

Marijuana legalization in Alaska: It's about to get real

By Jason Brandeis

As summer winds down, Alaska's marijuana industry is ramping up. Accordingly, interest in understanding this burgeoning industry is also steadily rising: Concerned citizens, lawyers, government officials, and prospective business owners are increasingly curious about the current status of—and future outlook for—marijuana legalization.

Marijuana enthusiasts are excited for greater personal use access: Patients want to further explore potential health and medical benefits; investors are eager to seize the prospective financial opportunities of a new industry; lawmakers are monitoring constituent concerns and engaging in public policy debates; analysts are intrigued by the social, economic, political and legal issues attendant with moving a product from the black market to a regulated market. Some hopeful proprietors and eager consumers complain that the industry is developing too slowly — frustrations abound among those who mistakenly believed they would be able to purchase marijuana almost immediately after Ballot Measure 2 passed in November 2014. "Why the delay? This isn't what I voted for!" is a common refrain.

As a professor who researches marijuana law and policy issues, and as a lawyer who practices in the marijuana regulation field, I routinely engage with industry



participants, regulators and other stakeholders. When I respond to their questions and comments, my replies typically fall somewhere between explaining the complexities of a highly regulated industry that

is governed by both state and local bodies (not to mention the layer of federal law that hovers over everything); how corporate law, contracts, and the byzantine process of local planning and zoning are now at the

heart of the marijuana legalization process; and how, actually, yeah, this is pretty much exactly what you voted for, and believe it or not, the bureaucratic regulatory process is moving steadily apace.

But recently I have shortened my standard stump speech to just this: It's about to get real.

In June and July, the Alaska Marijuana Control Board (MCB) issued preliminary licenses to the first round of marijuana cultivation facilities and testing labs. Cultivators, the source of the goods, are crucial to the development of a commercial marijuana market. But labs are the gatekeepers of the whole industry; without operational testing facilities, no product can be sold. The bulk of the establishments approved at the recent meetings are still pushing through local permitting and licensing processes. But a few cultivation facilities are already open and growing marijuana.

Alaska's Marijuana Control Board approved the first marijuana retail stores during the board's meeting Sept. 8.

The MCB was to meet next in early September to consider the first applications for marijuana retail stores, product manufacturing facilities and concentrate manufacturing facilities. Assuming most

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US Supreme Court Justice Sonia Sotomayor visits

By Monica Elkinton

United States Supreme Court Justice Sonia Sotomayor spoke to an audience of more than 1,200 people Aug. 17 at the Dena'ina Center in Anchorage. About 450 lawyers attended. This was one stop on her Alaska vacation that also included visits to the University of Alaska Fairbanks, Hubbard Glacier, Denali National Park, the Arctic, the Alaska SeaLife Center in Seward, and Ketchikan. About Ketchikan she quipped, "It was so sunny when I was there that they didn't want me to leave."

Sotomayor is the third Supreme Court Justice to visit Anchorage. When the previous justices visited, O'Connor in 2012 and Ginsberg in 2008, upholstered chairs and faux plants were placed on the dais, and then-Justice Dana Fabe asked pre-screened questions in a format reminiscent of a daytime talk show. Sotomayor's discussion started the same way, with Anchorage's own



Judge Morgan Christen (moderator) and Alaska Bar Association board members joined Justice Sotomayor on stage. From left are Christen, Sharon Barr, Darrel Gardner, Molly Brown, Justice Sotomayor, Susan Cox and Rob Stone. (Photo by Adam Gulkis)

9th Circuit Judge Morgan Christen seated on stage with her, prepared to ask questions written on index cards.

After only two questions, Sotomayor said, "I want to get off this

stage and walk among you. People are seeing me as little dots on a stage." She explained that she was an extrovert, and missed talking with people and trying cases. She

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A busy summer gives way to a very busy autumn

By Susan Cox

As I write this, fall is unmistakably here. Although the calendar says it's summer until the fall equinox arrives on Sept. 22, the leaves are turning color and fewer cruise ships are calling at the docks in Juneau. Besides the lingering flowers, kale and potatoes in my garden and fish in the freezer, little remains of summer but memories. I hope that, like me, you all had a chance to recharge your batteries over the summer – taking advantage of much longer days, exploring our great state and spending time with family and friends.

Although sections and committees take a hiatus during the summer, there's been a lot happening with the Alaska Bar Association in the last few months besides the Bar exam. A major highlight was our public event with Supreme Court Justice Sonia Sotomayor in August. The Alaska Bar had extended invitations to Justice Sotomayor in the past to speak at a bar convention or during a court break. When we heard she would be vacationing in Alaska this summer, we jumped at the chance to ask her to do something with the Bar. We were excited to have her accept our invitation – little did we know the event would draw the fabulous turnout that it did. More than 1,200 people attended, and well more than half were not members of the Bar. Kudos go to Bar staff for making all the arrangements, getting the word out and handling security and the media – all on short notice.

As the article in this edition of the Bar Rag describes in more detail, Justice Sotomayor addressed many topics, ranging from her own personal experiences to her views about how diversity enhances the court. She amazed the entire audience with her ability to multi-task: answering questions posed by Judge Morgan Christen while walking among the capacity crowd in the Dena'ina Center's large hall, signing books and posing for pictures with young children.

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ten while walking among the capacity crowd in the Dena'ina Center's large hall, signing books and posing for pictures with young children. And she lingered after the conversation to speak one-on-one with members of the Bar and the community. Justice Sotomayor's willingness to engage in such conversations greatly enhances the public's understanding of the legal system, leaving a lasting impression on all who attended. We were fortunate to be able to sponsor an event that informs the public and reinforces confidence in our nation's judiciary. Our thanks to Justice Sotomayor, Judge Christen and all involved.

I was privileged to take part in another notable moment in Alaska history: the installation of Susan Carney on the Alaska Supreme Court. Justice Carney is the 24th appointee to the court and the third woman to hold that position. She brings

years of trial experience and public service to the bench, including as a member of the Bar's board of governors. The high regard in which she's held by the Fairbanks community and her peers was evident at her installation; a packed crowd witnessed her robing under a life-size portrait of Justice Jay Rabinowitz, for whom she clerked at the outset of her career. We look forward to her future contributions and impact on Alaska jurisprudence.

While in Fairbanks, our Pro Bono Director, Krista Scully, and I met with several local attorneys to discuss the new virtual online legal clinic that will be rolling out state-



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wide in early October. A new feature of the Bar's presence at the AFN convention this year will be a demonstration of the virtual clinic, where volunteers will be assisting potential clients with registration. In addition, we met with organizers who have already begun planning next year's MLK Day pro bono clinic in Fairbanks. And several members of the Bar Board of Governors and Deborah O'Regan joined us at the weekly meeting of the Tanana Valley Bar Association.

Krista and I also visited the Dillingham legal community last month. We had a wonderful potluck lunch at the new courthouse, and talked to many of the lawyers providing legal services to indigent Alaskans in the Dillingham area.

And the Board of Governors, along with some Bar staff and legal services providers, went out to Palmer to share ideas and socialize with the Mat-Su Valley Bar after our board meeting last week. All of these occasions bring to mind the many ways we can and do make a difference for Alaskans. The inspiring examples of lawyers, from bush Alaska to the Supreme Court, have a huge impact on overall confidence in the rule of law. It falls on all of us to promote a positive perception and increase the diversity of the legal profession, and to educate Alaskans of all ages about the legal system. And we have so many opportunities to do so –

- teach high school students for the Supreme Court Live program – the next one's in Palmer in October,
- mentor participants in youth court and mock trial experiences,
- volunteer for a pro bono program – through ANDVSA, ALSC, the Early Resolution Project, the vir-

tual online legal clinic, or at MLK Day,

- help with the Color of Justice or the Success Inside and Out programs,
- host a radio show, or
- get involved in the work of local bar associations, Bar sections, the Alaska Judicial Council, or the Alaska Commission on Judicial Conduct.

As the seasons turn and kids go back to school, let's dedicate ourselves to helping others understand how the law works and how lawyers can help their lives. We can elevate public discourse through education and make a positive difference through our service. I hope you'll embrace an opportunity to get involved.

Susan Cox was recently elected president of the Alaska Bar Association.

The Alaska BAR RAG

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

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 840 K St., Suite 100,
 Anchorage, Alaska 99501
 (272-7469)

Publication Dates Editorial Deadlines

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

Board of Governors meeting dates

Oct. 25 & 26, 2016 (Tues. & Wed.: July Bar Exam results & budget)
 Jan. 26 & 27, 2017 (Thurs. & Fri.)
 May 8 & 9, 2017
 (Juneau: Mon. & Tues.)
 May 10-12, 2017 (Wed. - Fri.: Annual Convention in Juneau)

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EDITOR'S COLUMN

A Supreme Court Justice, pot and a couple of podcasts

By Meghan Kelly

I know you will enjoy reading Monica Elkinton's account of Justice Sotomayor's visit to Anchorage in this issue of the Bar Rag. I'm sure many of you were in attendance but for those who were not able to be there, Elkinton's piece deftly conveys the energy and excitement of the event.

Also in this issue you'll read about the latest developments for Alaska's marijuana industry. Our update from Jason Brandeis coincides with a recent article in the ADN announcing the Marijuana Control Board's approval of the first marijuana retail



"I know that I am not alone in expressing my hope that our state agencies continue to receive the funding they need!"

stores in the state. This is certainly an interesting time to be a lawyer in Alaska and I hope you will share stories of your experiences with this new area of the law.

Stepping away from the contents of this issue, I wanted to share a podcast that I read about over the recent holiday weekend. Some of you might enjoy listening during your morning commute. It concerns a scenario similar to a nightmare I've had: a lawyer with almost no experience in criminal law is assigned to a criminal case with a significant possible sentence (20 years to life).

This is a reality for attorneys in states like Louisiana, where underfunded public defenders' offices are so short-staffed that courts are ordering private attorneys to take on pro bono clients. Reporter David Zax tells the story of one attorney's experience on a recent episode of *This American Life* which you can stream here: goo.gl/uw5j8l. See also goo.gl/M9WcKP (court order appointing attorney Bailey to represent an indigent client facing criminal charges). I know that I am not alone in expressing my hope that our state agencies continue to receive the funding they need!

Meghan Kelly is editor of the Alaska Bar Rag and works in Kodiak.

Carney sworn in to replace Fabe on Alaska Supreme Court



Chief Justice Craig Stowers administers the oath to Justice Susan Carney.

Susan M. Carney was sworn in Aug. 26 as the 24th justice of the Alaska Supreme Court. She had been a defense attorney in Fairbanks and had worked for some time as a public defender and later with the Fairbanks Office of Public Advocacy over a career spanning almost 30 years.

She was appointed to the court by Gov. Bill Walker earlier this year.



Justice Carney was robed by her children, Rebecca and Samuel Carney-Braveman.

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are approved, and factoring in time for testing labs to complete their review, cultivators to harvest their crops, manufacturers to implement their processes and retail stores to finish their build-outs, the first marijuana retail stores in Alaska will likely open later this fall.

And that is when things will get real.

Advocates, opponents and legislators have been trying to determine whether legal marijuana sales will adversely impact public health and safety, whether the resulting tax revenue will be significant, and exactly how taxes will be collected and tracked in a mostly cash business. These questions have been largely hypothetical. Soon, real answers will begin to trickle in. Though it will be years before there is enough data to accurately identify the full criminal justice, social and economic impacts of legalization, we can begin this analysis very soon.

Despite the steady progress toward legal marijuana markets in Alaska, legalization remains a contentious issue, both locally and nationally. Continued existence of the market is not guaranteed. In fact, around the state, various local governments have already created their own regulatory and licensing frameworks. Some have opted out entirely. Others, such as the Mat-Su Borough, will allow voters to decide whether to ban commercial marijuana operations. And next session, the Alaska Legislature will have its first opportunity to consider wholesale changes to the industry's statutory authority.

The MCB, tasked with overseeing this industry, is not immune to the volatility inherent in creating a new enterprise. In June, a surprise vote at the beginning of the MCB meeting ousted Board Chair Bruce Schulte. Appointed as an industry representative to the board, Schulte had served since the board's inception in 2015. Peter Mlynarik, the Soldotna police chief and the board's public safety representative, became the new chair by a 3-2 vote. Two months later, Gov. Bill Walker removed Schulte from the board altogether. According to press reports, Schulte remains in the dark as to why he was dismissed.

The removal of a vocal supporter for the marijuana industry not only caused concern among advocates, but also raised questions about

Schulte's potential replacement. Would the governor replace him with another industry representative? Initial reports suggested widespread confusion about whether the seat had to be filled by an industry representative or whether it could go to a general member of the public. Ultimately, the governor appointed industry member Nicholas Miller, assuaging those concerns.

When considering the complicated developments in Alaska, it is easy to forget that federal law continues to loom large over this nascent industry. Commercial marijuana in Alaska, as well as in every other state that has legalized marijuana for medical or recreational use, exists under the assurance that the U.S. Department of Justice is committed, for the time being, to not enforcing the federal prohibition on possessing and selling marijuana in those states, so long as the states' regulations are consistent with certain federal priorities. But this is just a policy. A new presidential administration could change this position.

To that end, it is worth noting where the current major parties and presidential candidates stand on this issue. The Democratic Party endorsed rescheduling marijuana and creating a "reasoned pathway to future legalization." Hillary Clinton has expressed support for legal access to medical marijuana, more research into the medical benefits of marijuana, and reclassifying marijuana from Schedule I to Schedule II under the Controlled Substances Act.

At the Republican Convention, delegates voted against a platform that would have endorsed medical marijuana, and made no mention of full-scale legalization. Donald Trump has, well, you could write anything in this sentence and it probably wouldn't be surprising. But let's just say that The Donald's position on this issue has been ... inconsistent.

