a copy of Rule 45 and AS 09.43.440 with the subpoena so that the person or entity being served is advised of his or her rights to object.

A sample subpoena in arbitration is attached.

BEFORE THE AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

JOHN DOE, Claimant,
vs.
BLACK CORPORATION, Respondent.) AAA Case No._____

SUBPOENA IN AN ARBITRATION

To: Jane Roe, Records Custodian
Address: Whiteacre Real Property LLC, Anchorage, Alaska

X YOU ARE COMMANDED to mail or deliver to counsel for Claimant John Doe at the address designated below (or to permit inspection and copying of) a copy of the following documents at the place, date, and time specified below in the above arbitration:

Date and Time: in a reasonably prompt manner, but no later than Friday September 27, 2013 at 9:00 a.m. (Alaska time)
Location: mail or deliver to 188 West Northern Lights, Suite 1100, Anchorage, Alaska 99503.

A copy of any environmental soil or water report, inspection, evaluation, or assessment conducted or completed on or after January 1, 2010 for Lot 7 Block 11 Make Believe Estates, physical address 1234 Unicorn Drive, Anchorage, Alaska 99501.

Date
Arbitrator

John Alias

This subpoena is being issued at the request of:
Gregory S. Fisher
Attorney for Claimant John Doe
Address: 188 West Northern Lights, Suite 1100
Anchorage, AK 99503
Telephone: (907) 257-5300

If you have any questions, contact the person named above.

The attached statutory and rule provisions (Alaska Rule of Civil Procedure 45 and AS 09.43.440) are provided as a convenience because the subpoena is being served on a non-party.

PROOF OF SERVICE

I certify that on the date stated below, I served this subpoena on the person to whom it is addressed, Jane Roe at the following address ___ _____.

Date and Time of Service

Signature

Process Service Fees: _____

_____
Print or type name

If served by other than a peace officer, this return must be notarized.

SUBSCRIBED AND SWORN TO or affirmed before me at _____, Alaska on _____, 2013.

(SEAL)

Clerk of Court, Notary Public, or other person Authorized to administer oaths.
My commission expires _____

Certificate of Service

On the ___ day of _____, 2013, a true and correct copy of the foregoing Subpoena in an Arbitration was served by U.S. Mail, and by email, to the following party:
Attorney for
Black Corporation
Address
Email

By:_____
Secretary

In Memoriam

Continued from page 14

LaMont Meuwissen of Sun Lake, AZ; sisters, Suzanne Wathen of Pipestone, MN, and Mary Jane (Michael) Mohlin of Belle Plaine, MN; numerous nieces and nephews in the Midwest; and many close friends in Juneau, Tenakee Springs, and other places in Alaska.

In lieu of flowers, Shirley asked that contributions be made to the Juneau Public Libraries, 292 Marine Way, Juneau, AK 99801, in memory of Kevin Meuwissen Kohls.

In honor of Shirley, her family is putting together a book of her life. Please email your memory or story to: marymeuwissen@earthlink.net.

Said the Juneau Bar Association, "Shirley was a wonderful friend to many in our community. The JBA lunch on Aug. 30 was in honor of Shirley Kohls; she regularly attended these Friday luncheons up until until the last week of her life. The JBA will be submitting a nomination for Shirley Kohls to the Alaska Women's Hall of Fame, recognizing her contributions to the law since the early 1960s. Bride Seifert is coordinating with the City and Borough of Juneau for a proclamation for Shirley."

ESTATE PLANNING CORNER

Beware of income tax rates & trusts

By Steven T. O'Hara

Known as the *American Taxpayer Relief Act of 2012*, the 2012 Tax Act increased the top estate, gift and generation-skipping tax rate from 35% to 40%. (IRC Section 2001(c).)

Significantly, the Act also increased the top income tax rate on ordinary income from 35% to 39.6% as well as increased the maximum rate on long-term capital gains and qualified dividends from 15% to 20%. (IRC Section 1.)

The 2012 Tax Act allowed to stand the 3.8% tax, as of 2013, on so-called unearned income of estates and trusts and certain individuals. The net investment income to which this 3.8% tax applies includes, in general, long-term capital gain, interest, dividends and rent. (IRC Section 1411.) Known as the Medicare surtax, this extra tax was part of the 2010 Tax Act but not effective until 2013. The 2010 Tax Act is known as the *Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010*.

Some advisors may urge clients to avoid trusts, noting that trusts could be subject to a combined federal tax rate of nearly 44% (i.e., 39.6% plus 3.8%) on ordinary income and a combined federal tax rate of nearly 24% (i.e., 20% plus 3.8%) on capital gain and qualified dividends. In 2013 a trust may reach these top brackets at roughly $12,000 of income. (IRC Sections 1(e) and 1411(a)(2).) By contrast, an unmarried individual in 2013 is not subject to the 3.8% Medicare surtax until the taxpayer reaches, in general, $200,000 of income and is not subject to the 39.6% top bracket until the taxpayer reaches, in general, $400,000 of income. (IRC Sections 1(c) and (i)(3) and 1411(b).)

The following is an illustration based on an unmarried individual with ordinary income of $37,000 (over and above qualified dividends and long-term capital gain) versus a trust taxed as a separate taxpayer with the same annual income. The individual is an Alaska resident, the trust is an Alaska trust, and all the income is received in 2013 from activities within Alaska's borders.

Unmarried Individual	$37,000 Ordinary Income	Trust
25% marginal tax rate	Interest income	43.4% marginal tax rate
25% marginal tax rate	Rental income	43.4% marginal tax rate
15% tax rate	Qualified dividends	23.8% tax rate
15% tax rate	Long-term capital gain	23.8% tax rate

(*See* Rev. Proc. 2013-15.)

Trust income tax rates are a valid concern and are one reason why this writer advises clients to consider providing that all trust net income must be distributed annually. With this provision, the trust's income will generally be taxed at the beneficiary's income tax rates. (IRC Sections 651 and 652.)

"As always, estate planning will come down to the particular circumstances of the client as well as responding to and anticipating changes in tax law."

Recall also the need for careful consideration of income tax issues when designating a beneficiary under an IRA or other qualified retirement plan.

To maximize tax deferral under tax qualified retirement plans, clients need to have "designated beneficiaries" within the meaning of the Internal Revenue Code. (IRC Section 401(a)(9).) The term "designated beneficiary" means an individual and not a trust. (IRC Section 401(a)(9)(E).)

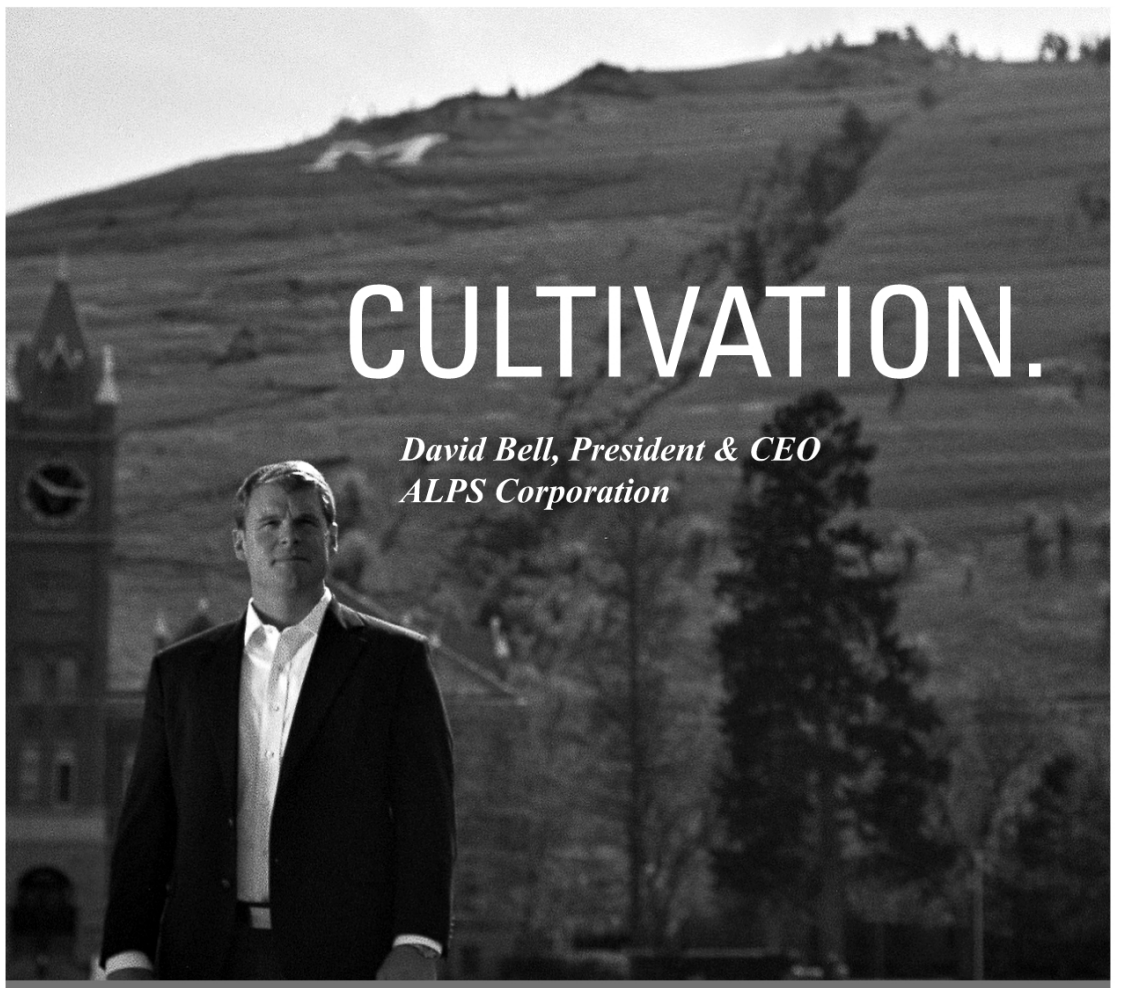
Trusts are not favored here because it may be difficult to determine the individual beneficiary, if any, who will actually receive the distributions from the retirement plan. To calculate the required minimum distributions under the retirement plan, one must look through a trust to an individual beneficiary in order to have a life expectancy on which to base minimum distributions. If a trust has a charitable organization as a beneficiary, then perhaps no individual's life expectancy can be used to maximize tax deferral under the retirement plan. (Treas. Reg. Sec. 1.401(a)(9)-5,A-7(b).) Also, if a trust has more than one individual beneficiary, then perhaps the life expectancy of the oldest individual must be used to determine minimum distributions. (Id.)

