

The Alaska BAR RAG

Dignitas, semper dignitas

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SEE PG. 14 (SALLY) FOR MEMORIALS

Sally Suddock: An editor's editor

By Steven T. O'Hara

Estate planning is fun because you get to know so many people whom it is a privilege to know. "Privilege" is an understatement. It is a flat-out honor to work alongside so many over the years.

Generally the people you work with are older. So a reality is that you have to confront death on a regular basis. You soon learn that no amount of preparedness can anticipate the shock and sense of loss when death occurs.

A colleague I got to know well over the years is Sally Suddock. She died much too young on Aug. 2, 2014.

Sally made the world a better place. One humble corner of the world she made better is *The Alaska Bar Rag*, for which she served as managing editor for as long as anyone can remember. When I joined *The Alaska Bar Rag* in 1989 Sally was there, and I have had the honor of working with her for a quarter-century.

A prize-winning journalist, Sally was from Chicago. She always had the backstory to connect the dots. When she heard I had grown up around boxing, she shared

the tale about one of her uncles. It was Sept. 22, 1927, and more than 100,000 people were in Chicago's Soldiers' Field watching Jack Dempsey try to regain the heavy-weight title from Gene Tunney. Dempsey had dropped Tunney to the canvas decisively whereupon all the reporters had left their perches to rush to meet their deadlines — all except Sally's uncle. He stayed put as Dempsey refused to go to the farthest neutral corner, giving Tunney precious time to clear his head. Sally's uncle then took the still shots that captured the Battle of the Long Count. Boxing authority Bert Sugar would later call this long count "perhaps the most famous moment in all of boxing." (Bert Randolph Sugar, *Boxing's Greatest Fighters*, (The Lyons Press, 2006).) Tunney went on to get the decision in this 10-rounder, and they say Dempsey was gracious in defeat.

For the majority of the past quarter-century, *The Alaska Bar Rag* was published every other month. Sally was always organized with a unique vision for each issue.

I remember her calling Northwestern University School of Law

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Ravin revisited: A brief recap of Alaska's unique marijuana law

By Jason Brandeis

Attorneys across Alaska are familiar with the Alaska Constitution's explicit privacy provision and with *Ravin v. State*, the 1975 Alas-

ka Supreme Court decision holding that the right of privacy protects an adult's ability to possess marijuana at home for personal use. But many do not know of the evolution of this common law doctrine or of the constitutional issues raised as it has been tested. The upcoming marijuana legalization question on the November 2014 ballot (technically Ballot Measure 2: An Act To Tax And Regulate The Production, Sale, And Use Of Marijuana) has reignited interest in this famous bit of Alaska constitutional law. But this initiative is just the latest development in the four-decade-long debate over marijuana regulation in Alaska.

1975: The *Ravin* era begins

Ravin was decided just a few years after the country was introduced to the War on Drugs. But the reasoning used by the *Ravin* Court bucked federal drug policy, which classified marijuana as an extremely dangerous substance. As Chief Justice Jay Rabinowitz's opinion explained, "It appears that the use of marijuana, as it is presently used in the United States today, does not constitute a public health problem of any significant dimensions. It is, for instance, far more innocuous in terms of physiological and social damage than alcohol or tobacco." Weighing this evidence when ap-

plying the privacy rights balancing test, the court found that a state law proscribing all marijuana use was unconstitutional as applied to an adult's marijuana use in the home. The limited potential societal ills posed by marijuana did not "justify intrusions into the rights of adults in the privacy of their homes."

Shortly after *Ravin* was issued, the Alaska Legislature decriminalized some marijuana possession, allowing adults to possess one ounce or less in public, and any amount for personal use in private, with no criminal penalty. Offenders would instead be subject to a civil fine. This is typical of decriminalization plans, where the conduct is treated more like a traffic ticket than a misdemeanor. But in Alaska, the 1975 decriminalization law still presented a constitutional problem because it left conduct protected by *Ravin* subject to a penalty. In 1982, the Legislature resolved this discrepancy by codifying *Ravin*, removing any civil or criminal punishment for an adult's personal use and possession of less than four ounces of marijuana in the home.

The 1990s: Recriminalization and medical marijuana

The four-ounces-in-the-home law remained on the books until November 1990, when Alaska voters

approved a ballot measure that recriminalized all marijuana possession in the state, putting the state statutes and *Ravin* directly at odds. This raised questions about the continuing vitality of *Ravin*; and Alaska's criminal marijuana laws more closely resembled a law school exam question than a clear statement on the rights of individuals and the responsibilities of law enforcement. When a new state statute enacted via a citizen-led ballot initiative conflicts with state Supreme Court precedent interpreting a constitutional right in a manner inconsistent with federal law, which one should prevail?

Before an appellate court addressed that issue, a new wrinkle emerged. In 1998, Alaska voters reversed course on their complete objection to marijuana use and voted decidedly in favor of legalizing marijuana for medicinal purposes, making Alaska one of the first four states to enact such a law.

2003: *Noy* clears things up

It took until 2003 before an appellate court ruled on the status of *Ravin* vis-à-vis the 1990 initiative. In *Noy v. State*, the Alaska Court of Appeals held that neither the Legislature nor the voters could overturn

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Criminal justice reform in Alaska: Exceptional leadership, political consensus, new paradigm

By **Geoffry Wildridge**

"You may have seen a lot of news lately about the rising cost of Alaska's corrections system. We have to face the facts: Prisons are incredibly expensive regardless of where or how they are built. It's time for us to start focusing on why we have had to build a new prison in the first place."

— Sen. Johnny Ellis, D-Anchorage

"When people break the law and hurt others, they need to be held accountable and punished. If they can become reformed in the process, it will save the state money in the long run. Let's hold people accountable and allow them to become productive citizens while honoring victims and serving justice."

— Sen. John Coghill, R-North Pole

Intense political partisanship is an often-distressing component of state and national government. The adoption of increasingly harsh criminal laws has also been a hallmark of our political process for many years. Given concerns about public safety, it has been easy for our politicians to be "tough on crime" and to ignore voices urging more constructive approaches. This resulted in an ever-increasing emphasis on longer and longer periods of incarceration for offenders, rather than on the use of treatment and community-based resources. The inefficacy of the broad use of incarceration—in terms of public safety, fiscal sen-

sibility, reducing recidivism, and promoting the productivity of those convicted of crimes—has until recently been given little attention.

There have, however, been times when the reflexive exercise of political power has yielded to more focused efforts at serious problem solving and the advancement of social justice. At their most notable, such efforts have been bipartisan; and they have been aimed at achieving greater common good through the adoption of entirely new paradigms. The 1964 Civil Rights Act is a sterling example of such a metamorphosis.

The success of such initiatives has often required exceptional leadership by elected officials.

Senate Bill 64 ("SB64"), recently signed into law by Gov. Sean Parnell as the Omnibus Crime, Corrections, and Recidivism Act, may not rise to the level of the 1964 Civil Rights Act in terms of its impact on society. It is, however, a legislative enactment of great significance, one that portends the comprehensive, evidence-based transformation of our criminal justice system. This new law recognizes that extended incarceration is enormously expensive and, from a public safety perspective, unnecessary for a majority of those convicted of criminal behavior. It reflects an understanding that a large percentage of those involved



"The inefficacy of the broad use of incarceration—in terms of public safety, fiscal sensibility, reducing recidivism, and promoting the productivity of those convicted of crimes—has until recently been given little attention."

in criminal conduct suffer from mental health and substance abuse problems, problems generally capable of being more effectively and inexpensively addressed through treatment rather than prison. And SB64 recognizes the appropriateness of limiting the use of very costly prisons to the incarceration of those who are genuinely dangerous.

Senate Bill 64 enjoyed strong bipartisan support in the Alaska Legislature, and was rather astoundingly adopted by unanimous votes in both the Senate and the House. This profound victory is surely evidence of effective leadership by well-respected legislators. Sen. Johnny Ellis, D-Anchorage, originally championed reform during a time when the Senate was led by a bipartisan coalition. As a result of a change in Senate leadership, Sen. John Coghill, R-North Pole, agreed to become its principal sponsor.

All agree that it was as a result of Sen. Coghill's careful and thoughtful stewardship that SB64 became law. Although a conservative Republican, he has been completely devoted to the goal of reform, driven by the mounting evidence of the current system's failure and the need for other alternatives.

Evidence of that lack of success includes the very troubling 66% recidivism rate in Alaska. We have only recently completed construction of the \$250 million Goose Creek

Correctional Center. But despite diminishing crime rates overall, our high percentage of recidivism has created the prospect that another enormously costly prison will have to be built within a few years, absent a vastly different approach to corrections. As Sen. Coghill has commented:

"We knew we needed to do one of two things: either start planning to build a new prison, or look at proven practices — things other states are doing — to reduce recidivism. So Senate Bill 64 was all about taking those proven practices to cut the cost of corrections and do that within the structure of state government that we have now."

In examining "things other states are doing," Sens. Coghill, El-

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The Alaska BAR RAG

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EDITORS' COLUMN

An editor leaves us, pot is on the ballot, criminal justice reform

By **John Crone and Meghan M. Kelly**

In this issue we say farewell and remember long-time *Alaska Bar Rag* Managing Editor Sally J. Suddock. Sally passed away on Aug. 2 surrounded by family in her home in Anchorage. Remaining *Bar Rag* staff gathered days later to discuss how we would transition managing publication of the September issue in the wake of Sally's departure. We were joined by Sally's daughter and one of her publishing colleagues (who has graciously shared his editorial skills and helped to bring this issue to life). Their memories, along with the many remembrances we received from the Bar, helped to round out a portrait of the accomplished and passionate journalist whom we were fortunate to know, albeit too briefly.

Sally was a Pulitzer Prize-winning reporter at the *Chicago Tribune* during the politically turbulent times of the late sixties and early seventies. She moved to Alaska in 1973 and began to write for the *Anchorage Daily News*, acquiring awards and accolades over the next seven years. Sally transitioned into work focusing on Alaska business and commerce for the remainder of her career, and she continued to work as the managing editor of *Bar Rag* until her final

days. We owe her a tremendous debt of gratitude — she will be missed.

Also in this issue we feature the second in a series spotlighting Ballot Measure 2: An Act to Tax and Regulate The Production, Sale, and Use of Marijuana. Alaska's unique history surrounding marijuana possession adds a layer of legal theory to the debate that we suspect has led many of you to follow the measure's development over the past several years. And Alaskans are not the only people paying attention. CBS News recently picked up an *Alaska Dispatch* piece on "hot-button issues" in the November ballot, noting that the pro-Ballot Measure 2 group has collected around \$700,000 in contributions — almost twice that of the opposition group, Big Marijuana. Big Mistake. Whatever the outcome in November, we will close our series with a look toward the future of pot's presence in the state, and more of what it means for Alaska's attorneys.

President Jeff Wildridge writes about criminal justice reform in his column this month. In light of this summer's events in Ferguson, MO, the president's column, along with con-



Meghan Kelly



John Crone

tributions from former Deputy Commissioner of Corrections Carmen Gutierrez and State Rep. Scott Kawasaki, help serve as reminders of the critical roles we advocates can play in continuing to seek out and implement the highest standards possible in the state's administration of criminal justice.

September ushers in the beginning of fall and the twilight of the all-too brief Alaska summer. The *Bar Rag* would love to receive photos and memories from your summer adventures — they will offer us a ray of sunshine in the colder months ahead. We leave you with a poem, and hope that you enjoy this issue's offerings.

Autumn Movement

I cried over beautiful things knowing no beautiful thing lasts.

The field of cornflower yellow is a scarf at the neck of the copper sunburned woman, the mother of the year, the taker of seeds.

The northwest wind comes and the yellow is torn full of holes, new beautiful things come in the first spit of snow on the northwest wind, and the old things go, not one lasts.

—Carl Sandburg (1918)

SB64 and criminal justice reform in Alaska

Continued from page 2

lis, and others in the Legislature looked to the experience of another profoundly “red” state in particular. In writing SB64, Sen. Coghill and his legislative allies:

“... modeled our approach on the successes of Texas. In 2007, Texas lawmakers were faced with spending \$500 million on new prisons. Instead, they invested \$240 million in corrections reforms and saved half a billion dollars. Now, their crime rate is declining faster than the national average and prison population is at a 5-year low. For the first time in the state’s history, Texas closed a prison.”

Sen. Coghill’s successful reform efforts have been profoundly bipartisan from the start. With the help of other legislators, he also sought broad and ongoing input from a variety of constituencies:

“We took a very deliberative approach. Every bill draft, every amendment, every concept was discussed with all parties before moving forward. We worked closely with the DOC, Law, Public Defender, and other legislators — we just had a very inclusive process and it worked well. Without the feedback and suggestions from those experts — the people who work in the field — I don’t think we would have seen the level of support SB 64 had.”

Senator Coghill’s deliberative approach has paid off. Developing broad-based, bipartisan support for a comprehensive new criminal justice paradigm was an enormous achievement. He, Sen. Ellis, House Judiciary Chair Wes Keller, R-Wasilla, and other legislators of both parties are deserving of great credit for this accomplishment.

...

Once signed into law, Senate Bill 64 made immediate changes to our criminal, sentencing and corrections laws. For instance, it revised our substantive criminal statutes to reflect more realistic monetary thresholds for theft offenses (thresholds not amended since 1978, despite the ever-diminishing value of the dollar); and it created a combat-related PTSD mitigating factor for sentencing. SB64 also adopts a mechanism for courts to impose prompt but measured sanctions for relatively minor probation violations, increasing accountability without destroying a probationer’s progress in the community.

The new law recognizes the need for information-driven decisions in addressing the goals of public safety and rehabilitation, requiring the Department of Corrections to conduct risk-needs assessments of persons sentenced to serve a term of incarceration of 30 days or more. In addition, SB64 permits the increased use of electronic monitoring for those convicted of first-offense DUIs, and better facilitates offenders receiving credit toward jail sentences for time spent in residential treatment programs.

But most importantly, SB64 creates genuine prospects for continuing reforms through its creation of the Alaska Criminal Justice Commission. The commission is charged with making comprehensive recommendations for improving our state’s sentencing and corrections laws and policies. Its voting members include a victim’s rights advocate, along with representatives of our courts, the Alaska Native community, the

attorney general, the public defender, the commissioner of Corrections, the commissioner of Public Safety, the Alaska Mental Health Trust Authority, and municipal law enforcement. The commission also includes non-voting members from the Legislature, one from the Senate and one from the House.

SB64 directs the Criminal Justice Commission to consider many concerns. They include the efficacy of our current presumptive sentencing laws, which are the basis for Alaska’s widespread reliance on incarceration. Among other things, examination of “alternatives to traditional forms of incarceration” and “the adequacy, availability, and effectiveness of treatment and rehabilitation programs” is mandated.

In requiring broad-based consideration of such factors, Senate Bill 64 points the way toward Alaska’s adoption of reforms like those which have proven successful in several other states. Many of those jurisdictions are decidedly conservative politically. As has been noted, Sens. Coghill and Ellis looked initially to the experience of Texas as a model. In addition, alternatives to incarceration have been successfully adopted by states such as Arizona, Idaho, Kansas, Mississippi, South Dakota, Kentucky and Georgia.

In each of these jurisdictions, criminal justice reform has involved a careful analysis of data, to determine what works and what does not. Money saved through the reduction in prison-based approaches has been reinvested in community-based programming; and community supervision has been strengthened through the adoption of evidence-based policies and practices. Reforms in other states have involved input from bipartisan and diverse constituencies like those represented on the new Criminal Justice Commission created by SB64. As will be true of Alaska’s commission, stakeholders involved in other jurisdictions’ decision-making include victims’ rights advocates, judges, public defenders, corrections officials, law enforcers, and prosecutors. (For an overview of reform strategies in other states, see “Lessons from the States: Reducing Recidivism and Curbing Correc-

tions Costs through Justice Reinvestment,” published by the Justice Center of the Council of State Governments in April 2013.)

...

As Sen. Coghill has acknowledged, he and other legislators relied heavily on the help of many policymakers in advancing criminal justice reform. One person who has been instrumental in promoting a different approach is former Deputy Commissioner of Corrections Carmen Gutierrez. Gutierrez was a criminal defense attorney before joining the Department of Corrections at the request of Commissioner Joe Schmidt. She approached her job from the vantage point of someone who, while in no way an apologist for criminal conduct or ignoring resulting harm to others, recognized the humanity and potential of many convicted of criminal behavior. Her work has been focused on reforms that advance both public safety and rehabilitation, while vastly reducing fiscal costs to our state. Gutierrez’s views on the compelling need for criminal justice reform are the subject of her accompanying article, for which she has my great appreciation.

...

I recently had the pleasure of being introduced to Sen. Coghill while he was observing proceedings in the Fairbanks courthouse. I took that opportunity to thank him for his work on SB64. Sen. Coghill promptly gave credit to Sen. Johnny Ellis for his contribution to that legislative achievement, a testament to the bipartisanship that resulted in the new law’s adoption.

Sen. Coghill also informed me that his work on criminal justice reform is continuing, with one focus being the need to change laws creating conviction-generated “collateral consequences” that make rehabilitation difficult. He has stated that:

“Our job is not done. In 2015, I plan to continue working on reducing the collateral consequences that ex-offenders face when released from prison like the ability to drive, work, and otherwise be productive. I also intend to keep looking for proven practices that reduce recidivism

within the Department of Corrections. If we are to avoid building another prison, it’s going to take continued work that I am willing to be part of.”

...

The reform of Alaska’s criminal justice system is necessary. Incarceration is undoubtedly required for dangerous offenders. Our reliance on lengthy jail sentences for low-risk offenders has, however, proven both fiscally disastrous and ineffective from a public safety perspective. As shown by Alaska’s high rates of recidivism, our over-utilization of prison does not deter criminal behavior. It has failed to address the underlying problems — often addiction and mental health-related — which can be more effectively and inexpensively dealt with through the use of community-based programs. The evidence-based redirection of our resources to focused, community-centered efforts is the answer. Successful criminal justice reforms in many other states have shown this to be true.

Alaska has now joined those reform-minded jurisdictions. Senate Bill 64 points the way forward. The new law creates and delegates responsibility for more intensive work to the Alaska Criminal Justice Commission, which will identify problems and recommend broad reforms. The composition of the commission guarantees that its decisions will reflect the views of many important constituencies. The lessons learned as a result of the successes in other states will no doubt provide direction to the commission as it conducts its work.

The adoption of the Criminal Justice Commission’s recommendations will, of course, require continued political support. As a result of the hard work of Sens. Coghill, Ellis, and others, including House Judiciary Chair Keller, there are good prospects for ongoing bipartisan support for reform. It appears that a different and more sensible paradigm is emerging in the operation of our criminal justice system. In large part, we owe the momentum for this constructive change to their exceptional leadership.

Alaskans are not receiving good value for the state criminal justice dollars spent

By Carmen Gutierrez

Introduction

Ninety-five percent of Alaska’s inmates are eventually released from prison, but two out of three will return within the first three years after discharge. Indeed, most return within the first six months. In 2013, the Alaska Department of Corrections (ADOC) released on average 448 felons every month into Alaska’s communities. Of those, the statistics indicate that 299 will be back in the system. Repeat offenders will cost Alaskans \$135 for every day they are incarcerated.

Consider this: the average length of stay for a felon is just over seven years. It costs the state approximately \$49,275 per year to incarcerate one person. This means that we spend \$350,000 to house that person over seven years of imprisonment. The cost of obtaining a bachelor’s degree from Harvard is roughly

half of that amount (the price of a full ride at Harvard for four years is estimated at \$217,376, based on the 2014-2015 tuition). Further, the cost of incarceration for seven years does not include the costs of the State Troopers and local police, the court system, prosecutors, court appointed counsel and other attendant expenses.

Are we receiving good value for the dollars we spend on our criminal justice system? No. It is becoming increasingly apparent that our correctional dollars have been mispent. We have been unnecessarily focused on incarceration and by doing so we have failed to return individuals to society who can contribute to our economy and lead more fulfilled lives. Our focus on incarceration as the sole means of addressing statutory sentencing criteria (AS 12.55.005) continues to occur despite mounting evidence that

public safety is actually enhanced when less expensive, less-restrictive and more rehabilitative models are employed. Is it time we find another way? Yes.

The legal, moral imperative

The need to find alternatives to incarceration is driven by moral and legal imperatives, as well as cost-based concerns. Article I, Section 12 of the Alaska State Constitution requires that that the administration of criminal justice shall be based on, among other things, “the principle of reformation.” The Alaska Supreme Court has interpreted this to mean that state prisoners have a right to rehabilitation services. (*Rust v. State*, 582 P.2d 134 (Alaska 1978)). The Supreme Court has also found that rehabilitative treatment for substance abuse was key to reforming a defendant’s criminal be-

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September:

ALASKA SUPREME COURT: OFF THE RECORD, LUNCH WITH THE JUSTICES

Friday, September 26, 2014 | CLE #2014-010
 2.0 General CLE Credits
 Lunch begins at 12:00 p.m. | CLE 12:30 p.m. - 2:30 p.m.



October:

THE CODE OF KRYPTONITE: ETHICAL LIMITATIONS ON LAWYERS' SUPERPOWERS

Friday, October 10, 2014 | 8:30 – 11:45 a.m. | CLE #2014-023 | 3.0 Ethics CLE Credits



Stuart Teicher

HOW TO MAKE A LOAD WHILE FOLLOWING THE CODE: ETHICAL PROTECTION AND DIRECTION FOR ADVERTISING IN THE INTERNET AGE

Friday, October 10, 2014 | 1:30 – 3:45 p.m. | #2014-024 | 2.0 Ethics CLE Credits

GREAT ADVERSE DEPOSITIONS: PRINCIPLES AND PRINCIPAL TECHNIQUES



Wednesday, October 22 & 23, 2014 | 7:00 - 10:45 a.m. | 3.0 General CLE Credits each

30TH ANNUAL ALASKA NATIVE LAW CONFERENCE

Wednesday, October 22, 2014 | 9:00 a.m. - 12:15 p.m. | CLE #2014-009 | 3.0 General CLE Credits



HISTORIANS' LUNCHEON

THE BAR RAG: 36 YEARS OF NOT TAKING OURSELVES TOO SERIOUSLY

Thursday, October 30, 2014 | 11:30 a.m. - 1:30 p.m. | CLE #2014-029 | 1.0 General CLE Credits

**CASES THAT GO BUMP IN THE NIGHT
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TALES FROM THE INTERIOR

Hangover, Part Deux — the rest of the story

By William Satterberg

I had just returned from Saipan in early September, 2013. I was jet-lagged and susceptible to suggestion. Caroline, my secretary for five years, was moving to Seattle. Caroline, never bashful, "suggested" that "the office" has decided that "we" should have a party. She was entitled to a going-away party. Caroline added that Joanne, my senior paralegal of 15 years, was entitled to "a party," as well. It was a done deal.