Given the evolving political and social views on marijuana, it is difficult to speculate on what federal changes, if any, can be expected following a change in administration. However, one way to get a clearer picture on federal marijuana policy, and where it may be going, is to consider recent federal action. After months of speculation, the Drug Enforcement Agency (DEA) announced in August that it would not remove marijuana from Sched-

ule I of the Controlled Substances Act. The DEA's decision gave "enormous weight" to the Food and Drug Administration's (FDA) position that marijuana has "no currently accepted medical use in treatment in the United States." Notably, the DEA specified that this decision was based not on the dangers posed by marijuana use, but rather on the premise that marijuana's safety and efficacy as medicine are unproven.

Critics of this decision point out that it creates a Catch-22: Rescheduling marijuana requires scientific data establishing that marijuana has medical benefits. There is a lack of such data because of legal prohibitions surrounding research on marijuana. But without such research, marijuana cannot be rescheduled.

The DEA has stated that it plans to support additional marijuana research. Beyond that, scant evidence exists to suggest that the relevant parties at the federal level are motivated to close the gap between federal and state marijuana laws.

But there may soon be more pressure on Congress to promote bills that would ease some of the practical concerns posing problems for both regulators and marijuana industry participants, such as restrictions on transportation of marijuana and lack of access to banking services. Why might this change? In November, voters in Arizona, California, Maine, Massachusetts and Nevada will consider legalization measures similar to Alaska's. And Arkansas, Florida, Montana, and

North Dakota will vote on medical marijuana ballot questions. Some of these may not pass, but the number of states allowing legal commercial recreational marijuana could double overnight. The number of states permitting medical use of marijuana could also increase further. In turn, the number of senators and representatives whose constituents clearly support marijuana legalization will increase, and lawmakers will feel pressure to respond. This scenario would also likely widen the chasm between state and federal marijuana policies such that it is no longer feasible for politicians to ignore.

Most Americans now live in states that have shifted away from the federal policy of absolute marijuana prohibition, a majority that is only likely to increase come November. Recent polls indicate that nearly 60 percent of Americans believe marijuana should be legal. All of this sets an interesting backdrop for the State of Alaska, which will begin to see the direct results of shifting marijuana laws and policies this fall as legal, regulated commercial marijuana transactions begin.

From theory to practice, marijuana legalization in Alaska is about to get real.

Jason Brandeis is an associate professor of Justice at the University of Alaska Anchorage and is of counsel at Birch Horton Bittner & Cherot, where he advises clients on marijuana law and policy matters.

Alaska Bar Foundation launches \$1.2 million grant

A historic litigation settlement has resulted in the formation of a new grant opportunity through the Alaska Bar Foundation. The foundation is now accepting applications from Alaska based civil legal services providers that serve low-income, underrepresented Alaska residents in the areas of foreclosure prevention legal assistance and/or community redevelopment legal assistance.

More than \$1.2 million has been made available to Alaska through a 2014 settlement on mortgage-related litigation between the U.S. Department of Justice and Bank of America Corporation. The settlement required that every Interest on Lawyers' Trust Accounts program in the U.S. and its territories receive funds for legal aid organizations in its jurisdiction for foreclosure prevention legal assistance and community redevelopment legal assistance.

Completed application(s) are due by 5 p.m. Nov. 1. Application instructions can be downloaded; goo.gl/K1bMS7. The grant term is Jan. 1, 2017, to Dec. 31, 2017. Awards will be announced in December.

The Alaska Bar Foundation is a 501(c)(3) organization established in 1972. The Bar foundation's mission is to strive to foster and maintain the honor and integrity of the profession of the law. The foundation provides grants to organizations that provide civil legal services to the poor.

Using the Delaware Tax Trap to increase the tax basis

By Steven T. O'Hara

This column puts together the previous two issues of this column. One discussed the Delaware Tax Trap, which can be used affirmatively to minimize taxes. The other discussed the possible increase in tax basis upon the death of a property owner.

This column shows that even where property is owned in trust, property can obtain a basis increase when the Delaware Tax Trap is triggered.

These articles may be found at www.bgolaw.pro. See the page entitled "Estate Planning."

More and more, clients prefer to pass wealth in trust. They realize trust ownership can provide a level of asset protection from creditors and predators. Clients realize any amount qualifies for trust ownership.

If the cost of a professional trustee is a concern, the primary beneficiary could be trustee as allowed under Alaska Statute 34.40.110(g) and with the protections of Alaska Statute 13.36.153 (cf. AS 34.40.113). Indeed, the less you have, the more precious each dollar may be, thus making creditor and predator protection even more important.

Consider a client who is a U.S. citizen and an Alaska resident with

assets only in Alaska. She has never made a taxable gift and has modest assets; she has no realistic exposure to federal estate tax. The client is the beneficiary of an irrevocable trust created by her parents. The trust has a provision giving the client the power to say where the trust assets go on her death, within limits. This power is known as a testamentary special power of appointment.

The trust has done well. The trust purchased an asset for \$100,000. Now the asset is worth \$500,000. If the trust sells for \$500,000, the trust's taxable gain would be \$400,000, the consideration received in excess of the trust's basis. The trust's investment policy is to hold the asset for long-term appreciation.

The client has heard that when a property owner dies, the person entitled to the property obtains a basis in the property that is "stepped-up" to the fair market value of the property (IRC Sec. 1014(a)(1)). The client wonders whether in the event of her death, there is any way to step up the tax basis in the trust's asset to its fair market value.

One answer in Alaska is *yes* where, as in our example, the trust includes a provision giving the cli-



"...even where property is owned in trust, property can obtain a basis increase when the Delaware Tax Trap is triggered."

ent a testamentary special power of appointment. With this power the client may intentionally trigger the Delaware Tax Trap, increasing tax basis as applicable.

Internal Revenue Code Section 1014 is the authority for basis adjustment when property is acquired from a decedent. This section includes a provision important for our discussion. It provides generally that if you exercise a power of appointment, and if that exercise renders the subject property includable in your gross estate for federal estate tax purposes, the property gets a new tax basis at your death (IRC Section 1014(b)(9)).

In our example, how does the client exercise the testamentary special power of appointment with respect to the trust asset such that the asset could get a stepped-up basis to \$500,000?

Here the client might consider signing a Will that exercises the power by giving a beneficiary, such as her child or other beneficiary, a presently exercisable general power of appointment over the asset. As of the client's death, such exercise would trigger the Delaware Tax Trap (IRC Sections 2041(a)(3) and AS 34.27.051(b)).

What does creating a presently exercisable general power of appointment do? The big-picture answer is that it renders the asset includable in the client's gross estate for federal estate tax purposes under the Delaware Tax Trap. The technical answer is that it makes the start date of the client's special power of appointment – the "first power" as referenced in the Internal Revenue Code quoted below – irrelevant. The individual whom the client gives the presently exercisable general power can appoint property in further trust and "postpone the vesting ... for a period ascertainable without regard to the date of the creation of the first power" (*Id.*).

Regarding asset protection for a beneficiary with a presently exercisable general power of appointment, Alaska law provides that applicable trust property is subject to the creditors of the general power holder only to the extent the power is exercised (AS 34.40.115). The holder of a power of appointment is called a "donee."

For further consideration in this area, recall the meaning of the following terms:

Power of Appointment: Suppose someone has died, leaving a trust for you. A power of appointment is where, in this example, the deceased (the donor) has given you (the donee) the power to transfer property (including money) out of that trust, whether now, during your lifetime, or at your death.

Lifetime or Presently Exercisable Power: A power of appointment that you can exercise now while you are alive is called a lifetime or presently exercisable power.

Testamentary Power: A power of appointment that you can exercise by Will is called a testamentary power. In my experience, clients prefer granting testamentary pow-

ers rather than presently exercisable powers, except when intentionally triggering the Delaware Tax Trap.

General or Unlimited Power: A power of appointment that you can exercise for the benefit of yourself, your creditors, your estate, or the creditors of your estate is called a general or unlimited power. A general power can be a presently exercisable power or a testamentary power or both. If you have a general power, federal transfer tax law treats you as the owner of the property that is subject to the power (IRC Sections 2041, 2514, and 2652(a)(1); cf. IRC Section 1014(b)(9)).

Special or Limited or Non-General Power: A power of appointment that you may NOT exercise for the benefit of yourself, your creditors, your estate, or the creditors of your estate is called a special or limited or non-general power. A special power can be a presently exercisable power or a testamentary power or both.

Rule Against Perpetuities: This rule means you can use trusts to postpone the ownership of property, and thereby protect the property so it is there when needed, but there is a limit. In Alaska the maximum period is generally one thousand years (AS 34.27.051 *et seq.*). In this area ownership is known as vesting. When property held in trust indefeasibly vests in you, you now own the property. Then the Rule Against Perpetuities no longer applies. The rule applies, if at all, only when vesting has been postponed. To keep track of the maximum period in a particular case the Rule Against Perpetuities has a start date, when the postponement of vesting has begun, and an end date, when property has vested.

The Delaware Tax Trap: A tool that can render property taxable to you as if you were the owner of the property. Under the federal estate tax system the Internal Revenue Code provides:

The value of [your] gross estate [which may be taxable at your death] shall include the value of all property ... [t]o the extent of any property with respect to which [you] ... by will ... exercise ... a [special] power of appointment ... by creating another power of appointment [such as a presently exercisable general power] which under the applicable local law can be validly exercised so as to postpone the vesting of any ... interest in such property ... for a period ascertainable without regard to the date of the creation of the first power.

(IRC 2041(a)(3) (annotations provided).) There is similar language under the federal gift tax system (IRC Section 2514(d)).

With the Delaware Tax Trap in combination with Alaska law, beneficiaries of trusts may reduce tax as applicable as part of their estate planning.

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

In private practice in Anchorage, Steven T. O'Hara has written a column for every issue of The Alaska Bar Rag since August 1989.

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This column shows that even where property is owned in trust, property can obtain a basis increase when the Delaware Tax Trap is triggered.

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Some days the magic works better than others when salmon run

By Dan Branch

It's raining in Juneau. That's not newsworthy in this rainforest town. It seems like it hasn't stopped raining since July. No surprise then that when we prepared for a late afternoon kayak trip last Friday, my daughter and I automatically donned rain gear. Defying a negative weather forecast, the sun broke through the clouds as we launched near the North Douglas Island boat ramp.

The sun brought a faint breeze that discouraged midges without ruffling the water as we paddled toward the mouth of Fish Creek. From the beach a mature bald eagle watched us move past kittiwakes, Arctic terns, and marbled murrelets without disturbing them. Only a touchy great blue heron flew off. Magically, even the tide cooperated — switching from flood to ebb when we were ready to return down Fritz Cove to the boat ramp.

The next day my families joined those of other Juneau lawyers for a bar association-sponsored whale-watching trip. Gray skies darkened the departure of our boat from the Auk Bay harbor. Low clouds denied views of the glacier and mountains that on a sunny day make Auk Bay look like a set for *Heidi*. In such flat light, any whales we'd see would

be dark objects on battleship-gray water under Payne's gray skies. This limited color palette didn't deter folks on the boat from enjoying each other's company. Children giggled while their parents caught up on family gossip—the good kind, not the mean stuff. Others built conversations over bridges of common experiences.

As if by magic, the sun broke through the marine layer as the boat pulled close to Little Island. There, hundreds of Steller sea lions caught rays on the beach. It was hard to choose which part of the puppy pile to watch. As Lion Mountain emerged from cloud cover on the horizon we watched the young males jostle their buddies while on a nearby patch of dry sand an old bull slept on its back, pectoral flipper across its chest.

After too short a stay at Little Island, the boat took us down Favorite Channel and past Herbert Glacier, then glowing under full sun. Near the edge of the Aaron Island reef a large pod of humpback whales circled around herring until the bait-fish were trapped in a net of bubbles. The whales shot up through the balling herring, each gulping yards



"The magic was sure to return with the next pulse of cohos moving through Icy Straight."

of fish while a cloud of gulls swept down to capture any leftovers.

An attorney I once worked with at the AG's Office watched the scene with her toddler. I tried to remember the magic moment when my daughter saw her first whale, happy that she was on the boat like she had been in the kayak with me the previous evening.

The clouds returned that night. I still left the house at seven the next morning and headed out to Tee Harbor in time to fish the low tide with the captain. There was little reason to expect success. A guy we talked to in the harbor that morning said that he had only caught one coho during four days of fishing the place where we usually secure our winter supply of salmon. In such conditions it takes something more than luck or skill to catch coho.

When we arrived at the troll run, a handful of boats were already bouncing along the shore of Admiralty Island. Those fishermen not in their boat cabins wore heavy fleece and rain gear to protect them from the wind blowing up Lynn Canal. No one looked like they had touched a net or played a fish.

Since it produced the most strikes and he is a generous guy, the captain insisted that I fish off the productive side of the boat. Whether for physical or metaphysical reasons, the rod secured in the downrigger on that side of the boat catches the most fish. Ten minutes after sinking my herring, a coho grabbed it. I managed to bring the smallish male to the boat where the captain netted it just as my hook popped out of the fish's mouth.

We fished for three more hours without getting another strike. Many more boats joined the troll line, each driven by a grim-faced fisherman who might be questioning if he or she should have stayed home to watch the Olympics. That thought certainly crossed my mind as I pulled a hoochie out of the tackle box. Looking more like a toddler's toy than fishing lure, the

floppy plastic thing was crafted to fool a salmon into thinking it is a tasty squid. Hoochies come in an assortment of patterns and colors but without instructions. I had nothing to assure me that the day-glow-green, magenta and purple-fringed ghost I held would catch salmon at that moment — an hour before low tide on a flat-light day. It just felt right.

I had obtained the faux squid at a hoochie party thrown by a group of fisher women when we lived in Ketchikan. The women, all capable of filling their freezers with fresh-frozen salmon, sat around a table tying hoochies to hook leaders. While they worked, the women shared fishing secrets, such as what condiment juice to add to bait-herring water and what songs entice salmon to strike. I left the party wondering if

I would ever be able to use such magic to bring on the bite.