In other words, the IRS recognizes that it is possible to satisfy the requirement of having an individual "designated beneficiary" even where a trust is named as the beneficiary of a retirement plan. But the regulations on this subject are not clear. For example, the distinction between a trust "successor beneficiary" (who can be ignored) and a trust "contingent beneficiary" (whose life expectancy might determine minimum distributions) is unclear. (Id. and Treas. Reg. Sec. 1.401(a)(9)-5,A-7(c).)

This writer's experience is that where clients intend to benefit adult children, they tend to name their children directly as beneficiaries under retirement plans. They do so even where their other assets remain in long-term, generation-skipping trusts with their children entitled to all trust net income. On the other hand, clients with minor children often designate as beneficiary one or more trusts for their minor children. Here clients generally consider the loss of tax deferral and the high income tax rates of trusts as the cost of providing asset management for minor children.

As always, estate planning will come down to the particular circumstances of the client as well as responding to and anticipating changes in tax law.

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



Interview with Aimee Oravec from the Golden Heart City

By Mamie S. Brown

Aimee Oravec is a shareholder at Oravec Law Group, LLC in Fairbanks Alaska. Her practice consists of civil litigation defense and appeals; regulatory practice before the Regulatory Commission of Alaska; and business and employment law. Aimee is President of the Tanana Valley Bar Association, a council member for the Alaska Judicial Council, a committee member for the Alaska Bar Association Fee Arbitration Committee, and a board member of the United Way of the Tanana Valley. She can be reached at (907) 458-8844 or aaolaw@gmail.com.

What led Aimee to practice law: While working on her B.A. at Southern Utah University, Aimee thought that teaching, rather than lawyering, would be her lifelong pursuit and the best use of her history major. By happenstance, an opportunity to teach during her senior year provided her additional insight into her skill set. When she thrived in her position as assistant debate coach the lesson was clear: her passion for learning and advocating made law, rather than education, the best fit.

What led Aimee to live and stay in Fairbanks: In 1999, Aimee moved to Fairbanks with her husband, who was serving in the military at that time. She "rooted immediately." When provided an opportunity to move to Anchorage a week after arriving in Fairbanks, she resisted. She could relate to the attitudes, the curmudgeonry, and the independent spirit of the locals. She also could relate to the dry climate. Aimee grew up in the Southwest with similar low humidity as Fairbanks. Accordingly to Aimee, "Desolate is gorgeous."

What Aimee ate for lunch: Minestrone soup and a side salad (she resisted the fig and prosciutto pasta).

Aimee's favorite quote: "If you can't be a good example, be a horrible warning." - Catherine Aird

Aimee Oravec

Aimee's first impression of Fairbanks: "The scenery was like a postcard." She recalls a humorous moment where she drove past a gloomy, overweight dog pouting while leashed to a post in the middle of winter.

Where Aimee would like to travel state-side: New York City.

If the apocalypse came to Fairbanks, Aimee would live in Valdez. She does not believe she would go stateside because, like many Alaskans, she feels spoiled by a lack of regulation.

Aimee's greatest mentor. Aimee stated that the person that she respects the most, both personally and professionally, is her husband Scott. They met in St. Louis, while attending a mutual friend's bon voyage party. At that time they were both attending different law schools. According to Aimee, "He sat next to me and ordered the same thing without looking. That was a sign."

Free advice. The best advice she received as a young attorney was to ignore the conduct of the opposing counsel and to just focus on the work, to just get the work done and the distractions will not matter.

Book recommendation. Aimee recommends: Don't Look Back, a novel by Norwegian writer Karin Fossum. Aimee particularly admires books with "clever dialogue," which, in her view, is difficult for a writer to master.

Aimee's thoughts on technology: "Technology is too prevalent in our interrelations with people. Too many people are on the phone when they should be talking to the human sitting next to them."

What keeps Aimee up at night: Work related stress.

The best advice she received as a young attorney was to ignore the conduct of the opposing counsel and to just focus on the work, to just get the work done and the distractions will not matter.

Aimee's advice: "Invest in high quality hand lotion. I don't wear much make up, but live in fear of wrinkly hands before my time."

How she addresses her clever kids, Oscar and Max: When her kids get smart, she gives herself permission to leave the room, laugh hysterically, and return ready to address them accordingly.

The best part of being an attorney: Her clients, her staff, and learning every day.

Greatest challenges of practicing today. Aimee believes that attorneys should practice in areas where they can stay interested and continue to learn, because in addition to personal fulfillment, that will lead to a good work product for the client.

If Aimee were not practicing law, she would choose to be a full-time mom and dedicate more time to public service. She believes that the happiest locals are those who are the most involved, and that the best way to improve the community and reinforce the importance of community with her kids is through public service.

Aimee would add this: "The biggest challenge for all attorneys is work life balance. You likely do not have work-life balance if you have not asked yourself the question whether you do. As attorneys, our mistakes have real world consequences, so it is important we find stress relief through things, other than work, that can bring perspective."

Mamie S. Brown is an associate at Clapp, Peterson, Tiemessen, Thorsness & Johnson LLC. Her practice consists of primarily of professional malpractice defense and entertainment law. In 2008, she meet her husband, when, in a twist of fate, a "deicer debacle" led to the temporary grounding of planes in Seattle. In the spirit of adventure, Mamie moved to Fairbanks in 2009 from Seattle, Washington. When she is not barbequing with her family, she enjoys hitting the trail with her two year old daughter and hanging out with fellow Rotarians. She can be reached at (907) 479-7776 or msb@cplawak.com.

Criminal defense lawyers meet at Alyeska

By Darrel J. Gardner

Since its creation in late 2009, the Alaska Association of Criminal Defense Lawyers (AKACDL) has had more than 150 members join its ranks. True in keeping with the goals of its founders, AKACDL has presented at least two criminal defense-oriented CLE programs per year, and in addition, an annual two day summer conference held at the Alyeska Resort in Girdwood.

This year marked AKACDL's third conference, held on July 18-19. The goal of the aptly named "All*Stars Conference" is to bring high powered, nationally known criminal defense lawyers to Alaska to speak to our criminal defense bar. Past presenters have included: Lisa Wayne, the 2012 President of the National Association of Criminal Defense Lawyers; Deja Vishny (NACDL Board of Directors); eyewitness and interrogation expert Colette Tvedt; jury selection expert Rob Hirschorn; and, Martin Sabelli, the former training director of the San Francisco Public Defender's Office. Most of the presenters have been instructors at the National College of Criminal Defense (NCDC) in Macon, Georgia, or at the National Institute for Trial Advocacy (NITA), or both.