At the time, we were providing legal assistance to a local Italian restaurant, Putin's, and one of its employees who had a brush with the law. Putin's has three different types of employees. One group is what we affectionately call "the POWs." POWs are those individuals on work release or bail. Another group speaks English as a third language. The remaining group consists essentially of social misfits to varying degrees. By agreement, Putin's would throw a dinner for the office in appreciation for our services. It would be a family-style Italian meal complete with wine. Our waiter for the evening would be Boris, one of Putin's most experienced waiters, who has developed a loyal following both with customers and the local constabulary. Knowing Boris's reputation, I was promptly reassured that "You should have no problems. Boris will be sober."

At the appointed hour, the office staff rendezvoused upstairs at the restaurant, where a large table had been set up with ample platters of antipasto. Several bottles of wine were present. We were resplendent in our evening wear. I had even donned a clean pair of jeans.

Dinner commenced. The wine flowed copiously. The amount in my goblet never seemed to subside, even though I was drinking more than my fair share of Italian grape. I learned later that Wendy, one of our associates, was ensuring that my glass remained full. As it turned out, Wendy became my babysitter that evening, promising my wife, Brenda, that she would make sure that I somehow made it home. Eventually, my patient, non-drinking wife announced that she would be leaving. The party was sinking to new depths.

A limousine was summoned. It would arrive within the hour. Desert served, we said our farewells to Putin's and departed for another establishment, Bobby's. We took over the place and partied on. Suddenly, as if directed by an unseen force, the ladies decided en masse to visit Bobby's ladies room, traditionally voted the finest women's restroom in Fairbanks.

Rumor has it that a porcelain toilet bowl was the major attraction for one secretary, who promptly wrapped herself around the fixture and worshipped it for quite some time. Whether it was the Italian food or the wine is unknown. What we do know is that we lost both her and her boyfriend that evening. It was also at approximately that time my ordinarily good memory began to fade. I do recall that the limousine finally did arrive and I was ushered to the vehicle. Out of the 10 occupants, the only two remaining males were myself and Tom.

We left Bobby's in search of more adventure. En route, we stopped outside of a local liquor store, often frequented by town drunks. The staff seemed to know it well and voted to buy more liquor for the

remaining two-block trip. Bottles of flavored vodka, flavored rum and plastic shot glasses appeared. Soon I was drinking some "girly drink." We continued onward.

After an eternity, we arrived at Reflections, a local dance establishment. In actuality, Reflections is not a place where everyone dances. Rather, Reflections is where women dance and guys watch. Or, in this case, my entire office staff watched.

Reflections has a cover charge. But the term is an oxymoron. In fact, the more you pay, the less cover there is. Because I represent the establishment, however, we received professional courtesies on admission. Still, I do remember someone taking my wallet and pulling some money out of it for entertainment. Mainly, a bunch of one-dollar bills.

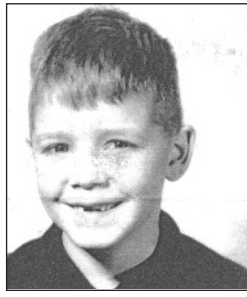
At Reflections, I went into full autopilot. Whether that was from a psychological defense mechanism or the effects of the alcohol may never be known. Either way, my remaining memory of that evening is sporadic, at best.

In retrospect, I still have a vague recollection of some office employees telling me that I should get a tattoo. After all, virtually everyone else in the office has a tattoo, some visible, and some not so visible. Apparently, I must have had enough presence of mind to resist the suggestion, although I do remember checking virtually all of my body parts the next day to verify that nothing had slipped through. "Welcome to Jamaica man, . . ." Upon reflection, I was proud of myself. After all, it is well known that I can resist almost anything except temptation.

I also remember approaching one of the dancers and giving her a generous tip comprised of a series of one-dollar bills. Where those bills came from, or where they ended up, I will not say.

I next submitted to something called a table dance, a local tradition whereby a dancer will perform rather closely to a patron who pays a large amount of money. It is a cultural thing. There are certain rules associated with table dances. One is that the dancer is not to be touched. The dancer can do the touching, but the patron is to remain discreet. As Reflections' attorney, I am familiar with those rules. I helped make them. I was therefore surprised when I had a distinct recollection of a burly bouncer standing before me and firmly stating that, "You are not supposed to be touching the dancers!" I was confused because I know the rules and ordinarily, or even extraordinarily, would not have dared to break those rules. I value my body too much.

I wisely realized that it was time for me to leave. Soon thereafter, I was trundled out to the limousine for the long trip home, all the time wanting to exit the vehicle to address certain gastric upset issues. Fortunately, I was able to control my stomach until I exited the limousine. Unfortunately, I was not able to control my stomach until I made it into the house. Nor even to the ditch. Rather, with Wendy standing directly in front of me, my stomach decided to express itself. Literally. The rest has become office history. Wendy earned her gold star that night.



"In retrospect, I still have a vague recollection of some office employees telling me that I should get a tattoo."

Following Wendy's cleanup in the Satterberg family bathroom, the remaining revelers departed for parts elsewhere, while I staggered off to sleep. I awoke the next morning with what could only be described as a terrible feeling of nausea and dread. Some call it a hangover. I was grateful for having gotten home in one piece. But I was concerned about the events of that prior night.

At noon, I was finally able to awaken Wendy with repeated phone calls. Rather than beating around the bush, Wendy told me that I "may as well know" the rest of the story. She asked whether or not I had heard "about Boris." Boris apparently had met up with us later that night at Reflections. Not only had Boris, but his boss, Natasha, joined the party without my knowledge, but they had traveled with the group for the rest of the evening.

Wendy explained that as the festivities drew to a close they had dropped Natasha off at her suburban home. Most of the other people had also been dumped at their houses, as well. Boris, on the other hand, was peacefully passed out on the floor of the limousine. No one knew where he lived, and he could not be stirred to consciousness despite the best efforts of every woman in the vehicle.

Because the staff had no place to take Boris, and could not ethically leave him on the doorsteps of Putin's on a sub-freezing night, they did the logical thing. They took Boris to the Fairbanks Police Department. As expected, Boris was no stranger to the officers.

Fearing the worst, the cops summoned the ambulance crew when they could not awaken Boris. Eventually, with some deep knuckle chest rubs

and some other proven coercive techniques, Fairbanks' finest were able to rouse the lethargic lad. Having been subjected to various indignities, Boris reportedly came up swinging. Boris had already thrown a punch earlier that evening against one of the ladies in the back of the limousine. Fortunately, he had only hit her in the thigh and had done very little damage except to his own hand. Apparently, Boris's punches left something to be desired.

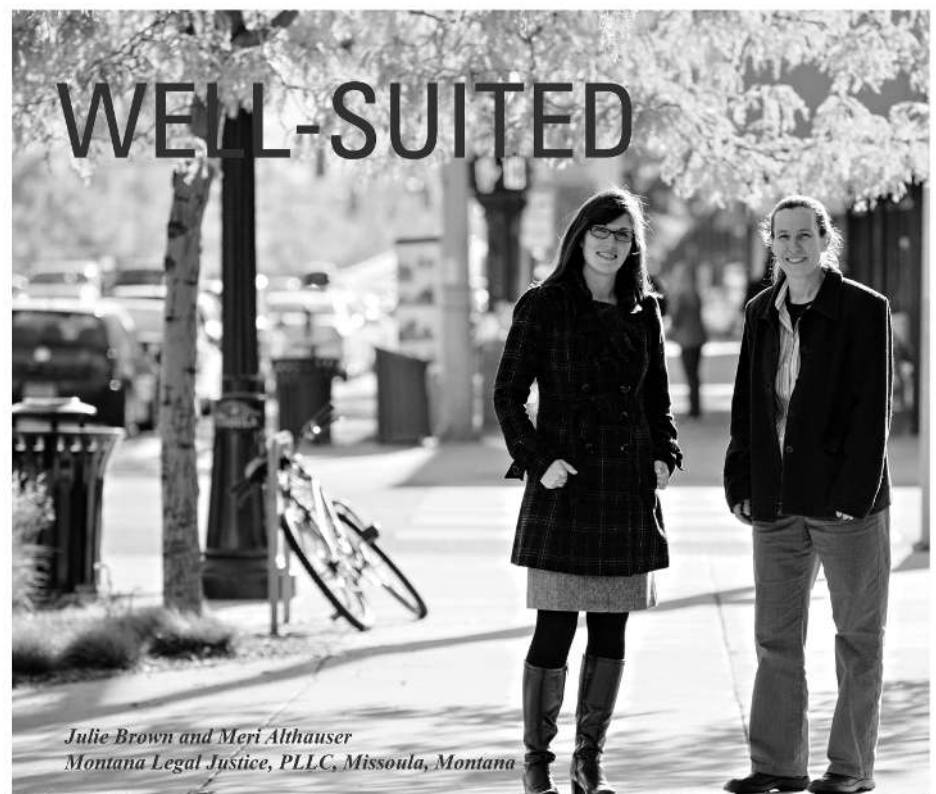
When the office crew last saw Boris, he was bravely squaring off against several sober police officers. The officers were sternly informing Boris that he did not want to duke it out with them. In the end, Boris went to the jail on a 12-hour mental health commitment sleep-off and did not get released until 5 p.m. the next day.

I next asked Wendy if my recollection of someone saying not to touch the dancers was correct. Wendy hesitated. Her voice then assumed a stern tone. She said to me, "Bill. Yes, that really happened." I immediately became embarrassed. I began to apologize profusely for my behavior. Wendy then queried me as to why I was apologizing. She told me that it was some other girl in the group who had "gotten handsy" with the dancers. In fact, I had nothing to do with it. I became even more ashamed. It was then that I realized that I had certainly missed quite the party.

My final contact was with Natasha, who asked me why my office staff had put "Boris, my head waiter, in the po-po on a mental health commitment." I said that they had no other choice, whereupon Natasha indicated that she understood the problem, adding that, should we ever party again, she wanted to be on the list, rather than going to Las Vegas.

And now you know the rest of the story.

(Names have been changed to protect the guilty).



Julie Brown and Meri Althaus
Montana Legal Justice, PLLC, Missoula, Montana

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Adventure with a cougar on Vancouver Island

By Dan Branch

While Captain Jim and I prepared to bike out of the Eve River campground on Vancouver Island, a young woman climbed onto a bicycle loaded down with a tent, sleeping bag and front and back panniers. She rode away with the erect posture of a Canadian finishing school graduate, guided her bike like she would a hunter across an English field.

She left behind a companion who dumped gear into a Rubbermaid Christmas decorations tote mounted on a DIY trailer. The man whistled a tune that migrated from “Amazing Grace” to the angry aria from “Carmen,” swatted mosquitoes from his bald head, and then placed a trumpet into the tote.

Captain Jim and I watched the young woman disappear into a wall of drizzle. She would soon climb the five-mile hill we had descended to reach the rest area. Earlier, the Captain and I had shared their morning coffee. When she held up a bag of organic beans to show that they had been roasted by serious people in British Columbia, I could see “Revolutionario” tattooed on the inside of her right forearm. The crisp embellishment was the only blemish on her well-cared-for Anglo-Saxon skin. Her companion’s clown-red nose shone in the morning light as he described meetings he sponsored for people to work on strategies for a kinder Canada. He then preached with anger against free trade, resource extractions and over-population. She tried to escape into a pink covered novel.

I asked where they camped the night before. They told us about this magical lakeside campground about 80 kilometers north. (50 miles in American). She said, “It’s a beautiful spot. Don’t let the challenging gravel access road put you off.” The man

looked at my 30-year-old touring bike and said, “You should be able to get down there O.K., ehey.”

Our bike tires crunched over fallen birch and maple leaves when we rode back onto the paved road to Port Hardy. The Captain and I climbed a six-mile-long grade, the first of many we would have to summit to arrive in Port Hardy in time to catch a ferry to Prince Rupert, B.C. From there we would ride onto an Alaska Marine Highway ferry bound for Juneau. During the four previous days we had pedaled up the southern part of the island, past resorts and strip malls and many opportunities for food and beverages. The day before Eve River we had entered a logged-off country that offered more deer than beer.

Jim pulled up the hill until he diminished to a yellow dot on my horizon. I thought about the young woman with her posh Toronto accent and revolutionary tattoo, her older companion who ended each sentence, angry or jovial with the colloquial, “ehey?” Imagining scenarios for how they got together kept my mind off the climb.

We rode past one clear-cut after another as sun burned off the morning mist. Twice young buck deer bounded along side Pedro. In the afternoon, a raven followed us, making familiar sounds exotic with his Canadian accent. At the turnoff to the lakeside campground, raven’s shadow darkened my Alaska Amber beer jersey. We dropped toward the lake on a steep, rocky road. Near the bottom a gunshot-like sound rang out and Pedro’s tire flattened. Ten inches of his rear wheel rim had blown off, leaving me 80 kilometers from the Port Hardy ferry terminal



“If I hadn’t been silently cursing the Eve River couple, I would have seen the cougar sooner.”

without a way to escape the island. The nearest bike shop was in Port McNeil, 44 clicks away and I had no reason to believe they would have a replacement rim for Pedro’s outdated 27-inch wheels. The campground had pit toilets but no pay phone or cell phone service. It also had a hoard of wind surfers who ripped across the lake thanks to a head wind we had fought for the last 20 miles.

I cursed our Eve River neighbors and their false assurance that, “you should be O.K. on that road down to the lake.” But in the thick, mixed-hardwood forest where the damaged Pedro lay, the sun dappled the ground with lights and darks and the wind cooled. I calmed down and moved the busted bike and my gear to a campsite next to a trailered 14-foot Lund skiff.

A retired teacher from Alberta walked over and said, “Here’s the deal. I’m driving that Lund over to Port McNeil. If your bike and gear are in it by 8 tomorrow morning, I’ll haul you over to the bike shop. You are probably screwed with that old bike but if they can help you they will.” After we accepted, the teacher said, “O.K. then” and walked away.

After a dinner of boil-in-a-bag Indian rice, I started to cross the 30 feet to the privy. If I hadn’t been silently cursing the Eve River couple, I would have seen the cougar sooner. Tall, with thin, long legs,

the cat’s hip joints bulged under a burnt-brown fur coat. I knew the animal was a predator and we were meat. It could take down a deer or a bicyclist with ease. I knew that we were exposed but felt only wonder, no fear. Like I was suddenly sure that the bike shop would have a 27 inch wheel for Pedro, I was sure that the cougar, then sitting with the erect posture of a Canadian finishing-school graduate, would eventually continue its languid walk away, that the curl at the tip of its long tail would brush the ground as it moved away from us to drop down to the lake for a drink.

We slept that night without fear. I silently thanked the Eve River couple for sending us to the cougar. On the drive into Port McNeil the next morning, the schoolteacher told us that the cougar had never been seen in camp. “They are

around but seldom seen.” Earlier a cougar had killed a mountain biker on the island. The cat took him down from behind.

By the next afternoon Pedro was back on the road sporting a classic Italian-made rear wheel. We made

Port Hardy in time to catch the boat home.

(I learned on this trip, of Sally Suddock’s death. She had edited the *Bar Rag* for the entire 28 years I have written for the paper. She put up with and fixed up my submissions for all those years but we never met. I knew her from the sometimes snarky (in a fun way) emails and letters about deadlines and such. Her readers saw her reflected in the layout of each *Bar Rag*. She will be missed and mourned.)

Tall, with thin, long legs, the cat’s hip joints bulged under a burnt-brown fur coat. I knew the animal was a predator and we were meat. It could take down a deer or a bicyclist with ease. I knew that we were exposed but felt only wonder, no fear.

Law Library News

Westlaw is available at the Law Library

By Susan Falk

Did you know that Westlaw is available at every law library around the state? Did you know that access is free to all members of the public? We offer free Westlaw in 16 locations statewide, and we just upgraded our subscription.

The biggest new change is the addition of WestlawNext, Westlaw’s newer research platform. The product is not really new – Westlaw Classic has been phased out in law schools, so newer graduates will just think of this new platform as Westlaw – but it has only recently been made available in public libraries. The most noticeable difference from the previous version is the single search box, which seeks to provide a more Google-like search experience. When using this feature, you don’t have to start with a specific database. If you’re searching Alaska material, every search will retrieve Alaska cases, statutes, regulations, and secondary sources, all organized by format. Search results are presented as a summary page, and it’s easy to scan all results or focus on specific material like case law or law review articles.

The search itself also aims to be easier and more intuitive. Users are no longer required to use the command language of terms and connectors. Instead, plain language searches retrieve all relevant results, combining the accuracy of terms and connectors searches with the forgiveness of natural language searches. That said, well-crafted terms and connectors searches still belong in the arsenal of skilled researchers, and as such, this tool is still available in the new platform. If you’d like assistance designing your searches, ask a librarian for assistance.

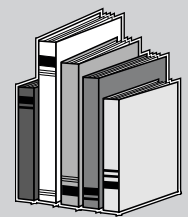
For those of you more comfortable with the devil you know, Westlaw Classic is still available as well; you’ll find links to both platforms

on the menus of our public computers. At some point in the future, however, the older model will be discontinued. We expect to lose our access to Westlaw Classic in the next year or two, so if you haven’t yet experimented with WestlawNext, come in and give it a test drive.

In addition to the format change, we’ve added a great deal of content. For the first time, the Treatises and Forms library is available to our public users. This database includes scores of Thomson Reuters titles, including Wright and Miller, Sutherland Statutes and Statutory Construction, McCormick on Evidence, Williston on Contracts, Newberg on Class Actions, and thousands of forms. We’ve also added the Restatements, and we continue to offer law reviews, ALR, and the entire AmJur library. Of course, all of this material is also available in print in some locations (or will be when the Anchorage collection comes out of storage).

While everything in the previous paragraph is available on both Westlaw platforms, another new product is only on WestlawNext – Practical Law. This new library is comprised essentially of black letter guides on a variety of subjects like labor and employment, antitrust, finance and real estate. Written by lawyers, the content includes practice notes, checklists, drafting guides and documents and tool kits. Practical Law can help introduce you to a new practice area or provide a new current awareness tool.

The Anchorage Law Library is open to the public six days a week including evening and weekend hours. Professional librarians are available from 8 a.m. to 4:30 p.m. Monday through Friday. Library assistants staff the library during all other hours the library is open.



Justice Not Politics Alaska aims to defend merit selection

By Barbara Hood

Recent efforts in the Alaska Legislature to amend the Judiciary Article (Article IV) of Alaska's Constitution in ways that many in the legal and judicial community believe would be harmful to the state have led to the formation of a new non-profit organization, Justice Not Politics Alaska. Co-chaired by Walter (Bud) Carpeneti of Juneau, former Chief Justice (2009-2012), and Bill Gordon of Fairbanks, former public member of the Alaska Judicial Council (2003-2009), JNPA will work to defend the Judiciary Article from changes that threaten Alaska's current merit system for judicial selection and retention.

Specific proposed constitutional amendments during the 2014 legislative session would have doubled the number of politically appointed public members on the Alaska Judicial Council and required legislative approval of all council members. By allowing the politically appointed members to dominate lawyers on the council by a factor of 2:1, and requiring legislative approval of even the lawyer members selected by members of the Alaska Bar Association, the changes would have opened the door for politics to play a greater role in the council's decision-making. Although the measure narrowly failed in the Senate, key sponsors have vowed to reintroduce it in 2015. In response, JNPA plans to educate legislators and the public about why politicizing our judicial selection and retention system is bad public policy and should be rejected.

"Article IV is one of the jewels of the Alaska Constitution and is the principal reason that our state has enjoyed a long history of judicial excellence," according to Carpeneti and Gordon. "(It) insures that nominees whose names go to the governor are chosen based on merit: legal competence, integrity, fairness and judicial temperament, and not because of their political affiliations or political beliefs We believe that our merit selection method is worth defending."

Justice Not Politics Alaska held its first event and fundraiser in Anchorage on Aug. 14, and plans other outreach activities across the state throughout the fall and spring.

Alaskans interested in lending their time or financial support to its efforts are encouraged to contact JNPA Project Director Heather Arnett at 907-240-3802 or justicenotpoliticsalaska@gmail.com, or write to P.O. Box 231473, Anchorage, 99523-1473.

Barbara Hood is secretary of Justice Not Politics Alaska.



Justice Not Politics Alaska Co-Chair Walter (Bud) Carpeneti joins other board members and staff at the organization's first event, held Aug. 14 in Anchorage. From left: Heather Arnett, project director; David L. Landry, treasurer; Don McClintock, director; Carpeneti; Tom Amodio, director; and Barbara Hood, secretary. Not pictured: Bill Gordon, co-chair, Fairbanks; Tena Williams, director, Ketchikan; and Nicole Borromeo, director, Anchorage.



Walter (Bud) Carpeneti, co-chair of Justice Not Politics Alaska, speaks at the organization's first fundraising event, held in Anchorage on Aug. 14.



Justice Not Politics Alaska's Project Director, Heather Arnett, greets attendees at the Anchorage event.

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The con man ... or just a savvy hail-fellow?

By *Kenneth R. Atkinson*

I met Gary N. early in November 1961. Two friends and I were moose hunting west of Willow. The day had been sunny with very little snow on the ground. As it got dark, the temperature dropped rapidly. We headed for the parked car to go home.

After walking through the woods for awhile, we realized we had lost our way. There were no landmarks to go by and we had not been careful in planning our return when we started hunting. We stopped and considered our situation in the increasing cold. We decided on a likely route, but soon found we were still lost. We had to move to keep warm. After a while, we spotted a light through the trees; it came from a small cabin on a lake shore.

By this time, it was about 8 p.m. and fully dark. We knocked on the cabin door and it was opened by a neatly bearded man in his forties who looked like Ernest Hemingway. We explained our predicament and he invited us into the welcome warmth. We exchanged names.

Our host, Gary N., was proving up on an 80-acre homestead. He had a slight Southern accent. He offered to let us stay the night and said he would lead us to our parked car in the morning. We had a good meal of moose stew that he warmed on his wood stove.

Gary said that he had spent 20 years in the U. S. Army, a few more years in the Border Patrol and then had worked for Commercial Credit Services in Miami. He had become tired of his job and had broken up with his girlfriend and come to Alaska to homestead. He liked to hunt and fish and had several guns and a lot of fishing rods in his cabin.

After dinner, he produced several bottles of good whiskey, and we all drank and talked of many topics into the late hours. I had often wondered about the practice of tarring and feathering miscreants. It seemed to me that pouring hot tar on someone would be very painful. A childhood friend had spilled hot tar on one of his hands and the flesh had been cooked. He had a long and painful recovery from the incident and was left with an ugly, scarred hand.

Gary explained to us that the tar used in tarring and feathering was the natural sap of pine trees in the South. It was highly viscous and thick but could be spread on the body to which feathers would adhere. The application was not painful but the

removal was difficult and probably involved some pain but not nearly as bad as if hot, melted tar had been used. For whatever reason, tarring and feathering was viewed as a condign punishment for certain offenses in the early years of our country. I had read about it as a child. Now I knew how it was done.

In the morning, after breakfast, Gary drove us to our car in his surplus Army Jeep on a primitive, rutted trail to Willow. When we left, I noted that Gary's homestead cabin was the only structure on the small lake, with a sandy beach and at least a quarter mile of shoreline.