By the time we moved to Juneau, I had forgotten the magical fish-catching songs. I only

By the time we moved to Juneau, I had forgotten the magic fish-catching songs. I only opened my hoochie box on days when the fishing was either very good or very poor.

opened my hoochie box on days when the fishing was either very good or very poor. The captain and I were having a poor day. *What the hey*, I thought as I used a downrigger weight to sink the hoochie in 37 feet of water. Seconds later a salmon grabbed the hoochie but spit it out before I could set the hook. No more than five minutes passed before I had another strike. That fish also escaped. The third coho hit minutes later hard enough to hook itself. This one would not escape unless the leader parted. It did. The magic hoochie and fish were gone when I reeled in the line.

We trolled several more hours that day, alternating herring and hoochies without catching any more fish. There was no more magic in the boat. That had left with the Ketchikan ladies' hoochie. But, we still had a supply of the secret condiment juice on board for the next fishing trip. The magic was sure to return with the next pulse of cohos moving through Icy Straight.

Dan Branch, a member of the Alaska Bar Association since 1977, lives in Juneau. He has written a column for the Bar Rag since 1987.



Sea lions crowd a Little Island beach.



A humpback whale dives near Aaron Island Reef.

SUBMITTING A PHOTO FOR THE ALASKA BAR RAG?

- Ensure it is in high resolution (aka, "fine," "superfine," "high res" or "best") setting on your digital camera, scanner, or photo-processing software.
- Rename all digital photo filenames with the subject or individual's name!!! (Example: lawfirmparty.jpg or joe_smith.jpg)
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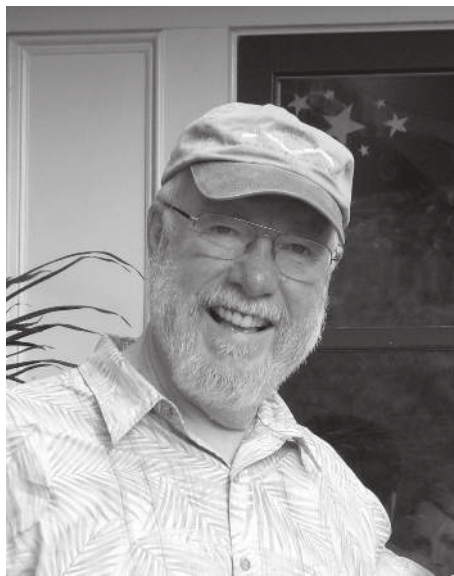
In Memoriam

Timothy M. Lynch

Timothy M. Lynch died Tuesday, April 5, 2016, at his Anchorage home with his wife and children beside him. He was born Oct. 6, 1942, in Bluefield, W. Va., to Francis B. Lynch and Evangeline P. Finley. Tim left home at the age of 12 to attend St. Mary's Manor, a minor seminary. In 1960 he enlisted in the Air Force, learned Russian, and served in Turkey intercepting Russian communications.

From 1964-1971 he attended the University of Kentucky, working full time to support himself. He was a grocery clerk, proofreader, front-page editor, translator, and law clerk. Tim earned a Bachelor of Arts in Russian Behavioral Political Science and a law degree. The highlight of law school was winning a Moot Court trial against his two highest-ranking classmates.

His Alaska legal career spanned 44 years, 42 in private practice with many partners. He especially cherished clerking for Judge James Fitzgerald. Tim was a historian at heart. He served on the Ninth Ju-



Timothy M. Lynch

dicial Circuit Historical Society Board of Directors, and its successor the Advisory Council (2010). He was very active as a member of the Alaska Bar Association's Historians Committee, working on projects to collect bench and bar histories and to promote obtaining oral histories. He was instrumental in creating the Alaska Bar 100th Anniversary

Exhibit depicting the history of the Bar. It is on display in the Jury Assembly Room of the Nesbett Courthouse and bears his name as author.

Throughout his life Tim offered his services to anyone who needed them through organizations or one-on-one. If an issue could be resolved with a phone call, a letter, or good advice, Tim's standard fee was two dozen chocolate chip cookies. For more than 15 years he was an active volunteer in the legal section and member of the Organizing Committee for the Alaska Workers Association, an organization that assists low-income workers.

In 1969 Tim married his wife Edie. Two years later they drove a Volkswagen Bug up the Alaska Highway. There is a picture of Tim kissing the pavement to commemorate their arrival. What followed were many strong friendships. As an adopted member of the Baker clan led by Ed and LeEllen Baker, he celebrated many holidays and family events. He holds the record for the most weddings and high school and college graduations attended by one person. Tim shared

many "adventures" with his friends Steve and Sue Ellis including frostbite, near electrocution, 18 broken water pipes, and falling into a canal. An unlucky fisherman, Tim was given a mounted Irish Lord (double ugly) which he proudly displayed in his law office. He had a great sense of humor and gift for storytelling. After his wife described one of their adventures, a friend said, "I can't wait to hear Tim tell that."

Tim was preceded in death by his parents Francis and Evangeline; his in-laws Ralph and Edith; and his aunt and uncles, Mary Jo, Henry, and Emmett. He is survived by his wife, Edie; his daughter, Kate; his son, Collin and wife Min; his granddaughter, KaQing; and grandson KaiYi. He is also survived by his brother, Frank; his sister, Ann; Aunt Roberta; and his Lynch, Hammond, and Hardebeck cousins.

In his memory, please consider a donation to the Alaska Workers Association, 211 E. Fifth Ave., Anchorage 99501 or Catholic Social Services at 3710 E. 20th Ave., Anchorage, 99504.

Charles Tunley

Retired Nome Superior Court Judge Charles Tunley died July 1 in Green Valley, Arizona. He had been ill for a long time and was recently in hospice care. He is survived by his wife Carol and their three children David, Michael and Laura.

Judge Tunley was appointed by Gov. Jay Hammond to the Superior Court in Nome in 1980 (replacing Judge William Sanders) and retired in February 1996. Judge Tunley was the first Presiding Judge in the Second Judicial District, and was instrumental in developing computerization



Charles Tunley

for the Second District and rural courts in general.

Judge Tunley was raised in Skagway and attended Seattle University. After graduating he worked for the Bureau of Land Management and the legal department of the Alaska State Highway Department. He graduated from the San Francisco Law School, worked as a law clerk in Anchorage in 1965, and was admitted to the Alaska Bar that same year. He practiced law in Anchorage for nearly 14 years before his appointment to the bench at Nome; his law practice and his judicial work took him throughout the state.

His good friend, retired Judge Richard Erlich, said though Judge Tunley's courtroom appearance could be perceived as "gruff and crotchety," he was a gentle, sweet man and he cared tremendously about the work he did as a judge.

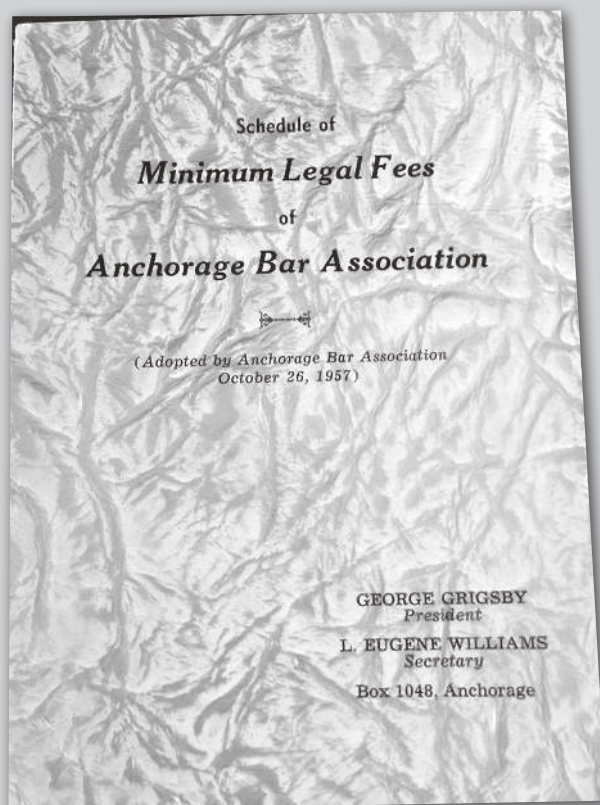
Carol Tunley can be contacted at 715 South Los Opalos, Green Valley, AZ 85614. I do not have any information currently as to the family's plans for a memorial, but will pass that along if I learn of one. One request of the family is that in lieu of flowers, consider making a donation to your local food bank.

- Craig Stowers
Chief Justice

Those were the days, weren't they?

In going through her husband's papers, Carol Tunley came across this Schedule of Minimum Legal Fees from 1957. They might provide a chuckle compared with the fees charged these days.

- Richard Erlich



Schedule of Minimum Legal Fees of Anchorage Bar Association		
<i>(Costs are not included in this schedule and are to be added)</i>		
DISTRICT COURT		
Criminal Cases		
Misdemeanor		\$ 250.00
Felony		500.00
Capital		1000.00
Civil Cases		
Appearance only		150.00
Divorce (uncontested)		300.00
Divorce (contested)		300.00
<i>(Plus \$125.00 per day or portion of day in court)</i>		
Attorney of record, commencing suit		200.00
Change of Name		125.00
Quiet Title Suit		500.00
COMMISSIONER'S COURT		
Criminal Cases		
Appearance and Pleas		100.00
Misdemeanor (trial before court without jury)		125.00
Conducting jury trial first day		150.00
Each additional day		100.00
Civil Cases		
Appearance only		100.00
Conducting trials		Contract
PROBATE COURT		
Estates (Formula - apply each step)		
Minimum		250.00
Second Step	2,500- 10,000	6%
Third Step	10,000- 100,000	5%
Fourth Step	100,000- 400,000	4%
Fifth Step	500,000-1,000,000	2%
Sixth Step	1,000,000-upwards	1%
Guardianship cases (same as estates for decedents)		

Adoption—:		
Uncontested		150.00
Contested		300.00
CITY MAGISTRATE'S COURT		
Criminal cases		75.00
OTHER SERVICES		
1. Written opinion		50.00
2. Bill of Sale		15.00
3. Deed		15.00
4. Real Estate Contract - Mortgage - Trust deed - transactions with escrow and necessary documents - minimum		75.00
<i>(Above \$7500.00 contract based approximately on a fee of 1% gross sales price)</i>		
5. Chattel Mortgage		40.00
6. Lease		50.00
7. Labor or Materialmen's Lien		30.00
8. Conditional Sales Contract		40.00
9. Organizing corporation, preparing & filing through first meeting of incorporators		500.00
10. Dissolving corporation		300.00
11. Partnership		100.00
12. Will		50.00
13. Bankruptcy		500.00
14. Power of Attorney		15.00
15. Assignment of lease or contract		25.00
16. Promissory note		10.00
17. Appearance before Board or Council		100.00
18. Recommended attorney's minimum hourly rate		25.00
COLLECTIONS		
On first \$500 collected		30%
Plus 25% of \$ 500.00-\$1000.00		
Plus 10% of 1000.00- 2500.00		
Over \$2500.00 by contract		
L. EUGENE WILLIAMS Secretary		

US Supreme Court Justice Sonia Sotomayor visits Alaska

Continued from page 1

asked the audience to remain in their seats so as not to alarm the U.S. marshals who were providing security around the room.

For the next hour, she wandered among the crowd seated at round tables, shaking hands, laying her hands on people's shoulders, and signing autographs. Very few audience members left without some physical contact with the justice. As she wandered, Justice Sotomayor continued to answer questions from Judge Christen, who remained seated on the stage. Cameras followed and projected Sotomayor's image on two screens at the front of the room, but audience members craned their necks and rotated in their seats to be able to see her in person as she made her way back and forth in the huge crowd.

Sotomayor explained the process for deciding cases. She explained that the justices each read the briefs in conjunction with their own law clerks, but they don't actually discuss them with other justices until oral argument. "We are asking you questions," she explained, "but we are also sharing with each other our views on the case. You'll see a conversation through the lawyer, but between the justices." After oral argument, the judges take time to reflect on points raised by other justices, and wait a few days before they vote on the case.

She talked about her background, growing up Puerto Rican in Queens. She is the first Latino American Supreme Court justice. She said she was a very energetic child. Everyone in her family can dance salsa but her, and when she asked her mom why she wasn't taught, she was told she couldn't sit still long enough. She is an outlier in her family, although she has always felt strong family support. She described that when she attended Princeton and Yale, other minority students wouldn't have their families visit. The students weren't fully comfortable in the Ivy League, so they didn't think their families would be comfortable. Sotomayor said she invited her entire family to visit. All six slept in her dorm room at Princeton. Her mom got the bed. She has invited her family to every induction, including to the White House when she was sworn in. To Sotomayor's embarrassment, her 90-year-old aunt stuffed her pocketbook with White House napkins and cups.



Justice Sotomayor and Bar President Susan Cox. (Photo by Adam Gulkis)

Sotomayor talked about the importance of racial diversity on the Supreme Court. Because the court has such a diverse docket, she said, it's important to have justices who have a variety of life experiences. "We are being asked as judges to decide the legal issues that are perplexing every person, business, and government enterprise," she said. "You are asking us to decide issues that vex you, that many of you have been living and studying most of your professional lives. You're asking a judge to become a master of every human endeavor there is. We are being asked to decide the issues the experts can't. You want people who actually really know as much about the world as they can." She said the court is currently comprised of Ivy League Catholics and Jews only. There are no Protestants, and no one from the middle part of the country. "Is that a bad thing?" she asked. "No. But is it enough for a court? I don't think so." And, "sometimes diversity just ensures that justices are sensitive about how they express themselves."

She gave an example. The case *Riley v. California* in 2014 involved cell phone searches, where a defendant had two cell phones. "One of my colleagues asked, 'Who [other than a criminal] would have two cell phones?' I said, 'I have two cell phones. The lawyer you're talking to has two cell phones. He's a government lawyer.' That is what diversity does. It ensures that in our conver-

sations, little is missed."