This year's presenters were:

Tony Gallagher, who in 1992 was selected as the first Executive Director of the Federal Defenders of Montana. Mr. Gallagher has argued before the United States Supreme Court. Tony is a Fellow of the American College of Trial Lawyers. He was named Criminal Defense Lawyer of the Year (2005) by the Montana Association of Criminal Defense Lawyers. He has been an adjunct professor at three law schools, a guest lecturer at five others, and a featured speaker on criminal defense topics for Continuing Legal Education programs throughout the United States. Mr. Gallagher presented a full 3 hours of MCLE ethics: "Professional Responsibility in the 21st Century -- Ethical Decision Making for the Criminal Defense Lawyer."

Former AKACDL President Steve Wells and presenter Cynthia Roseberry at the speakers' dinner at Chair Five Restaurant.

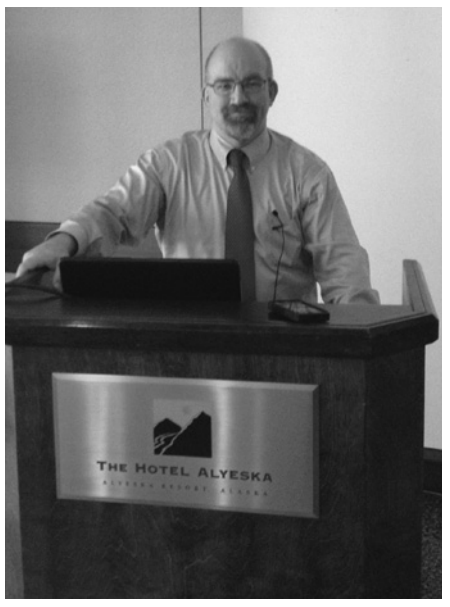
Steve Oberman, who is a nationally renowned defense lawyer and author from Knoxville, Tennessee. In 2006, Mr. Oberman became the first lawyer in Tennessee to be recognized as a Certified Specialist in the area of DUI Defense Law by the Tennessee Commission on Continuing Legal Education and Specialization, and by the National College for DUI Defense. Mr. Oberman is the only Knoxville lawyer to receive this honor. Mr. Oberman was recently named a Best Lawyers "Lawyer of the Year" in the area of Criminal Defense for 2013. Mr. Oberman spoke on multiple aspects of DUI defense, including ways to challenge so-called "Drug Recognition Experts."

Cynthia Roseberry, who is the Executive Director of the Federal Defenders Office for the Middle District of Georgia in Macon, the home of the National Criminal Defense College. Cynthia spoke on the defense of sexual assault cases, including strategies to deal with the rape shield statute.

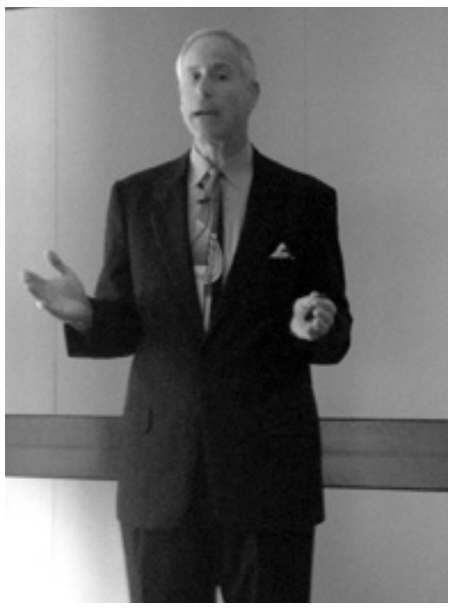
Bill Wolf, who has been an Assistant Public Defender with the Cook County Public Defender's Office in Chicago for the last 19 years, and is currently assigned to the Office's Homicide Task Force. He also defended death penalty cases before the State of Illinois abolished the death penalty in 2011. In 2006-7, Bill served as local counsel for the Innocence Project in their representation of Jerry Miller, the 200th DNA exoneration in the United States. Bill is also the Immediate Past President of the Illinois Association of Criminal Defense Lawyers. Bill's Alaska presentation included a discussion of preparation and methods for cross examination of expert witnesses, and how to challenge videotaped statements of criminally accused defendants.

The conference was very well attended, with approximately 80 participants. A large number of public defense attorneys were present because the Alaska Public Defender Agency and the Office of Public Advocacy cancelled its in-house training conference for this year due to funding issues. The association is very pleased with the support shown by Public Defender Quinlan Steiner and Public Advocate Rick Allen. A large number of attendees stayed at the hotel on the first night of the conference, taking good advantage of the AKACDL hospitality suite that opened at 5 p.m..

At the lunch event on the first day of the conference, Rich Curtner (the Federal Public Defender for the District of Alaska) hosted a short awards ceremony. Based on a tradition that started with the Alaska Academy of Trial Lawyers ("AATL" - which has since become the Alaska Association for Justice, the state's civil trial lawyers organization), AKACDL presented two "Alaskan Champion of Liberty" awards, in the form of large decorative engraved gold pans.



Presenter Bill Wolf from the Chicago - Cook County Public Defenders Office.



Presenter and noted DUI defense expert Steve Oberman from Knoxville, TN.

The first award was given to

AKACDL Champion of Liberty Award winner James Christie.

Anchorage attorney James Christie, for his exceptional work in the first-degree murder trial arising from the Sports Authority parking lot shooting in 2009. All three defendants were acquitted in 2012. Judge Wolverton commented that James' closing argument was the "best he'd ever heard."

The second award was given to Joy Hobart, a public defender from Kenai, whose dedicated efforts challenging Datamaster evidence resulted in a string of DUI trial victories. Just two weeks after the conference, Joy won another DUI acquittal in Homer! Other nominees for the award included Nikki Swayne; Cynthia Strout (who received the AATL award in 2003); Julia Moudy, Fred Slone, Wally Tetlow, Dan Lowery, and Sid Billingslea. Also receiving recognition, in the form of commemorative gold pans, were the four original founders of AKACDL: Rich Curtner, Darrel Gardner, Andrew Lambert, and Steve Wells.

2013 AKACDL Champion of Liberty award winner Joy Hobart, Kenai Assistant Public Defender.

In this 50th anniversary year of *Gideon v. Wainwright*, AKACDL reminds us that the criminal justice system is vital to our freedom and way of life. The rule of law is basic to a civilized society. The zealous defense of the accused individual against the awesome power of the government plays a fundamentally vital role in our constitutional system of justice.

The Alaska Association of Criminal Defense Lawyers ("AKACDL") is a non-profit organization and the only professional association of criminal defense lawyers in Alaska. The members of AKACDL include both private attorneys and state and federal public defenders who provide criminal defense for individuals accused of crimes in all of courts of Alaska. For more information or to join AKACDL, please visit our website at www.akacdl.org

Attendees at the 2013 AKACDL All Stars Conference at the Alyeska Resort Hotel.

Phil Shanahan (Anchorage) and Sue Carney (Fairbanks) catch up during the afternoon cookie breaks.

Federal Appellate Practice: 18th Annual Ninth Circuit Bench/Bar CLE

Judges offer advice on briefs & arguments: Less is more

By Gregory S. Fisher

The Ninth Circuit heard argument in Anchorage during the week of Aug. 12-15, 2013. The panel included Chief Judge Alex Kozinski, Judge Marsha Berzon, and Judge Sandra Ikuta.

The visiting Judges took time to meet with members of the Bar on Tuesday, Aug. 13 for the 18th Annual Bench/Bar CLE sponsored by the Alaska Bar Association and the Alaska Chapter of the Federal Bar Association. Judge Morgan Christen joined the visiting Judges. Judge Timothy Burgess moderated the discussion. Darrel Gardner, President of the Alaska Chapter of the Federal Bar Association, convened proceedings. Chief Justice Dana Fabe, Alaska Supreme Court, attended the CLE.

Chief Judge Kozinski observed that attorneys should consider oral argument to be "aural" argument, emphasizing how important it was to listen to the questions posed by Judges. He also recommended that attorneys begin drafting briefs early. When preparing for argument, the Chief suggested pitching your case to intelligent non-lawyers, ideally children. A common theme stressed by all Judges was to know your case and the record. If you can't state your case cleanly and simply in a sentence or two, you probably don't know your case well enough to argue it.

The Judges expressed somewhat different views on the scope and content of briefs. Judge Ikuta noted that she preferred objective, dispassionate writing without excessive use of adverbs. All Judges agreed, however, that briefs should be brief. Judge Christen explained that each Judge is reading around 4,000 pages for each week of oral argument. Less is more. Judge Christen urged attorneys to edit their briefs to remove needless content. For example, she noted she often reads briefs with strings of dates that appear to be significant, only to find out later that the dates are meaningless.

The same "less is more" point was made with respect to argument. The Judges agreed that attorneys should strive to keep arguments brief and conversational. Argument may not "win" a case, but it can lose one. Other advice: Avoid jury-type arguments. Let your clients and relatives stay home. Engage the panel. Listen.