I didn't hear from Gary again until New Year's Eve of that same year. I had worked a half day at my law office at Fifth Avenue and E Street. At noon, my law partners and I stopped at the Club Paris for lunch and a few drinks, which led to an afternoon celebration of New Year's Eve.

A regular client of the firm was at the Paris when we got there, already far ahead of us on the booze. He told us that when he went home earlier that day, his wife, a red-haired woman of spirited temper, told him about some appliance or device at their home that was not working. He said to her, "What did you do to it this time?" She was furious at his question and he returned to the sanctuary of the Club Paris until she could calm down.

After about four hours, I walked to my vehicle, parked at an unmeted-parking street several blocks away. My vehicle was a 1957 panel truck, which I had acquired as a partial payment of a legal fee, and as a replacement for the 1941 Ford sedan that gave out on me after three years of good service.

The truck had been a dry cleaner's delivery vehicle at one time and had two metal bars athwart the body behind the driver's seat from which clothing could be hung. My young children loved the truck because they could play on the bars when they rode with me. When I reached the truck that night, I saw that the left rear tire was completely flat. I walked back to the Club Paris and called a cab to get home, perhaps fortunately for me considering my condition.

My wife and I were invited to a party that night and the children had already gone to a friend's house to spend the night. When I got home, my wife was angry at my condition and told me to go to bed. She went to the party without me.

I was awakened several hours

later by the persistent ringing of the telephone. When I picked it up, Gary N. said, "Ken, I've got some moose meat for you. How do I get to your house?"

He arrived in his Jeep, which he parked in our driveway. By then, it was snowing hard. Gary had a big dog with him. We also had a big dog. The two of them growled at each other as I let Gary in through the back door. Gary was dressed in a surplus Army parka and had on high, lace-up boots and a big cap with ear flaps. He carried a large bag of wrapped and frozen moose meat, which we decided to leave outside, as it was below freezing.

Gary said he couldn't stay long; he wanted to drive back to his Willow homestead before the snow accumulated too much. I insisted that he stay at our house and drive back in the daylight. He could sleep on our sofa. It didn't take much to persuade him to do this. We had a few drinks and talked. Then I went to my bed and he to the sofa, fully dressed, boots and all, with his parka covering him. I heard perfunctory and desultory growls from the dogs coming from the back door foyer before I fell asleep.

My wife told me later of the scene at the house when she got home after midnight. She already knew that I had left my truck downtown, but she was surprised by the Jeep in the driveway and by the strange dog inside the back door next to our dog. She was even more surprised by the fully clothed stranger sleeping on the sofa. She went to bed in one of the children's bedrooms.

In the morning, she was fixing breakfast wearing her housecoat. My wife was, and is, an attractive woman. Gary was still asleep. She was understandably still miffed at my behavior of the previous night, and by the presence of a sleeping stranger on our sofa, and didn't appear mollified by my explanation for Gary's presence.

Gary awoke while my wife was still fixing breakfast. Gary rubbed his eyes and said, "I must be in Heaven. I see a beautiful angel there in the kitchen." My wife's behavior changed instantly. She offered Gary coffee and orange juice as the gracious hostess. We all ate breakfast and chatted.

The snow had stopped. Gary agreed to drive me to my truck, where we jacked it up and removed the wheel with the flat tire. We went looking for a service station to get the flat fixed, having trouble finding a place open on Near Year's Day. While we waited for the repair, an attractive woman had arrived, accompanied by a boy about 14 rolling a car wheel with a flat tire. Gary chatted her up and told her he would come back to the station and give her a ride to their home. After we put the wheel on my truck, Gary left with his dog. I didn't see or hear from him for several weeks. When I did, he told me he had spent a week at the woman's house, after surmising she was not "attached" when he saw the young boy helping with her flat tire.

About five months after the New Year's Eve visit, Gary called me and said he had to fly back to Mi-

ami to take care of some business. He didn't have the money for airfare and asked me if I would co-sign a promissory note at a local bank for \$350. I was reluctant to do this, as I knew, and had heard of, many persons who said that and never came back to Alaska.

Sensing my reluctance, Gary said, "You have seen all the guns and fishing gear at my cabin. I'll leave that at your house as security." I knew the stuff was worth at least \$1,000, so I agreed and drew up a pledge agreement. Gary delivered all the guns and fishing gear to my house. Gary signed the pledge agreement, and we both went to the bank, signed a note and got the money for Gary.

I didn't hear from Gary while he was in Miami. I began to feel certain that he wouldn't return. When male friends visited me, I'd show them the pledged stuff and gloat over the bargain I had made. Some of the friends said they wanted to buy some of the items as they became increasingly certain that Gary wouldn't return. He hadn't yet proved up on his homestead.

On the day the note came due, the bank called me at my law office, and I went to the bank and paid off the \$350 note, plus accrued interest, and went back to my office. Within an hour of my return, I received a call from Gary, which I assumed was coming from Miami.

Gary asked, "Did you pay off that note?" I told him I had. Then he said, "Come over and have a drink with me." He was at the Richmond Bar on Fourth Avenue downtown, only a block from my office. I walked there and sat at the bar next to Gary. "How much was the interest?" he asked. I showed him the paid note. He reached into his back pocket,

took out his wallet, and peeled off enough cash to repay me in full.

"You thought I wouldn't come back and get all that stuff at your house," he said. "I knew if I went to Miami and

left that stuff at my cabin someone would break into it and steal the stuff. I needed a safe place to store it while I was gone." He did give me a fishing rod and reel and some flies for my efforts.

Gary proved up on his homestead a year or two after his Miami trip. By that time, lakefront property, within easy driving distance from Anchorage, had increased in value. In about 1966, Gary sold his 80-acre property to two men in Wasilla who developed it into a subdivision with lake-frontage lots. They paid Gary a substantial cash down payment and agreed to installment payments with interest for the balance owed. I did the legal paperwork for Gary on the transaction.

Shortly after the sale of his homestead, Gary moved to Amsterdam, the Netherlands. Gary never told me his reasons for moving there, but he married a Dutch woman 20 years his junior who had a house there. The United States had a military base in the Netherlands, so Gary had access to the commissary at cheap prices. He and I kept in touch occasionally by mail and he

"I knew if I went to Miami and left that stuff at my cabin someone would break into it and steal the stuff. I needed a safe place to store it while I was gone."

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Continued on page 9

Letters to the Editor

Dear Editors:

As an immigrant to the Badger State, I was proud to read the article by former Badger Ken Atkinson as well as my favorite expatriate Badger editor's work. After consulting a dictionary to find out what "condign" punishment meant, I can only conclude that Mr. Atkinson is unduly modest in that if I were the judge, his client would have received a much heavier sentence which would have been surely condign. I also enjoyed the anecdote by Wayne Ross, another Wisconsin native. Wayne's memoir should be required reading among the Alaska Bar members.

On a serious note, I was very impressed with the quality and quantity of the scholarly and practical articles. Although I am sure recreational

marijuana will continue to create many new clients whether legalized or not, Mr. Davis has provided a road map for people looking to get in on the business side of the industry.

Since my favorite editor has moved to Alaska, our family has enjoyed several visits in addition to our 1978 motorcycle tour. I've been impressed with the collegiality and down-to earth atmosphere created by the judges and lawyers that I have met during our visits. I have to say that I was pleasantly surprised by the quality of your humbly named publication. It compares favorably to our slick rag. Congratulations are definitely in order.

—Thomas J. Kelly
Spring Green, Wisconsin

The con man ... or just a savvy hail-fellow?

Continued from page 8

urged me to visit him.

In 1969, I had business with a client in New York City. By that time, KLM had jet service between Anchorage from Amsterdam. After my business in New York, I flew across the Atlantic to Amsterdam. Gary, without my knowledge, made a reservation for me at the Grand Hotel Krasnapolsky, an old and elegant hotel near the Queen's Palace in the heart of Amsterdam. The hotel had high ceilings, crystal chandeliers and distinguished looking guests walking through its lobby. It impressed me, as did Amsterdam itself. I visited the Rijksmuseum to see the Old Masters and the Stedelijk Museums for modern art. I walked through the red-light district to see scantily clad women, many Indonesian, on display in store-front windows, like those in the line I had seen in Fairbanks in 1948.

After a couple of days in Amsterdam, we took off in Gary's car to travel around the Netherlands. One of Gary's friends went with us (a male American). Both he and Gary were heavy whiskey-drinkers and they bought an ample supply.

We went first to small towns in the southeast Netherlands on the North Sea. In Vlissingen (Flushing), we stayed in some rooms in a farmhouse and took our meals with the family for a few days. The Dutch were still angry at the Germans, who dynamited the sea dikes that the Dutch had erected to reclaim land from the ocean, land which they called polders and used for agriculture. The Germans did this near the end of World War II when they retreated from the country, which they had occupied since

1940. It took the Dutch a long time to repair the dikes and get rid of the salinity in the polder soil from the ocean flooding. It reminded me that the Romans plowed salt into the fields of Carthage to ruin them for agriculture for many years in ancient days.

After we left Vlissingen, we headed back to Amsterdam through Rotterdam. It took us only half a day. It was bizarre to see boat traffic in canals next to the highways, canals that were at a greater elevation than the roads. All the towns in Holland were tidy. I often saw workmen tidying things up. In Amsterdam, I saw women scrubbing the front entryways to houses. The food and beer in the Netherlands were good everywhere I went.

I went to England, Scotland and Ireland for 10 days after returning to Amsterdam. After that, I flew back to Anchorage.

In March, 1973, in March, I went to Greece via SAS through Copenhagen and on to Athens. By that time, Gary was living in Cadiz, Spain, which had a U. S. military facility nearby. Gary urged me to visit him in Spain when I left Greece, but by that time, I was tired of the Mediterranean heat and needed to get back to work in Anchorage.

I didn't go to Cadiz to see Gary, something I now regret. He died there a few years later. Around 2010, I had business with one of the men who bought Gary's homestead. I asked him if he remembered Gary and he said he did. He told me that Gary called him from Cadiz when they paid off the note before its due date. Gary complained that the early payment of the debt deprived him of interest.

The origin of the letters:

Many years ago I was visiting Judge von der Heydt in his chambers. We were discussing the the slow manner in which many cases progressed through the judicial system. He said, "...I know you collect judicial humor...." He then produced these two letters. I want to share them with the bar in hopes it will remind us of his great sense of humor as well as the amusing response of David Ruskin.

—Leroy Barker

JAMES A. von der HEYDT
United States District Judge
Box 1080
Anchorage, AK 99501

June 26, 1973

Mr. David B. Ruskin
Attorney at Law
PO Box 2073
Anchorage, Alaska 99510

Re: Reefer King v. Anna A.
A-113-69

Dear Mr. Ruskin:

Every now and then I search out some hidden and lost cranny of the Great Federal Pyramid, and though it be dark as Pharoah's tomb, with the aid of a lighted candle, I glance over the "old cases," mummified and dry from the passage of time. My ability to read hieroglyphics has dimmed with the years, but the other day I did come across A-113-69, and more particularly, your letter of February 1, wherein something was going to happen within 30 days thereof. The Sphinx may wink slowly, but even my abacus tells me that more than 30 days have elapsed since February one. As Antony said to Cleopatra as he climbed through her bedroom window, "I come not here to make conversation."

Kind Sir, what gives? This letter will be delivered by camel caravan.

Very truly yours,

James A. von der Heydt

JAV/deb
cc: Reginald J. Christie
Barry Donellan

Law Offices of
DAVID B. RUSKIN
A Professional Corporation
Lathrop Building
Mailing address: PO Box 2073
Anchorage, Alaska 99510
272-8401

June 27, 1973

The Honorable James A. von der Heydt
United States District Court Judge
Post Office Box 1080
Anchorage, Alaska 99510

Re: Reefer King v. Anna a
A-113-69

Dear Judge, Your Honor:

Let me tell you like it is. If you are talking about the Reefer King, who is the head of the grass racket here in town, and his girlfriend, Anna A, I don't know anything about it. According to my recollection, I did ask for "30 days" on behalf of somebody, but I think this had to do with sentencing.

Also, as Your Honor knows, it is impossible to get anything done in this town in 30 days. First of all, I have been dealing with Donellan, who is a capo in Don Edgar's family, and Christie, who is a lieutenant in Don Wendell's family. They made me an offer I couldn't refuse and everything is all taken care of to get rid of the case except that we are waiting for the dough from the Seattle family Don Wendell is associated with. Everybody says that the deal can be terminated with extreme prejudice within a week. If it isn't, we know what the Sphinx will do to us.

The real problem now is who is going to clean up the mess that your camel made.

Your humble servant,

David B. Ruskin
Consigliere for Intervenors

DBR/jts
cc: Reginald J. Christie, Jr.
Barry Donellan

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Chief Justice Dana Fabe welcomes teachers from across the Anchorage School District.

Bar committee kicks off new pilot program, calls for volunteers

By Russell Johnson

Teachers from across the Anchorage School District visited the Boney Courthouse on Aug. 15, as part of a district-wide field trip organized by Pamela Orme, ASD's director of social studies curriculum and a member of the Alaska Bar's Law Related Education Committee. The day's field trip activities were actively supported by the LRE Committee, whose members set up a variety of activities under Orme's guidance. There was a meeting with Chief Justice Dana Fabe, who graciously received the teachers, posed for a photograph, and endorsed the LRE Committee's efforts. This was followed by a meeting with Superior Court Judges William Morse, Patrick McKay and District Court Judge Leslie Dickson who all took time out to sit as a panel and answer questions about the trial courts and their respective paths to the bench. The teachers also visited Wellness Court, where District Court Judge David Wallace unexpectedly had the Wellness Court participants speak directly to the teachers about their experiences and the difference Wellness Court has made in their lives.

The field trip also presented a great opportunity for the LRE Com-

mittee to kick off a new program called Attorney Connect. The program is intended to help teachers enhance their curricula by creating a network of attorneys interested in working with their local schools. The LRE Committee began pursuing the project after the great success of other legal programs in the schools, particularly We the People, Supreme Court Live and Mock Trial.

The LRE Committee examined different ways to structure the Attorney Connect program. The final result is a program that works by creating lasting partnerships between individual schools and one or two attorneys who serve as attorney coordinators for an assigned school. Those coordinators are then supported by a pool of attorneys with a variety of expertise and experience.

When a teacher has a request, he or she can contact the attorney assigned to the school. The requests can vary from general questions about the law to requests for an attorney to teach a class on a specific topic. The coordinating attorneys can then answer the requests themselves or send the requests to the attorney pool. The coordinating attorneys are also generally responsible for collecting any answers received from the pool attorneys and forwarding those along to the teacher.



Teachers and attorney volunteers meet Chief Justice Fabe.

During the August field trip, the attorney coordinators in Anchorage met with the teachers and asked them about the law-related portions of their curricula and how they might use an attorney in the classroom. The teachers' responses were enthusiastic and varied. Some teachers expressed interest in having an attorney they could talk to about current events so they could present the law-related aspects of those stories to their students. Other teachers were interested in having attorneys speak to their students on a variety of topics, including constitutional law, family law, the juvenile justice system, the potential impacts of criminal convictions (particularly DUI), and the importance of jury duty. Several teachers were also interested in having attorneys discuss careers in the law with their students or suggested having students shadow an attorney.

The August meeting made clear that the social studies teachers are interested in working with attorneys to enhance the classroom experience for their students and can foresee many ways to use them in the future. To meet that need, the LRE Committee is actively seeking additional volunteers for the Attorney Connect program. The Committee is particularly working to increase the size of the Anchorage volunteer attorney pool to help field questions outside of the expertise of the individual attorney coordinators. No matter what your practice

area may be, we would be interested in having you as a part of the attorney pool. A greater variety of experience will only make Attorney Connect that much more valuable a program. Anyone who is interested should email AttorneyConnect@alaskabar.org.

While the program is currently being piloted in Anchorage, attorneys outside of Anchorage are strongly encouraged to let us know if they are interested in starting an Attorney Connect program in their communities. The LRE Committee intends to fine tune the program and then expand it throughout Alaska. One of the first steps in that expansion will be identifying attorney coordinators and pool attorneys for those communities. Knowing who is interested will help expedite that process.

The response to the Attorney Connect program has been incredible. From the individual attorney volunteers to the Bar itself, the LRE Committee has been overwhelmed by the generous donations of time and resources we have received to bring this program to fruition. We look forward to Attorney Connect's continued success and hope you will join us in supporting local schools by volunteering.

Russell Johnson is a member of the Law Related Education Committee and the Attorney Connect Subcommittee. Johnson is an attorney in Anchorage working with the Alaska Court System.



Stephanie Galbraith-Moore (standing) and Leslie Hiebert (far right) from the Law Related Education Committee meet with teachers.

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From panel on "Misdemeanors and Juvenile Cases:" L to R: Dr. Cory Lepage and Dr. Ryan Fortson, UAA Justice Center; Lisa Jaeger, Tanana Chiefs Conference; Chief Tribal Judge Peter Esquiro, Sitka Tribal Court; Tribal Judge David Voluck, Central Council of Tlingit & Haida Indian Tribes; Rob Wood, Division Operations Manager, Division of Juvenile Justice, Alaska Department of Health and Social Services.



L to R: Christine Johnson, Alaska Court System Administrative Director; Judge Niesje Steinkruger (Ret.); Victor Joseph, President, Tanana Chiefs Conference; Professor Carole Goldberg, Indian Law & Order Commission and Professor of Law, UCLA School of Law; Chief Justice Dana Fabe, Alaska Supreme Court.



L to R: Christine Folsom, Director, National Tribal Judicial Center, The National Judicial College, and Chief Tribal Judge Ingrid Cumberlidge, Qagan Tayagungin Tribal Court, Sand Point.



L to R: Dr. Cory Lepage and Dr. Ryan Fortson, UAA Justice Center; Lisa Jaeger, Tanana Chiefs Conference; Prof. Kevin Illingworth, University of Alaska Tribal Management Program, Interior-Aleutians Campus, University of Alaska Fairbanks.

Board of Governors invites comments

The Board of Governors invites member comments regarding the following proposed Bar Rule amendment. Additions have underscores while deletions have strikethroughs. Please send comments to Executive Director, Alaska Bar Association, oregon@alaskabar.org by Oct. 13, 2014.

Under Bar Rule 44, law school graduates or lawyers not admitted in Alaska can qualify for a legal intern permit which allows them to perform specified legal tasks.

One of the requirements is that the applicant not have failed the Alaska Bar Examination. However, as the rule is currently written, an applicant who has failed a bar exam in any other U.S. state or the District of Columbia may still qualify for a permit if the applicant has *subsequently* passed a bar exam in any other U.S. state or the District of Columbia.

This rule also applies to persons practicing under the 10 month practice rule in AS 08.08.210(d). The Bar recently had an inquiry from a lawyer admitted in another jurisdiction regarding the lawyer's ability to practice under the 10 month rule. Even though he had passed a bar exam and was admitted to practice, he later took a bar exam in another state and failed that exam. Because he didn't retake and pass the second exam, we advised him that he wasn't eligible under the rule.

This amendment would clarify that if a permit applicant or a 10 month applicant had passed a bar exam in any other U.S. state or the District of Columbia, the applicant could still qualify for a permit or 10 month practice even if the applicant had failed a bar exam in any other U.S. state or the District of Columbia.

Rule 44. Legal Interns.

.....

(c) Be a law school graduate who:

...

(3) Has never failed a bar examination administered by another state of the United States, or the

District of Columbia, or, despite failure, has *subsequently* passed a bar examination administered by any state or the United States of the District of Columbia; and,

.....



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.

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So long, farewell, give me that last column and DLTDHYITA

By Kenneth Kirk

"These fragments I have shored against my ruins"

— Eliot

The dame cruised into the office like she owned the place. I was used to her rocking her pantsuit, but she seemed to have a little more pep in her step than usual.

"Hey, doll, haven't seen you in a while. What brings you to the wrong side of the tracks?"

She smirked back at me. "I just came here to gloat, Steve," she said. "I heard the good news this morning."

I gave her my innocent look, but I knew what she was talking about. "This about the rumor that you-know-who is going to quit writing 'Bar Rag' articles?"

She was positively beaming. "It's not a rumor. You think we don't have contacts in the Bar offices? It's a done deal. And no more articles, means you're toast. History. You're an ex-parrot!" And she howled with laughter.

"Not bad for a feminist dame," I said, trying to annoy her. "I didn't think you were the type for Python. Or any kind of humor."

"Ah, on a day like this, I can enjoy just about anything. You and your misogynistic views are never going to be seen again, Steve."

"That's where you're wrong, sister," I said. "Just because he's going to lay off the Bar Rag articles, doesn't mean he won't be writing anything. And he'll come back around to me. I'm one of his best characters."

"You? You're nothing but trouble for him. He was naïve enough to think that giving you a specific name would make it clear to people that you were not just a stand-in for his own opinions. He forgot how humor-impaired a lot of people are. He had a shot at the bench once, and he blames you for his not getting it. You're an inconvenient man, indeed," she said.

That stung, because for once she had hit on a little bit of truth. "Hey, it's

not my fault if some people are so illiterate they can't distinguish between an annoying fictional construct used to play the devil's advocate, and the writer's own views. Haven't they ever heard of irony?"

She didn't say anything. She just shook her head sadly, and started to walk out the door. "Hold on," I said, "just because I won't be appearing in print anymore doesn't mean we can't get together."

She stopped. She turned around slowly. "Yes, Steve, it does mean we can't get together. You see, I'm an annoying fictional construct too. And I'm done for as well. But I got to take you down with me, and that's worth it."

And then she left, and it was the last I saw of her. Or anybody else, ever.

.....
BEGIN REQUESTED PORTION OF HEARING

COURT: You may be seated. We're here in the matter of Smedley v. Kirk. This is a defamation suit, and... where is Mr. Kirk?

MR. TULKINGHORN: My understanding is, he's not going to appear today. He left a phone message yesterday.

COURT: All right, then, he can always get a transcript. Mr. Tulkingshorn is here for the plaintiff. And is this someone from your office?

MR. SATAN: I'm here as out-of-state counsel, assisting Mr. Tulkingshorn. He'll do all the talking.

COURT: And you are?

MR. SATAN: The Devil himself. Lord of the underworld. Fount of all evil.

COURT: Well, as long as local counsel does all the talking, I suppose you don't need to be admitted pro hac vice. At any rate, I believe this is on approval of a settlement agreement?

MR. TULKINGHORN: Yes, and Mr. Kirk has signed it. Without admit-



"Pour me another one, Jimmy. And this time make sure it's the good stuff."

ting fault, of course.

COURT: I never did really understand the complaint here. Mr. Smedley is suing over a fake obituary which was featured in the "Bar Rag," right?

MR. TULKINGHORN: Not only fake, Your Honor, but defamatory and hurtful. Simply despicable.

MR. SATAN: And I would know despicable!

COURT: But isn't Mr. Smedley an imaginary character?

MR. TULKINGHORN: Which makes it all the more false.

COURT: But how can he be defamed, if he doesn't actually exist?

MR. TULKINGHORN: Which is why we settled for what we did. No damages, just an agreement that Mr. Kirk will no longer write for the "Bar Rag."