Sotomayor gave great credit to her predecessor women on the court. She described that when women joined the court, it became more civil and the justices stopped speaking ill of each other. Justice O'Connor required all the justices to eat lunch together. Sotomayor said that before Ginsberg and O'Connor, there had not been one Supreme Court case that was favorable to a woman. "It wasn't the court that changed the rights of women. It was the women's movement that changed the court," she said.

Sotomayor described the time Justice Kagan was sworn in, President Barack Obama visited the Supreme Court. He said to Justice Ginsberg, "Are you happy with the two sisters I have brought you?" She replied, "Very happy. But I'll be happier when I have four more."

When asked about Antonin Scalia, Sotomayor said he was like a "big brother who sometimes said the most annoying things." She said he liked engaging in the world, and made the court a little more fun. "It was reported that after his death, I started asking too many questions. I realized it was because I was too uncomfortable with the longer silences happening at oral argument. I wanted to fill the holes."

The lawyers, judges, and members of the public reacted to Sotomayor's visit with great admiration. "I thanked her afterward for the gay marriage decision," said stay-at-home-mom Dana Ward-Massey, through a few tears. "My wife gave birth to our daughter two weeks af-

ter it came out and it made such a big difference to our family." Local activist Laura Herman wished Sotomayor had spoken more about gender dynamics. "Even strong professional women still get sexually harassed and discriminated against. I think the men on the Supreme Court probably have no idea what that's like, and it shows in their decisions."

Sotomayor said she was able to visit 12 Alaska communities and talk to Alaskans. "It's an amazing place you live in. You have a sense of courage and survival. You've made a better place for all of yourselves here and should be proud. You've showed me a great deal of the majestic nature of America."

Monica Elkinton is an assistant municipal attorney for the Municipality of Anchorage. She's the outgoing co-chair of the Unbundled Services Section and serves on the Alaska Bar CLE Committee.

SUPREME COURT JUSTICES WHO HAVE VISITED ALASKA

- 2001 Steven Breyer – Bar Convention in Ketchikan
- 2003 Antonin Scalia – Bar Convention in Fairbanks
- 2005 Sandra Day O'Connor – Bar Convention in Juneau
- 2007 John Roberts – Bar Convention in Fairbanks
- 2008 Ruth Bader Ginsberg – Bar Convention in Anchorage
- 2009 Samuel Alito – Bar Convention in Juneau
- 2012 Sandra Day O'Connor visited Anchorage, speaking at the Dena'ina Center
- 2016 Sonia Sotomayor toured the state



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Members from the 1990s Office of Public Advocacy Criminal Section reunited in July at Glenda Kerry's home in Girdwood. From left: Glenda, Heather O'Brien, Averil Lerman, Phil Shanahan, Darrel Gardner, Chet Randall, Brant McGee, Sid Billingslea, Donna McCready and Leslie Hiebert.

CLE2016

Alaska Bar Association

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3.0 Ethics CLE Credits

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2.0 General CLE Credits

November 18

2016 Workers' Comp Update
4.0 General CLE Credits

November 20

Historians' Luncheon
 Ethics and Injustice: The Last Hangings in Territorial Alaska
1.0 Ethics CLE Credits

December 2

Anchorage District Court Off the Record
1.0 General and 1.0 Ethics CLE Credit

December 16

What Teenagers Teach Us About Communication and Candor
3.0 Ethics CLE Credits

December 16

Tech Tock, The Tock: Social Media and the Countdown to Your Ethical Demise
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Don't Let the Jokers Drive You Batty! What We Can Learn from Batman about Maintaining our Sanity (and Ethics) in the Practice of Law
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Contact the Alaska Bar Association or one of the following coordinators when you learn of a tragedy occurring to some one in your local legal community:

Fairbanks: Aimee Oravec,
aimee@akwater.com

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

Anchorage: Mike Walsh
mike@wheelslaw.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.

Is it time to consider cashing out part of the Permanent Fund?

By Cliff Groh

Alaska's politicians are stuck in a rut over financing of state government.

Here's one possible approach to breaking a political impasse that threatens Alaska's future: Does it make sense to take some portion of the Permanent Fund's principal and distribute it on a per capita basis as part of a constitutional amendment that fixes the purpose of the Permanent Fund as an endowment for education, transportation, and other purposes of general government?

Alaska's Policy Predicament and the Alaska Fiscal System

The nickel version of our state's fiscal difficulties is that:

1. Alaska's government has run mostly on oil money for more than 35 years.

2. Alaska's oil production is a quarter of what it was in the late 1980s and will under all reasonable scenarios never recover to that level.

3. World oil prices have slumped massively and are well under half of what they were two years ago.

With oil revenues way down, the State of Alaska has been spending down savings, and the savings account used most heavily — the Constitutional Budget Reserve — is running low. At the current burn rate, this fund will not get us all the way to the summer of 2018.

Meanwhile, the state budget has gone down — substantially. The total operating and capital budget has been cut by more than 40 percent in the last four years and is now below the level it was eight years ago — without accounting for population and inflation. (This measurement is of Unrestricted General Fund revenues, which is what most people mean when they say "the budget." The figures for the budget come from the Alaska Legislative Finance Division.) Alaskans still pay the lowest taxes in the United States, as our state is the only one without any form of broad-based tax.

So where are we?
The current budget is \$4.3 billion and revenues are expected to be \$1.2 billion, leaving a \$3.1 billion gap just for Fiscal Year 2017 (which runs July 1, 2016-June 30, 2017).

The State of Alaska does have a Permanent Fund, run by the Alaska Permanent Fund Corporation. The Corporation's website shows that the Permanent Fund has a principal of \$39.5 billion in realized assets, not spendable absent a constitutional amendment. The Permanent Fund's principal generates earnings held in the Permanent Fund Earnings Reserve, now at about \$7 billion in realized earnings "assigned for future appropriations." Pursuant to a statutory formula, about half of the Permanent Fund's earnings are paid out each year on a per capita basis as Permanent Fund Dividends to each Alaskan who applies. (The Governor's veto of a portion of the appropriation for dividends will reduce the payment made in October.) Some of the remainder of the earnings go back into the principal to protect against the effects of inflation.

Alaska's Political Impasse
That description of Alaska's policy predicament and fiscal system might not leave you thinking Alaska is in deep trouble, but that's because we haven't gotten to the politics yet. Alaska is not the only state with fiscal problems, but the 49th state has the most complex fiscal politics.

One good way to understand the

depth and severity of Alaska's fiscal stalemate is to look at the various fiscal options different groups of Alaskans fear the most. See the attached the Groh Hexagon.

Another takeaway from the Groh Hexagon is that a lot of Alaskans have positions, but very few have realistic plans. This complicated line-up sets us up for a long conflict, similar in some ways to the stalemated trench warfare of World War I. But it's actually worse, because there were only two sides in World War I, unlike the four, five, six sides in this fight. In that sense, it's more like a standoff in a Western or gangster movie that might keep going and going and going, grinding Alaska down in the process.

Exacerbating this mess are the factors of inertia, incentives and ideology. Alaska's system of government has multiple veto points, making it difficult to get important measures passed under the best circumstances. A number of lawmakers also appear to be to never take a tough vote, no matter how bad the consequences to the public. Finally, ideology plays a role in that some legislators are following a "No Action Plan" to advance goals other than taking immediate steps to address the crisis.

Pros and Cons of a Partial Cash-out of the Permanent Fund

Let's start by contrasting a partial cash-out with a proposal with more far-reaching consequences, a full cash-out of the Permanent Fund's principal. Alaska economist Gregg Erickson advocated in 1997 for a per capita distribution of the entire principal that would make each current Alaskan a beneficiary of a trust.

Shortly before his sudden death in 2001, former Speaker of the Alaska House and Alaska Commissioner of Revenue Hugh Malone — who played critical roles in the creation of both the Permanent Fund and the Permanent Fund Dividend — suggested that the entire Permanent Fund principal just be given away. His comments in an interview included:

"I guess I think now that the creation of the Permanent Fund — at least allowing it to grow apparently to unlimited size — may have been a mistake.... I don't know what to do with the fund as it continues to grow and this black beast gets bigger and bigger and is hiding in the closet.... If I had my druthers, I'd say, 'OK, everybody, line up here and get ready. Here's your last dividend, because next year we're going to give the fund away. We're going to give it away to somebody else and it will be their headache after that.'.... Because the risk is too large that it will make people's lives worse instead of better."

Let's turn now to a discussion of a partial cash-out of the Permanent Fund's principal. Under a partial cash-out, a portion of the Permanent Fund principal would be distributed on a per capita basis in exchange for the income of the remaining principal being devoted to financing regular government operations. In 2000, Jerry Mackie — then State Senate majority leader — proposed that approximately 50 per cent of the Permanent Fund principal be distributed as part of such a trade.

It would take a constitutional



Cliff Groh

amendment adopted at a general election to implement such a partial cash-out proposal. It takes a two-thirds vote of each house of the Legislature to put a proposed constitutional amendment on the ballot, where it would be adopted if it received a majority vote of the people.

The amount distributed would depend on the percentage of the principal distributed. If 50 percent of the principal and earnings reserve were distributed, it would be more than \$30,000 per person. If 25 percent of those two accounts were distributed, the per capita share would be more than \$15,000. Other portions could of course be proposed in the constitutional amendment.

The constitutional amendment implementing such a proposal would also provide that the remaining portion of the Permanent Fund's principal that was not distributed would be explicitly reserved for generating income for general government, meaning that Permanent Fund Dividends would end. A constitutional amendment would presumably provide for the longest possible residency requirement constitutionally permissible to minimize concerns about immigration to receive the benefits of the cash-out.

The arguments for such a partial cash-out include:

1. A one-time distribution of multiple billions of dollars would boost the Alaska economy.

2. The reservation of the remainder of the Permanent Fund's principal would provide a steady stream of funding for the state budget.

3. Adopting the constitutional amendment would settle the question of "What is the Permanent Fund for?"

4. Settling the question of the purpose of the Permanent Fund and eliminating the Permanent Fund Dividend would reduce the number of sides in the political standoff and clarify the conflicts over how to finance Alaska's public services. This would make Alaska more like other states in their straightforward discussions of trade-offs between ser-

vices and taxes. This simplification of the conflict might help Alaska avoid a terrible crash.

The arguments against such a proposal include:

1. Distributing a portion of the Permanent Fund's principal would mean that future generations of Alaskans would neither have that portion of the principal—or income from it—collectively available. Such a proposal poses questions of intergenerational equity.

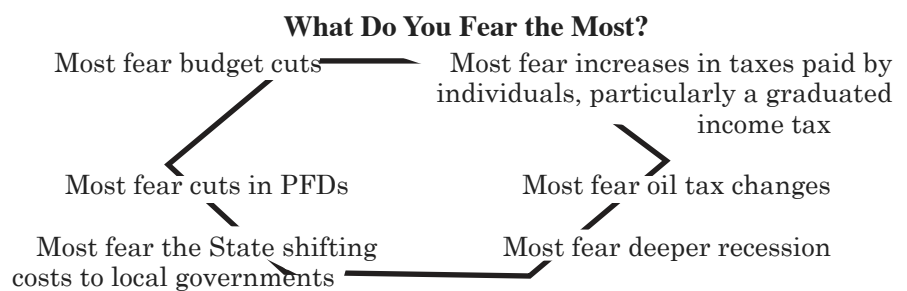
2. Dispersing a portion of the Permanent Fund's principal reduces options to use the Permanent Fund principal as collateral for big economic development projects or to use the income from the portion dispersed to build a world-class university or some other important public institution in Alaska.

3. Distributing part of the Permanent Fund's principal to help minimize the risk of a crash and long-term destructive gridlock could seem like giving in to a counsel of despair. A lot of how you respond to a proposed partial cash-out depends on what you think the actual alternatives for Alaska are. As one observer asked, "Do we have to be broke to be sane?"

A partial cash-out of the Permanent Fund might provide politicians with a new and substantial incentive to present to voters to consider in a deal to cut expenditures and raise recurring revenues to balance the state budget. Given our current fiscal and political circumstances—and the likely trajectory for our state — is a partial cash-out the least bad in a set of bad alternatives facing Alaska?

Cliff Groh was the principal legislative assistant working on the legislation adopted in 1982 that created the Permanent Fund Dividend we have today. He has authored or co-authored four chapters in academic books about the Permanent Fund Dividend. Although the views he expresses here are solely his own, he is also Chair of Alaska Common Ground, a public policy organization focused on helping Alaskans seek consensus on the major issues facing the state. Alaska Common Ground is holding a series of events in the fall of 2016 regarding the fiscal and economic challenges facing Alaska.

The Groh Hexagon



PUBLIC NOTICE

FOR THE REAPPOINTMENT OF PART-TIME MAGISTRATE JUDGE

The current term of the office of the United States Magistrate Judge Scott Oravec at Fairbanks, Alaska is due to expire in February, 2017. The United States District Court is required by law to establish a panel of citizens to consider the reappointment of the magistrate judge. Comments from members of the bar and the public are invited as to whether the incumbent magistrate judge should be recommended for reappointment. Please go to goo.gl/fkqJ3P for further information.

19th annual Territorial lawyers dinner held June 9



Invited lawyers from territorial days or who've practiced in Alaska 40 or more years attended.