Judge Berzon discouraged attorneys from talking over Judges or avoiding their questions. She noted those tactics never help. The Judges noted that it is sometimes better for trial counsel to retain independent appellate counsel as trial counsel may have too much emotional energy invested in a case to separate the appellate wheat from the chaff.

The CLE was well-attended and received. Appellate practitioners may find this source of benefit: Judge Alex Kozinski, *"The Wrong Stuff: How You Too Can . . . Lose You're your Appeal,"* 1992 BYU L. Rev. 325, republished Montana Lawyer, October 1997, 23-OCT Mont. Law. 5 (A copy may be accessed at http://notabug.com/kozinski/loseappeal)

Top Mobile Travel Apps

By John Edwards

Lawyers often find themselves in unfamiliar and uncomfortable places, meeting strange and difficult people, and facing the daunting prospect of meetings, hearings, conferences, and other highly demanding obligations. In such an environment, a mobile phone or tablet app that can speed, simplify, or clarify key aspects of life on the road can be a real lifesaver, saving time, money, and sanity.

While there are now thousands of road warrior apps designed to run on Apple Inc.'s iOS and Google Inc.'s Android mobile devices, only a handful are actually worth downloading. We've collected the top 15 here, omitting titles such as Dropbox, Twitter, Facebook, Skype, and Yelp, which are already widely known by most mobile device users.

Time Master + Billing

Publisher: On-Core Software Time Master+ Billing helps users turn their iPhones and iPads into highly functional, billable-hour record-keeping devices. The app supports incremental billing and lets users manually start and stop the clock on clients. Users can customize the app to record billable hours based on clients or projects, associate billing codes, and set the amount of time allotted to each client or project. iOS

Evernote

Publisher: Evernote Corp. Evernote is a free app that helps users remember all sorts of trip and business details across multiple devices. Users can take notes, capture photos, create to-do lists, and record voice reminders. All files are searchable.: iOS, | Android.

Expensify

Publisher : Expensify Inc. Lawyers can use this nameake app to track purchases and other transactions while traveling, by syncing the app with their credit cards and bank accounts. It also functions as a receipt scanner, using the mobile device's camera. A PDF, emailed directly to the user or a designated recipient, documents all spending activities for reimbursement, tax reporting, and other purposes. -- iOS | Android

Google Maps

Publisher : Google . If your rental car doesn't include a GPS navigation system, your mobile device can provide the service. While Google Maps is a well-known app, its turn-by-turn GPS capabilities aren't as widely recognized. The app also offers public transit, biking, and walking directions. -- iOS | Android

AroundMe

Publisher: Attorno a Me. For anyone who has ever asked, "What's in the neighborhood?" AroundMe has the answer. The app helps users find the nearest bank, hospital, hotel, restaurant, or taxi. Users can view the places on a map, or try an augmented reality feature that overlays direction markers on the mobile device's viewfinder. -- iOS | Android

Skyscanner

Publisher: Skyscanner Ltd. An indispensable app for lawyers who need to quickly make or alter travel schedules, Skyscanner lets users check flight availability and prices on the go. The free application covers more than 67,000 flights on more than 600 airlines. Users can filter results by price, airline, and departure/arrival times. -- iOS | Android

GateGuru

Publisher: Trip Advisor. GateGuru supplies travelers with detailed real-time flight status information, including push notifications, plus a wealth of airport content specifically customized to its user's itinerary. The app includes a detailed list of places at 120 airports worldwide, including different terminals, cafés, restaurants, and gift shops. Users can also make last-minute airport rental car reservations through GateGuru. -- iOS | Android

FlightTrack Pro

Publisher: Mobiata . A must-have app for attorneys who travel by air, FlightTrack's slick, clean interface helps users track a flight in seconds, view flight details on zoomable maps, and get real-time departure info, delay updates, and gate numbers at a glance. The app also automatically notifies users about cancellations and suggests alternate flights. -- iOS | Android

My TSA

Publisher: United States Transportation Security Administration. Whether you believe that the TSA actually provides effective and efficient protection to travelers or is simply a jobs program for toll collectors displaced by automation, it pays to know what the agency is up to at any given moment. My TSA provides 24/7 access to information that passengers frequently request from the agency. The app also provides flight delay information for airports nationwide, as well as tips for how to prepare for security checkpoints. Now lift your arms up. Thank you. -- iOS | Android

Wi-Fi Finder

Publisher: JiWire Inc. When using a mobile device that doesn't include 3G or 4G connectivity, being able to find a reliable Wi-Fi hotspot is essential. Wi-Fi Finder, and its database of more than 500,000 locations, can help. Using the GPS technology built into phones and tablets, Wi-Fi Finder determines its user's precise location, shows exactly where the closest Wi-Fi hotspot is, and describes how to get there. Users can also search by provider, service type (free or paid), or location type (restaurant, cafe, hotel, etc.). A continuously available offline database allows searches to be made even when there's no currently available connectivity. -- iOS | Android

Alarm Clock Pro

Publisher: iHandySoft Inc. There are dozens of alarm clock apps, but Alarm Clock Pro is the easiest to use. The app supplies a beautiful digital clock that features attractive themes and wakes users up with their favorite tunes. There's even a built-in flashlight designed for use during a power failure. -- iOS | Android

Due

Publisher: Phocus.Every lawyer wants to make her or his trip as efficient and productive as possible. Due helps its users by providing reminders of important tasks that need to be accomplished during the trip. Users can see at a glance how many tasks they have remaining for the day, or only those that have been ignored or missed. Due's beauty lies in its simplicity. There's no account to create, no start or end times or dates to set, and no need to prioritize, tag, or categorize items. Due's developer claims that the app works up to three times faster than a standard calendar program. -- iOS

Mobile Transcript

Publisher : Mobile Transcript . An anytime, anywhere transcription viewing tool, Mobile Transcript lets users see any transcript for any case simply by logging into the app. Users can highlight key testimony with the tap of a finger and email selected points (in Microsoft Inc.'s Excel format or via PDF with yellow highlights) to associates or expert witnesses. The app also logs billable time. Users must register for free online at www.mobiletranscript.com. -- iOS, Android, BlackBerry

The Deponent App

Publisher : Majority Opinion The Deponent App is a deposition question and exhibit outline app. Users can select more than 300 deposition questions by categories, including admonitions or expert qualifications, organize the order of questions, and customize questions for their witnesses. Each question can be linked to a specific exhibit. Attorneys can also create their own questions and categories. -- iOS

iWrite Legal

Publisher: Pacite. The iWrite Legal app aims to help lawyers improve their writing skills, particularly in places where standard reference tools may not be available. Developed by a professor at Suffolk University Law School, the app provides writing tips and legal writing checklists that are designed to help users overcome writer's block and to thoroughly revise, edit, and proofread legal documents. iOS

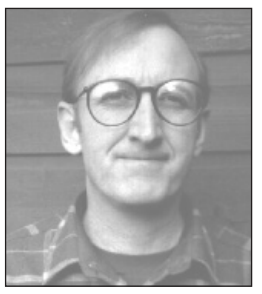
--August 9, 2013
Law Technology News

Moving on

By Dan Branch

Jim Baldwin and I are being taken to the alpine in one of the older White Pass Yukon rail carriages---the one set aside for hikers and German tourists. We could be bike-riding the section of the Klondike Highway that climbs 12 miles from Skagway, Alaska to White Pass, sometimes at a 12 percent grade. Instead we relax, listening to a Yukon gold rush lesson from a disembodied voice generated several cars back as the train clunks over narrow gauge track.

In the train's bowels rest Pedro and Side Meat, the weighed down touring bicycles we will ride 328 miles of British Columbia and the Yukon Territory to Haines, Alaska. I should be reflecting on the challenges ahead --- steep grades, old legs, bears, bad weather, trouble finding drinking water or even beer. Instead I gawk at beauty as we climb from coastal rainforest to a place of glacier-scraped granite and alpine lakes.



"It's 100 miles on the Alaska Highway from Whitehorse to Haines Junction, YT. We hope to cover 50 of it on day three of riding."

dike Highway to pilot the heavily-laden bikes into Carcross, YT. Pedro, my 30 old Trek 520, soon settles down. We milk a tail wind for much needed help while climbing endless steep bumps that make hard work out of the descent from White Pass into Carcross. It's hot for the mountains and sunny. We are always thirsty. The sun and deep blue sky bring out the beauty of the landscape---at first a broad flat valley of granite and shallow lakes boxed in by steep peaks, then walls of trembling poplar leaves until we reach the long blue waters of Tutshi Lake. For the rest of the day it's all light brown scree slopes plunging into lake waters.

We camp night one at Carcross, hauling water from the gas station/cafe/store which also provides us beer

Branch rides toward Whitehorse on the Klondike Highway.