COURT: I'm not sure about approving this. I know that Mr. Kirk has agreed to it. I don't understand, though, why he would. He couldn't possibly have lost if it went to trial. And he probably would have won on summary judgment.

MR. TULKINGHORN: He signed because, to be quite candid, we have pictures of Mr. Kirk at the 1997 Bar Convention. Right here. Hmm... Mr. Satan, who is that fellow standing just behind him in the picture? The one with his hand on the young lady's... derriere?

MR. SATAN: Why, I believe that's His Honor the judge, Mr. Tulkingshorn.

JUDGE: Never mind, I'll sign the decree.

.....
Pour me another one, Jimmy. And this time make sure it's the good stuff.

Believe it or not, something's bugging me. And yeah, it's the wife again.

So last night, I got home late, forgot to tell her I was over here, so she made dinner and it was ruined. I lied and told her I was at the office, working on my "Bar Rag" article. Big mistake. You're right, I knock those out in about 10 minutes, but she doesn't know that. So she starts asking me questions, like how much they pay me for those things. I guess I never really told her I was doing it for free. So now I gotta fess up. And then she starts dragging out the bank and credit card statements and showing how much I spend on entertainment. Well, okay, on booze. And she's whining about how, if I want to drink this much, I oughta spend my spare time actually making some money.

So then she gives me the big ultimatum. Yeah, she doesn't put her foot down that often, but when she does she puts it down hard. She says I either have to cut back on the amount I drink, or quit wasting my time writing stuff they don't pay me for.

I sure am gonna miss the "Bar Rag." Hey, pour me another one, and easy on the ice.

.....
I wasn't sure who to expect this time. It's hard to see in those parking garages, particularly when several of the lights have been shot out. As I got closer, I saw that it was the long time managing editor. Let's call her "Sadie" to protect her identity.

"I'm surprised to see a familiar face," I said. "I thought the "Bar Rag" was being run by a bunch of fresh, young kids."

She smiled, a little. "There are still a few of us old-timers left. They thought it was best to send somebody you knew. After all you tend to be a little bit... paranoid."

I chuckled. "I'm not actually paranoid, you know. There really are a lot of people out to get me."

She gave me a sort of searching look. After all these years, did she still not get my sense of humor? If you don't know me by now, as the song says.

I broke the awkward pause with "It's your meeting. What did you want to see me about?"

"About this, what else?" She was holding up a printed-out email. "Are you really closing down your column? Or is this another stunt like Satterberg did?"

I shook my head. "You know what I find sad? That lawyers are so illiterate that they can't tell the difference between humor and reality."

"And this is reality?" she asked. I nodded. It was.

"So this is it," she said. "I won't pretend that there won't be a lot of people happy about this, but I really want to understand why. Is it health reasons? There was a rumor your hair has been starting to fall out...."

"It's a bald spot! And a relatively small one. No, my health is fine. Or least it's not any worse than it always has been."

"It can't be that commission you're on? You've done plenty of volunteer stuff in the past, and still had time to crank out your column."

"Partly," I said. "The commission does take a lot of time, and I am chairman of APOC now."

"Writer's block! Of course. Hey it happens to the best of them. Most of our 'Bar Rag' contributors just take a little bit of their favorite hallucinogenic substance, and they're right back on track. You need me to hook you up? I'm pretty sure Steve O'Hara can get you a little something."

"Which explains a lot, but that's not it at all," I said. "I have plenty of ideas left. Plenty of oxen I could gore, plenty of trouble I could still make. But mostly it's just made trouble for me. And it's time you all had some fresh blood anyway. Isn't that what your new editors said?"

"Yeah, but they're new. They'll realize after a while that it's better to have some good old, reliable, gadflies like you, than to try to beat the bushes every three months to get other people to write columns."

I smiled. "It's mostly the commission," I said. And then I turned on my heel and, for once, I walked away.

.....
Dear Diary, tomorrow is the big day! No more public defender stuff for me. Now I get to take down dirty politicians, with the Public Offices Commission. I'll have this state cleaned up in no time!

.....
*It hurts to set you free
But you'll never follow me
The end of laughter and soft lies
The end of nights we tried to die
This is the end.*


— Morrison

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Legal community should explore feasibility of law school

The following is the first installment of an anticipated series on the prospects for a law school in Alaska

By John Havelock

History: In 1974 a number of Anchorage lawyers, both in the legislature and out, led by the now legendary Wendell Kay, prepared and presented to the Legislature a proposal to hire a well-known lawyer to undertake a feasibility study on a proposal to start a law school in Alaska. There were several leaders in the Legislature who took a considerable interest in this proposal, which was well-greased to go all the way, including beginning funding for a law school. Speaking for a number of concerned lawyers, I complained that the proposed candidate had done many feasibility studies, but that every one of them had found a law school to be feasible.

Our concern was that a law school would be started on a sub-marginal basis and that Alaska would be saddled for many years with

a struggling institution that would use such ploys as automatic admission to the bar for its graduates, introducing a stream of sometimes under-qualified lawyers into the Alaskan community. To my surprise, our complaint was echoed by many, and shortly thereafter the Legislative Affairs Agency and the regents jointly proposed that the feasibility study be undertaken, approved funding for the project, and directed that I (at the time an underemployed but still well-regarded former attorney general) undertake the project.

The study: The study undertaken over the following months was published under the title "Legal Education for a Frontier Society." A few copies of this document can still be found in state libraries. The study concluded that the current population of the state would produce, just barely, enough qualified students to populate a law school the size of some of the smaller law schools around the country meeting AALS standards, but that the state would be better served at that time by establishing a program for undergraduate education in law. The university could support the newly recognized, higher education needs of police, corrections officers, court administrators and the then just-emerging occupation of the paralegal. Beyond meeting the needs of justice professionals, the justice program could address the educational concerns of business or government administrators seeking a better understanding of the legal background of the programs they were administering. The justice program would also speak to undergraduates considering a career in law but lacking sufficient information to make an informed decision.

The university's Justice Program: The University of Alaska accepted these recommendations and I was hired to implement them. The result was the establishment of an undergraduate major in justice and the creation of a Justice Center at

Anchorage mandated to teach and to study the Alaska justice system. These programs have proved to be highly successful. The justice major is well-established throughout the university system. By now several thousand students have benefited from a well-designed and broadening curriculum. The center sustains a nucleus of productive scholars and has published dozens of important reports and studies concerning the Alaska criminal justice system that continue to be highly useful to the public agencies of the state and federal government. But there is no law school.

A political lesson: Looking back now, I wonder whether we did the state a service by closing a political window. Yes, it is still my opinion

A political lesson: Looking back now, I wonder whether we did the state a service by closing a political window.

that under the circumstances of that hour, a demonstrably inferior law school would have been established. But, with the improvements that have come to be over the past 39 years the University of Alaska of today would surely have in place a law school that meets at least the median standards of quality. Now, prevailing opinion, which is uninformed and misguided, runs against a law school. "Already too many lawyers," one hears; end conversation.

Feasibility reconsidered: The question of feasibility, considered narrowly, is now moot. The population of the state has doubled. The number of qualified candidates is no longer in question. Three principal questions remain. First, in terms of state priorities in education, how high does the establishment of a law school rank? Is it worth the investment? Second, a closely related question, if a law school is established, what should it look like? Third, how would we get there? These questions, particularly the second, deserve considerable study, far more than can be offered in a "Bar Rag" article, but I offer a few comments to suggest a direction for the Alaskan community.

Before expanding on these questions, a prefatory question needs to be addressed. Why should the Alaskan legal community get involved in examining these issues or promoting interest in an Alaskan law school? Having just attended two programs on lawyer ethics at the annual convention, and an informed address on the future of legal education, the answer seems obvious. We have the knowledge, the experience, the discipline and the moral duty.

Law school inevitability: Some kind of a law school will happen in Alaska, if not in this decade, the next. Maybe some enterprising group will take a shot at a proprietary school, a profit-making venture with support from members of the Legislature who would like to have a law degree. The automatic admission perk is a tempting reason to target a "law school-lite." The boom in proprietary education and its negative consequences suggest this

is a bad route. Maybe one of several law schools now showing an interest in Alaska will start an Alaskan arm, either from public interest or from concern that flagging enrollment at home calls for financial and enrollment reinforcement. Two different law schools have now moved to formalize relations with Alaska, one talking with the Bar Association, and one with the university. There are other indications from time to time that narrowly focused efforts of this kind are under way.

None of the approaches that fail to directly engage the Alaskan legal community are likely to produce the great law school that will result if the Alaskan legal community undertakes a leadership role in emphasizing quality and contemporary curriculum, and involves all the interested parties. The university is a starting player, notwithstanding occasional signs of negativism from the regents. The Justice Center at UAA should be centrally involved. The new law degree may follow the pattern of other graduate programs in starting with an undergraduate major. The Institute for Social and Economic Research and Alaska Pacific University have interested roles. Within the legal community, the Supreme Court, through the Judicial Council, practicing lawyers, and law graduates in business or public administration all have potential parts to play in this effort.

The legislature, particularly the Legislative Affairs Agency, the Judiciary Committees and interested leadership officers are a necessary component of any final chapter in examination of the issues.

Years ago, the Alaska Bar Association fought hard to remind the Supreme Court that it was a constitutionally established body with responsibility for the quality of legal performance in Alaska, beginning with admissions and discipline. Our educational efforts now include a vigorous and highly qualified Continuing Legal Education program. Surely the Bar Association's responsibilities extend to examining the shape of legal practice and opportunities for Alaskans to enter the profession — including the establishment of an accredited law school.

About the author: John Havelock is a member of Havelock & Duffy. In a long legal career, he has served on the Board of Governors, as Delegate to the American Bar Association, Bar Association administrator (once it took only part of one person's time!), professor and founder of University Justice programs and attorney general. He may be best known as an ADN columnist, having started writing for the News in the late 60's.

Note: A link to the full feasibility study is available at the Bar Rag Facebook page: [facebook.com/alaskabarrag](https://www.facebook.com/alaskabarrag).



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In Memoriam



Sally J. Suddock
(1946 - 2014)

Sally Suddock: An editor's editor

Continued from page 1

because she wanted to nail down a legal proposition. She just called and asked for a professor dealing with her subject matter. She believed in asking straightforward questions and getting straightforward answers.

I recall her commenting on so many articles of various authors, recommending this edit or that presentation on the page. An editor's editor, she was an artist who knew how to get to the heart of a matter.

The world is not the same without Sally.

—Steven T. O'Hara

My sister-in-law Sally Suddock served as managing editor of the Bar Rag for many years. She loved working with bar association staff and with the contributing lawyers in all their resplendent variety. Though not a lawyer herself, Sally found our profession endlessly fascinating. She was a great journalist and a delightful iconoclast beloved by many and sorely missed by me.

—Judge John Suddock

Hi. I'm very sorry to hear this. She was a tower of power at the Bar Rag and her enthusiasm will be greatly missed.

—Peter Aschenbrenner

I submitted my last Bar Rag column before learning the sad news of Sally Suddock's passing. I thought that she would enjoy that I featured her in one of the vignettes. Now she'll never know.

Sally was my editor. No writer wants an editor; all need one. I occasionally teased, in my column, that the Bar Rag found my irreverent humor discomfiting; in reality Sally and her gang were always supportive and hardly ever tapped the brakes. And even then, gently.

I am sure Sally had a life outside her part-time gig as an editor. I didn't really know that part, so I'll leave the full eulogizing to those who knew her better and more fully. To me, she was my editor, and I honor that.

Enough said. RIP, Sally.

—Kenneth Kirk

Sally J. Suddock, 68, died Saturday, Aug. 2, 2014, at her home in Anchorage after a long illness surrounded by her family.

She was born March 27, 1946, in Chicago. After graduating from the University of Illinois she worked as a reporter at the Chicago Tribune in the late 1960s and early '70s. At the Tribune she was a member of a team that won a Pulitzer Prize for uncovering flagrant violations of voting procedures in the March 21, 1972, primary election. In 1973 she moved to Alaska where she had lived ever since.

Sally worked as a reporter at the Anchorage Daily News from 1973 until 1980 and in 1977 with her colleague Rosemary Shinohara won the prestigious Gerald Loeb Award for distinguished business and financial journalism for a series of articles the two wrote about construction problems with the trans-Alaska oil pipeline.

After 1980 she worked at the Alaska Journal of Commerce, hosted the Alaska Business segment on KENI News Radio and served as executive director of the Alaska High Tech Business Council. She also was publisher and managing editor of the Alaska Bar Association's newsletter "The Alaska Bar Rag" until her death.

After 2000 she began developing as a bead, metal and fiber artist, serving at one time as president of the Alaska Bead Society. She and her daughter Ariel sold their works at various shows and markets around Southcentral Alaska.

Sally and her husband Warren were married July 27, 1979.

She is survived by her husband Warren, daughter Ariel and husband David Phifer all of Anchorage; brother-in-law George and wife Linda and family of Anchorage and Seattle; brother-in-law John Suddock of Anchorage and family; a brother Robert Wagner and wife Anita of Syracuse, NY; sister-in-law Anka Wagner and Eric Neal of Philadelphia, PA; a nephew, James Wagner and wife Marika of Brooklyn, NY; the Dickows of Illinois and Wisconsin; David and Vivian Watts of Washington, D.C.; Ariel's father Tim Jones of Palmer; and dear friends throughout the world. Her first grandchild is expected in October.

At Sally's request no service has been planned. She asked that in lieu of other memorials, donations be made to the Bird Treatment and Learning Center in Anchorage (Bird TLC).



Sally takes in the sights and sounds of New York City.

Sally was here, editing the Bar Rag, when I came to the Bar in 1982. She "knew her stuff" and was a real professional. She was also fun to work with and was as upbeat editing her final Bar Rag last spring, as she was with editing any of the issues in the 32+ years before that. I miss her.

—Deborah O'Regan

I will very much miss Sally. For many years I was chair of the Historians Committee and the committee that organized the annual Territorial Lawyers Dinner. She was always very helpful in publicity for our events and in assisting in reporting them and organizing the photographs for each event. Also, we should all be proud of her work on the Bar Rag. It is a unique publication which combines professional information with articles of general interest and humor. It is in my opinion far superior to any other bar publication I have reviewed.

—Leroy Barker

I learned on this trip, of Sally Suddock's death. She had edited the Bar Rag for the entire 28 years I have written for the paper. She put up with and fixed up my submissions for all those years but we never met. I knew her from the sometimes snarky (in a fun way) emails and letters about deadlines and such. Her readers saw her reflected in the layout of each Bar Rag. She will be missed and mourned.

—Dan Branch

I worked with Sally for many years on the Bar Rag; first as a typesetter, then layout and design. Sally was an excellent editor. I will miss her not only as a colleague but also as a friend. I chose yellow at Sally's request. You are missed my friend.

—Sue Bybee

I thought I should elaborate just a bit on my comment about Sally Suddock; "She saved the Bar Rag". Until she entered the picture, each edition of the Bar Rag was written, edited and laid out through the volunteer efforts of a handful of lawyers.

The time and effort involved in putting together the paper which came out almost monthly through the first 3 or 4 years was enormous. There were a number of occasions when we wondered how long we could continue to publish. When Sally entered the picture, we stopped worrying. She believed in the paper, added a professional touch of class, and kept it going all these years. She will be very much missed.

—Harry Branson,
Editor Emeritus

I heard the news the other day and our hearts go out to all of you and Sally's family. We had worked with Sally for so many years on the Bar Rag and are so saddened by the news. She will be greatly missed by all of us at Anchorage Printing Inc.

—Gerrett Rhodes, General Manager,
Anchorage Printing Inc.



Sally enjoys some wine at Denali Winery.

Nuts and bolts of starting, running a 21st Century solo practice

By *Monica Elkinton*

I didn't have any classes in law school on running a business or managing a law practice. And even if a class like that were offered, I wouldn't have taken it. I knew I wanted to be a public defender, and I knew I wanted to work in the public sector for my entire career. Yet life changed, and I found myself a few years later planning to open a solo law practice, but not knowing at all where to begin.

I borrowed the book everyone recommended, Jay Foonberg's "How to Start and Build a Law Practice." The book is published by the American Bar Association, and is available on their website for \$69.95. The most recent edition, the Fifth Edition, was published in 2004. I borrowed the Fourth Edition, which was published in 1999 — the year I graduated high school.

It should not be a surprise to any of us that a lot has changed in the practice of law in the last 10 years, and especially in the last 15 years. Although most of the trust accounting advice was spot on, the chapter on office technology was painfully out of date. The book advised me to have a fast desktop computer with at least a good word processing program installed. It suggested I think about getting a facsimile machine because a lot of other attorneys were beginning to use them.

It was difficult to find resources on what technology I actually would need, or what resources would help me in the kind of practice I wanted to run. I hope that through a series of "Bar Rag" articles, I can provide some suggestions for starting a solo practice in 2014, not 1999.

The absolute best thing I did was meet with as many other solo practitioners as I could. I cold-called other attorneys whom I knew had started their practices in the previous five years. I knew some from the Anchorage Bar Association's Young Lawyers Section, some from taking the Bar exam together, some from Facebook. I asked them out to lunch and asked for advice. I tried to get as much advice on as many topics as possible. I also asked to talk to more senior attorneys who had previously had solo practices. I always took a notepad to lunch, and I wrote down everything. I asked to tour their offices, and to meet their staff (if any). Some let me into their space, pointing out their setup, how they kept track of bills, how they stored their files, and all aspects of their practice. I'm the kind of person who likes to have a lot of information before making a decision. I wanted to know how lots of different people chose to do things, and only then could I decide what was right for me. That's the pleasure of being a solo. You get to decide every-

thing: from the art that hangs on the walls in your reception area to which printer to buy. It is a lot of decisions, but I was pretty excited about it after five years working for the state.

The second best thing I did was find a CPA. I wanted to support woman-owned businesses, so I went to the website for the Alaska Society of CPAs (www.akcpa.org) and looked at the directory of Anchorage CPAs, cold calling the firms that were owned by women. Even before I quit my previous job, I was taking other solos out to lunch for advice. All those lunch dates were business expenses, and my CPA helped me figure out how to keep track of them. She later helped me decide on my corporate structure and what bookkeeping system to use so that tax time could be cheaper and easier. (Of course, I had talked to other solos about these things previously, so I was already informed.) She also suggested I get an Alaska Airlines credit card to use for business expenses only, which I did.

A little further along, she also suggested I use QuickBooks for my bookkeeping. Having a CPA means having someone who can look at your financial situation with professional judgment, and give advice that fits your particular situation. When I first started the practice, I had more time than clients, so I learned to keep my own books. I checked "QuickBooks for

Dummies" out of the Loussac Library and read it cover to cover. I chose to use QuickBooks Online, the cloud version of the software. Cloud software is a hot topic in CLEs right now, and solo attorneys should figure out for themselves whether it's something they want to explore, paying attention of course to our recent *Ethics Opinion 2014-3* and what will work for their practice.

Today, I still use QuickBooks Online, and I find that I still love doing the books for my practice. Everyone complained about it, but with software I like that makes it easy, bookkeeping becomes a chore like cleaning or making the bed, where I feel better at the end of the day when everything is orderly and in its place.

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

Possible Future Topics in this series: What kind of insurance do I need (health, malpractice, vehicle)? What do I do about trust accounting? Marketing and networking for the 21st Century solo.

Ravin revisited: A brief recap of Alaska's unique marijuana law

Continued from page 1

judicial interpretation of the constitutional right to privacy. The court went on to review legislative history and clarified that the personal use amount of marijuana permitted in the home under *Ravin* was up to four ounces—the standard previously set by the Legislature in 1982. The Alaska Supreme Court declined to hear the case.

2005-2009: Recriminalization Part 2

A few years later, Gov. Frank Murkowski spearheaded another effort to re-criminalize marijuana and put *Ravin* back before the court. In legislative hearings held in 2005 and 2006, evidence was presented that sought to establish that marijuana had become much more potent and dangerous since *Ravin* was decided, and therefore the state now had a sufficient interest in proscribing all recreational marijuana use — even that by adults in the privacy of their homes. The bill eventually passed and was signed into law.

Litigation followed, and in *State v. ACLU of Alaska* (2009), the Alaska Supreme Court dismissed the case on ripeness grounds, declining to engage in pre-enforcement review of a criminal statute, and without reviewing the merits of *Ravin*. This decision left the legal landscape regarding marijuana in Alaska identical to how it looked to the court in *Noy*: *Ravin* remained good law even though the statutes on the books stood in direct conflict. That remains true today.

Federal law

There is of course another issue hovering over this entire area of jurisprudence: that pesky body of federal law, against which so many

Alaskans like to rail. The United States Code lists marijuana as a Schedule I narcotic, among the most dangerous of controlled substances (conversely, the State of Alaska classifies marijuana as a schedule VIA substance—a drug with the lowest degree of danger). Understanding how marijuana can remain legal under state law, yet illegal under federal law presents another exam fact pattern, this one involving federalism, state sovereignty and preemption. In short, while federal law is supreme over state law, the Tenth Amendment's anti-commandeering rule precludes the federal government from forcing states to pass coexistent drug laws, or from forcing states to enforce federal drug laws. Though drug enforcement has historically involved a state-federal partnership, states are not obligated to regulate and penalize drug use at all, but they can, and do, craft laws consistent with their own norms, preferences and social policy goals. So while *Ravin's* common law rule means personal consumption of modest amounts of marijuana in the home is beyond the reach of state punishment, such activity may still be subject to federal prosecution.

Decriminalization and legalization

Marijuana regulation remains a controversial and complex topic, both in Alaska and nationwide. Beyond criminal justice administration, legalization touches on matters related to public health, economics, racial equality, personal medical decision-making, and general privacy and autonomy. It is a serious social policy issue and, in light of these concerns, a number of states have shifted away from enforcing criminal penalties for personal recreational marijuana use. As of this

writing, nearly one-third of the states and Washington, D.C., have decriminalized possession of small amounts of marijuana for recreational purposes. Nearly half of the states and Washington, D.C. have legalized medical marijuana use. In 2012, voters in Colorado and Washington State took things a step further, approving ballot measures that legalized the recreational use and retail sale of marijuana. Though the Colorado and Washington regulatory schemes differ, both involve state licensure for commercial marijuana production, processing and distribution, and both allow personal use and possession by adults over 21.

So far the federal government has been supportive of these developments. The Department of Justice (DOJ) issued a memorandum stating that it would not interfere with plans to implement the ballot initiatives, thus allowing these states to continue to serve in their traditional function as "laboratories of democracy." The Department of Treasury has issued guidelines for helping banks work with marijuana businesses and congress is considering legislation aimed at ensuring re-

spect for state marijuana laws.

Legalization in Alaska?

Alaska may be the next state with a regulated marijuana industry. If Ballot Measure 2 passes in November, it would legalize recreational marijuana use and establish a taxation and regulation program similar to Colorado's. The initiative would make the non-public use and possession of up to one ounce of marijuana legal for adults 21 and over and would establish a regulated system of marijuana cultivation, retail sale and taxation. If the initiative passes, the state will have nine months to establish the regulatory framework.