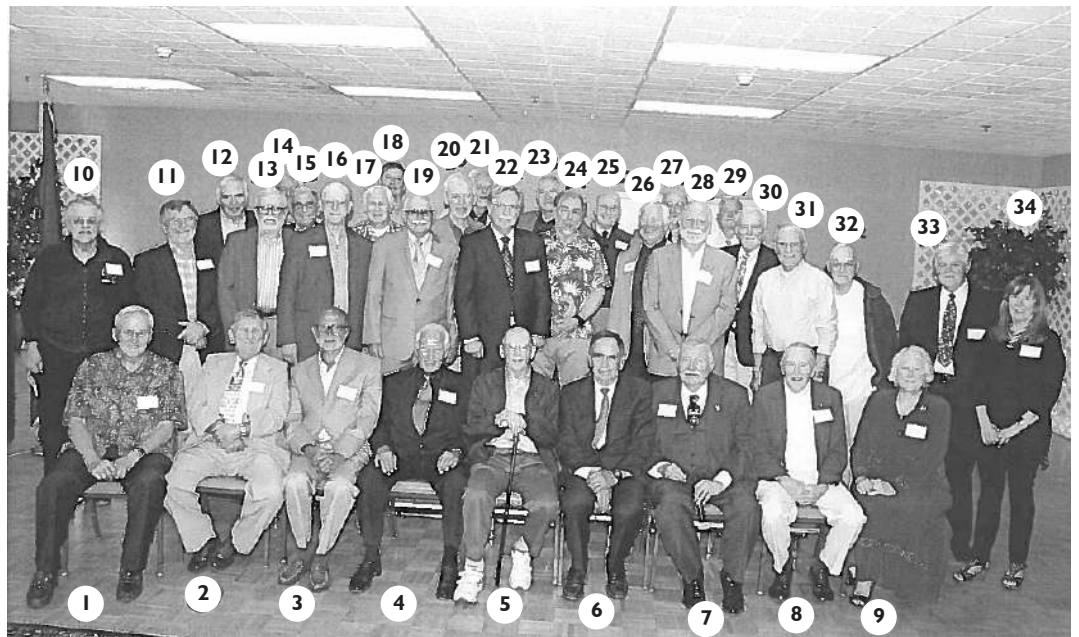
Sitting

- 1. Jim Wanamaker '61
- 2. Stan Ditus '65
- 3. David Ruskin '63
- 4. Rod Sisson '74
- 5. Warren Taylor '55
- 6. Charlie Cole '55
- 7. Wayne Anthony Ross '69
- 8. David Shaftel '71
- 9. Valerie Therrien '76

- 17. Robert Libbey '64
- 18. Brock Shamberg '71
- 19. Rodney Kleedehn '76
- 20. John Havelock '61
- 21. Judge Russel Holland '63
- 22. Judge Frank Pfiffner '75
- 23. Bob Frenz '76
- 24. Jerry Wertzbaugher '74
- 25. Joe Palmier '68
- 26. Larry Wood '76
- 27. Joe Kalamarides '76
- 28. Mike Schneider '75
- 29. Bill Cook '75
- 30. Vic Carlson '62
- 31. John Mason '65
- 32. Bob Erwin '61
- 33. Glen Anderson '74
- 34. Karla Taylor-Welch '84

Standing

- 10. Ken Jacobus '69
- 11. Jim Barnett '84
- 12. Mick Hawley '67
- 13. Tom Meacham '74
- 14. Chris Cooke '70
- 15. Jim Christie '65
- 16. Jim Powell '65



Lawyers admitted to the Alaska Bar in territorial days, as well as Bar members admitted 40 or more years ago, and their spouses and guests gathered for dinner June 9 in Anchorage. To identify members look for the number in the list that corresponds with the key in the black and white photo. The numbers after the names indicate the years members were admitted to the Bar.



Lawyers, spouses and widows attended the gathering.

Territorial lawyers dinner



Warren Taylor '55, left, and Charlie Cole '55 practiced during territorial days. Numbers indicate the year they were admitted to the Bar.

My Five .



Asking people 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 legal community in Alaska. In this installment we went to the law library for selections from the folks who work there. Susan Falk is the Alaska State law librarian. She spent an inordinate amount of time reviewing the soundtrack of her life in an effort to identify five seminal songs. Buck Sterling is the public services librarian at the Alaska State Court Law Library in Anchorage and he blasts music in his office when no one is around, much to the disappointment of his colleagues. Stacy Koster is a part-time library assistant and part-time Wasilla farmer, with a small front yard farm consisting of 13 chickens, 12 ducks, and 8 mostly friendly geese. This job mostly consists of reminding the geese who's in charge.

Susan Falk

- "High Tide or Low Tide" – Bob Marley
- "Concrete Schoolyard" – Jurassic 5
- "Life on Mars" – David Bowie
- "Ever Fallen in Love (With Someone You Shouldn't've)" – Buzzcocks
- "Three Days" – Jane's Addiction

Buck Sterling

- "Choctaw Bingo" – James McMurtry
- "Satisfaction" – Devo
- "Won't Get Fooled Again" – The Who
- "Not Fade Away/Going down the Road Feeling Bad" – Grateful Dead (Live, from Skull and Roses)
- "Your X-Rays Have Just Come Back From the Lab and We Think We Know What Your Problem Is" – Jets to Brazil

Stacy Koster

- "Dear Abbey" – John Prine
- "Spanish Pipedream" – John Prine
- "Black Diamond Strings" – Guy Clark
- "Getting Ready to Get Down" – Josh Ritter
- "Wagon Wheel" – Old Crow Medicine Show

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PerkinsCoie.com/NorthStarAward2016

Federal Bar Association prepares for new year with new leadership

By Darrel J. Gardner

The Alaska Chapter of the Federal Bar Association is gearing up for another great year under the leadership of president-elect Lane Tucker. Tucker replaced Assistant U.S. Attorney Kevin Feldis, who was president-elect. Feldis has taken an extended overseas detail to work with the U.S. Department of Justice in Indonesia. Tucker will assume her FBA presidency Oct. 1, at the conclusion of Jamie McGrady's current term as president. Tucker



Lane Tucker is president-elect of the Alaska Chapter of the FBA.

is a partner at the law firm of Stoel Rives, and has nearly 30 years of experience in federal government contracts, SBA matters, white collar prosecution and defense, and construction litigation. Prior to entering private practice, she was an assistant U.S. attorney, serving as the civil chief for the U.S. Attorney's Office in Anchorage. Prior to joining the U.S. Attorney's Office, she was a trial attorney with the U.S. Department of Justice in Washington, D.C.

Alaska's resident Ninth Circuit Judge, Morgan Christen, celebrated the completion of her new chambers and other improvements at the Anchorage Historical Federal Courthouse with a reception May 25. The extensive courthouse remodeling took several years of work by the General Services Administration. The event was co-hosted with the Alaska Chapter of the FBA. Invited guests included members of Alaska's state Supreme Court and Court of Appeals; Alaska state, U.S. District Court, and Bankruptcy Court staff; U.S. District Court and Bankruptcy Court judges and their judicial assistants and law clerks; former and current Alaska District Lawyer Representatives; FBA-Alaska members; and representatives from the Alaska Bar Association.

On July 20, the Alaska Chapter of the FBA presented a free "summer associate luncheon" at the James M. Fitzgerald U.S. Courthouse. This special luncheon was hosted by Chief Judge Timothy Burgess and District Judge Sharon

Gleason. The luncheon consisted of a presentation by the judges offering tips for new practitioners, followed by an opportunity for attendees to ask questions and mix socially. The luncheon, with approximately 35 attendees, offered an excellent opportunity for summer associates, law clerks and interns to gather with distinguished members of Alaska's federal bench on an informal basis.

The Third Annual Alaska Federal Bar Conference scheduled for Aug. 12 at the Dena'ina Center was cancelled, unfortunately, due to the low number of registrants. The Alaska Chapter did hold a reception, however, for Mark Vincent, the current national president of the FBA. Mark came from Salt Lake City, where he works as an assistant U.S. attorney. The reception was graciously hosted by Lane Tucker at her home, with catering by Sweet Basil Café. The chapter was able to conduct one presentation, which took place at the Federal Building during a lunch-time meeting. "Arctic Law and Policy" featured Betsy Baker and Mara Kimmel.

Baker is an Anchorage-based



"The Alaska Chapter of the Federal Bar Association is gearing up for another great year. . ."

is currently first lady of the Municipality of Anchorage. Kimmel has practiced law in Alaska since 1996, and recently earned a Ph.D. in Environmental Sciences and Policy from Central European University. The presentation was free to FBA members, and the Alaska Chapter provided Moose's Tooth pizza for lunch. FBA President Mark Vincent also at-

mission, the Inuit Circumpolar Council, and the Arctic Council. She has sailed with two Arctic Ocean bathymetric mapping cruises on the U.S. Coast Guard icebreaker *Healy*, and served as visiting scholar with the Extended Continental Shelf Task Force at the U.S. State Department. Kimmel has a long career in Alaska public policy focused on issues of rights and justice. She is a senior fellow at the Institute of the North, and

been held. Until our first FBA Conference in 2014, no FBA president had ever visited Alaska. With more than 18,000 members across the United States, the FBA is second only to the American Bar Association for voluntary membership. The visiting FBA presidents take their Alaska experiences and impressions back with them, and generally praise our state during their remarks at the national FBA's Annual Convention in September, which is attended by hundreds of federal practitioners and judges from all over the country. This is good for us and good for Alaska. The FBA pays for the president's trip, but there has to be an event that

I am truly proud of Alaska and our bar, but if we can't get sufficient attendance to hold an annual conference, we will likely lose this valuable opportunity to put Alaska on an important part of the national legal stage. PLEASE support us by attending this conference. We don't yet have plans for our next attempt, but when we do, we would really appreciate your support.

justifies the cost of sending the president to Alaska. I am truly proud of Alaska and our bar, but if we can't get sufficient attendance to hold an annual conference, we will likely lose this valuable opportunity to put Alaska on an important part of the national legal stage. PLEASE support us by attending this conference. We don't yet have plans for our next attempt, but when we do, we would really appreciate your support. Thank you.

Alaska saw a visit by the Ninth Circuit Court of Appeals in early August. The panel participated in an informal bench-bar discussion Aug. 3, followed by a reception held at the James M. Fitzgerald U.S. Courthouse. The event was hosted by the U.S. Court of Appeals for the Ninth Circuit and the U.S. District Court of Alaska. The panel consisted of Circuit Judges Raymond C. Fisher, Richard A. Paez and Andrew D. Hurwitz. The judges discussed their respective pathways to the bench and answered questions from the audience.

The Annual Ninth Circuit Judicial Conference was held in early July at the Big Sky Resort in Montana, the home state of Chief Circuit Judge Sidney R. Thomas. The conference returned to a three and one-

Continued on page 13



Betsy Baker, Magistrate Judge Deborah Smith, Mara Kimmel, and FBA national president Mark Vincent follow the Arctic Law and Policy CLE.

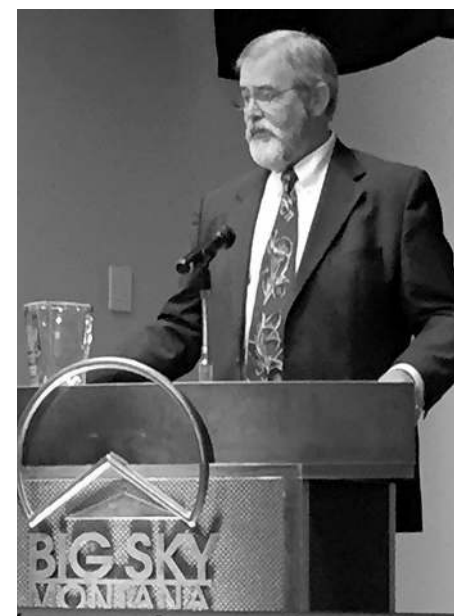
consultant on ocean, Arctic, and international law and a tenured professor at Vermont Law School. Her work on Arctic resource development and marine management includes reports and presentations for the Alaska Arctic Policy Com-

tended, and he spoke highly of the Alaska Chapter's increased activity and membership growth in the past several years.

I have been writing this column for a few years now and I usually do so without much editorializing. In this instance, however, I want to say that I am very disappointed in the lack of turnout for the Federal Bar Conference. Several people worked extremely hard to plan this conference, particularly Jamie McGrady, Brewster Jamieson and Mary DeSpain at the Bar Association. Brewster had lined up a fascinating, cutting-edge presentation on artificial intelligence and the law, with several speakers coming from out of state. We ended up having to pay a lot of money to one of the speakers, who had completely re-arranged his summer vacation plans to come to Alaska. Also, we have been extremely lucky to have had national presidents of the Federal Bar Association come to Alaska specifically for this conference every year it has



Supreme Court Justice Anthony Kennedy joins Alaska Chief Judge Timothy Burgess onstage at the 2016 Ninth Circuit Judicial Conference in Big Sky, Montana.



Montana Federal Public Defender Tony Gallagher (who has spoken in Alaska at an AKACDL conference) wins the Ninth Circuit's John P. Frank outstanding lawyer award.

Federal Bar Association prepares for new year

Continued from page 12

half day format and featured noted speakers addressing topics related to the conference's theme: "And Justice for All." The programs developed by the Conference Executive Committee explored how federal judges and lawyers can better meet the challenges of administering justice fairly and effectively in an increasingly dynamic world with disparate allocation of financial resources and legal services. Some of the topics included "Income Inequality and the Challenges of Achieving Justice for All," "Representing the Indigent on Appeal," and "Overcoming Economic Barriers to Criminal Justice." The conference opened with welcoming remarks from Chief Judge Thomas, Montana Gov. Steve Bullock, and Bankruptcy Judge Margaret Mann, this year's conference chair. The first day also included "A Conversation with U.S. Supreme Court Justice Anthony M. Kennedy," who spoke on a wide range of topics and issues he has addressed over the course of his career.

Alaska was well represented at the conference. Alaska Chief Judge Tim Burgess, who served as this year's conference program chair, moves into the conference chair position and will lead the 2017 conference, set to be held in San Francisco next July. Earlier this year, Darrel Gardner was elected to be an officer of

the Ninth Circuit Lawyer Representatives Coordinating Committee (LRCC); he is chair-elect for 2017 and will serve as the LRCC chair in 2018. Other conference attendees included:

- Circuit Judge Morgan Christen
- District Judge Sharon Gleason
- Senior Judge Ralph Beistline
- Senior Judge H. Russel Holland
- Senior Judge Jack Sedwick
- Magistrate Judge Deborah Smith
- Federal Public Defender Rich Curtner
- U.S. Attorney Karen Loeffler
- Lawyer Representative Kevin Feldis
- Lawyer Representative Dick Monkman
- Lawyer Representative Mary Pinkel
- Clerk of Court Lesley Allen

The programs developed by the Conference Executive Committee explored how federal judges and lawyers can better meet the challenges of administering justice fairly and effectively in an increasingly dynamic world with disparate allocation of financial resources and legal services.