After claiming our touring bikes from the baggage car at Fraiser, BC, we roll up to Canadian customs where the agent asks the usual questions about money, guns, liquor, and tobacco. (He doesn't care about fruit.) Since both bikes sport a set of large panniers affixed to front and back wheel racks, these are fair questions. When we answer in the negative, the agent wants to know how we are going to deal with bears or that wolf that recently chased a cyclist on our route. I want to tell him, "good luck and common sense," but only smile to avoid a pannier search for bear spray.

With a wave of the custom agent's hand we are released onto the Klon-

and an excellent meatloaf dinner. We eat while watching the Toronto Bluejays game on TV. Outside the sun sparkles on Nares and Bennett Lake and the railroad trestle separating the two. We are too tired and thirsty to mind missing the show. Not normally a big beer drinker, the day's dry heat, the sun, the exertion make me mad for brew.

Day two we break camp and ride into Whitehorse, receiving an unexpected blessing at the Emerald Lake overlook. An Anglican priest, stopping on his way to his mission church in Carcross to admire the product of shafts of morning sunlight striking the milky green lake waters, offers a prayer after watching me slide through loose gravel in the parking area. It' a fine blessing that washes away some of the concerns about aging bodies and bad drivers that had been bubbling up on the morning's ride.

Our good weather continues in Whitehorse, where we stay two days, sharing the Robert Service Campground with Germans and other world travelers. I have a flat tire on the bike path running along the Yukon River. A nice rider stops and helps me patch it. After finding several deep cuts in it, he advises that I replace the failing tire with one I purchased that day at a local shop. I think of the blessing and recognize today's minor miracles: that I thought to buy the tire, that the shop had a quality touring one that fits Pedro's outdated 27 inch wheels, that the helpful rider stopped by, that the homeless guy emerging from a riverbank nap didn't manage to take my bike for a ride. Another miracle was the discovery of a rich patch of wild raspberries which yielded enough fruit to make memorable the next morning's breakfast.

It's 100 miles on the Alaska Highway from Whitehorse to Haines Junction, YT. We hope to cover 50 of it on day three of riding. Lack of good camping opportunities force us to pedal 70 miles to Cracker Creek where we cook Indian food on the center line of a redundant section of the highway before collapsing into sleep. We wouldn't have made it that far if not for Irene, who served us hamburgers, french fries and a Canadian Beer at her restaurant along the the way.

On the short ride from Cracker Creek into Haines Junction. YT we run into a solo biker from Ottawa who wants to make sure we know the Village Bakery is still open. This is good news, indeed, for which we thank him before he proceeds to announce all the good bakeries he had exploited on his two week ride through the Northland. After visiting a local farmer's market in Haines Junction we suck down steamed but ungarnished Swiss Chard in our motel room and prepare for the 148 miles of mountain road we must ride to the ferry terminal in Haines, Alaska.

Facing a headwind and rain, we climb out of Haines Junction for 3.5 miles to where the road takes on a rolling personality, dropping only to rise a little higher as low clouds appear to chew on the surrounding mountain tops. This is our hometown weather so we push on more than 50 miles to the Million Dollar Falls Campground, where, we were told earlier by another group of Juneau bikers, cold beer would be on offer. Those 18 were riding naked bikes behind support vehicles that haul their clothing, camping gear, and food. They delivered. The beer refreshed and the company's kindness reaffirmed the power of our Emerald Lake blessing.

We leave Million Dollar Falls with the group of 18, who soon disappear into the fog covering the long incline of road leading toward Alaska. This becomes a special day as fog gives way to broken cloud conditions, sunshine illuminates retreating glaciers and broad flat river valleys full of clucking ptarmigan, nervous ground squirrels, golden eagles, swan pairs, and at least one grizzly bear sow and cub.We see the latter fairly near the road on a treeless river plain. We stop. You have to, though if she thought we endangered her child, the mother bear could easily run us to ground. We are nothing but slow moving caribou to her. She is simply lovely with still-wet golden brown fur glistening in the mountain sun, watching over a miniature version of herself in a darker brown coat. We leave when she and her charge start moving towards our spot on the road.

My affection for Pedro always grows on days like this when it takes me to a top of the world place, then lets me ride it down on steep descents to the familiar tidewater forests of home.

On the road to the summit of the road from Haines Junction to Haines.

Municipal law annual conference alert

By Louann Cutler

The Alaska Municipal Attorneys Association annual conference is approaching quickly. It's scheduled for November 18-19 in Anchorage at the Captain Cook Hotel

The draft agenda and registration form for this year's conference are ready, we have a great program planned and sure hope you will be able to join us. The pre-registration deadline is Oct. 7, and you can find the forms at the Alaska Bar werbsite at https://www.alaskabar.org/servlet/content/Municipal_Law_149.html.

Please return the registration form to my assistant, Barbara Pauli at Barbara.pauli@klgates.com. Please send your check for the applicable fees to Joe Levesque at the snail mail address shown on the form. Please take care of both of these ministerial duties as soon as you can, but in no event later than October 7, 2013.

Dinner on Nov 18 will be at Kinley's this year. Terry Welch and Ed Voss have once again very generously agreed to sponsor our refreshments. You will note that the registration form includes a space to let us know if you will need a ride to/from Kinley's and also whether you could provide same.

ABA Municipal Law Section co-chair Todd Sherwood and I are happy to report that we actually had more volunteers/topics for presentations than we could accommodate in the two days allotted to the conference. So, we will plan to have those presentations at upcoming Bar Association section meetings. A shout out to Mike Gatti is in order, he arranged for us to have the Quarter Deck instead of the basement meeting rooms at the Capt. Cook Windows, views -- yea. Thanks, Mike.

Private sector attorneys and law firms are welcome to sponsor our lunch breaks, etc. Please email Barbara Pauli (Barbara.pauli@klgates.com) to let us know of your interest!

Q and A with ALPS president and CEO David Bell

Q You've lived all over the country and as far away as Bermuda. What brought you to Missoula, Montana?


David Bell

A I fell in love with the west when I was young. I came to the University of Montana as a teenager and knew right away that Montana was a special place. I met my wife, Brittany, while we were both attending UM. She's from Conrad, so as we moved to different parts of the country and internationally, Montana was always "home base" and we knew we would return. When I met ALPS Founder Bob Minto on one of my trips back to Montana, we made a connection and as the opportunity at ALPS unfolded, I knew it was time to come back home.

Q What drew you to the insurance industry originally? What has kept you there?

A Like many others in senior positions I found the industry (or it found me) by accident. I went to work for Chubb out of college, mainly because it was a large, highly reputable organization with an international footprint, and that was the experience I was looking for out of school. The "trade" of insurance – focused on the transfer of risk from one corporate balance sheet to another – was fascinating. It has been called the DNA of capitalism. It's also an industry full of good people. In my experience, compared to other financial service industries, it seems to have a higher concentration of leaders who came from humble means and are committed to giving back to the industry and their communities.

Q How does the lawyers' professional liability insurance line differ from your previous experiences in the industry?

A It has been fun to focus on a single industry niche. In my previous role as COO of Allied World, a large public company, we had significant resources and more than 40 different coverage lines. That did have its advantages, but I was never able to get "in the trenches" as ideas were first incubated. At ALPS, our mission is to provide the best coverage protection to the legal community. Because of our niche focus, we have been able to successfully build a culture focused on customer service and ease of doing business. I am now able to participate at the grass roots level to help ensure we live up to the faith our policyholders place in us.

Q ALPS was started in 1988. Now, 25 years later as you are taking the helm, how has the company changed?

A As I learned about the ALPS story it became clear that some things have changed a lot, and some things not at all. What has changed is the utilization of technology, policyholder expectations regarding customer service and a general business model that has evolved over a quarter century. ALPS has done a fantastic job of staying ahead of the curve, and is regularly out front as the innovation thought leader. What hasn't changed is the hallmark of the ALPS value proposition. We are a "by lawyers, for lawyers" professional liability carrier committed to making the legal profession better through risk management and stable risk transfer. From the beginning when Bob Minto and his colleagues started this company, ALPS made a commitment to provide the broadest coverage in the marketplace at a reasonable price. ALPS made a promise to our policyholders that if you have a claim it will be handled honestly, promptly and professionally. Those values are the same today as in 1988, and will be the same for many years to come.

Q As a non-lawyer, how do you view the challenges and opportunities facing the legal community of today?

A New issues in the legal community are constantly emerging. At ALPS, we have the good fortune to have longstanding affiliations and endorsements from more state and local bar associations than any other insurance carrier. As a non-lawyer myself, these relationships are truly valuable for me to gain a better understanding of what today's lawyers are grappling with and to be able to offer real solutions.