About the author: Jason Brandeis is an assistant professor of Justice and Legal Studies at the University of Alaska Anchorage. For a much deeper dive into the history and development of Alaska's marijuana laws, see his article "The Continuing Vitality Of *Ravin v. State: Alaskans Still Have A Constitutional Right To Possess Marijuana In The Privacy Of Their Homes*" published in the December 2012 *Alaska Law Review*.

Dick Madson and Ken Covell enjoy a laugh at Johnny's Seafood in Tacoma. Dick is living at 1515 Dock St., No. 318, Tacoma, WA. It's a short car, train or bus ride from SeaTac Airport. His condo with Johnny's Seafoods' deck right next door, is just downhill from the old Union



Station which is the current federal courthouse in Tacoma. He would enjoy visits from old friends, enemies and even judges. He and Jean can be reached at 305-849-1559. His winter address is 8110 E. Wolfberry Circle, Gold Canyon, AZ 85218.

Alaskans are not receiving good corrections value

Continued from page 3

havior. (*Abraham v. State*, 585 P.2d 526, 533 (Alaska 1978)). Further, AS 33.30.011(3) provides that the ADOC commissioner shall, for persons committed to his custody, “establish programs . . . that are reasonably calculated to . . . create or improve occupational skills . . . enhance educational qualifications . . . and . . . otherwise provide for the rehabilitation and reformation of prisoners, facilitating their reintegration into society.”

Regrettably, former Gov. Frank Murkowski’s commissioner of Corrections from 2002 to 2006, Marc Antrim, took the correcting out of corrections. Despite the above-referenced state constitutional requirements, court rulings and statutory mandates, the Murkowski administration eliminated all ADOC programs, save for one federally funded long-term substance abuse treatment program. The Murkowski administration bought into the cynical and unproductive “nothing works” philosophy developed in 1976 by New York sociologist Dr. Robert Martinson. It is now apparent that the “nothing works” approach is a bankrupt philosophy that has had enormous human costs and fiscal impacts.

The elimination of correctional rehabilitative programs, coupled with the passage of legislation that increased criminal penalties, and the state’s policy decision to shift the method of funding its community mental health from a grant-funded approach to an approach relying on federal Medicaid funds, has led to unmitigated systemic failure. Harsher sentences, warehouse prisons and a corrections establishment that militantly rejected the idea of salvaging offenders became the rule of our land. This systemic failure – which often generates homelessness, unemployment, returning to or falling into addiction, new crimes and new victims, and ultimately reincarceration – results in a costly waste of public resources and diminished public good will. Alaska’s high recidivism rate is ample proof of this failed practice of the past.

The winds of change

In 2006, then-Gov. Sarah Palin appointed Joe Schmidt commission-

er of Corrections. Soon after his appointment, Commissioner Schmidt read the January 2007 Alaska Judicial Council (AJC) Recidivism Study, which revealed that 66% of offenders return to custody within three years of release. As a 20-year corrections veteran, Schmidt had witnessed far too often the unacceptable outcomes of the “nothing works” philosophy: an unacceptably high rate of recidivism and continual growth of the inmate population. He has since been steadfast in his commitment to adopt more constructive approaches to corrections administration.

Commissioner Schmidt’s concerns about the need for reform are well taken. Alaska’s prison population continues to grow by 3% per year, one of the higher rates of prison population growth in the nation. Between 2005 and July 2014, the “hard bed” prison population grew from 4,231 to 5,224. At this current rate, by 2016 a new prison will need to be constructed to keep up with prison population growth, and by 2020 our inmate population will reach 6,313. The most recently built prison, Goose Creek Correctional Center, cost the state \$250 million to construct. Note, too, that our prison population continues to grow while both violent and property crimes have decreased. The number of Alaskans on probation has also increased. In 1982, 1 in 80 Alaskans was under the jurisdiction of the ADOC. By 2009, that ratio had grown to 1 in 32.

The system Commissioner Schmidt inherited promoted a cycle of repeat offending. What has the ADOC done to turn this expensive system around under his stewardship? With legislative support, the ADOC has implemented substance abuse treatment programs both in and outside of prison, cognitive behavioral treatment, sex offender treatment in prison, educational and vocational training programs, anger management, parenting classes and more. According to a 2014 ADOC legislative presentation, the rate of recidivism is finally beginning to drop.

Much more is needed

Alaska will not, however, be successful in achieving a meaningful recidivism reduction without the collaborative and committed assistance of other state and community partners. Too many components of successful reentry are beyond the mandate of the ADOC. For instance, if communities are not prepared and willing to accept these returning citizens, the rehabilitation re-

sources expended in prison will be for naught. Former prisoners cannot successfully return to their communities without safe and secure housing, living-wage employment, ongoing mental health and substance abuse support and encouragement, and hope that life will indeed be better if they turn away from old friends and the destructive behaviors of the past. Fortunately, there is growing recognition of this needed continuum of care. Community organizations are now taking positive steps to provide essential community reentry components. More is needed.

Sixty-five percent of those comprising ADOC’s population have a mental health or serious substance abuse problem. These individuals need much faster access to community-based mental health services than is available to them today. The state’s decision to not expand Medicaid eligibility has a disproportionate impact on this population and on the state’s ability to provide rapid access to services needed during the critical first week back in the community.

The effects of involvement with our criminal justice system are not limited to incarceration or probation, and have other wide-ranging impacts. According to an AJC 2013 research memo, since 1980 a total of 250,319 people, or one-third of Alaska’s population, has been convicted of at least one offense in Alaska. As a result, untold numbers of Alaskans face barriers to employment, housing, and federal and state benefits – barriers euphemistically referred to as “collateral consequences.” Over the years, policymakers have passed a patchwork of state and federal laws and regulations that create serious barriers to reentry. According to an inventory conducted by the American Bar Association’s Collateral Consequences Project, Alaska has 1,625 such statutory and regulatory barriers. Seven hundred forty-six of these relate to employment alone. A comprehensive review of the need for these serious impediments to reintegration into our society must be undertaken.

A new, promising recognition of the need for change by Alaska’s policymakers

Alaska’s problems mirror those of our country as a whole. According to the International Centre for Prison Studies, as of 2013, the United States has the dubious distinction of incarcerating more people per capita than any other country in the world. Despite falling crime rates, incarceration rates continue

to grow. This reflects the failure in approaches to adult corrections nationwide, failure that has generated both the loss of human potential and enormous fiscal consequences.

Other jurisdictions are taking a hard look at their correctional systems. As a result of the innovative work done in other states, we are learning what it takes to reduce recidivism and promote a former prisoner’s successful reentry. This work has often been driven more by fiscal considerations than by moral reflection. But, regardless of the underlying motivations, there is a growing recognition that the time has come for rethinking our outmoded and ineffective approaches to adult corrections.

There is clear evidence that Alaska’s policymakers are now also intent on reform. Recently, the Alaska Legislature has been focused on ensuring that Alaskans receive better value for criminal justice dollars spent. This is evidenced by the recent passage of SB64, which among other things creates a Criminal Justice Commission with a broad mandate for review of existing laws and practices. We can hope that the newly formed Alaska Criminal Justice Commission will examine how and why Alaska is filling its expensive prison beds with 57 per cent non-violent offenders, many of whom have mental health and substance abuse problems.

There are also encouraging signs that those in the administration responsible for Alaska’s criminal prosecutions recognize the need for change. On March 18, 2014, during a hearing on SB56 (a bill to reduce the possession of certain controlled substances from a felony to a misdemeanor), the head of the Department of Law’s Criminal Division, Deputy Attorney General Richard Svobodny, stated, “something has to be done about the amount of people we have incarcerated.” He further confirmed, “we are not dealing with the addiction problems people have.”

Conclusion

There has never been a louder, more collective call for change in the way Alaska administers its correctional system. Let’s ensure that we never go back to the failed practices of the past by supporting our Legislature’s and our administration’s efforts to promote a system of justice that protects the public through measures that provide offenders with a meaningful opportunity for reformation while not undermining the promotion of public safety. Only then will Alaskans receive good value for the criminal justice dollars spent.

Carmen Gutierrez was born and raised in Alaska. Ms. Gutierrez is an attorney, and was a criminal defense lawyer in Alaska for 25 years, both as a public defender and in private practice. Most recently, she served as deputy commissioner for the Alaska Department of Corrections. There she was responsible for identifying and implementing needed inmate rehabilitation programs and developing community reentry strategies. She served as chair of the Alaska Prisoner Reentry Task Force, until her retirement from the ADOC in December 2012. She helped develop and write Alaska’s first ever Five-Year Prisoner Reentry Strategic Plan, 2011 – 2016.



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The new Uniform Real Property Transfer On Death Act

By Rep. Max Gruenberg

Effective July 21, under a new law¹ Alaska became the 25th jurisdiction² to permit the use of transfer on death (TOD) deeds with the passage of the Uniform Real Property Transfer On Death Act (URPTODA), codified at AS 13.48. Under URPTODA, a TOD deed can be used to transfer a person's interest in real property to a person or organization (including a charity) upon the transferor's death.³ The TOD deed must include (1) a legal description of the property, (2) the names and addresses of all transferors and beneficiaries, (3) a statement that it will become effective upon the transferor's death, and (4) an acknowledgement. The deed must be recorded in the recording office where the property is located prior to the transferor's death.⁴

Probate is not required; transfer of title is automatic upon the transferor's death.⁵ Should the transferor's death be questioned, the act does not limit how it can be proven. Production of a certified copy of the death certificate is probably the

most common way of doing so. If the optional forms in the act for the deed and for revocation are used,⁶ the only required fee is for the instrument's recordation. Should the transferor change her mind, she can either revoke the TOD deed or execute a new one and record the instrument during her lifetime. The beneficiary can also disclaim the property.⁷ Any attempt to transfer or bequeath the property after the TOD deed has been recorded is ineffective, unless it is recorded in the same recorder's office during the transferor's lifetime.⁸

A TOD deed is not for everyone. Complex and large estates may require more sophisticated planning. And even with a small simple estate it is often wise to consult an attorney or other professional to ensure that the owner is using the best estate plan and that issues like possible tax consequences are fully considered. URPTODA simply provides another method to pass real prop-

erty at death.

The legality of a TOD deed is determined by the law of the situs where the property is located, regardless of the owner's home state. Thus the new Alaska law only governs property in Alaska.

URPTODA is similar to other state and federal laws that currently allow automatic transfers of personal property, outside of probate, upon the owner's death, including laws for Individual Retirement Accounts, securities and bank accounts.

HB 60 was suggested by retired Anchorage attorney R. Stanley Ditus. It received support and helpful commentary from the Alaska Commission on Aging, AARP, the Alaska Association of Realtors, and the Alaska Bankers Association. Members of the Alaska Bar Association's Probate and Real Property Law Sections were particularly influential, with special thanks to Beth Chapman, Dave Shaftel, Caroline Wanamaker and Deborah Randall. Credit also goes to Ben Orzeske, legislative counsel to the Uniform Law Commission in Chicago, former Alaska Assistant Attorney General Deborah Behr, former Chief State Administrative Law Judge Theresa Thurbon (two of Alaska's Uniform Law commissioners), Alaska Legislative Counsel Theresa Bannister, who did the drafting, and to Miles Brookes and Nicoli Bailey of my staff, who

did the heavy lifting to navigate the bill through the hearing process. Thanks also go to bill co-sponsors, Reps. Cathy Munoz, R-Juneau, Bob Lynn, R-Anchorage, Chris Tuck, D-Anchorage, David Guttenberg, D-Fairbanks, and Harriet Drummond, D-Anchorage. Chairmen Kurt Olson, R-Soldotna, of the House Labor and Commerce Committee and Wes Keller, R-Wasilla, of the House Judiciary Committee were also very helpful.

The bill was introduced in January 2013 and passed through three committees and the floors of both houses. Gov. Sean Parnell, who was also supportive, signed it into law on April 22. Thanks to everyone else who worked on the bill. I couldn't list everyone, but their help was really appreciated.

Rep. Max Gruenberg currently represents House District 14 – the Boniface, Russian Jack, College Gate and Nunaka Valley neighborhoods in Anchorage. He sits on the House Judiciary Committee.

Footnotes

¹Ch. 10, SLA 14, formerly known as House Bill (HB) 60.

²The list includes 25 states and the District of Columbia.

³Although each person can only transfer her interest in the property, several co-owners can transfer their interests in a single TOD deed. See AS 13.48.010 and AS 13.48.070 (b).

⁴See AS 13.48.050(4)

⁵See AS 13.48.010 and AS 13.48.030.

⁶See AS 13.48.120-130. These can be downloaded from the Alaska Court System's Self-Help Services: Probate website at <http://www.courts.alaska.gov/shc/probate/probate.htm>.

⁷See AS 13.70.100(e) and (f) and AS 13.70.130.

⁸See AS 13.48.070 (a)(2)



Chief Judge Ralph Beistline is shown at the Alaska District dinner with Sandra Singleton, Greg Razo, Karen Loeffler and Bankruptcy Judge Gary Spraker.

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The emperor has no shirt: Alaska's annexation vexation

By Peter J. Aschenbrenner

"The 'D&D Bar & Grill' is venerable," I turn to the assembly. "I lunched here with my comrades from Alaska Legal Services."

"Technically," the governor corrects me, "that's 'Bar & Cafe.'"

"And that's going back a 'fur' piece," Jimmy and Dolley agree.

We wander into the back room and whisk away the flies. An ancient television brays news of fresh disasters.

"If you're wondering whether Russia will be annexing a second region anytime soon," the announcer proclaims, "one thing for sure, it definitely will not be Alaska. According to Rasputin, the U.S. state is too cold for his taste."

"Will we have to give Alaska back to Russia?" the governor asks. "Tina Fey would never let that happen."

"I hope you don't mind if I take off my shirt, do you?" A newcomer settles in and brushes road dust from his trousers.

James and Dolley inspect his torso for wounds.

"You don't seem any the worse for wear," Dolley approves. "Sorry about the revolution," she adds.

"Just to show there are no hard feelings," Tsarina Alexandra's top advisor adds, checking out his tan in the full length mirror, "I'm going to give Alaska back to you."

"To the United States," I suggest. "If you're talking reregifting."

"Actually, Alaska was an independent republic in 1867. The Grand Republic of the North," Madison applies his own corrective.

"If we may be heard?" an instance of officialdom wishes admittance to our assembly. "We are the Reapportionment Board."

"You're not supposed to be meeting until 2020," I put in.

"We've discovered a flaw in the Constitution, and you're just what the governor ordered."

"Doesn't the phrase run 'what the doctor ordered'?" Dolley asks.

"Please," the Governor stays her soulmate. "I respond to all honorifics."

"The problem begins with this text: 'Each house district shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area.'"

"So?" we chorus.

"That's the only time 'compact' appears in the Constitution," the chair continues, "but it also appears in the Statehood Act, that is, in the disclaimer of Section 4."

"The source of all our woe!" the governor turns to Dolley and Jimmy. "This is a conundrum wrapped up in a dilemma."

"When legislators are chosen, there is no requirement that they

match the socio-economic interests of their constituents."

"That's completely unrevolutionary!"

We wave Jimmy the floor.

"Americans were obliged to hire members of Parliament to represent their interests at Westminster. 'One province, one member.' That was the principle that obtained under the reign of King George."

"Everyone was happy, right?" the Chair dabs her brow.

"Because Americans could buy a legislator to get a hearing for their interests," the Governor supposes.

Dolley eases the crisis.

"If Americans could buy MPs they could count on, then 'taxation without representation' – which does make a fine motto for a license plate – would become meaningless as a rallying cry."

"Does Rasputin have any suggestions?" the chair turns to our timeless visitor.

"Perhaps you should do what we do in Russia. Nowadays we give constituents the government they deserve. The people should be for the government, of the government and, if necessary, buy – or something like that. And if they don't measure up, then Siberia!"

"The voters? The legislators?"

"Both," Rasputin replies. "Which brings me to the solution I have for your flaw in the universe."

"Why do these things always happen to Alaska?" the chair moans. "I should have moved to British Columbia."

"Soon enough, 2020 foresight will be required," Rasputin checks his pocket diary, "unless we've gone back to the Julian calendar by then."

"Here's a copy of the Statehood Act," the members tender Alaska's pedigree. "Knock yourself out."

"I have always found that provision to be somewhat odd," Governor Egan arrives and takes up his duties behind the soda fountain. "How could we 'disclaim all right and title to any lands or other property not granted or confirmed to the State'? That's what Section Four says. Emphasis supplied, naturally."

"Of course there's a logical problem with writing a law about a state that doesn't exist. Just ask St. Anselm," Jimmy explains. "'The perfect state must exist, because if it didn't exist it wouldn't be perfect.' So Alaska must be more perfect than it is. Or was."

"A Princeton degree at work," Dolley yawns.

"That's just what Congress had in mind," Rasputin rubs his chin. "Now where did I leave my beard?" "Yes, that's it. No one really knew what Alaska was back then. There were no reality shows in 1867. 'Ice Rink Parking' or 'Ship Creek Dock Disasters' was, like, way in your future. But it must have occurred to Congress that if some of Alaska was

lost in the corrupt arbitration over the 'Panhandle,' that there might be even more Alaska to lose. After all, international boundaries are pretty much a crap-shoot."

"We are a northern country," the television bles yesterday's interview with Rasputin. "Alaska – is it in the south? It's quite cold up there. Let's not be over enthusiastic about it. Because if we have our people there we will have to pay extra to our employees there because they live in the north."

"Well that wraps it up and pretty nicely too," Jimmy pulls up a chair and signals for tableside service. "Can I get extra bacon on my cheeseburger?"

"Speaking only for myself, and not for any other official," Rasputin doubles down on Jimmy's order – 'pass him my bill,' he asides to his server – "it sounds like neither the United States nor Russia

knows where Alaska begins. Or ends. Hence Section 4's disclaimer, thanks to St. Anselm, recognizes Alaska's claims to everywhere in this or any other universe."

The chair of the Reapportionment Board has a final plea.

"Will we find constituents to match our socio-economic criteria as required by the state constitution?"

"Only if you pay them to live in Alaska," Rasputin wolfs down.

Peter J. Aschenbrenner has practiced law in Alaska since 1972, with offices in Fairbanks (until 2011) and Anchorage. From 1974-1991 he served as federal magistrate judge in Fairbanks. He also served eight years as a member of the Alaska Judicial Conduct Commission. He has self-published 16 books on Alaska law. Since 2000 the Bar Rag has published 41 of his articles.

Attorney Discipline

Bar Counsel admonishes Anchorage attorney

Bar Counsel issued a written private admonition to Attorney X for his failure to avoid a controversy over fees and for failing to account for and deliver fees promptly.

Attorney X represented his client in one criminal matter and undertook to represent his client in a second related criminal proceeding. Attorney X mistakenly applied the wrong statute of limitations and filed a late appeal, and the court dismissed the second case.

Attorney X promptly notified his client, provided an affidavit outlining his ineffective assistance, and advised the client on steps to minimize the consequences of the lawyer's mistake. Attorney X also agreed to refund his unearned fee. The client asked Attorney X to return the file and asked for a refund of all fees paid from the onset of the first representation.

Despite multiple requests for a return of the fee, Attorney X did not provide an accounting or make any refund. The client filed a petition for fee arbitration. At the fee arbitration hearing, Attorney X agreed that he owed a partial refund, but he was unable to calculate the correct amount to refund his client, although he contended he had earned much of his fee.

The Panel found that Attorney X, at a minimum, had to calculate the amount he believed was due as a refund and should have been prepared at the hearing to articulate and justify his decision not to refund more. The Panel found that Attorney X was entitled to compensation for some work and found that Attorney X should pay an amount to his former client. Attorney X immediately refunded the fee the panel awarded and paid interest that the Panel assessed. The Panel referred the matter to the Bar for disciplinary action based upon Attorney X's failure to calculate, and promptly pay, what he believed was an appropriate refund to his former client. The Panel concluded that missing a deadline was negligent, but not unethical neglect under the presented facts.

Guidelines for lawyer discipline generally recommend a reprimand when a lawyer is negligent in dealing with client money and causes injury. Attorney X had no prior discipline, which served to mitigate a reprimand to a written private admonition. This summary in the Bar Rag is to educate Bar members of their duty to account promptly and to refund fees promptly to their clients.

NOTICE TO THE PUBLIC

By order of the Alaska Supreme Court,
entered July 14, 2014

FREDERICK H. HAHN, V
Member No. 8111099
Anchorage, Alaska

is reinstated
to the practice of law
effective July 15, 2014.

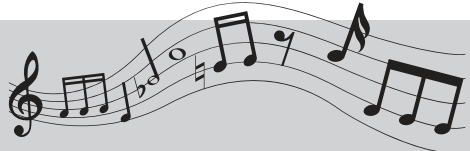
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My Five

Asking somebody to name their top five favorite songs presents a uniquely difficult challenge. It also provides insight (if you consider yourself an amateur psychologist) into the personalities of the various members of the Alaska Bar. In this second installment we highlight the top-fives of: David Mannheimer, chief judge, Alaska Court of Appeals; Lauren Sommer, associate, Landye Bennett Blumstein, LLP; and Forrest Dunbar, candidate, United States House of Representatives.

Lauren Sommer

1. Harry Chapin – “Circle”
2. John Mellencamp – “I Need a Lover”
3. Richie Havens – “Here Comes the Sun” (Live) (Beatles cover)
4. The Temptations – “Papa Was a Rollin’ Stone”
5. Bob Dylan – “Gotta Serve Somebody”

Forrest Dunbar

1. “Juicy” – Notorious B.I.G.
2. “Baba O’Riley” – The Who
3. “Star Spangled Banner” – Marvin Gaye (1983 NBA All-Star Game)
4. “The Legend of Zelda Theme” – Koji Kondo
5. “My First Song” – Jay-Z

Judge David Mannheimer

As someone who loves listening to, and playing, many kinds of music, I can’t say that I have five favorite songs. But here are five songs that are among my favorites (in no particular order):

1. “Jessie’s Girl” – Rick Springfield: Probably the most structurally complex song ever to reach Number 1 on the Billboard charts.
2. “If I Needed Someone” – the Beatles: Written by George Harrison in a mixolydian scale, with beautiful, unpredictable chords in the bridge.
3. “Dear Sister” – Claire Lynch: A story from the Civil War. I heard Ms. Lynch perform this song live in Raleigh, NC to a small audience; people around me were crying.
4. “Jealousy” – the Gin Blossoms: The beat is energetic; the narrator is dissipated, anti-authoritarian, and ruefully self-aware.
5. “Hallucinations” – Tim Buckley: Haunted visions of a lost lover; a memento of San Francisco in the mid-1960s.

The first judge’s last law clerk

By Paul Peterson

Why do a judicial clerkship in Barrow of all places?

A partial answer is that, as in most of my major life decisions, I was driven by a desire to become the coolest grandpa ever. Not just climbing Kilimanjaro, but getting engaged at the summit – luckily my girlfriend was hiking with me, so I didn’t have to get engaged to a stranger. Not just teaching English in Ukraine, but founding the school’s first slapstick ballet club. Not just clerking, but clerking with the first resident Superior Court judge above the Arctic Circle.