For more information, or to join the Federal Bar Association, please contact Jamie McGrady (jamie.mcgrady@fd.org) or Lane Tycker (lane.tucker@stoel.com), or visit the Alaska 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."

Darrel Gardner is a past president of the Alaska Chapter of the FBA, and president-elect of the Alaska Bar Association.

Legal Services introduces Pro Bono Training Academy

By Sarah Carver

Alaska Legal Services Corporation has announced the Pro Bono Training Academy (PBTA), a new initiative to better support our pro bono volunteers. Our goal is to make the volunteer experience go more smoothly and be more fulfilling for both the attorney and the client. The PBTA program has three main components.

1. Free webinars. ALSC offers free webinars that are pre-approved for CLE credits. These webinars can be accessed from anywhere with an internet connection or mobile device. So far, we have offered three substantive topic webinars: Eviction Defense, Medicaid Eligibility, and Estate Planning. If you are unable to attend live webinars, you can access the recordings online at www.alaskaadvocates.org under the CLE tab. The webinars are offered to both educate on substantive legal topics and inspire new generations of pro bono attorneys.

2. Resource library. ALSC has recently revamped the www.alaskaadvocates.org website. This website is maintained for our volunteers to utilize as a resource for their pro bono cases. The website contains training materials, sample pleadings, templates, cases and statutes and links to other resources. The website is being updated and new content is being added all the time. You can also find ALSC newsletters, calendars and current open pro bono cases listed on the website.

3. Mentor program. ALSC maintains a list of private attorneys who have indicated that they are willing to mentor a pro bono volunteer in specific subject matters. These volunteers include retired judges and experienced lawyers. If a new pro bono volunteer is uncomfortable taking on a case without guidance, we can match that volunteer with a mentor to help guide them through the case. This is a great asset for the volunteer not only in their pro bono case, but to also build relationships and skill for future practice. We hope that the mentor-mentee relationship is fruitful for both parties, and encourage our volunteers to actively participate in sustaining the mentorship.

Pro bono involvement is crucial in promoting access to justice for all



Alaskans. Alaska presents unique and extreme access issues that hamper pro bono efforts. Approximately half of Alaskans live outside the Anchorage metropolitan area, many in towns or villages off the road system. Most rural residents do not have easy access to the private bar. Attorneys are disproportionately located in the Anchorage area, and 77% of practicing attorneys live in the Third Judicial District. In contrast, 67% of the poverty population in Alaska lives outside Anchorage. Rural Alaskans lack physical access to a courthouse and may be unable to access forms online because of a lack of reliable internet in remote villages.

In a 2014 survey conducted by the Pro Bono Service Committee of the Alaska Bar, many respondents weighted "lack of skills or experience in the practice areas needed by pro bono clients" as the greatest or second greatest deterrent to pro bono service. Nearly half the survey respondents said free training and CLE credit, free manuals or forms, and mentors and co-counsel would be an "important" or "highly important" factor in their doing more pro bono work. The PBTA is working to address this deterrent and create not only a fulfilling experience for both lawyer and client, but also an opportunity for attorneys to enhance their legal skills.

If you have any questions about the PBTA or would like more information, please contact Sarah Carver, PBTA project coordinator at scarver@alsc-law.org or (907) 406-2222.

Sarah Carver is the project coordinator for the Pro Bono Training Academy.

Substance Abuse Help

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Michaela Kelley
Canterbury
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Serena Green
777-7258

Megyn A. Greider
269-5540

David S. Houston
278-1015

Mike Lindeman
760-831-8291

Suzanne Lombardi
770-6600 (wk)

Matthew Magliaro
(907) 782-5988

Jennifer Owens
269-8809

Michael Stephan
McLaughlin
793-2200

Greggory M. Olson
269-6037

John E. Reese
345-0625

Palmer

Brooke Alowa
269-5100

Glen Price
746-5970

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Book Review

‘Denali Justice’

by Peter A. Galbraith

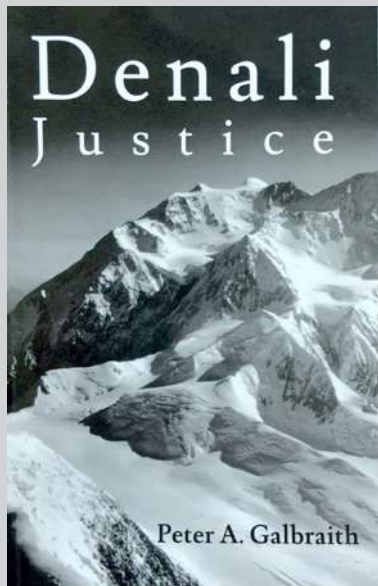
By Thomas J. Kelly

Peter A. Galbraith's first book, 'Denali Justice', is his account of a Mount McKinley (Denali) plane crash and successful/flawed rescue attempt in December 1981, and subsequent litigation. The author, a Washington native, was admitted to the Alaska Bar in 1974 and worked for a couple of small firms before going solo in 1978. Galbraith determined that the U.S. government's conduct in the rescue was negligent, resulting in a delay of aid to his injured Cheechako clients. The story is a Grisham-like improbable tale of a cocky young lawyer taking on the Goliath government for clients who had no money in a lawsuit named "dumbest lawsuit of the year" by the Anchorage Daily News under the annual Soapy Smith awards when filed in 1984.

As in the Grisham novels, the good guys win only after years of hard work. To win this case Galbraith had to become educated in fixed wing and helicopter flight operations, medical issues, the economics of personal injury and wrongful death cases, government search and rescue protocols and then convince a new, Reagan-appointed federal judge that the government was grossly negligent. The judge's decision subsequently became required reading at the Rescue Coordination Center at Elmendorf Air Force Base.

This book is a must-read for aspiring trial lawyers and others who have any curiosity about life in the trenches of complex civil practice. Copies are available from amazon.com.

Thomas J. Kelly, an emeritus (geezer) member of the Wisconsin Bar, is best known on Kodiak Island as Meghan Kelly's father. He read this book in one rainy Kodiak day.



NEWS FROM THE BAR

Board of Governors action items from September 8, 2016

- Voted to send the revisions to the ethics rules "Ethics 20/20" to the Supreme Court.
- Voted to send to the Supreme Court the amendment to Bar Rule 16, creating language for charging fees in discipline cases, with a proposed fee schedule.
- Voted to send to the Supreme Court the amendment to Bar Rule 26 (b) returning "failure to file a tax return" under definition of serious crime for purposes of Supreme Court interim suspension of an attorney.
- Voted to send to the Supreme Court an amendment to Bar Rule 43.1, replacing "Alaska Pro Bono Program" with "qualified legal services provider."
- Advised the Board that the Supreme Court asked for clarification of whether the military spouse practice rule should be under admissions or waivers, and that the preference is to stay under waivers.
- Voted to send to the Supreme Court an amendment to Bar Rule 44 which would extend the length of term of a legal intern permit from eight months to 12 months.
- Voted to approve the two Lawyers' Fund for Client Protection committee decisions which recommended that the claims be denied.
- Approved the minutes from the May 9 and 12 board meetings.
- Voted to move \$100,000 from unappropriated capital to the long term capital reserve account.
- Established a board subcommittee to review options for staff medical insurance.
- Reviewed a proposed policy from Joshua Decker of the ACLU of Alaska and voted to add a paragraph on the admissions website to address accommodations that may be available to bar exam applicants who may be nursing at the time of the exam.
- Voted to recommend the admission of 14 reciprocity applicants and six applicants by UBE score transfer.
- Voted to approve a Rule 43 (ALSC) waiver for Chelsea Gregersen.
- Voted to allow reimbursement for the Young Lawyer Delegate from the fund for the New Lawyer Section representatives.

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ALASKA ALA

A Chapter of the Association of Legal Administrators

Alaska Association of Legal Administrators, Inc. 9th Annual Fall Educational Conference

October 18, 2016 8:00 a.m. – 4:30 p.m.
 The Lakefront Anchorage

Lynne Curry, President of The Growth Company, Inc., will start our conference with a session on dealing with Bullies in the Workplace, and later, Communication Skills for Leaders.
(4.5 Alaska Bar Association CLE Credits – Pending)

Additional speakers on topics of interest to all law practice managers, including attorneys, paralegals and legal assistants whose job duties include administrative responsibilities, will be detailed soon. **Check for updates at www.AlaskaALA.org.**

Alaska ALA can help you solve the challenges that face your law firm or office with **educational sessions, networking opportunities**, and the opportunity to discover the latest technologies and solutions in the **Business Partner expo**.

Cost is \$100/member and \$125/non-member, and includes breakfast and lunch. The conference will end with a networking **reception** at 4:30 p.m., where a **scholarship** good toward any 2017 Association of Legal Administrators conference (<http://www.alanet.org/events/>) will be awarded (up to \$2,500).

For updates and registration, please visit AlaskaALA.org.

AKACDL's 6th All*Stars Defense Conference termed a success

By Darrel J. Gardner

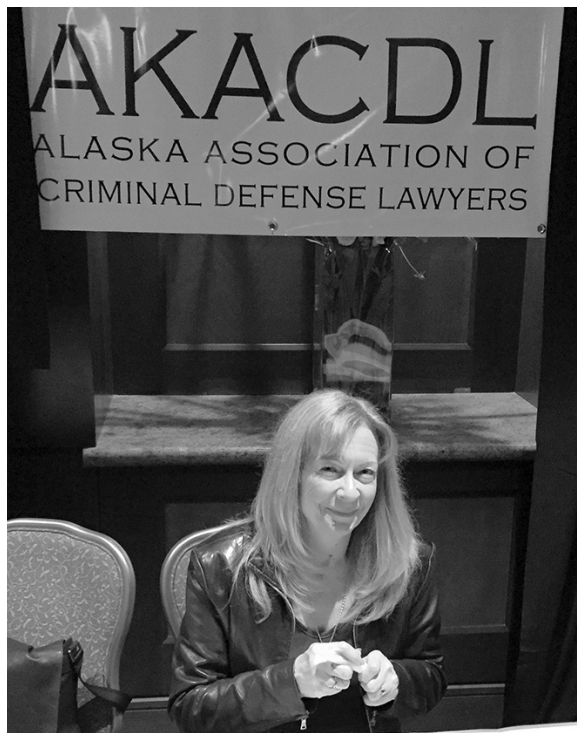
The Alaska Association of Criminal Defense Lawyers will be 7 years old in November. AKACDL has approximately 130 members in cities all around Alaska. In keeping with the goals of its mission statement, AKACDL usually presents at least three criminal defense oriented CLE programs per year, and in addition, an annual two-day summer conference held this year July 7-8 at the Alyeska Resort in Girdwood. This year marked AKACDL's sixth conference. The goal of the aptly named "All*Stars Conference" is to bring highly experienced, nationally noted criminal defense lawyers to Alaska to speak to our criminal defense bar. Most of the presenters have been presenters at the National College of Criminal Defense (NCCD), the National Institute for Trial Advocacy (NITA), and the National Association of Criminal Defense Lawyers (NACDL). This year's four featured presenters included:

Professor Jonathan Turley, a nationally recognized legal scholar who has written extensively in areas ranging from constitutional law to legal theory to tort law. He has written more than three dozen academic articles that have appeared in a variety of leading law journals at Cornell, Duke, Georgetown, Harvard, Northwestern, University of Chicago and other schools. In addition to his extensive publications, Professor Turley has served as counsel in many notable cases in the last two decades. Turley holds the Shapiro Chair for Public Interest Law at The George Washington University Law School where he teaches criminal procedure and constitutional law. He has had articles published in The New York Times, The Washington Post, USA Today, the Los Angeles Times, and The Wall Street Journal, and he has been a legal analyst for NBC News and CBS News.



Speaker Kelli Childress emphasizes a point during her presentation on jury dynamics.

Kelli Childress is a member of the State of Illinois Task Force on Grand Jury Review, a member of the State of Illinois Advisory Council on Alcoholism and Other Drug Dependency, a member of the Board of Directors of the Illinois Public De-



Non-lawyer volunteer (thank you!) Tina Adair checks in attendees at the All*Stars Conference.

fender Association, and a member of the Board of Directors of the Illinois Association of Criminal Defense Lawyers. She is the chair of the Illinois State Bar Association's Human Rights Section Council, vice chair of the Diversity Leadership Council, and past chair of the Criminal Justice Section Council. She also sits on the Northern Illinois University College of Law's Board of Visitors. Childress is a nationally recognized speaker, having appeared as a panelist in several law-related television programs.

Jed Stone, a widely respected criminal defense lawyer in Illinois. Stone is a Fellow of the American Board of Criminal Lawyers. He holds a faculty appointment at Lake Forest College and has taught at Northwestern University. He trains indigent defense counsel and public defenders for the Administrative Office of the United States Courts and the New York State Defender Association. The Chicago Bar Association conferred upon him the title of Master Advocate. Stone is the recipient of the Abraham Lincoln Marovitz Public Interest Lawyer Award; the NAACP's Freedom and Justice Award; and the 2015 Most Influential African American of Lake County Freedom Award.

Andrea George, has been the executive director of the Federal Defenders of Eastern Washington and Idaho since 2012. From 2006-2012, she was the senior litigator for the Federal Defenders for the District of Minnesota. George has spoken and taught nationally on a variety of topics for the Federal Judicial Center, National Association of Criminal Defense Lawyers and various law groups. She is a faculty member of the National Criminal Defense College (NCCD) and the Alternate Defense Counsel, (ADC) Colorado Trial Academy.