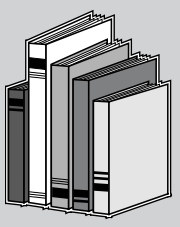
For example, right now, we have law school students emerging with significant debt and fewer opportunities. With less "big firm" options they are increasingly hanging a solo shingle. On the flip side we have our baby boomer lawyers reaching retirement age. As they leave the practice of law, with them goes some of our most experienced and knowledgeable legal practitioners. ALPS is responding by launching ALPSLegalMatch.com, a new tool that will pair "new" lawyers with soon-to-be retiring lawyers. This tool will help retiring lawyers identify a successor. It will help new lawyers find a practice, and will partner them with a mentor during the transition. The result: for ALPS we have our best lawyers training our newest lawyers, which make the new lawyers a better risk for us to insure. For retiring lawyers, they will have a succession plan using a process that allows them to pick the right person without months of painstaking diligence. For the new lawyer, nothing takes the place of experience and this provides an opportunity to work with someone and gain the benefit of that experience…as well as potentially take over a practice.

I view this challenge and others like it as opportunities, and there are plenty of both on the horizon.

ALPS is the Alaska Bar Assiation-endorsed malpractice insurance carrier.

Law Library News

Court system and law library websites get new look



By Susan Falk

On July 15, the Alaska Court System launched its new homepage. The new look and feel of the homepage is more modern and user friendly, removing much of the previous page's clutter while still providing access to all the information you've come to rely on through a combination of direct links and pull-down menus. While it can take time to adjust to change, the new website should prove to be a great improvement over its predecessor. If you haven't visited the court system's website recently, take a few minutes to check it out.

In the coming months, the rest of the court's website will migrate to the new platform. In anticipation of this move, we have reorganized the law library's website entirely. The new pages will include links to all Alaska primary law resources, including the Alaska Statutes, the Alaska Administrative Code, Alaska Rules of Court, many municipal codes, Alaska Pattern Jury Instructions, and much more. We'll also continue to provide links to federal resources, other state resources, and general legal information.

This summer, the law library asked you to fill out a user survey to help us understand what you want and need from us. More than 100 of you responded, providing us with valuable information about what you expect from your law library. Thank you for your participation!

Among other things, many of you expressed strong support for the addition of a Discovery Layer, a search interface that simplifies the process of navigating library resources and finding information. With the implementation of a Discovery Layer, library users can enter a search in one place and retrieve results from the library catalog as well as from electronic databases like HeinOnline.

We are just as excited about the prospect of a Discovery Layer as you are, and we are moving forward with plans to add this service. We hope to unveil the new search screen sometime this winter. Check back with us in a few months and let us know what you think.

NOTICE TO THE PUBLIC

By order of the Alaska Supreme Court, entered July 26, 2013

VINCENT P. VITALE
Member No. 7305030
Maricopa, Arizona

is reinstated to the practice of law from disability inactive status (due to a physical disability) effective August 6, 2013.

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

TALESFROMTHEINTERIOR

Skip to my loo

By William Satterberg

It began with a memo. Memos are the bane of all bureaucrats and business owners. Memos mean that something has gotten onto the proverbial radar screen. Memos announce that action is needed. Or else.

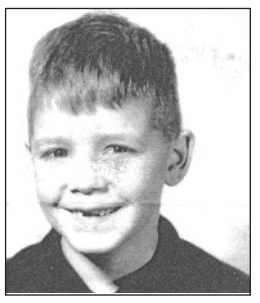
As Ralph Waldo Emerson once said, "A foolish consistency is the hobgoblin of little minds, adored by little statesmen, philosophers, and divines."

Fairbanks is a small, historic town. Contrasted with many other cities, Fairbanks is a place where a law firm having three or more staff is considered large. Where some Fairbanks firms consist of only a spousal team, my firm has eleven regulars, plus a bunch of summer hires and wannabes. Fortunately the folks all seem to coexist well, especially when I am on trips. For, it is during my extended trips that even a greater cohesiveness develops. Camaraderie is built, and concerns and complaints aired over high-calorie lunches that I buy in absentia, the leftovers invariably going home with Tom Temple. Perhaps "aired" is a good choice of words in retrospect when it comes to staff concerns. And perhaps some background is in order.

Another attribute of Fairbanks is that professional offices need not necessarily stand on grandeur. Contrary to the bigger cities, many law firms in Fairbanks are situated in remodeled houses or older buildings which are only nominally code compliant. My office is no exception, occupying two adjacent houses built in the 1940's. The buildings are linked by an underground communications line. Although unpretentious, both houses still have character. Both are reputed to be retired whorehouses. Certainly, there is evidence of such, even setting aside considerations of the current occupant. I suspect that the 6x8 bedrooms in the basement of 715 4th Avenue have something to do with the rumor. Plus, the location being on the famous "4th Avenue Row" of Fairbanks. Either way, we feel quite at home in our environment. After all, why change history? Moreover, most of our older clientele are familiar with the address and some even have stories to tell. For example, LeRoy Panky, (whoever he was) was reportedly beaten to death with a shovel in my office garage.

As older houses, there understandably are physical shortcomings. Most deficiencies are tolerable. Still, one of the focal points of all employment interviews I conduct is to emphasize the need for "facilities tolerance." Tight space, noisy boilers, and musty basements. Hot in the summer. Cold in the winter. Limited head bolt plug-ins and, oh yes, the Boys and Girls rooms.

In short, there are none. Rather, the restroom facilities are shared, usually not at the same time. Part of the new age coupled with recent United States Supreme Court opinions. Because Tom and I are in the minority in a staff of nine women, we insist that the ladies leave the toilet seat up when finished, lest we forget. It has been a point of contention over the years. More than one reminder sign has been posted, but it is still a bone of contention.



"Every year, the office sewer lines freeze. It is now a tradition. On a good year, the event only happens sporadically. On a bad year, it seems constant."

Winters in Fairbanks can be quite harsh, which is why I now prefer to spend the darkest, coldest months in Saipan. In winter, things break. Cars do not start. And plumbing invariably freezes.

Every year, the office sewer lines freeze. It is now a tradition. On a good year, the event only happens sporadically. On a bad year, it seems constant. In response, I have developed a close relationship with our local pumping and thawing company. Ordinarily, the staff endures the freeze ups and tries to adjust their diets accordingly. However, the winter of 2013 was particularly cold, with little snow cover. A deep frost permeated the ground. Not that I necessarily noticed, since I again was in Saipan. But the staff sure did. And Joanne, our sage paralegal, became the self-appointed messenger and crafted the now famous "action memo." Having been one of my longest employees on staff and the longest occupant of 715 4th, Joanne was the best choice, as well, to break the news. After all, Joanne had job security.

Joanne's message was clear: The bathroom at 715 4th needed to be remodeled. But that was not all. The sewer line, which had once again predictably frozen had backed up into the basement. It had to be fixed. The smell was overpowering the staff's perfume.

I thought seriously about Joanne's memo. It was not the usual memo. Rather, Joanne also actually backed it up with some legal research. Legal research is something we tried to avoid in the office. Clearly, the situation was serious.

Fortunately, our office handyman, Jeff, was available to work due to the winter construction season shutdown, even if we can never find him during the summer. Jeff soon began work on the lavatory in 715 4th, tearing out the old and installing the new – complete with a high volume exhaust fan, which was another one of Joanne's demands. But Joanne was not done. As the instigator, she insisted on picking the colors, and chose renegade purple as the motif. Joanne clearly was leaving nothing to chance. In fact, my only allowed contribution was the high capacity toilet paper dispenser, similar to the ones in the state courthouse where the paper gets jammed inside when one most needs it. Otherwise, it was to be the ladies' lav.

Eventually, several thousands of dollars later, Jeff finished his task – and none too soon, since the backup loo at 709 4th was working at double capacity, much to Tom's frustration.

The above-ground crisis cured, attention was next devoted to the subterranean realm. Eventually, a solution to the pollution was discovered. My pumping expert suggested we install a line within the line, along with a jet pump to force the effluent on its way. To date, the pump has seemed to work. But, then again, the sewer man finished his work in the summer. The true test will come when I am once again gone to the tropics next winter.

With both the above and underground complaints addressed, it was time for the grand opening. A ceremony was planned. All staff were invited. Because Joanne was the genesis of the project, and reportedly one of the most ardent users of it, she got to occupy the throne.

On the appointed day, other dignitaries were invited, to include Jeff and the sewer man. For the reception, the staff provided snacks symbolically consisting of brownies, lemonade, and other suitable finger foods. Since the sewer man was coming, popcorn was out.

Then there were the obligatory speeches during which "Joanne's John" was christened, complete with a plaque, but with no sprinkles of holy water. In the end, Joanne was happy, as were the other occupants of 715 4th. The slate was wiped clean.