How many grandpas can say they knew the first resident judge above the Arctic Circle?

Obviously, graduating to enter the worst market for legal jobs in history had something to do with it too, but one glance at the Barrow judge’s resume and I knew this was the job for me. His resume isn’t just impressive, it’s enlightening, and I could always really use a shot of enlightenment.

After graduating from Yale Law School with an article published in the Yale Law Review, Michael Ives Jeffery spent about a year working for legal services in Massachusetts, another year recovering from a near-fatal car accident (that wasn’t his fault), five years volunteering in India at an Ashram and elsewhere before, with no prior ties to Alaska, moving to Barrow and founding the community’s first Legal Services office. He is the only judge Barrow has ever had (being appointed when I was negative three years old), the first white person to join the Barrow Dancers, and one of the first judicial experts on fetal alcohol spectrum disorders.

I didn’t want to just meet him, I wanted to appropriate his life secrets and use them for my own devices. By the time people like him reach their late 60’s, I reasoned, they must spew out wisdom left and right the way baseball players spew dip. If I just got close enough I’d be covered in no time. I could then put the best of his sayings into greeting

cards or etch them on pebbles and make millions.

But when he picked me up upon my arrival at the Barrow airport all he talked about was how much he loved Barrow: this house is where my daughter’s first ... blah blah blah; that whale bone arch is where my wife and I ... yadda yadda yadda. All very interesting I suppose, but I don’t want interesting, I wanted enlightening. And not just enlightening, Mahatma Gandhwhipping-you-with-his-wet-diaper enlightening.

“How about that time you sent a kid you had known since birth to spend the rest of his life in prison?” I egged him on.

“That was tough,” he replied doggedly.

Tough! Of course it was tough, I could have told *you* that. Where’s the lesson for my grandchildren? Where’s my million-dollar pebble?

Weeks went by, months went by, and everything Mike (I get to call him “Mike”) said was still just run of the mill. What kind of grandchild is going to be interested in what the judge packed for lunch or how many times he’s watched “Lord of the Rings?”

Then, after about six months, it finally dawned on me: maybe it was just this “regularness” that I was really looking for.

The judge shows up to work early every day and leaves late every evening; but he always has a pleasant “good morning” and “good night” ready for everyone. He does a ton of volunteer work, from serving on state-wide policy commissions, to singing hymns at the assisted-living home and reading at the elementary school, to cleaning up dishes after staff meetings. But none of this ever comes across as volunteering: He seems genuinely glad to help. How can he still be like this after more than a lifetime of dealing with unspeakably horrible things?

State law requires Judge Jeffery to retire by the time he turns 70 on Dec. 29. I said to him “I guess your last day will be a week or two before then, so you can have a nice Christmas with your family?”

“No,” he replied without a

thought, “I plan on working at least eight hours on the final legally permissible workday I have; I just love my job too much.”

I knew he loved his job, but more than Christmas? More than staying up all night eating pie and then waking up late and eating more pie for breakfast?

This 69-and-a-half year old man, I realized, is less burned out than I was on my first day of work just from waking up early and putting on a tie. How does he do it?

When I ask him about it, he always puts on a guilty puppy dog face, cranes his neck to me slowly and says “Oh, Paul, I *am* burned out.”

Yeah right, Mike.

Burned-out people don’t wake up early to finish the local high school’s latest Battle of the Books challenge, or give their law clerks an endless supply of hot chocolate, or wear the kinds of ties to which the judge is partial. He can’t even fib like a burned-out person; he should try a cat-resigning-itself-to-the-bathtub face next time, or a freshly lobotomized Jack Nicholson impression from “One Flew Over the Cuckoo’s Nest” – the guilty puppy dog routine isn’t going to fool anyone.

So I try more subtle questions to tease out his secret. Essential oils? No, he won’t even use a happy light. Some variation of the Paleo diet? No. What about those magnet brace-

lets seen on TV? No. When he went out of town for an FASD conference I rummaged for clues, but all I could find was a stack of Hawaiian slack guitar music, which I promptly copied to my phone and listened to for three weeks straight. But all it is is pleasant. I wasn’t looking for pleasant.

After months of effort, I’m still not any closer to discovering his secret, which leads me to one logical conclusion: He’s hiding it from me. He doesn’t think my grandchildren are good enough for his wisdom. Who does he think he is to judge my grandchildren like that? They’re barely even hypothetical at this point.

As soon as I recognized his malicious ways, I didn’t get mad or trash his office or yell. No, I just quietly renewed my clerkship contract for a second year.

Judge Jeffery is bound to have a weak moment in the time leading up to retirement, where his defenses are compromised by nostalgia and melancholy, and that’s when I’ll strike.

Paul Peterson is the deputy magistrate and law clerk to the (mostly) Honorable Michael I. Jeffery. Paul just realized that if one counts Kotzebue, then Judge Jeffery is only the second judge above the Arctic Circle. He’ll have to make sure that none of his grandchildren count Kotzebue. You can reach Paul at: PaulRPete@gmail.com

General aviation accidents to major airline disasters



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Abandoning the innocent

By State Rep. Scott Kawasaki

Prison is a life-changing event. It's supposed to be. Regardless of the crime committed, incarcerations are meant to be punitive or rehabilitative; the incarcerated was sent there for a reason. But what if the prisoner is innocent?

Unfortunately, our legal system is far from perfect and innocent Alaskans find themselves in prisons with their only recourse being to work their way through the appeals and post-conviction relief process. Under Alaska law, if an innocent prisoner is lucky enough to be free again, he doesn't receive an apology or any compensation or guidance. I believe Alaska can and should do better. I therefore sponsored legislation this past session to compensate wrongly convicted Alaskans, but there wasn't the political support for my bill.

Justice is the foundation of the American legal system. When injustice occurs, we must all work together to balance the scales and correct our wrongs. While the compensation money won't make up for the years Alaskans wrongfully spent behind bars, it's a way to ease the transition from incarceration back into the public arena. There isn't a monetary value for emotional suffering or being separated from one's family, but we have to start somewhere.

My legislation would have compensated wrongfully convicted Alaskans with \$50,000 per year for every year they wrongly spent behind bars. This amount abides by the federal standard and is the rough median amount for the 30 other states that already have compensation statutes. Alaska should be a leader for justice and equality; we should be on the forefront of this issue rather than lagging behind.

I believe it's the duty of our state to recognize when we've made a mistake, and then take responsibility for it and face the consequences. A government is an entity made for the people, of the people, by the people. I urge you to contact your senators and representatives and ask them to support this change in our legal system. Alaskans control our legal system and we should hold it accountable when it makes a life-altering mistake.

The sponsored legislation was House Bill 352, with more information available at: http://www.legis.state.ak.us/basis/get_bill.asp?bill=HB%20352&session=28. The bill was referred to State Affairs Committee and the Judiciary Committee. We requested a bill hearing but were unsuccessful. Since 2014 ended the two-year cycle of the legislature, all new legislation in 2015 will have to start over.



Scott Kawasaki

Bar People

Kevin Clarkson named 'Super Lawyer'

Kevin G. Clarkson, with Brena, Bell & Clarkson, P.C., was named as a Super Lawyer, by Super Lawyers, a publication of Thomson Reuters, in July, 2014. Super Lawyers is a rating service of outstanding lawyers from more than 70 practice areas who have attained a high-degree of peer recognition and professional achievement. The selection process includes independent research, peer nominations and peer evaluations. Super Lawyers Magazine features the list and profiles of selected attorneys and is distributed to attorneys in the state or region and the ABA-accredited law school libraries. Super Lawyers is also published as a special section in leading city and regional magazines across the country.

Clarkson has twenty-eight years of experience representing clients, including individuals, professionals, small businesses and fortune 500 corporations, in complex civil litigation cases in Alaska's state and federal courts ranging from commercial contract disputes to business dissolutions to employment matters to construction matters to personal injury and wrongful death. He also has substantial experience in a variety of constitutional areas.

Clarkson now joins his colleague Robin Brena as a Super Lawyer. Brena was named a Super Lawyer in 2012.

4 Davis Wright Tremaine lawyers in Anchorage, Alaska selected as 2015 Best Lawyers

Four lawyers from the Anchorage, Alaska, office of Davis Wright Tremaine LLP have been selected by their peers for inclusion in the 2015 edition of The Best Lawyers in America (2015)®.

Partner-in-Charge of the Alaska office, Joseph L. Reece, has been named by Best Lawyers® as a 2015 "Lawyer of the Year" in Corporate Law. Best Lawyers® designates a single "Lawyer of the Year" in each of several high-profile practice areas in major legal markets.

Jon S. Dawson – Copyright Law, Corporate Law, Litigation: Banking and Finance, Litigation: Mergers and Acquisitions, Litigation: Real Estate, Mergers and Acquisitions Law

Barbara Simpson Kraft – Corporate Law, Mergers and Acquisitions Law, Real Estate Law

Joseph L. Reece – Corporate Law, Real Estate Law

Robert K. Stewart, Jr. – Labor Law: Management, Litigation: Labor and Employment

Peterson inducted in NADN

Matthew Peterson, of counsel to the law firm of Clapp, Peterson, Tiemessen, Thorsness, and Johnson, was recently inducted as the first Alaska member of the National Academy of Distinguished Neutrals (NADN).

Membership is by invitation only after peer nomination and review, and is limited to attorney arbitrators and mediators who have proven experience in the field and met stringent practice criteria.

Matt Peterson is an AV rated attorney with over 30 years of experience in trials of complex civil cases throughout Alaska. Over the past several years, he has limited his practice to mediation and arbitration of civil litigation matters. He has handled mediations and arbitrations of complex civil lawsuits, including personal injury, wrongful death, and professional malpractice, as well as corporate, commercial, insurance, and business matters. He conducts mediations in Anchorage and throughout the state of Alaska. He is a Fellow of the American College of Trial Lawyers, and has been recognized by other professional groups. More information with regard to Mr. Peterson's background and practice can be found at the law firm's website, www.cplawak.com, or call 907-272-9463. For further information on NADN, visit www.nadn.org, or call 813-600-5678.



Matthew Peterson

By the Numbers

By Bill Falsey

| | |
|---|------------------------------------|
| Lawyers in active status and resident in the United States as of 2013: | 1,268,011 |
| Population of the United States as of 2013: | 316,128,839 |
| Lawyers in active status and resident in the United States per capita in 2013: | 0.40% |
| Members of the Alaska Bar Association as of 2013: | 4,217 |
| Members of the Alaska Bar Association in active status as of 2013: | 3,118 |
| Percentage of active-status lawyers in the U.S. who are active-status members of the Alaska Bar: | 0.25% |
| Active-status members of the Alaska Bar Association residing in Alaska as of 2013: | 2,494 |
| Rank of Alaska in list of states and territories ordered by number of active-status, resident lawyers: | 48th |
| Population of Alaska as of 2013: | 735,132 |
| Active-status members of the Alaska Bar resident in Alaska as of 2013 per capita: | 0.33% |
| Rank of Alaska in list of states and territories ordered by active-status, resident lawyers per capita: | 22nd |
| Lawyers in active status and resident in Anchorage as of 2013: | 1560 |
| Population of Anchorage as of 2013: | 300,950 |
| Lawyers in active status and resident in the Anchorage per capita in 2013: | 0.52% |
| Lawyers in active status and resident in Fairbanks as of 2013: | 190 |
| Population of Fairbanks as of 2013: | 32,312 |
| Lawyers in active status and resident in the Fairbanks per capita in 2013: | 0.58% |
| Lawyers in active status and resident in Juneau as of 2013: | 202 |
| Population of Juneau as of 2013: | 32,556 |
| Lawyers in active status and resident in the Juneau per capita in 2013: | 0.62% |
| States and territories with more active-status, resident lawyers than Juneau per capita: | DC (8.03%), NY (0.85%), MA (0.64%) |

Sources:

http://www.americanbar.org/resources_for_lawyers/profession_statistics.html
<https://www.alaskabar.org/servlet/download?id=2827>
<http://www.infoplease.com/us/states/population-by-rank.html>
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<http://myalaskabar.org/PublicDirectory/PublicDirectory.aspx?s=fairbanks&all=true>
<http://myalaskabar.org/PublicDirectory/PublicDirectory.aspx?s=juneau&all=true>

Bar People

Sen K. Tan retired from the Superior Court bench July 1, 2014. He is enjoying traveling, riding his motorcycle and playing tennis. In between travels, Judge Tan will be available to conduct private mediations, settlement conferences and alternative dispute resolutions.

...

Italia A. Carson has been promoted to Division Chief, Acquisition Law Services Division, Office of the Staff Judge Advocate, Tinker Air Force Base, Oklahoma. Carson supervises the delivery of government procurement legal support by civilian and military attorneys for the Air Force Materiel Command (AFMC), Oklahoma City Air Logistic Complex (OC-ALC), the largest of three logistics complexes in AFMC. OC-ALC contracts over \$5 billion annually in contractor logistic support and depot maintenance of select U.S. Air Force aircraft and the entire USAF inventory of jet engines. She personally serves as program counsel for the B-1B and B-2 bombers and provides litigation support for protests, claims, and contract disputes. She is a former law clerk for the Honorable Sen K. Tan and the Honorable David Mannheimer and is a former associate with Davis Wright Tremaine, LLP, in Anchorage.



Italia A. Carson

Farley admitted to American College of Trial Lawyers

Laura L. Farley has become a Fellow of the American College of Trial Lawyers, one of the premier legal associations in America.

The induction ceremony at which Laura L. Farley became a Fellow took place recently before an audience of approximately 465 persons during the recent 2014 Spring Meeting of the College at the La Quinta Resort & Club in La Quinta, California.

Founded in 1950, the College is composed of the best of the trial bar from the United States and Canada. Fellowship in the College is extended by invitation only and only after careful investigation, to those experienced trial lawyers who have mastered the art of advocacy and whose professional careers have been marked by the highest standards of ethical conduct, professionalism, civility and collegiality. Lawyers must have a minimum of 15 years trial experience before they can be considered for Fellowship.

Membership in the College cannot exceed one percent of the total lawyer population of any state or province. There are currently approximately 5,868 members in the United States and Canada, including active Fellows, Emeritus Fellows, Judicial Fellows (those who ascended to the bench after their induction) and Honorary Fellows. The College strives to improve and elevate the standards of trial practice, the administration of justice and the ethics of the trial pro-



Laura Farley with sponsor Matt Peterson

profession. Qualified lawyers are called to Fellowship in the College from all branches of trial practice. They are carefully selected from among those who customarily represent plaintiffs in civil cases and those who customarily represent defendants, those who prosecute individuals accused of crime and those who defend them. The College is thus able to speak with a balanced voice on important issues affecting the legal profession and the administration of justice.

Laura L. Farley is a partner in the firm of Farley & Graves, P.C. and has been practicing in this city for 22 years. The newly inducted Fellow is an alumna (alumna) of University of Puget Sound School of Law.

Barat M. LaPorte joins Oles Morrison as partner

Oles Morrison Rinker & Baker, LLP, is pleased to announce that **Barat M. LaPorte** has joined the firm as a partner in its Anchorage, Alaska office.

LaPorte practices in the firm's Commercial Litigation group, where she represents companies and individuals in litigation matters, including regulatory and appellate practice. Prior to entering private practice, LaPorte served as a law clerk for the Alaska Supreme Court. She earned her law degree from the University of Notre Dame Law School, magna cum laude, in 1995, where she was a Thomas J. White Scholar. She earned her undergraduate degree with honors from the University of Notre Dame in 1992.



Barat M. LaPorte



Gladys Liliana Rey (left) and Chief Justice Dana Fabe.

Gladys Liliana Rey has successfully passed the National Center for State Courts Spanish oral exam administered by the Alaska Court System. She is the second interpreter candidate to be fully trained in Alaska through the Language Interpreter Center and the second interpreter to receive court certification by the Alaska Court System. To prepare for certification, she participated in a rigorous curriculum of study and passed a written and an oral exam. The written exam tests a candidate on English language skills, court-related terminology, and ethics. The oral exam measures the candidate's language knowledge and fluency and the candidate's skills in three modes of interpreting used in the courtroom: simultaneous, consecutive, and sight translation of documents.

UA System hires longtime Fairbanks attorney Andy Harrington as associate general counsel

The University of Alaska System is pleased to announce that longtime Fairbanks attorney Andy Harrington has joined its legal team as associate general counsel.

Harrington has practiced law in Fairbanks for 33 years, serving in a variety of different positions, including serving over 25 years with the Alaska Legal Services Corp., and most recently serving as senior assistant attorney general in the Alaska Department of Law. He joined UA in late July and replaces former UA associate general counsel Larry Zervos, who retired in March.

"The quality, breadth and variety of Mr. Harrington's legal experience, his reputation for keen intellect, collegiality, public service and hard work, coupled with his agency and management experience, make him extraordinarily well-qualified for this position," said UA General Counsel Mike Hostina.

Harrington received his degree from Harvard Law School, graduating cum laude. His first job out of college was clerking for the Alaska Supreme Court. During his career with Alaska Legal Services, he was a staff attorney, a supervising attorney and served eight years as the nonprofit agency's statewide director. At the state attorney general's office, he worked in the Commercial and Fair Business Practices Section. Peers and the Alaska Judicial Council have recommended Harrington for seats on the Alaska Supreme Court on several occasions.

Six Davis Wright Tremaine lawyers selected as 2014 Alaska Super Lawyers

Six lawyers from the Anchorage, Alaska office of Davis Wright Tremaine LLP have been selected by their peers for inclusion in the 2014 edition of Alaska Super Lawyers. The Super Lawyers list, published by Thomson Reuters Legal, is identified through an extensive research and survey process, starting with peer nominations. Only five percent of the lawyers in Alaska are named to this list.

Super Lawyers also named DWT partners Jon Dawson and Joseph Reece to their list of the top 10 lawyers in Alaska.

Davis Wright's Alaska lawyers named to the 2014 Super Lawyers list include:

Jon S. Dawson – Business/Corporate, Business Litigation, Intellectual Property

Gregory S. Fisher – Employment & Labor, Appellate

Michael Jungreis – Business Litigation, Intellectual Property

Barbara Simpson Kraft – Real Estate, Business/Corporate, Land Use/Zoning

Joseph L. Reece – Business/Corporate, Real Estate

Robert K. Stewart, Jr. – Employment & Labor, Government Contracts, General Litigation

Glenn Cravez selected by peers for inclusion in The Best Lawyers in America

Glenn Cravez has been selected by his peers for inclusion in the 21st (2015) edition of *The Best Lawyers in America* for his work as a mediator. Glenn mediates in Anchorage and throughout Alaska as he has for the past 25 years. He works to help people take charge of their lives and plan their futures. His goal is to help people find solutions that provide satisfaction, confidence, and control at a reasonable cost.

Alaska's Territorial Court: Frontier justice on snowshoes

By Donna C. Willard-Jones

The history of the federal territorial court is as rich and colorful as Alaska itself. Snowshoes, sled dog teams, canoes, paddle wheelers, steamships, a narrow-gauge railway, airplanes, log cabins, tents, lean-tos, spruce bough beds, roadhouses and saloons, have all played a part in weaving its tapestry.

When the United States purchased "Seward's Folly" from the emperor of Russia in 1867 for the sum of \$7.2 million, it acquired more than 365,000,000 acres of land inhabited by fewer than 30,000 people. Known as Alaska, an appellation derived from the Aleut word Alyeska meaning "Great Land," it is comprised of 570,374 square miles, one-fifth the size of the contiguous 48 states and more than two and one-half times larger than Texas.

Stretching across five time zones, Alaska's 6,640-mile coastline is greater than the rest of that bordering the combined lower 48 states. As the history of the federal court in Alaska unfolds, the significance of these facts will become apparent.

For its first 17 years, Alaska remained virtually lawless, apart from a municipal self-consent government established at Sitka. It was not until the United States Congress passed the first Organic Act in 1884 that some semblance of order was imposed. And, even then, it was sparse at best.

By its terms, Alaska was recognized as both a civil and judicial district, for which a governor; a district judge; a district attorney; a clerk of court who was also to serve as secretary, treasurer and recorder; four commissioners; and a marshal who was designated the executive officer of the court, were to be appointed by the president for terms of four years, with the advice and consent of the Senate.

The act further established Alaska's first district court at Sitka, directing it to also sit once a year at Wrangell. It was accorded "the civil and criminal jurisdiction of district courts of the United States exercising the jurisdiction of circuit courts..." and was directed to apply the general laws of the State of Oregon.

The first session of court was held Nov. 4, 1884, in an old military barracks building at Sitka, the former Russian capital.

Between July 5, 1884, when Ward

McAllister Jr. was appointed as the first federal judge, and June 1900, no fewer than eight men held the office, most being removed, without notice or hearing, before fulfilling a full four-year term.

In 1899, Judge Charles S. Johnson, then headquartered at Sitka, embarked on a 7,000-mile trip, traveling from Juneau to Dawson City, down the Yukon River to St. Michael, across to Nome over to Unalaska and down the coast to home. In Nome, where the first court session in that venue was held, the courthouse was a leaky tent, with the judge robed in a yellow rain slicker and rubber boots.

Congress, in 1900, finally recognized the impossibility of but a handful of people administering justice in a gargantuan territory where, given the discovery of gold in both Alaska and the Yukon, crime ran rampant.

Alaska was figuratively separated into three divisions, with a district court judge to be appointed for each. The first division was designated to sit at Juneau, the second at Nome and the third at Eagle City, a settlement of some 1,700 people, on the Yukon River near the U.S. border with Canada. The three judges were James Wickersham, a Tacoma, Wash., lawyer who was appointed by President William McKinley to administer justice in the Third Division; Judge Melville C. Brown from Wyoming to preside over the First Division; and Alfred S. Noyes from Minnesota, who was named to the new Second Division post.

In order to reach his new district, it took Judge Wickersham some two weeks, traveling first from Seattle to Skagway by steamship. He then embarked on the new White Pass and Yukon rail line to Lake Bennett, took another steamship to Cariboo and yet another ride on the railroad to Whitehorse. From there, a steamer took the party down the Yukon River to Dawson City and yet a third carried the court to Eagle where it arrived July 15, 1900. At that juncture, the district did not include so much as one courthouse, jail, school or public building, let alone a road or trail.

For Judge Noyes, the trip was even longer because he had to travel from Eagle to the edge of the Bering Sea at St. Michael, where a steamship conveyed him across Norton Sound to Nome. Accompanying the judge was a district attorney and a marshal

from Montana, all of whom owed their appointments to one Alexander McKenzie, a powerful businessman who had designs on the recently discovered Nome goldfields. He also happened to be on board.

The court was not a static one. Generally, rather than litigants traveling to headquarters, the judges rode circuit. The first jury term ever held in the Third Division took place at Circle City on Sept. 3, 1900, to which the court traveled by stern-wheeler. Thereafter, in the winter of 1901, wearing a pair of snowshoes and followed by a five-dog team and sled, driven by another official, Judge Wickersham trekked 526 miles down the Yukon River trail to Rampart where he convened court to adjudicate a mining dispute. The round trip took 45 days. And that pattern continued, particularly in the Third Division which encompassed 300,000 square miles.