This year's All*Stars Conference was once again very well attended, with more than 100 participants. A large number of public defense attorneys attended because, for years now, the Alaska Public Defender Agency and the Office of Public Advocacy have experienced inadequate

funding to provide a similar level of in-house training. AKACDL commends Public Defender Quinlan Steiner and Public Advocate Rick Allen for their unwavering support of the association in its mission to provide high quality Continuing Legal Education to the Alaska criminal defense bar.

At the lunch event on the first day of the conference, AKACDL presented its annual "Alaskan Champion of Liberty Award." The award, a large engraved decorative gold pan, is based on nominations from the membership and is given to an attorney who has demonstrated exemplary legal skills and dedication in achieving a successful case outcome in the preceding year. In 2016, the AKACDL board of directors voted to create a second award that could be given to a non-AKACDL member or member of the public. This year's AKACDL member award went to Andy Pevehouse who is a partner at the firm of Gilman & Pevehouse in Kenai. Andy was a public defender in Kenai from 2007 until he

went into private practice in 2015. This year the AKACDL board also presented a gold pan to Alaska Innocence Project founder

Bill Oberly, who received the award on behalf of the "Fairbanks Four" defense team, which included Dorsy & Whitney lawyers Bob Bundy, Jahna Lindemuth, Kate Demarest and Mike Grisham, plus Alaska Public Advocate Rick Allen and OPA lawyer Whitney Glover. Mr. Oberly and the Alaska Innocence Project have been similarly honored this year with human rights awards from the First Alaskans Institute and the Alaska Bar Association. Congratulations to all of these outstanding practitioners!

At lunch on the second day of the conference, local attorneys Susan Orlansky and Tracey Wollenberg presented an "Alaska Case Law Update." Orlansky is an attorney in private practice, whose practice for most of her 35 years in Alaska has concentrated on appeals, both criminal and civil. She is currently of counsel to the firm Reeves Amodio LLC, and a volunteer staff attor-



AKACDL's 2016 "Champion of Liberty" award winners Andy Pevehouse and Bill Oberly display their gold pans.

ney at the ACLU of Alaska. Prior to January 2014, she was a partner in Feldman Orlansky & Sanders. Before entering private practice, she was an assistant public defender for 11 years. Wollenberg is the deputy public defender for the Appellate Division at the Alaska Public Defender Agency. After graduating from Columbia Law School, she clerked for Court of Appeals Judge David Mannheim. Following her clerkship, she began work at the Alaska Public Defender Agency, first in the trial section and then in appeals. In 2011, she assumed her current position supervising statewide appeals for the Public Defender Agency.

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

Darrel Gardner is an AKACDL board member and served as its president in 2014. He is an assistant federal public defender and president-elect of the Alaska Bar Association.

This year's All*Stars Conference was once again very well attended, with more than 100 participants



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Tribute to Sharon Yerbich, chronicle of a bout with cancer



By Jean Bundy

Many will remember Sharon Yerbich, who died March 1, 2007. She worked in her husband Tom's office for decades. I knew Sharon through our spouses' interests in bankruptcy. She was slender with a short grayish-shag and would appear at dinners in pastel, always tasteful. Sharon had the ability to chat with judges and those who recently had passed the bar. Our final bankruptcy conference together was Fall 2003, San Diego. Dave and I had dragged Maddy, our disgruntled teenager, only to discover we were put in the wrong hotel, which involved climbing through hedges and moving after one night. However, the following evening we were all laughing with Tom and Sharon over thick steaks and broccoli oozing with butter, resembling the lights dripping into San Diego Bay. The Yerbichs talked about winding down. They planned to travel.

Some weeks later Sharon called to say they wouldn't be attending our Christmas party. She had found a lump while bathing—in Vegas, their fortieth anniversary. Time passed and Sharon verified a lump and some lymph nodes had been removed, fluid had been suctioned from her lungs, chemo was out, radiation and hormone therapy were in. Sharon embraced life including reoccurrences of cancer. January 2004, she and I began an oversized-

yearlong project. Rules were simple: I would paint but not invade her privacy. The following contains excerpts including paintings from *Sharon a Friend*, which have been exhibited at Pleaides Gallery, New York City, several times.

Jan. 26, 2004: and I am in Sharon's dining room drinking coffee and noshing blueberry coffeecake, while perusing art books by cancer victims. Sharon emerges from her garage with a box of masks she had crafted during her first bout, 15 years earlier.

Sharon points to a stuffed blue bear in surgical garb, whose purpose is to act as whipping boy to angry patients. She shows me yellow pills and paperbacks on advanced stages. Sharon speaks about the cruelty to victims of cancer; friends desert you. She likes Kitsch and jokes about being buried in her *Lion King* cookie jar. Sharon shows me breast scars, bluntly explaining procedures for reconstruction and invites me to come along to radiation sometime — I leave overwhelmed.

Feb. 11, 2004: and winter sun was radiating into Sharon's kitchen as she poured tea and sliced banana bread. She was back from a Vegas trip. Sharon was happy to be pain free, while describing her guardian angel. As a former nursing student,

she felt simpatico with her doctors; she desired care from those who didn't predict an outcome — it was about hope. Sharon was a board member of Hospice of Anchorage so we talked about the origin of the word as possibly Chaucerian. Her latest project was to become Catholic and renew marriage vows with Tom. Bone scans were elevated.

Feb. 23,

2004: and Sharon had experienced three weeks of radiation which had made her tired-nauseated. She made tea; cake on the coun-

ter got forgotten. Sharon worried about a truck wandering the neighborhood and fretted the Costco sofa which seemed too big. Medications were causing hot flashes and radiation was burning her skin.

March 1, 2004: and Sharon and I sat drinking tea. She was doing a puzzle and enjoyed matching colors. Sharon's blood work was now good and hormone therapy was reducing tumors. She felt in command and craved a Cold Stone banana split.

March 12,
2004: and I had brought my own mug of tea. Sharon asked me to photograph her chest; she only had a few more weeks of radiation. She regaled about breakfasting with survivors and appreciated the conferencing that was occurring among her doctors — she called them "her team."

March 23, 2004: and I followed Sharon to Alaska Regional for a radiation session. Walls were aluminum-gray, there was a big fish tank and a sunflower puzzle lay on a coffee table. Routinely someone would stop and scrutinize a piece. Others were just staring; all was surreal. We headed back to the "deck" where a row of blue foam "nests" lined the entrance to the machinery. Nests are form-fitted, allowing patients to return to the same position under apparatus. Like a horse entering starting gates, red lights flashed as Sharon took her position; an attendant told me I had 8 seconds to leave.

March 29, 2004: and Sharon's house was full of Easter eggs and bunnies. She proudly showed me her radiation certificate, exclaiming many fail because of the monotony. But finishing treatment also meant future uncertainty; and she was seeing a Naturopath. Her cat continued throwing up fur-balls as she spoke about Tom speaking at a conference in a few weeks.

April 30, 2004: and Sharon told me her medication was really working, pushing back the cancer. Her latest self-expression was cross-stitching. The May cancer luncheon-gala was approaching and she eagerly awaited presiding at her support-group's table.

June 21, 2004: and Sharon was about to travel again, this time to a Seattle wedding, some friends of her kids. She continued making plans to renew vows with Tom. Sharon joined the Red Hat Society as it celebrated who you are.

June 28, 2004: and Sharon served me Bisquick muffins while pouring iced tea. She had acquired

She had acquired Red Hat paraphernalia: red boa, red hat and was going to their next Vegas convention.

Red Hat paraphernalia: red boa, red hat and was going to their next Vegas convention. Sharon mused about her wedding recep-

tion of cake and wine in St. Patrick's vestry while worrying about her condo sump pump not functioning.

Aug. 13, 2004: and Sharon had returned from visiting Judge Eugene Wedoff in Chicago; they dined at Lawry's. Tom's recent book on bankruptcy had done well at the convention. She had a bunch of blood tests coming up.

Aug. 25, 2004: and Sharon was excited about her wedding, Sept. 25. She showed me her wedding dress, pale blue floor length with a jacket and the rhinestone pin given to her by Mrs. Wedoff. Sharon's brother, the motorcycle rider, was coming as was her sister who had acquired a third husband.

Sept. 24, 2004: was the night before the wedding at Sharon's condo. Relatives chatted at the kitchen table and crammed the Costco sofa; some planned to sleep on the floor,



Continued on page 17

Bar People

Birch Horton Bittner & Cherot members named

Birch Horton Bittner & Cherot is pleased to announce that **William A. Earnhart** and **Carissa D. Siebeneck** have become members, **Jack R. McKenna** has joined the firm as an associate, and **Jason M. Brandeis** has become of counsel to the firm.

William A. Earnhart joined Birch Horton Bittner & Cherot's Anchorage office in 2015. His practice focuses on labor and employment law, commercial litigation and appeals, and municipal law. He has more than 20 years of trial experience in state and federal Courts.

Carissa D. Siebeneck joined Birch Horton Bittner & Cherot's Washington, D.C. office in 2011. Her practice focuses on government contracts law, natural resources law, and alternative dispute resolution matters. She has expertise in small business government contracting and Native American Law. Before joining the firm, she worked for the Navajo Nation and a west-coast law firm where she worked in government affairs, corporate law, and general litigation.

Jack R. McKenna is an associate attorney with the firm's Anchorage office. His practice focuses on civil litigation and construction law. Prior to joining the firm, he was an assistant district attorney at the Anchorage District Attorney's Office. There he supervised a felony trial team in Anchorage as well as prosecutions in Dillingham.

Jason M. Brandeis has joined Birch Horton Bittner & Cherot's Anchorage office in an Of Counsel position. His practice focuses on advising businesses and government entities on regulation of the marijuana industry. Brandeis has extensive experience with Alaska marijuana law and policy. He has litigated cases involving the legality of marijuana in Alaska and has published several articles on this topic, including the only comprehensive history of the development of Alaska's unique marijuana laws.

Perkins Coie partner named to Resource Development Council

Perkins Coie is proud to announce that **Eric B. Fjelstad**, a partner in the firm's Environment,

Energy & Resources practice and managing partner of the Anchorage office, has been named president of the Board of Directors of the Resource Development Council of Alaska for the 2016-2017 term. Eric was named to this position June 30 at the 41st Annual RDC membership luncheon at the Dena'ina Center in Anchorage. The RDC is a statewide business association comprised of individuals and companies from Alaska's oil and gas, mining, forest products, tourism and fisheries industries. RDC's purpose is to encourage a strong, diversified private sector in Alaska and expand the state's economic base through the responsible development of natural resources.

Attorney joins Delaney Wiles after passing Bar exam

Delaney Wiles is proud to announce that our newest addition to the firm, **Luba K. Bartnitskaia**, passed the Alaska State Bar in February. Bartnitskaia joined the firm in 2015. She graduated from the University of San Diego School of Law with a concentration in civil litigation, where she was managing editor of the *San Diego International Law Journal* and competed on the National Mock Trial Team, as well as the Vis International Commercial Arbitration Moot Court Team. While in law school, Bartnitskaia interned at the Transportation Security Administration's Office of Chief Counsel in San Diego, the U.S. Attorney's Office in Anchorage, and the Office of Public Advocacy Elder Fraud and Assistance Section. She is also a member of the California Bar Association.



Luba K. Bartnitskaia

4 Manley & Brautigam attorneys selected as 2017 Best Lawyers

Four lawyers from the office of **Manley & Brautigam, P.C.** have been selected for inclusion in the 2017 edition of The Best Lawyers in

America ©. **Peter Brautigam** was named as Anchorage Lawyer of the Year in Trusts and Estates and Tax Law. **Robert Manley**, Litigation-Trusts & Estates, Tax Law and Trusts and Estates; **Charles Schuetze**, Tax Law; and **Steve Mahoney** was named Anchorage Lawyer of the Year in Oil and Gas Law. He is also included in the practice areas of Energy Law, Tax Law, Litigation & Controversy-Tax Law, Natural Resources Law and Non-Profit/Charities Law.

Ashburn & Mason announces new additions

Jessica J. Spuhler joined **Ashburn & Mason** as an associate in March 2016. Prior to joining the firm, Jessica was the senior commercial regulatory affairs analyst for a major oil company in Alaska, managing non-technical risk and advising on regulatory matters. She previously worked as a public interest lawyer in Colorado, where she represented private property owners, small oil and gas operators and federal oil and gas leaseholders, as well as industry and agricultural trade associations.



Jessica Spuhler

Jeffrey Robinson joined the firm in 2015 and recently became a shareholder. Prior to joining Ashburn & Mason, Jeffrey most recently served as a supervisor in the felony trial unit of the Alaska Public Defender Agency in Anchorage, where he tried complex felony cases and trained new lawyers in trial skills. He maintains an active civil litigation and trial practice, handling a variety of business, real estate and criminal disputes in both federal and state court.



Jeffrey Robinson

Tribute to Sharon Yerbich

Continued from page 16

grandchildren were whining/bouncing everywhere. One woman came alone from North Carolina without her professor husband, another from Seattle arrived with her moving man spouse. Like a seasoned curator, Sharon produced her masks and explained their significance: panic, organized chemo, always living with sunshine and darkness. One relative was scolded for rearranging masks. Another glibly asked, what was her worst experience? Sharon calmly said, "panic" while treatments and daily pills meant "survival."

Sept. 25, 2004: and the priest in a small chapel kept the wedding upbeat. Sharon's vows sent Kleenex rustling; the long kiss from Tom got lots of laughs.

Nov. 19, 2004: and Sharon continued on maintenance drugs. A prolapsed bladder sent her to the emergency room.

June 22-27, 2005: and Sharon now required a by-pass; I went to see her at Providence. Sharon was wearing a red beret and purple scarf; she would not be going to the *Red Hat* convention. Sharon was hooked to a drippy machine and taking lots of pills including shots to increase her iron count; she missed

Felix her cat. Sharon wanted me to bring over some wine; she wanted to visit Rome.