Like all construction projects, not everything went perfectly. There are two toilet paper holders in the "loo", as our British-born staffer, Mel, prefers to refer to the room. One dispenser is labeled for clients and is within easy reach. It has the Charmin. The other dispenser is reserved by a sign specifying "Staff Only." It is the large, industrial capacity dispenser for obvious reasons. It is filled with cheap, lower grade, scratchy paper and is placed well out of arm's reach. Undoubtedly a design defect, unless I surreptitiously planned its remote location out of some cruel, retaliatory motive. The humor is that the dispenser's clearly out-of-reach placement still has not dissuaded our summer interns from stretching desperately to use it, which is fun to watch on our hidden YouTube camera. Still, one has to admire such dedication to a foolish consistency. And to think that both interns say they will be lawyers like me someday…

In retrospect, although the bathroom next door has many improvements, it is still lacking. I have always wanted one of those toilets that makes a loud whooshing sound when it is flushed. I have been able to stand mesmerized before the bowl for hours watching the force-fed flush that now has become commonplace in many locations. This is mainly because the force-fed toilets in the State of Alaska courthouse never seem to do the job completely. Instead, one often has to stand there for several cycles in order to get the job up to even my level of satisfaction.

I have also grown to actually like the automatic dispensers which exist in certain state of the art public restrooms. Although the blow-dryers for hands to sanitize for my protection have been around for years, some lucky customers now have use of automatic soap dispensers, automatic paper towel dispensers, and automatic water faucets, as well. All of these innovations have programmed people into wandering around public bathrooms waving their hands mystically in the air, as if trying to awaken some unseen supernatural force, just to get the gimmicks to function. As collateral damage, we are now all forgetting that many older toilets still have manual flush handles, to the dismay of the next user. Invariably, where auto-dispensers do exist, yards of paper towels are often strung out on the floor and mountains of foamy blue-green soap have built up like stalagmites upon the counters. Nevertheless, the facilities are still quite entertaining. As cheap amusement, my young grandson now pleads to go to the bathroom in chain stores simply so he can play with all of the fun automatic dispensers. So much for preserving the environment.

One of these days, my level of practice may rise to the level where I, too, can afford such high-tech amenities. Until then, however, simply having a high-volume fan in the women's purple bathroom is a treat which the entire staff and the YouTube public thoroughly enjoy.

As the State of Alaska gets older, the lawyers who were in practice at Statehood become fewer and fewer. This year, just six were able to attend the dinner: (from left: Barry Jackson, Charlie Cole, Jamie Fisher, John Hughes, Bob Opland, and Judge Warren "Bill" Taylor (ret.). Not pictured: Russ Arnett. *Photo by John Reese*

The Brits are confronting health care, too

By Vivian Munson

After spending six weeks visiting my Auntie Ruth, age 88, and younger cousins in the southwest of England, I am dismayed to report that Parliament is as ineffective as our Congress in balancing the budget while addressing the social needs of the population. I found some unsettling variations on the same tired themes we hear in the U.S

Take health care. It was true that the National Health Service provided a model for good quality medical services available to all subjects of the British Isles. My working class relatives, including Uncle Cornie, ambulance driver for 40 years, would attest to this.

However, an aging population, the availability of ever more forms of treatment, the obesity epidemic—the NHS faced burgeoning costs. What to do?

The NHS system is organized around hospitals in each region, or district, of the country. Cost containment became the responsibility of hospital administrators, who were given annual financial targets, aka budget caps, within which to operate all health care programs in the district. Administrators who met the targets were rewarded with salary increases and other perks.

With cost containment, standards of care declined. In one district, Staffordshire, "hundreds of patients died unnecessarily," of neglect. Their relatives were marching in the streets while I was in England.

The resulting investigation uncovered a management practice initiated under the recent NHS regime: The inclusion of a "nondisparagement clause" in the employment contracts of doctors, appropriately dubbed a gag order by the media.

I especially enjoyed watching a BBC interview with one doctor who accepted a very substantial severance package from the NHS before blowing the whistle on his district hospital and the nondisparagement clause. He received a letter from an NHS solicitor hours after that interview aired.

In a response remarkably reminiscent of our own political landscape, Sir David Nicholson, head of the NHS although not a doctor, claimed he knew nothing of the nondisparagement clause or the "culture of silence" in the agency, called for increased transparency, and promised to look into the "uneven death rates" in hospital districts. After receiving furious criticism from the public, he will take an early retirement.

Example #2 of a pinhead response to a real problem: The ever-expanding costs of disability benefits, caused by the aging of the population and the increasing number of disabled children.

Parliament declares: "The present system is not sustainable; reform and cost-cutting are essential; there has been a 34% increase in claims in the past 10 years."

Proposed changes include the appointment of a private company to review the circumstances of every recipient of disability payments, making a "tick box assessment" as to allowable services. The Disability Living Allowance of three million adults will be phased out and a Personal Independence Payment will be introduced.

Privatization, and a name change. Does nothing to actually address the needs of disabled people, but perhaps scares them into making more of an effort?

Down and dirty #3: Hitting the citizenry where they live. The Labor Party suggested a "mansion tax" on every taxpayer whose home is worth more than a million pounds. Members of Parliament nixed that one immediately but the concept is gaining traction as Brits learn how many London homes valued at over two million pounds are owned by foreign princes and moguls.

The "bedroom tax" on the poor was passed into law, and becomes effective in April, 2014. The Tories argued that many single individuals and families living in government-subsidized housing units had more bedrooms than they really needed. To alleviate the housing shortage in Britain, the Tory Party proposed that residents of Council Houses should refund 14 pounds a week to the Government, for every spare bedroom. In theory, this rebate would save the Government money, and motivate those receiving a "spare room subsidy" to move into smaller quarters, thus freeing up housing for new families.

Unfortunately, it turns out that, under the new scheme, at least 20 smaller units are needed for every one unit available. Also, half of the residents of subsidized housing are handicapped, and have already built into their "under occupied" homes accomodations for their disabling conditions. As things now stand, there is no alternative for the spare room crowd, other than to tighten the budget.

Up to now, disabled children have been allocated an entire bedroom. Under the new law, a disabled child can share a bedroom with a brother or sister, the same as any other poor kid.

Class warfare is not new to the English. They practically invented it. But it is painful for me to see the politicians in my mother's beloved country engaging in tactics so mean-spirited and stupid that they make the empty No, No, No pronouncements of American lawmakers look mild-mannered by comparison. The latest British social welfare legislation proves that the Devil really is in the details.

On a lighter note, these are the winter prices (converted from grams and pounds sterling) for fresh fruit in an upscale department store: grapes from South Africa-$2.83lb.; blueberries from Chile-$8.07lb.; strawberries from Egypt-$3.54lb.; raspberries from Morocco-$6.89lb. Prices for more plebian fare are a little lower at ASDA (Walmart in the UK). The Brits spend a far greater portion of their much lower incomes than we do, for food. And a gallon of petrol costs $9!

2013 CLE Calendar

Date	Type	Title	CLE Credits	Location
Sept. 24	Webinar	Doing a Technology Return On Investment	1 General	Computer-based
Sept. 25	Webinar	Thurgood Marshall's Coming	2.5 Ethics	Computer-based
Oct. 1	Live	Out of the Closet and Into Your Law Office	3 General	Hotel Captain Cook
Oct. 9	Webinar	The Art of Advocacy: What Can Lawyers Learn From Actors	3.3 General	Computer-based
Oct. 11	Live	Trials of the Century	5 General 1 Ethics	Hotel Captain Cook
Oct. 23	Live	Alaska Native Law Section Annual CLE: Case Law Updates and Discussion of Thorny ANCSA Land Issues	3 General	Westmark Fairbanks
Oct. 25	Live	Tort Law CLE	TBA	Hotel Captain Cook
Oct. 29	Live	Be A Lawyer, See the World	1.5 General 1.5 Ethics	Hotel Captain Cook
Oct. 29	Webinar	Practice Management - Why Outlook isn't Enough	1 General	Computer-based
Oct. 30	Live	Annual Historians' Luncheon The Legacy of Gideon: 50 Years in the 49th State	1 General	Hotel Captain Cook
Nove. 6	Live	Employment Law CLE	TBA	Hotel Captain Cook
Nov. 8	Live	Alaska Unbundled Law	3 General 3 Ethics	Marriott Downtown
Nove. 14	Webinar	Manage Your Time and Avoid Stress in Your Legal Practice	3 Ethics	Computer-based
Nov. 20	Webinar	Impeach Justice Douglas	3 Ethics	Computer-based
Nov. 26	Webinar	QuickBooks - Why it's Not Right for a Law Firm	1 General	Computer-based
Dec. 6	Live	Who's at Fault When You Don't Apply What They Didn't Teach You in Law School?	TBA	Westmark Juneau
Dec. 12	Live	Who's at Fault When You Don't Apply What They Didn't Teach You in Law School?	TBA	Westmark Fairbanks
Dec. 13	Live	It's Only Workers' Comp but I Like It!	TBA	Marriott Downtown
Dec. 17	Live	Who's at Fault When You Don't Apply What They Didn't Teach You in Law School?	TBA	Hotel Captain Cook
Dec. 18	Live	Wrestling with Ethical Dilemmas: We Have Met the Enemy	3 Ethics	Hotel Captain Cook
Dec. 19	Webinar	Manage Your Time and Avoid Stress in Your Legal Practice	3 Ethics	Computer-based

FEDERAL BAR ASSOCIATION

It's been a busy summer

By Darrel J. Gardner

The Alaska Chapter of the Federal Bar Association (FBA-Alaska) remained very active throughout the summer months with several well-attended events. The chapter has approximately 50 members involved in varied fields of federal practice in Alaska.