In at least one instance, in 1901, not only the judge and other court officials but also a Grand Jury and petit jury sailed 750 miles from Nome to Unalaska for the first session of court ever held in the Aleutian Islands. Three trials, including two for murder, were completed with one of the men convicted later being hanged.

One of the more important tasks of the judges was the establishment of recorders' offices in places convenient for the miners who were flooding the territory. Judge Wickersham spent untold months musing and boating from Eagle, to Circle, to Rampart to Fairbanks, because he bore that responsibility for the northern half of the vast area.

Other judicial duties included staking land for courthouses and jails; collecting license fees in order to build them; establishing civil government in the mining towns that literally sprang up overnight; issuing saloon licenses; and on-site investigation of mining claims, the litigation of which commanded most of the early court's attention.

Sessions were held in whatever building was available whether it be a warehouse, saloon, roadhouse, school, church, tent or ship. Virtually all early permanent structures erected, both courthouses and jails were, in the absence of sawmills, constructed from logs. Sleeping accommodations for the peripatetic judiciary were equally varied, including tents, as well as miners' and trappers' cabins, all furnished with spruce bough beds.

The legal opinions rendered by former judges had to be collated and published, a task that Judge Wickersham undertook. The first volume of the Alaska Reports (Wickersham) was published in 1903. Even after he left the bench in 1907, Wickersham continued the endeavor, noting in the 1910 edition, that he did so "amid my efforts, as delegate from Alaska, to secure favorable legislation from Congress for the organization of an elective territorial legislative assembly for Alaska" (3 Alaska Reports (iii) (Wickersham 1910)).

Judge Wickersham edited his last volume in 1936 while residing in Juneau, where he was practicing law. In his spare time, Judge Wickersham made the first attempt to climb Mount McKinley, or as Alaskans prefer, Denali. At one point, he was called upon to construct a coffin for the first white woman to cross the Continental Divide and to thereafter conduct her

funeral service.

When Congress added the coastal region from Bristol Bay to Yakutat to the Second District, Alaska's Floating Court came into existence in 1903. Traveling from Rampart by steamer, the court was met by the revenue cutter Rush at St. Michael, from where it sailed, via Nome, to Bristol Bay, holding a session in Nushagak. Law enforcement machinery was organized and a tract of land was staked for the purpose of building a commissioner's court, as well as a jail. Its situs was named Dillingham.

From there, for similar purposes, the court sailed to Unalaska, Belkofsky, Unga, Karluk, Sand Point, Kodiak, Seldovia and Nuchek before finally reaching Valdez, a voyage of 3,000 miles. The most memorable case tried during that first session in Valdez, in rented space, was title to the Kennecott copper mines. The court returned from Valdez to Eagle by dog sled. The floating court, which began annual sailings in 1910, remained in existence until 1957. These divisions remained in place until Alaska became a state in 1957 and the District of Alaska was formed.

Court travel became somewhat easier when the first wagon road, between Valdez and Fairbanks, was completed in 1910 by the Alaska Road Commission, which was created by Congress in 1905. It was named after its builder, army engineer Gen. Wilds P. Richardson and ultimately was upgraded to accommodate automobiles in the 1920's. By 1937, there were 11,008 miles of roads and trails in Alaska.

As of December 1, 1904, with the discovery of gold in the Interior, Third Division headquarters were moved from Eagle to Fairbanks. Then, in 1909, Congress created a fourth division and added one more judge and the Third Division headquarters were moved from Fairbanks to Valdez, with the former being redesignated as the Fourth Division.

Finally, in 1943, Anchorage became the residence of the Third Division. When Col. Carl Ben Eielson pioneered commercial aviation in 1924, using Fairbanks as his base, the Fourth Division was quick to take advantage. Thus, by 1926, Alaska's Flying Court joined its floating counterpart. District Court Judge Cecil H. Clegg, together with his court reporter, an assistant U.S. attorney and a marshal, took flight from Fairbanks to hold a Fourth Division session in Wiseman. Had a river boat been used, the trip would have taken two weeks, instead of just under three hours.

Altogether, as set forth in the chart elsewhere in this publication, 45 men served as territorial district court judges in Alaska between 1884 and 1959 when the Great Land was admitted to the Union as its 49th state.

Finally, there is the scandalous case of Nome's first judge who was found in contempt of court by the Ninth Circuit almost before the ink was dry on his commission, as were the district attorney, other government officials and several lawyers. However, there is insufficient space to tell that tale which was described by the Ninth Circuit as "grossly illegal proceedings ... which may be safely and fortunately said to have no parallel in the jurisprudence of this country." Only in Alaska.

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Negotiation strategies: Some rules for deal-making

By William A. Earnhart

"Dad, if I'm really good, can I go to the movies tomorrow?"

"Only if you clean your room, Bobby."

We all negotiate every day with merchants, business partners, our children, our spouses. But these are often micro negotiations conducted instinctively.

Commercial negotiations, through attorneys or other representatives, whether lasting hours, days, or months, are something very different. Particular attention must be paid to the communications and what passes not only between the parties, but also what passes to each party from their respective representatives. Whether negotiating a larger allowance or a major labor contract, several important rules must be followed.

Black's Law defines negotiation as:

[T]he process of submission and consideration of offers until acceptable offer is made and accepted. . . . The deliberation, discussion, or conference upon the terms of a proposed agreement; the act of settling or arranging the terms and conditions of a bargain, sale, or other business transaction.

What makes a negotiation successful? Is it that both parties go away happy? Is it that my client goes away happier than the other party? Is it that the other party has been totally devastated? Is it that my client has been less devastated than the other party? The specific answer is relative.

A negotiation to conclude litigation is normally very different from a commercial contract negotiation to establish an ongoing relationship. Both are generally different from a labor contract. Because the relationship of the parties differs in each negotiation, the goals and methods must vary as well.

There are numerous books, papers, charts and lectures regarding negotiations and negotiation strategy. Almost all have at least some value or truth, but none are applicable to every negotiation. The following addresses a number of broad rules of general application that may be helpful both to the negotiator and to the client in preparing for and approaching negotiations to achieve the best possible result. Although to every rule there is an exception, the following are rules or concepts that apply in almost any formal negotiation, whether a traditional "I win - you lose" scenario or in collaborative negotiating.

Negotiation is more art than science, as stated by Harvard Business professor Michael Wheeler: "You cannot script negotiations." Although sometimes on very discreet issues negotiations in fact can be scripted, in general, negotiations involve human beings and imperfect knowledge. Thus, they rarely follow a predictable course.

Prepare

The first rule in negotiations is to prepare, prepare and prepare. "One who is fully prepared, awaits the unprepared and will be victorious" – Sun Tzu. This involves collecting information to support your position and/or to dispute the opposing party's position. What has

discovery shown us? Who is a weak/strong witness? What is the average wage increase in this industry or in this locale? What is the history of this property, and what pollution concerns should we expect? It also involves exploring resolutions, compromises and ideas to make sure input and thought have been given to all aspects of business operations. Does a term involving wages at the table affect employee or employer taxes or benefits? How will this change affect the company one year or 10 years down the line?

Preparation is also essential in setting goals and a realistic bottom line. It is easy for a client to state what they want or need. It takes more thought to decide on a Plan B if those immediate goals cannot be achieved. Part of preparation is also knowing when you are prepared to leave the table. A willingness to leave the table is an essential point to not only avoid unacceptable results, but, more importantly, provides essential leverage at the table.

Another aspect of preparation is anticipating the desires of your opponent. This helps not only in directly forming arguments but also finding a way to win-win solutions. "You must never try to make all the money that's in a deal. Let the other fellow make some money too, because if you have a reputation for always making all the money, you won't have many deals" – J. Paul Getty. Even in the most strident negotiations, knowing your opponent's wants, needs and desires can be used to increase your negotiation leverage. Negotiation is about trading value for value. To get something of value, a party trades something of less value to the other party. It is difficult to be a successful negotiator without determining what the other side values or does not value. An understanding of the opponent not only adds to a win-win scenario it can also be used to leverage a better result for your client by maximizing value received in exchange.

Tell no lies

The second rule is to retain your credibility. It is essential to retain your credibility throughout the process. Retaining credibility does not mean that your position cannot change over time. However, it does require that changes in position be understandable, either based on new information, new facts or reasonable reassessment. Although negotiation is all about adjusting positions, being overly fluid without reason reflects a lack of investment in the discussion.

Further, do not take unrealistic positions. Unreasonable positions are perceived as a lack of knowledge or judgment. An unrealistic position undermines your credibility when later you state your client's actual bottom line.

An essential part of retaining your credibility is thorough advice to and from your client and negotiating team. Nothing will undermine your credibility faster than having to retract an offer because you got ahead of your client and drove the



"The best negotiators are partially forensic psychologists, reading and anticipating the thoughts of the other side, both the mind of the negotiator and their client."

negotiation away from your client's expectations.

Patience is a virtue

The third rule is to be patient. Negotiations take time. Rapport needs to be established in most cases, and facts, information and arguments need to be adjusted. Further, on both sides of the table, negotiators may need time to address client issues and gain client acceptance. Most, if not all, negotiations rely on trust between negotiators and between each negotiator and his or her client.

Never underestimate the power of silence to induce the other side to reconsider its position. Remember, there are no absolutes in negotiations. Although you should not negotiate out of empathy, calculated acts of anger, frustration or relief can all be effective tools in which to achieve your objectives.

Patience is also an important aspect in communicating that you are willing to leave the table and that your position is well considered. But, only leave the table if all options have been explored and are not acceptable. Contracts are rarely formed when one party is unwilling to compromise.

It's a show

Fourth, always remember body language during negotiations. Facial expressions, slump of the shoulders, and crossing of the arms are almost as important as tone in conveying our thoughts.

The best negotiators are partially forensic psychologists, reading and anticipating the thoughts of the other side, both the mind of the

negotiator and their client. Prepare all client representatives who may appear at the table to show their poker faces and not be surprised, angry or pleased, except at appropriate times.

Remember, it takes two to tango

Fifth, above all else, always listen to the other side. Do not be afraid to take advantage of opportunities that present themselves. In other words, do not be afraid to adjust your well-planned strategy. "If your opponent opens the door you must rush in" – Sun Tzu.

Negotiations involve two or more sides." Hearing the concerns and needs of the other parties allows you to explore weaknesses, common ground or opportunity. It also allows you to formulate your position to best address the situation.

Negotiating without active listening is like playing chess while ignoring the moves of your opponent. It leaves you vulnerable when a little further effort to listen might be the deciding factor in a successful negotiation.

Negotiations, whether in search of a win-win solution or total devastation of the opponent, require preparation, anticipation and listening. Being able to perceive your opponent's interests and respond to them is more likely to achieve a desirable result than simply moving forward based on the needs of your client.

About the author: William A. Earnhart is an attorney in the law firm of Wohlforth, Brecht & Cartledge, A Professional Corporation, with offices in Anchorage. He specializes in complex litigation and labor and employment matters, including labor negotiations. He can be reached at (907) 276-6401 or wearnhart@akatty.com.



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The economy: Alaska's biggest challenge and why you should care

By Cliff Groh

Recent annual deficits of more than \$1 billion in the state budget and a debate over oil taxes have drawn attention to the most important and most complicated challenge facing Alaska.

For the past three decades, the State of Alaska's fiscal system has featured five critical elements. The "Alaska Fiscal Five" are:

(1) overwhelming reliance on revenues from taxes and royalties from oil development;

(2) high state spending per capita relative to national averages;

(3) no broad-based statewide taxes paid by individuals;

(4) no use of Permanent Fund principal for anything except generating income; and

(5) no use of Permanent Fund income in significant amounts for anything but paying Permanent Fund dividends and protecting the Permanent Fund principal from inflation.

The fall in oil revenues caused by the continuing decline of oil production in Alaska means that these five markers of the Alaska fiscal system are highly unlikely to survive in combination for the next three decades. The State of Alaska is already rapidly depleting its cash reserves, and anyone who understands reality knows that the trend in oil revenues and oil production will remain downward no matter what oil tax regime the State of Alaska imposes.

That continuing fall in oil production will create wrenching problems for the state government, the economy and people and local gov-

ernments around the Last Frontier. There are no easy fixes for these problems.

The day of reckoning is coming, although the exact timing is unclear. The adjustments Alaska will need to make could be pushed off by a number of factors, including continued higher oil prices, a decline in oil production that is shallower than forecast, temporary upticks from new oil wells, improvements in technology that reduce the cost of producing oil in Alaska, and much-ballyhooed development possibilities such as the development of a natural gas pipeline to take North Slope gas to market. But even if all this good news comes – and it is exceedingly improbable that all of it will – those factors will only delay the inevitable.

The Prudhoe Bay Curve and the coming fiscal and economic crunch

Alaska's fiscal and economic challenge is well-known, although many Alaskans hold only a hazy understanding of its dimensions. Oil production provides more than 85 percent of the unrestricted General Fund revenue for the Alaska state government. Veteran Alaska economist Scott Goldsmith calculated in a 2011 report that counting oil-related and spinoff jobs, half of Alaska's jobs can be traced in some way to oil development.

Discovered in 1967, Prudhoe Bay is the largest oilfield ever found in North America and the source of most of the oil that has run through the Trans-Alaska Pipeline System ("TAPS" or "the pipeline"). At the peak of production in 1988-1989,



more than two million barrels of oil per day flowed through the pipeline, which carries 98 percent of the oil produced in the 49th State to market from the North Slope. TAPS now transports less than 550,000 barrels a day, however, well under a third of the throughput less than two and a half decades ago. The volume of oil flowing through the pipeline went up every year from the opening of the pipeline in 1977 until 1988-1989, and has dropped every year but one since then.

Alaska's heavy reliance on this non-renewable and steadily declining resource makes "the Prudhoe Bay Curve" a big problem for the state. Outside of the petroleum sector, moreover, the economy on the Last Frontier is thin. Developing a significant tax base in the state unrelated to oil has been difficult, partly because the value of the non-petroleum resources in Alaska has tended to be relatively low and partly because Alaskans have chosen not to collect much tax from non-petroleum resources and non-petroleum economic activity.

Getting ahead of the Curve

With oil production tailing off and no easy alternatives, Alaskans will be navigating a challenging future for themselves, their families and their communities. To better understand the trade-offs and values needed to chart that course, Alaska Common Ground is sponsoring a free public forum on Alaska's fiscal and economic future from 9 a.m. to 6 p.m. Saturday, Oct. 4, 2014, at the Wilda Marston Theatre at Loussac Library in Anchorage, with lunch and snacks available for purchase on site.

Aided by the University of Alaska Anchorage's Institute of Social and Economic Research and the State of Alaska's Legislative Finance Division, this forum will cover the basics in the morning. There will be a primer on state finances that includes an entertaining introduction to Alaska's fiscal system followed by sobering projections on the state's reserves. Featuring experts like Professor Goldsmith and Alaska natural gas pipeline federal coordinator Larry Persily as well as Alaskans on the front lines of the coming crunch, this event will focus in the afternoon on laying out the options for the fiscal and economic future as Alaska travels the downward slope of the Prudhoe Bay Curve. The program will also allow Alaskans to use tools to build their own fiscal system based on the elements of the budget they want and the tax types and levels they believe are appropriate.

Over the course of the day, we will address questions such as:

- What does the long-term drop in oil production mean for state spending, including spending on education?
- Why has the state's budget essentially doubled in the past 10 years?
- What are likely to be the major drivers of proposed future increases in the operating budget?
- How do the desires for allocating state funds to proposed

big-ticket capital projects like a natural gas pipeline, the Susitna-Watana hydroelectric project, and the Knik Arm bridge fit in with declining oil revenues?

- What are the pros and cons of targeted budget cuts vs. across-the-board budget cuts?
- What would an economic crash be like for Alaska, and does the crash of the late 1980s offer lessons?
- What would a sustainable fiscal system for Alaska look like?
- How can Alaska best help the people of Alaska deal with the coming shrinking economy on the Last Frontier?
- What are the potential rewards and risks of state investment in a large-diameter natural gas pipeline, and what is the likelihood of such a project actually going into service?
- What are the fiscal, political, and socioeconomic effects of Alaska being the only state without either (a) any form of state income tax paid by individuals or (b) any statewide general sales tax?
- How will the transience in Alaska's urban areas and the growing diversity of the state's population help shape the responses to the declines in oil production and revenues?
- What should the Permanent Fund be for?
- What is likely to happen to the Permanent Fund and the Permanent Fund dividend as oil revenues continue to fall?
- How much should the responses to declining oil production take into account the interests of future generations of Alaskans?
- Will different approaches for addressing the coming crunch have different distributional effects on various groups of Alaskans? If so, by what criteria should losses be allocated among various groups?

This forum on Oct. 4 is co-sponsored by ISER, the League of Women Voters of Alaska, the League of Women Voters of Anchorage, the Anchorage Public Library and Commonwealth North.

Attending this forum—or even a portion of it—will help you understand the facts and the choices facing Alaska.

About the Author: Cliff Groh is a lifelong Alaskan and a lawyer and writer. Groh authored a chapter for the 2012 book "Exporting the Alaska Model: Adapting the Permanent Fund Dividend for Reform around the World" (Palgrave Macmillan, 2012), and some of the material in this essay overlaps with that chapter. Groh was involved in the creation of the per capita Permanent Fund Dividend Alaska has today while serving as an assistant to the Alaska Legislature in 1982. Groh was also special assistant to the Alaska Commissioner of Revenue in 1987-1990. A board member of Alaska Common Ground for almost two decades, Groh became that organization's chair in May 2014. This column will continue with coverage of the Ted Stevens case in the next edition.



DO YOU KNOW SOMEONE WHO NEEDS HELP?

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

Contact the Alaska Bar Association or one of the following coordinators when you learn of a tragedy occurring to someone in your local legal community:

Fairbanks: Aimee Oravec, aimee@akwater.com

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

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.

SHOULD THERE BE A LAW

Book Reviews

'The Widow Wave': A synopsis of a book detailing a complicated maritime trial

This nonfiction story centers on the passion-driven trial that resulted from the worst recreational fishing boat accident ever to happen in San Francisco's long maritime history.

Francis Dowd, his son and three other men left San Francisco Bay on Dowd's 34-foot boat for a day of salmon fishing out on the Pacific Ocean. The boat vanished under mysterious circumstances. There were no survivors or witnesses to whatever happened. Much speculation ensued in the San Francisco newspapers and the evening broadcast news about what may have occurred. Was the boat sunk by a rogue wave? Or run down by one of the large ships in the area?

Ultimately, a lawsuit was filed by the widow of one of the men onboard against Francis Dowd's widow. I, a relatively inexperienced lawyer at the time, was asked to defend Mrs. Dowd. She maintained that although her husband was many things, he was not a negligent or careless man. On this slim statement, I built my case. My opponent was a highly experienced lawyer, a Goliath known for always prevailing, in fact crushing his opponents in the courtroom.

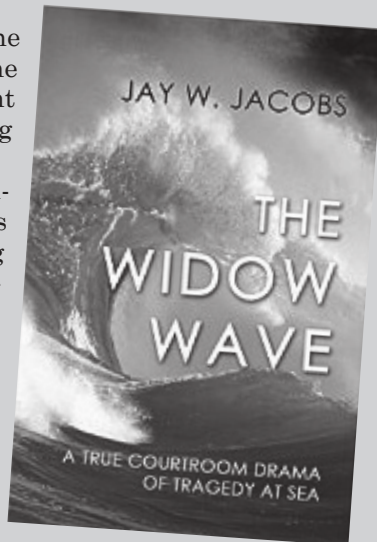
Under the special circumstances of no physical evidence and no eyewitnesses, the three-week jury trial hinged on the testimony of both sides' expert witnesses who intertwined the physics of rogue wave formation, navigation and meteorology, with the all-too human story of the fragility of life. The dramatic nature of each day's testimony overwhelmed the courtroom. Which side was ahead seemed to change day by day, almost witness by witness.

The old legal bromide, 'You never try the case you prepare,' was never more apropos than in this trial. Discovering (what) happened in a trial is not the difficult part. 'Why' something happened is far more complicated, probing the deepest recesses of the human mind to learn why the people involved took the actions they did. The intricate piecing together of that puzzle was what this case was all about.

The three weeks in court were an extreme emotional burden for my client. If it had been only her husband who died, in time she would probably have come to accept that. Her husband was a grown man, doing something he loved. But her son was also on board. It is hard to imagine a greater grief for a mother than to bear the death of a child. If the jury found her husband was responsible for the loss of her son, it would have been the death of her soul.

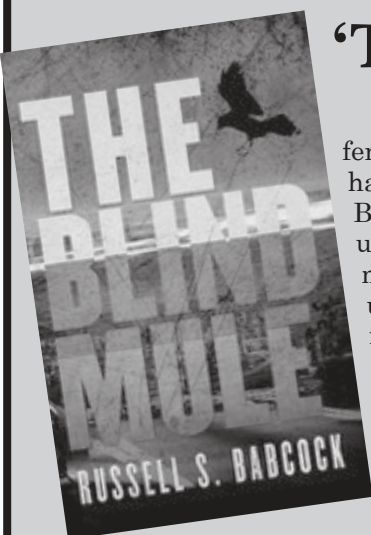
Compounding this pressure was the fact that the widow suing Mrs. Dowd was seeking sums that could potentially wipe her out financially. The two factors prompting most people into settling — the fear of going to court and the possibility of financial devastation — had no effect on her. She regarded the allegations of negligence as a cloud over her husband's good name, and she wanted that cloud removed. For her, honor was more important than money.

"The Widow Wave" by Jay W. Jacobs will be released in hardback Sept. 10 by Quid Pro Publishers. It is currently available in Kindle/Nook version and paperback from Amazon and Barnes & Noble. Jacobs has been a member of the California bar for 35 years, specializing in maritime law. He retired from the practice of law to write full time. Jacobs and his wife live on Whidbey Island overlooking Puget Sound. Prior to law school, Jacobs was a sailor and then an officer in the merchant marine. Over a three-year period, he sailed on cargo ships, ore-carriers and tankers on voyages to Europe, Africa, India, the Far East, South America, the Persian Gulf and Japan. These experiences at sea were a great help in unexpected ways in the trial that is the subject of the book.



'The Blind Mule'

Russell Babcock, a former prosecutor, defense attorney and Alaska attorney general, has released his first novel entitled "The Blind Mule." This crime thriller is based upon Babcock's legal experience spanning more than 25 years. The book draws heavily upon Babcock's defense of many unknown drug couriers, also known as "blind mules." As of Sept. 1, 2014, the novel will also be available in Spanish. For more information, please visit www.blind-mule.com.



Your digital afterlife

By Bill Falsey and Chelsea Ray

What should happen to your Facebook and email accounts when you die?

In practice, many simply persist. It's been reported that more than 30 million Facebook accounts belong to dead people.

Most wills don't address the issue, and federal privacy laws complicate the picture: The Scored Communications Act (18 U.S.C. §§ 2701-2712), for instance, generally prohibits entities that provide "electronic communication service[s]" from making digital content available to anyone without the "lawful consent of the originator or [an] intended recipient."