Nov. 27, 2006: in spite of ongoing pain and tumors crushing her urinary tract, Sharon was flying to San Diego and laughed aloud about being wheeled through airport security.

Jean Bundy AICA-USA is a writer/painter living in Anchorage

Photography by Dave and Maddy Bundy

Deepest Gratitude to Tom Yerbich



ATTORNEY DISCIPLINE

Supreme Court orders attorney disbarred

The Alaska Supreme Court ordered attorney Deborah Ivy disbarred from the practice of law, effective 30 days after its opinion and order dated May 20, 2016.

The Court affirmed the decision of a disciplinary hearing committee and of the Disciplinary Board that Ms. Ivy violated *RPC 8.4(a), (b), and (c)* and Bar Rule 15 by knowingly and intentionally testifying falsely under oath on three separate occasions.

Ms. Ivy knowingly and intentionally testified falsely under oath in an affidavit in which she falsely accused her brother, an opposing party, of having sexually assaulted her in open court. The courtroom security camera captured the events in video and the video proved that Ms. Ivy's claims were, in the words of the Court, "patently false."

At the conclusion of a sanctions hearing, a hearing committee found that Ms. Ivy, an experienced lawyer, provided no proof of mitigating factors — save for the fact that she had no prior discipline. The Committee found that Ms. Ivy's conduct threatened to cause and did cause injury to her brother and to the legal system. The Committee and the Disciplinary Board concluded that Ms. Ivy's conduct warranted disbarment. The Court agreed and affirmed the decision.

In addition to disbarment, the Court affirmed awards of costs and attorney's fees against Ms. Ivy and in favor of Bar Counsel and the Bar and ordered her to pay a total of \$61,282.75 for such costs and attorney's fees under Bar Rule 16(c).



Known for its often-irreverent and always-topical content, the *Alaska Bar Rag* is the official newspaper of the Alaska Bar Association.

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City adopts false-claims, whistleblower protection ordinance

By Bill Falsey

The Municipality of Anchorage has adopted a False Claims and Whistleblower Protection Ordinance that allows whistleblowers to develop lawsuits to defend the municipality's interests – and keep 10% to 30% of what is ultimately recovered.

In substantial part, Anchorage's law is modeled on the Federal False Claims Act, perhaps the mostly widely known (and used) statute permitting "qui tam" lawsuits.

Anchorage's ordinance does not permit "qui tam" lawsuits in precisely the same manner as the federal law, but instead authorizes private plaintiffs to be designated "special counsel" for the municipality, akin to the approach adopted by New York City.

See <http://www.nyc.gov/html/law/html/fca/fca.shtml>

In adopting the law, Anchorage joins at least 29 states and several localities (including NYC, Chicago, Philadelphia, and Miami-Dade County) that have adopted a local version of the federal law.

False claims

Similar to the federal law, Anchorage's ordinance provides for civil penalties of between \$2,000 and \$10,000, and up to treble damages, where a person, among other things:

- knowingly presents, or causes to be presented a false or fraudulent claim for payment or approval;

- knowingly makes, uses, or causes to be made or used, a false

record or statement material to a false or fraudulent claim;

- has possession, custody, or control of property or money used, or to be used, by the municipality and knowingly delivers, or causes to be delivered, less than all of that money or property; or

- knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the municipality, or conspires to do the same.

See AMC 1.60.100; cf. 31 U.S.C. § 3729(a)(1).

Small claims (of less than \$10,000) and property tax claims are excluded from the scope of the law. Other tax claims are not.

The law includes a three-year statute of limitations, with tolling for any time during which that facts constituting a violation of the chapter were not discovered or reasonably discoverable.

Private lawsuits

Lawsuits developed by private parties for the municipality's benefit begin with the submission to municipal attorney's office of: (a) a proposed complaint, and (b) "all material evidence and information" in the whistleblower's possession to support allegations in the complaint. See AMC 1.60.100B. Cf. 31 U.S.C. § 3730(b)(2).

After review, the municipal attorney will elect: (1) to prosecute the case, (2) to designate the whistleblower's attorney to prosecute the

case as "special assistant municipal counsel," or (3) to provide the whistleblower with a written explanation as to why the municipal attorney's office will neither prosecute the case, nor authorize the whistleblower's attorney to do so. See AMC 1.60.100B.2. The municipal attorney may only elect to scuttle a lawsuit for specified cause. See AMC 1.60.100B.3.

Like the federal law, Anchorage's law bars certain lawsuits, including those based on allegations or transactions already publicly disclosed. Unlike the federal law, it does not automatically preclude suits developed as a result of information obtained pursuant to the municipality's Access to Public Records ordinance.

The share of any recovery obtained for the municipality awarded to the whistleblower varies from 10% to 30%, depending on whether the suit was prosecuted by the whistleblower's designated special counsel or the municipality, and ac-

ording to other codified factors. See AMC 1.60.100I.

Whistleblower protections

Anchorage's ordinance also codifies whistleblower protections, providing that a person cannot be discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against in the terms and conditions of his or her employment for developing a complaint about, or reporting a violation of AMC 1.60. The ordinance allows aggrieved whistleblowers to seek injunctive relief and compensation, including up to two times back pay, with interest. See AMC 1.60.120.

Further details about Anchorage's law, which was passed as AO 2016-48, as amended, can be found at <http://www.muni.org/Departments/legal/Pages/FalseClaims.aspx>

Bill Falsey is the Anchorage municipal attorney.



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TALES FROM THE INTERIOR

After 3 consultations, dizziness tied to loose rocks in the head

By William Satterberg

One of my dearest Saipan friends, Ben Concepcion, now deceased, had a favorite saying "All things man-made are eventually destined to break." The saying applied not only to outboard motors and all-terrain vehicles, but to human beings, as well.

Eventually, as humans get older, they, too, are destined to break. But it is normally incrementally as opposed to all at once. Simply stated, little things start going wrong. Perhaps that is why we send our youngest and most fit into combat. After all, we want them to catch up with the rest of us.

There is a joke which involves a man going to a doctor and complaining that his wife has lost her hearing. The doctor advises the man of a simple test to determine the extent of his spouse's hearing loss. The husband is advised to start at 40 feet and ask his wife a question when her back is turned to him and see if she responds. He then moves closer by 10-foot stages until he finally gets a response, thus being able to judge the severity of the loss. Following the doctor's orders, the man starts at 40 feet and asks his wife what is for dinner. No response. He moves to 30 feet and asks the same question. No response. 20 feet. Same question. No response. Finally, at 10 feet, the question again is put to the wife. This time, she angrily spins around and says to him, "Honey, I have told you three times already. Chicken!"

Following the 2014 fall hunting season, I began to experience some dizziness. It was relatively moderate, but still annoying. Eventually, my family physician, Peter, a friend of many years, told me that I probably needed to see a specialist to determine the cause of the problem. "What?" I asked. Peter referred me to a well-known Fairbanks hearing doctor. That hearing doctor, in turn, advised that, before he would meet with me about my dizziness and balance issues, I would first have to undergo a hearing test. At first, I was not sure if I had heard him correctly. But he was insistent. A hearing test was a precursor to any discussion with respect to dizziness.

For years, Brenda and I have argued about whether or not we accurately hear each other. I understand that it may be a marital thing. Perhaps counseling is the best answer. Whenever I suggest to Brenda that she obtain a hearing test, she becomes defensive and suggests that I first obtain a hearing test. This exchange goes back and forth *ad infinitum*, neither one of us wanting to listen to the other on the subject.

However, given my balance issue, I was no longer in a position where I could continue in the stalemate. I had lost the advantage of time. I needed to have the balance issue resolved. To accomplish that objective, a hearing test was mandated.

I asked my doctor again if I really needed such a test. Despite my protestations, the doctor was resolute. It would first be a hearing test, followed only then by a medical evaluation. My suspicions about medical fee building were being confirmed.

So much for the Affordable Care Act.

When I arrived for my appointment, I saw a friend of mine who is a police officer in the waiting room. Apparently, a firecracker round had gone off near his ear. He was also there for an evaluation. In his case, however, it was covered by worker's comp and a likely financial reward. He was actually looking forward to the test.

Eventually, the time came for me to talk to the audiologist. I was escorted to a soundproof room where the test would take place. The audiologist was a knowledgeable person who proceeded to instruct me on the various tests to be performed. After making sure that my ears were not clogged with wax again, I was given a clicker to hold in my hand as I perched on a stool. A headset was placed on me. I was told to push the button on the clicker any time I heard a sound in the headset, or even thought that I heard a sound, for that matter. It seemed to be an easy enough test. After all, I am considered good at pushing buttons.

The test commenced and I eagerly listened for the little tones. I performed the test perfectly. I heard every sound. The audiologist then came into the room, removed my headset and clamped a vibrating device on my head. He repeated for me to push the clicker each time I heard a sound. Again, I did well, diligently hitting the button for every one of the tones.

I next had to repeat various words back to the audiologist that I heard spoken over a headset. It was the trickiest of the tests. Through the examination, I was unable to see the audiologist, who hid behind the wall. In retrospect, his placement from me was unfair. It clearly was cheating. After all, if I could not see his lips, how could I possibly understand what he was saying?

Regardless, I proceeded to repeat the words back to my examiner that I had heard over the headset. Again, I did well, even if the speaker mumbled a lot and mixed up his phrases. I was then told the test was over.

The audiologist re-entered the room. To my surprise, he explained to me, from a series of hieroglyphic charts that he had developed, that I apparently had moderate hearing loss in the range normally associated with loud noises. He asked me whether I had ever been around any loud noises in the past. It was a curious question, so I asked him to repeat himself. So he did, only louder. I then began to tearfully discuss my parents and teachers yelling at me since I was 3 years old, moving up through gunshots, motorboats, sirens at the fire department, more gunshots, firecrackers, Skil saws, chainsaws, more gunshots, rock concerts, my wife yelling at me, my daughters was yelling at me and finally, virtually every judge in the court system yelling at me, not to mention my clients also yelling at me. This apparently confirmed his diagnosis. He explained that I would also likely have problems hearing



"Eventually, as humans get older, they, too, are destined to break. But it is normally incrementally as opposed to all at once."

people discuss matters in crowded areas, especially when consonants were used. This caused consternation on my part, since consonants comprise almost the entirety of the alphabet, with the exception of the five known vowels, Vanna.

I asked if I was being referred for a hearing aid. He said that I was not yet a candidate, but that eventually I might wish to consider one as I got older. I remembered that such devices do have their advantages. I thought of Frank Turney, the omnipresent Fairbanks fully informed jury advocate, who regularly sits in the courtroom with a headset provided by the clerk. Frank monitors controversial cases. I recalled that the information that Frank hears comes directly from the microphones in the courtroom, which includes the microphones of both the plaintiff and the defense tables, in addition to witness microphones. For many years, I have secretly suspected that Frank wears the courtroom headset mainly so that he can hear what is being discussed at the counsel tables, and not necessarily because of any particular hearing problems. This is because Frank is never seen by me wearing a hearing aid outside of court. In that respect, I accepted that, not only would a hearing aid provide a distinct courtroom advantage, but my wilderness hunting prowess might be helped, as well. Maybe I would someday consider the option.

The audiologist also explained that one of the benefits (as I saw it) of my hearing impairment was that most of the range of my hearing loss took place in the decibel range level in which women, as opposed to men, communicate. Higher-pitched sounds would not be as easily heard by me as lower-pitched sounds. I recognized immediately that it might be a blessing in disguise on the home front, having a wife and two grown daughters. Another good friend of mine tells me that he simply shuts his hearing aid off when

he wants peace and quiet.

I next spoke with the ear, nose, and throat doctor, as promised. Following a number of diagnostic questions, and actually finally looking into my ear, nose and throat, the doctor told me that I had loose rocks in my head. This was not the first time that I had been told that. According to his diagnosis, what had happened was that some little rocks in my inner ear on the right side of my head had broken loose from their assigned seats. Now, they were rolling around wildly inside my head, sending out random dizziness messages. Apparently, there was empty space available. Fortunately, a simple maneuver known as the "Epley maneuver" should solve the problem. But that was not his job. I was next referred to a physical therapist who, after having me fill out a form disclosing my bladder, bowel, and erection issues, if any, advised me that she would have me roll around on a table for a period of time while she tumbled the rocks around inside my inner ear. Three specialists. Three referral fees. Still dizziness.

For the next 30 minutes, I was bent and tossed from one side to the other, and held in various positions reminiscent of the Karma Sutra. When the game of therapy Twister was over, to my dismay, none of my bowel, bladder or erection problems were solved by the maneuvers. On the other hand, I did find the next day that my balance problems were

resolved. Following some later internet research, I learned that the Epley maneuver is actually 95% successful in curing such symptoms. The treatment can actually be performed

at home once it has been learned. Sort of like a geriatric break dance.

For now, the problem seems to be over. People still accuse me of being unbalanced, but it no longer pertains to my ability to stand upright. Apparently, something else is involved, but I don't want to hear about it.

Admitted to the Alaska Bar in 1976, William R. Satterberg Jr. has a private, mixed civil/criminal litigation practice in Fairbanks, Alaska. He has been contributing to the Bar Rag for so long he can't remember.

For now, the problem seems to be over. People still accuse me of being unbalanced, but it no longer pertains to my ability to stand upright. Apparently, something else is involved, but I don't want to hear about it.

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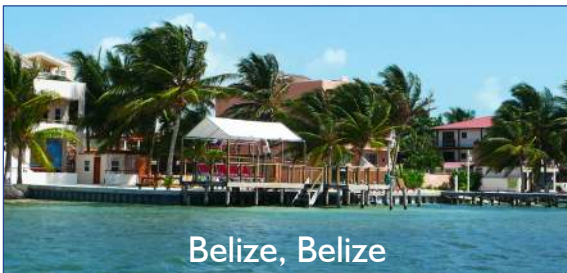
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