Judge Spraker

On May 21 the Alaska Chapter hosted an informal 'meet and greet' with the visiting Ninth Circuit Court of Appeals three judge panel. The noontime meeting took place in the courtroom at the Anchorage Historic Federal Building on 4th Avenue. Alaska's own Ninth Circuit Appellate Judge, Morgan Christen, moderated the panel, which included Senior Judge A. Wallace Tashima (Pasadena, CA), Judge Richard Tallman (Seattle, WA), and Judge N. Randy Smith (Pocatello, ID). The judges described in detail their varied personal backgrounds and unique paths to the Ninth Circuit bench. Members of the bar enthusiastically participated in a very "conversational" exchange with the judges. Judge Tallman in particular noted how pleased he was with the opportunity to speak so informally with individual members of the Alaska bar. He described how similar events in other Ninth Circuit cities are often attended by hundreds of attorneys, making such personal interaction almost impossible. Judge Smith spoke effusively about the general high level of practice, collegiality, and professionalism in Alaska. Several weeks after the meeting I received a letter from Judge Smith,

"He described how similar events in other Ninth Circuit cities are often attended by hundreds of attorneys, making such personal interaction almost impossible."

who graciously wrote: "What a great bar association to which you belong! What a beautiful place you live! 'You are very welcome' to the time our panel spent with you and the association. We particularly enjoyed the opportunity to 'meet you and greet you.' We enjoy letting you know that we consider ourselves to be lawyers trying to do the best job we can (just as you are). Thank you for making us feel so welcome. Best wishes to you and to the members of the bar association (professionals - every one)." */s/ Randy Smith*

The FBA-Alaska Chapter is also partnering with the Alaska Bar Association to present "The 18th Annual Informal Discussion with the Ninth Circuit Court of Appeals" CLE and reception on August 13, 2013 in Anchorage. The panel will include the Chief Judge of the Ninth Circuit Court of Appeals, Alex Kosinski.

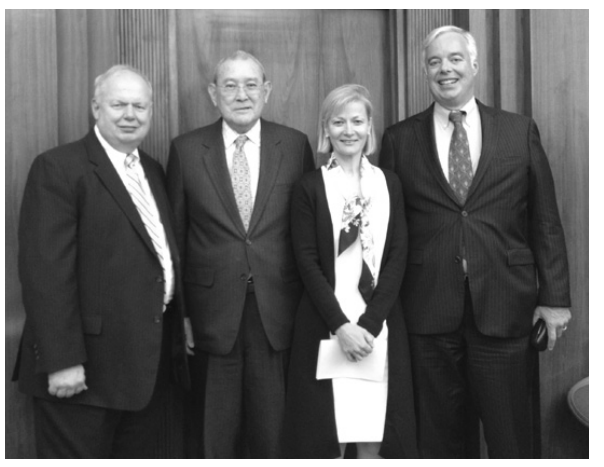
The fifth meeting of the FBA-Alaska Chapter this year took place on June 25, 2013: "The Wide World of Bankruptcy." Bankruptcy Judge Gary Spraker spoke about his experiences as a bankruptcy judge since his appointment to the bench in October 2012. Judge Spraker also gave a general overview of bankruptcy law and procedure as it relates to general civil and criminal practitioners who do not regularly handle bankruptcy cases.

Both of the FBA-Alaska meetings were approved for one hour of general CLE credit by the Alaska Bar Association.

The following FBA meetings are planned for the remainder of the year: Except as noted, the meetings will take place from 12:00 – 1:00 PM at the Executive Dining Room located on the east side of the cafeteria at the Federal Building, 222 West 7th Avenue, Anchorage. Membership applications are available at every meeting. Attendance at meetings is FREE to members; non-members may attend by paying a $25 registration fee at the door (cash or check only, please) New attorneys with less than 5 years of experience may register for $10.

- September 10, 2013: "Technology in the Federal Courtroom." Judge Burgess will present the latest technology related topics as they impact on practice and trials in federal court, including a discussion of the Jury Evidence Retrieval System (JERS) currently installed in one of the jury deliberation rooms.
- October 8, 2013: "Round Table with the Judiciary." This will be a bench/bar meeting with a panel of our local District and Magistrate Judges. Bring your questions, comments, and suggestions, particularly with respect to magistrate matters. There will also be a court report regarding fiscal year 2014, which starts October 1.
- November 12, 2013: "Taking It Up - Appellate Practice and Procedure with Judge Morgan Christen." Our own Ninth Circuit Court of Appeals Judge, Morgan Christen, will be sharing her experiences and observations after more than a year with the Ninth Circuit. There will also be a question and answer session.

The FBA-Alaska Chapter is currently scheduling its meeting calendar for 2014. Meetings in 2014 will usually take place on the second Thursday of the month. To obtain more information or a meeting schedule, or to join the Federal Bar Association, please contact Darrel Gardner or visit the Chapter website at www.fedbar.org



Ninth Circuit judges, left to right: Judge N. Randy Smith, Senior Judge A. Wallace Tashima, Judge Morgan Christen, and Judge Richard C. Tallman.

Law firms seeing slow growth

Law firms saw anemic growth in the first half of 2013, with minimal gains in gross revenue stemming from higher billing rates rather than more work coming in the door, according to a survey released this week from Wells Fargo Private Bank's Legal Specialty Group.

The bank polled 120 firms—half in The Am Law 100, and the rest regional firms or those falling in the Am Law Second Hundred—to see how they fared from January to June compared with the same period in 2012. On average, gross revenue rose 1.5 percent, the survey found, though average hours per lawyer fell 2.5 percent.

"I'm not surprised by what I see," says Jeff Grossman, the senior director of banking for the legal specialty group, who shared the results of the Wells Fargo survey Thursday with The Am Law Daily.As has been the case for the past few years, a small number of top performers significantly outpace the averages, Grossman says. One firm in the survey reported a nearly 35 percent revenue boost in the first half of the year, he says, with the least successful firm recording revenue down almost 20 percent.

"We continue to see the stratification, where the stronger firms continue to get stronger," Grossman says, noting that about a dozen firms reported a revenue increase of 10 percent.

Blended average rates across all attorney levels are up 3.5 percent, Grossman says, which is partially a reflection of firms staffing matters with a larger proportion of senior attorneys than in the past. The staffing change comes as junior ranks slim down through smaller first-year classes, attrition, and layoffs. "Some also continue to raise rates because they just discount them [later]," he says, adding that even as rates increase, collecting on bills has become more difficult over the years.

One factor that Grossman says will likely eat into profitability by year-end is rising expenses. The survey found expenses up 3.5 percent over the first half of last year, including for capital expenditures like information technology upgrades that "can only be deferred for so long," Grossman says. Firms also have slightly more attorneys than they did a year ago, and have compensation obligations that are 2.5 percent higher.

As part of the survey, Grossman says he asked firms if they anticipate making any "head count reductions" of equity partners, nonequity partners, or other attorneys. Firms said they are planning for very minor cuts, Grossman says: "But what I've learned, if firms are reporting anything, it's a little bit of the tip of the iceberg. There aren't wholesale changes to be made, but what we'll continue to see is real-time management of head count to keep productivity at a reasonable level."

Grossman said he also expects firms to continue asking underproductive partners to leave. In data collected on 2012 productivity, the bank found that a third of law firm partners billed 1,400 hours or fewer last year. That compares to the average 1,600 hours each that lawyers across all seniority levels are on track to bill this year, which is still down from the 1,640-hour average hit last year.

"It's a very difficult issue to deal with," Grossman says of what he calls these chronically underperforming partners. "To me this is the biggest challenge the industry faces."

Wells Fargo also found that average capital per equity partner is up around 2 percent, to $300,000, and that firms are decreasing their reliance on debt.

--From AmLaw Daily, americanlawyer.com, Aug. 9, 2013

Do you know someone who needs help?

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

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

Fairbanks: Aimee Oravec, aaolaw@gmail.com

Juneau: Karen Godnick, kgodnick@alsc-law.org

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

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