Many online businesses view the personal representative of a decedent—in the absence of an express provision in a will or other document — as simply lacking the required consent. They may honor a request to terminate a dead person's account, but won't allow anyone to access or modify it. Others include provisions in their terms-of-service agreements that flatly prohibit limiting any third-party access to accounts. To date, only seven states have passed laws to address the issue; and their approaches vary widely. In two states (Connecticut and Rhode Island), the adopted law applies only to email accounts. In two others (Idaho and Oklahoma), enacted laws were expanded to additionally cover most social media, text messaging and blogging services. The laws in the final three states (Indiana, Nevada and Virginia) are more general (covering virtually all of a decedent's digital accounts), but grant personal representatives distinctly different levels of authority: One authorizes representatives to terminate accounts; one permits access (but not control); while the final state permits a representative to assume a decedent's terms-of-service agreements with online service providers — but it applies only to accounts held by minors.

The National Conference of Commissions on Uniform State Laws sees this legal patchwork as increasingly untenable. On July 16, 2014,

after more than two years of deliberation and debate, the Uniform Law Commission adopted a "Uniform Fiduciary Access to Digital Assets Act" designed, broadly, to "vest fiduciaries with the authority to access, manage, distribute, copy or delete digital assets and accounts." The act would apply not only to decedents' personal representatives, but also to conservators acting for protected persons, trustees and agents acting pursuant to a power of attorney.

In pertinent part, the act would create default rules—which could be modified by will or court order — that: Fiduciaries have the consent of account holders to access communications; are authorized [account] users; and therefore may, without violating federal law, assume all rights of account holders in applicable terms-of-service agreements.

The act seeks to place electronic assets and communications on the same footing as traditional assets and communications, but it is not uncontroversial. Over objections from online service providers, the act also provides that "[i]f a provision in a terms-of-service agreement limits a fiduciary's access to the digital assets of the account holder, the provision is void as against the strong public policy of this state, unless the account holder ... agreed to the provision by an affirmative act separate from the account holder's assent to other provisions of the terms-of-service agreement." The act would render unenforceable provisions in the terms-of-service agreements of some online providers, like Yahoo, that declare "any rights to [a user's account] [and] contents within [the] account to," without exception, "terminate upon ... death."

What's the right answer? Should the default rule be that personal representatives may access and manage a dead user's accounts? Should Alaska adopt the Uniform Act? Share your thoughts at <http://facebook.com/AlaskaBarRag>

Sources: www.uniformlaws.org/Committee.aspx?title=Fiduciary+Access+to+Digital+Assets

Chelsea Ray, "Til Death Do Us Part: A Proposal for Handling Digital Assets After Death," 47 REAL PROP. TR. & EST. L.J. 583 (2013)

Access to Digital Accounts After Death Varies State to State

The table below outlines the status of digital asset laws at the state level. It is adapted from a list compiled by Jim Lamm from the Minneapolis office of the law firm Gray Plant Mooty. For more detail on state laws, see his overview.

| | Personal representative may... | ...these digital assets | | | | |
|---------------------|--------------------------------|-------------------------|-------|--------------|------|------------------------------|
| | | Digital Accounts | Email | Social Media | Blog | Online text message services |
| CURRENT LAWS | | | | | | |
| Connecticut | access | | ✓ | | | |
| Idaho | control | | ✓ | ✓ | ✓ | ✓ |
| Indiana | access | ✓ | | | | |
| Nevada | terminate | ✓ | | | | |
| Oklahoma | control | | ✓ | ✓ | ✓ | ✓ |
| Rhode Island | access | | ✓ | | | |
| Virginia | assume terms of service | ✓ | | | | ✓ |

Source for chart: Kirsten Salyer, "How To Protect Your Digital Afterlife," BloombergView (May 28, 2014), available at: <http://www.bloombergview.com/articles/2014-05-28/how-to-protect-your-digital-afterlife>

Burwell v. Hobby Lobby Stores, Inc.

The Supreme Court decision — what it does and what it does not

By *Kevin Clarkson*

The United States Supreme Court's decision in *Burwell v. Hobby Lobby Stores Inc.* has sparked a great deal of discussion and debate. It is not my intention herein to dive into the debate about whether the decision was good, bad, right or wrong. Instead, I will tackle the more limited and hopefully less controversial task of simply explaining the decision, its historical and statutory foundation and its practical effects and limitations.

Background

To understand *Hobby Lobby* one needs to start with an examination of its historical and statutory background. Prior to 1990, free exercise of religion under the First Amendment was protected from government intrusion under a line of authority set forth in cases like *Sherbert v. Verner* and *Wisconsin v. Yoder*. Under this authority courts used a balancing test that took into account whether the challenged action imposed a substantial burden on the practice of religion, and if it did, whether it was needed to serve a compelling government interest. Thus, in *Sherbert*, the court held that an employee who was fired for refusing to work on her sabbath could not be denied unemployment benefits. And, in *Yoder*, the court held that Amish children could not be required to comply with a state law demanding that they remain in school until the age of 16.

But everything changed in 1990 when the court decided *Employment Division v. Smith*. In *Smith* the court rejected the previous balancing test, concluding that applying that test whenever a person objected on religious grounds to the enforcement of a generally applicable law "would open the prospect of constitutionally required religious exemptions from civic obligations of almost every conceivable kind." According to *Smith*, with certain possible exceptions, under the First Amendment any law that is both generally applicable and neutral toward religion

may be applied to religious practices, even when not supported by a compelling government interest.

Congress responded by enacting the Religious Freedom Restoration Act (RFRA) with overwhelming bipartisan support. By RFRA a person is entitled to an exemption from any law that burdens his or her religious liberty unless the government demonstrates that application of the burden to the person (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest. As enacted in 1993, RFRA applied to both the federal government and the states under Section 5 of the Fourteenth Amendment. But, in *City of Boerne v. Flores* the court held that Congress had overstepped its Section 5 authority and, thus, struck RFRA down as applied to the states. Accordingly, at this time RFRA applies only to the federal government.

The HHS mandate

The Patient Protection and Affordable Care Act of 2010 (ACA) generally requires employers with 50 or more full-time employees to offer a group health plan or group health insurance coverage with minimum essential coverage. Any employer who does not provide mandated coverage must pay a substantial price – up to as much as \$100 per day – for each affected individual and \$2,000 per year for each full-time employee if it elects to stop providing health insurance altogether. Under the ACA an employer's group coverage must furnish "preventive care and screenings" for women without cost sharing. The Health Resources and Services Administration, a component of the Department of Health and Human Services, promulgated guidelines that require nonexempt employers to provide coverage for all Food and Drug Administration approved contraceptive methods. The FDA approved contraceptive meth-



Clarkson

ods include four which have the effect of preventing an already fertilized egg from developing any further by preventing its attachment to the uterus.

Hahns' and Greens' religious convictions

Norman and Elizabeth Hahn and their sons are devout members of the Mennonite Church, a Christian denomination. The Mennonite Church opposes abortion and believes that "[t]he fetus in its earliest stages shares humanity with those who conceived it." The Hahns operate a wood working business called Conestoga Wood Specialties (CWS). CWS, which is structured as a closely held corporation owned and controlled by the Hahn family, grew from a business that Norman started in his garage 50 years ago to a business that now employs 950 people. The Hahns believe that they are required to run CWS "in accordance with their religious beliefs and moral principles." The Hahns object to providing coverage for four types of contraceptives that operate after conception: two forms of emergency contraception commonly called "morning after" pills, and two types of intrauterine devices. David and Barbara Green and their children are Christians who own and operate two family businesses. Like the Hahns, the Greens believe that life begins at conception and that it would violate their religious convictions to facilitate access to contraceptive drugs or devices that operate after that point.

The litigation and the decision

Both the Hahns, the Greens, Conestoga and Hobby Lobby sued Health and Human Services (HHS) under RFRA and the First Amendment to enjoin enforcement of the contraceptive mandate against them. The Third and Tenth Circuits reached conflicting decisions and the Supreme Court granted certiorari and consolidated the cases. The court decided the case under RFRA and not under the First Amendment. First, the court concluded that RFRA protects the rights of for profit corporations like Conestoga and Hobby Lobby. RFRA contains no definition of "person." But, the Federal Dictionary Act's definition of "person," which controls RFRA, includes "corporations, companies, associations, firms, partnerships, societies and joint stock companies." The court found little reason for concern over RFRA's definition, because "[a] corporation is simply a form of organization used by human beings to achieve desired ends." "When rights, whether constitutional or statutory, are extended to corporations, the purpose is to protect the rights of these people." The court noted that Fourth Amendment protections against unlawful searches and seizures and Fifth Amendment protections against taking of property both protect corporations.

Next, the court concluded that a corporation, at least a closely held

corporation, can exercise religion as protected by RFRA. "Furthering ... [a corporation's] religious freedom also 'furthers individual religious freedom.'" The fact that the corporations operate in the commercial world for profit is of no consequence, because religious freedom can be burdened in that context. Noting that the court had applied the Free Exercise Clause to for-profit corporations in the past—*Braunfeld v. Brown*—"a law that 'operates so as to make the practice of ... religious beliefs more expensive' in the context of business activities imposes a burden on the exercise of religion." People do not forfeit their religious liberty simply by entering the commercial world of business.

Finally, the court concluded that the contraceptive mandate substantially burdens the plaintiffs' exercise of religion without a compelling government purpose that is sought to be accomplished through the least restrictive means. The court concluded that because the Hahns and the Greens have

sincere religiously based beliefs that life begins at conception and that they should not facilitate abortion, the mandate "demands that they engage in conduct that seriously violates their religious beliefs"—and the cost to the plaintiffs of refusing to provide insurance coverage was in the millions or even hundreds of millions. Although hinting that compelling government interests must be defined narrowly and not "broadly," the court assumed that the contraceptive mandate serves compelling interests. The court, however, found that the mandate is not the least restrictive means of achieving the government's assumed compelling interests.

Many businesses, including religious organizations, have already been exempted from the ACA and the mandate such that hundreds of millions of women employees are not provided certain types of contraceptive coverage through employer health plans. And, the government can assume the cost of providing these contraceptive methods to women employed by employers who object on religious grounds—there was no evidence that this cost would have been relatively significant. Moreover, ACA and the mandate already provide an alternative means for providing these contraceptive methods to women employed by religious organizations – this same means could be made available to women employed by companies objecting on religious grounds.

Limitations of decision

Hobby Lobby is an RFRA decision and RFRA does not apply to the states—*Hobby Lobby* and RFRA apply only to the federal government. *Hobby Lobby* appears to extend protection only to closely held corporations where the religious beliefs of the owners can be impacted when the corporate entity is impacted—it is not clear how closely held the business must be in order to be protected. Compelling government interest still prevails if implemented in the least restrictive manner.

... courts used a balancing test that took into account whether the challenged action imposed a substantial burden on the practice of religion, and if it did, whether it was needed to serve a compelling government interest.

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First Alaska conference a success

By Darrel J. Gardner

The Alaska Chapter of the Federal Bar Association is gearing up for a great year under the leadership of president-elect Brewster H. Jamieson, who has just finished his term in July as an Alaska District Lawyer Representative to the Ninth Circuit Judicial Conference. Brewster assumes his FBA presidency on Oct. 1, 2014. I hope that everyone in federal practice will continue to support the Federal Bar Association in Alaska. I am extremely proud to have been president of the Alaska Chapter for the past two years, and I am looking forward to my continued activity in the FBA on both local and national levels.

By far our biggest story of the year was the First Annual Alaska

Federal Bar Conference held on Aug. 22, 2014, at the Dena'ina Center in Anchorage. This full-day event featured an unprecedented visit by the current national president of the Federal Bar Association, U.S. District Judge Gustavo Gelpi, who resides in Puerto Rico. No FBA national president has ever visited Alaska, and Judge Gelpi is also the first Article III judge in history to serve as president of the FBA. Judge Gelpi moderated several programs at the conference and also presented an historical overview on the development of constitutional law in current and former U.S. Territories such as Alaska, Hawaii and Puerto Rico. There was also a panel presentation marking the 50th anniversary of the Criminal Justice Act featuring Chief Judge Ralph Beistline, Federal Public Defender Rich Curtner, and U.S. Attorney Karen Loeffler. Another panel presentation, a discussion on the Civil Rights Act, featured Joshua Decker, executive director of the ACLU of Alaska. Lunch included a presentation on current efforts to establish equal rights for Americans in U.S. Territories by Neil Weare, president and founder of the We the People Project based in Washington, D.C. In the afternoon there was a half-day CLE on federal sentencing presented by Alan Dorhoffer, deputy director of the Office of Education and Sentencing Practice of the U.S. Sentencing Commission, and included a moderated panel discussion with Alaska's three active district judges. The event concluded with a gala reception.

Alaska saw two visits by the Ninth Circuit Court of Appeals this summer, once in June and most recently in August. The June panel of three circuit judges was extremely busy with its caseload of oral arguments, and the judges were unable to participate in a bench/bar program. However, the August panel graciously continued a long-standing tradition by appearing at the 19th Annual Informal Discussion with the Ninth Circuit Court of Appeals, which the FBA co-hosted along with the Alaska Bar Association. FBA-Alaska Chapter President Gardner introduced the panel, which was moderated by Alaska

District Court Judge Timothy M. Burgess. Panel members included: Senior Judges Joseph J. Farris and Dorothy W. Nelson, both of whom were nominated by President Jimmy Carter, and Judge Jacqueline Nguyen, nominated for both a district court judgeship (CD-CA) and a circuit judgeship by President Obama. She is the first Vietnamese-American woman to serve on the federal bench and the first Asian-American woman to serve on the U.S. appellate courts.

The Annual Ninth Circuit Judicial Conference was held at the Hyatt Regency in Monterey, CA,

on July 14-17. The annual conference was not held in 2013 due to sequestration and budgeting constraints. The theme of this year's conference was "Access to Justice," and featured noted speakers addressing topics such as: the

impact of court decisions on police policies; the role of unconscious bias in the decision-making process; the crisis in legal education and the impact of non-attorney legal services; the era of modern law under the Constitution; and, ongoing issues related to the production of discovery in criminal prosecutions, particularly after the repercussions from the Stevens case. The conference concluded with an address by U.S. Supreme Court Justice Anthony M. Kennedy, who gave a fascinating retrospective on the role of the Magna Carta in Anglo-American law. One of the social highlights of the conference was "Kozinsky's Movie Night," which featured Chief Judge Alex Kozinsky and a screening of the film "Gran Torino" in the hotel's main ballroom. On hand for a discussion of the film was none other than 84-year-old Clint Eastwood, who also answered questions about his acting career and made himself available for endless photo ops during the course of the evening. Alaska was well represented at the conference, and attendees included:

- Chief Judge Ralph Beistline
- District Judge Timothy Burgess
- Bankruptcy Judge Gary Spraker
- Bankruptcy Judge Herb Ross
- Senior Judge Jack Sedwick
- Senior Judge James Singleton
- Senior Judge H. Russel Holland
- Magistrate Judge Deborah Smith
- Federal Defender Rich Curtner
- U.S. Attorney Karen Loeffler
- Lawyer Representative Brewster Jamieson (out-going chair)
- Lawyer Representative Lane Tucker
- Lawyer Representative Greg Razzo
- Lawyer Representative Darrel Gardner

The rules that govern Lawyer Representatives allocate approximately 1.3 Lawyer Rep positions for each active district court judgeship; Alaska has three district court judges, and consequently there are four



"Alaska saw two visits by the Ninth Circuit Court of Appeals this summer, once in June and most recently in August."

Lawyer Rep positions. Lawyer Reps serve a staggered three-year term, with two Lawyer Reps co-serving every third year. This was Brewster Jamieson's last year as a Lawyer Representative. As the senior Lawyer Rep, Jamieson acted as the chair for Alaska, and participated on the Ninth Circuit LRCC, or Lawyer Representatives Coordinating Committee, which meets several times throughout the year. The Alaska Bar Association is responsible for handling

the selection and recommendation process for new Lawyer Representatives, and final decisions are made by Chief Judge Beistline. Nominations for the open seat created by Brewster's departure closed on Aug. 8, 2014. By the time this issue of the Bar Rag is published, the name of the newest Lawyer Representative will likely have been announced.

For the second year in a row, the Alaska Chapter of the Federal Bar Association has been selected to receive a national "Chapter Activity Presidential Achievement Award," to be presented at the 2014 FBA Annual Meeting and Convention, scheduled for Sept. 4-6 in Providence, R.I. The award is given in recognition of "accomplished chapter activities in the areas of administration, membership outreach,

and programming."

On the public service side of our organization, Judge Burgess has asked that the FBA conduct a clothing drive to collect clothing to be used by indigent criminal defendants during trials. Judge Burgess has also generously donated a portable rack for storing defendant court clothes in the Federal Defender's office at the court house. The Federal Public Defender will maintain the clothes and make them available to any CJA Panel attorney representing a defendant (as court-appointed counsel) in a criminal trial. Cleaned or new clothes only please. Please email me to arrange for pick up, or preferably just drop them off any time at the office of the Federal Public Defender (601 W. Fifth Ave., Suite 800, Anchorage). We need basic white long sleeved men's dress shirts in all sizes, and particular L, XL, and larger. We need men's pants and suits in typical sizes (especially in larger sizes), preferably in plain black/gray subdued tones. We need sweaters, dress socks, and men's dress shoes – and we need a lot more women's clothes, including shoes. Thank you for your help!!

For more information, or to join the Federal Bar Association, please contact Darrel Gardner or visit the Chapter website at www.fedbar.org, like us on Facebook at "Federal Bar Association – Alaska Chapter," and follow "Fed Bar Alaska" on Twitter "@bar_fed."

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AKACDL's fourth annual All*Stars Defense Conference

By Darrel J. Gardner

The Alaska Association of Criminal Defense Lawyers will celebrate its fifth anniversary on Nov. 30, 2014. Since its creation in 2009, AKACDL more than 180 members have joined the organization. In keeping with the goals of its founders, AKACDL usually presents 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 fourth conference, held on July 10-11. The goal of the aptly named "All*Stars Conference" is to bring high-powered, nationally noted criminal defense lawyers to Alaska to speak to the criminal defense bar. Most of the presenters have been instructors at the National College of Criminal Defense (NCCD), the National Institute for Trial Advocacy (NITA), or both.

This year's presenters included: Ann Roan, who has been the state training director for the Colorado State Public Defender since 2004 and has been a public defender since 1990. She develops curriculum, oversees training and teaches more than 700 lawyers, investigators and administrative professionals. Before her appointment to that position, she spent 10 years as a deputy public defender in trial offices throughout the state, and six years practicing in the Public Defender's appellate division. She has spoken at conferences around the country sponsored by the National Association of Criminal Defense Lawyers (NACDL), NORML and other national defense organizations. Ann is on the faculty of the National Criminal Defense College in Macon, GA; the NACDL Capital Voir Dire College in Boulder, CO; and has taught state and federal criminal defense lawyers in Georgia, Kentucky, Texas, New Orleans, Washington, Santa Fe, Alabama, Utah, California and Washington, D.C. She is an adjunct professor at the University of Colorado's School of Law and is a frequent guest lecturer on voir dire at the law schools of both the University of Colorado and the University of Denver.

Stephen Lindsay, is a partner in the North Carolina firm of Sutton & Lindsay PLLC. Lindsay is admitted to practice in the Supreme Court of the United States, the United States Court of Appeals for the Fourth District, and the United States District Courts for the Western, Middle and Eastern Districts of North Carolina. A graduate of Guilford College and the University of the North Carolina School of Law,



Presenter Steve Lindsay gives a tip on demonstrative evidence.

he has been a senior member of the faculty at NCCD and a member of NACDL since 1995. Steve is regularly called upon to teach trial practice skills to attorneys at seminars and conferences across the nation, and has taught courses and made presentations for the Federal Public Defenders and state public defender groups in 16 states.

Jeff Adachi, who is the elected public defender of the City and County of San Francisco. Adachi has served on the American Bar Association's Standing Committee on Legal Aid and Indigents and is a member of the National Board of Trial Advocacy. He currently sits on the board of the California Public Defenders Association and is a past board member of California Attorneys for Criminal Justice and the San Francisco Bar Association. In 2006, Adachi received the American Bar Association's Dorsey Award for excellence in public defense. In 2007, Jeff was the recipient of the prestigious California Lawyer Attorney of the Year award for his work in the field of prisoner reentry. In April 2009, he received a second California Public Defenders Association Program of the Year Award for the office's innovative Children of Incarcerated Parents program. In May 2010, he was honored with the 2009 Defender of the Year award from the California Public Defenders Association. In December 2012, Jeff received the National Legal Aid & Defender Association's Reginald Heber Smith Award for outstanding achievement and dedicated service. He is a graduate of U.C. Berkeley, and he obtained his J.D. from Hastings College of the Law in 1985.

Lisa Wayne, who went into private practice in 1999, had practiced as a Senior Trial Lawyer for the Colorado State Public Defender for 13 years. Wayne graduated from

the University of Colorado in 1981 and Pepperdine Law School in 1985. She is a past president of National Association of Criminal Defense Attorneys and past board member of the Colorado Criminal Defense Bar. Wayne served as a member of the Colorado Supreme Court Standing Committee on Rules of Professional Conduct. She is an adjunct professor at the University of Colorado. In 2005, Lisa received NACDL's most prestigious award, the Robert Heene Award, given to a criminal defense lawyer who best exemplifies the goals and values of the NACDL.

This year's All*Stars Conference was once again very well attended, with almost 90 participants. A large number of public defense attorneys were present because the Alaska Public Defender Agency and the Office of Public Advocacy have experienced inadequate funding to provide a similar level of in-house training. The AKACDL commends Public Defender Quinlan Steiner and Public Advocate Rick Allen for their support of the association in its mission to provide high quality continuing legal education to the Alaska defense bar.



Champion of Liberty award winners Julia Moudy and Dan Lowery.

At the lunch event on the first day of the conference, AKACDL Board Member James Christie 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 its "Alaskan Champion of Liberty Award," which is a large decorative engraved gold pan. This year there were two awards given, both to Anchorage Public Defenders: Julia Moudy and Dan Lowery, in recognition of their many years of trial and appellate advocacy for indigent defendants facing state criminal prosecutions. Other nominees for the award included David Case, a public defender in Bethel; Phil Shanahan, a private criminal defense attorney in Anchorage; and Cara McNamara, a federal public defender who won back-to-back victories in two federal trials in Juneau.



AKACDL President Darrel Gardner and San Francisco Public Defender Jeff Adachi.

In this 50th anniversary year of the passage of the federal Criminal Justice Act, which statutorily implemented the 1963 landmark U.S. Supreme Court case 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. In particular, AKACDL celebrates the right to counsel for indigent criminal defendants guaranteed under Gideon.

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



Federal Public Defender Rich Curtner and Joshua Decker, executive director of the Alaska ACLU.



Full house at the 2014 AKACDL All Stars Conference.



Shelly Chaffin, Morgan White, and Monica Elkinton.