

The Alaska BAR RAG

Dignitas, semper dignitas

VOLUME 42, NO. 3 July - September, 2017

District Judge leaves Mental Health Court as her legacy

By Kate Sumey

Stephanie Rhoades, appointed Aug. 3, 1992, was to retire from the Alaska Court System Sept. 1, 2017, after 25 years of service. Judge Rhoades will continue to represent the Alaska Court System on the Alaska Criminal Justice Commission.

Among her many accomplishments was the establishment of the Anchorage Coordinated Resources Project, one of the nation's first mental health courts.

How Alaska's first mental health court started

In response to the overrepresentation of mentally ill individuals in correctional facilities, the concept of mental health courts emerged in the late 1990s as a way to divert mentally ill offenders from incarceration into court-based programs where participants receive intensive community supervision and assistance in accessing community-based treatment and social services. From four courts in 1997, the number of mental health courts in the United States has grown to more than 300 today¹. The Anchorage Coordinated Resources Project (ACRP) was one of the first mental health court programs in the United States.²

In 1997, Judge Rhoades, then chair of the Criminal Justice Assessment Commission's subcommittee on Decriminalization of the Mentally Ill, worked with stakeholders to develop what is known today as the



Stephanie Rhoades

Anchorage Coordinated Resources Project (ACRP), a court-based program designed to identify Alaska Mental Health Trust Authority (AMHTA) beneficiaries³ charged with crimes and divert them to community-based behavioral health treatment.

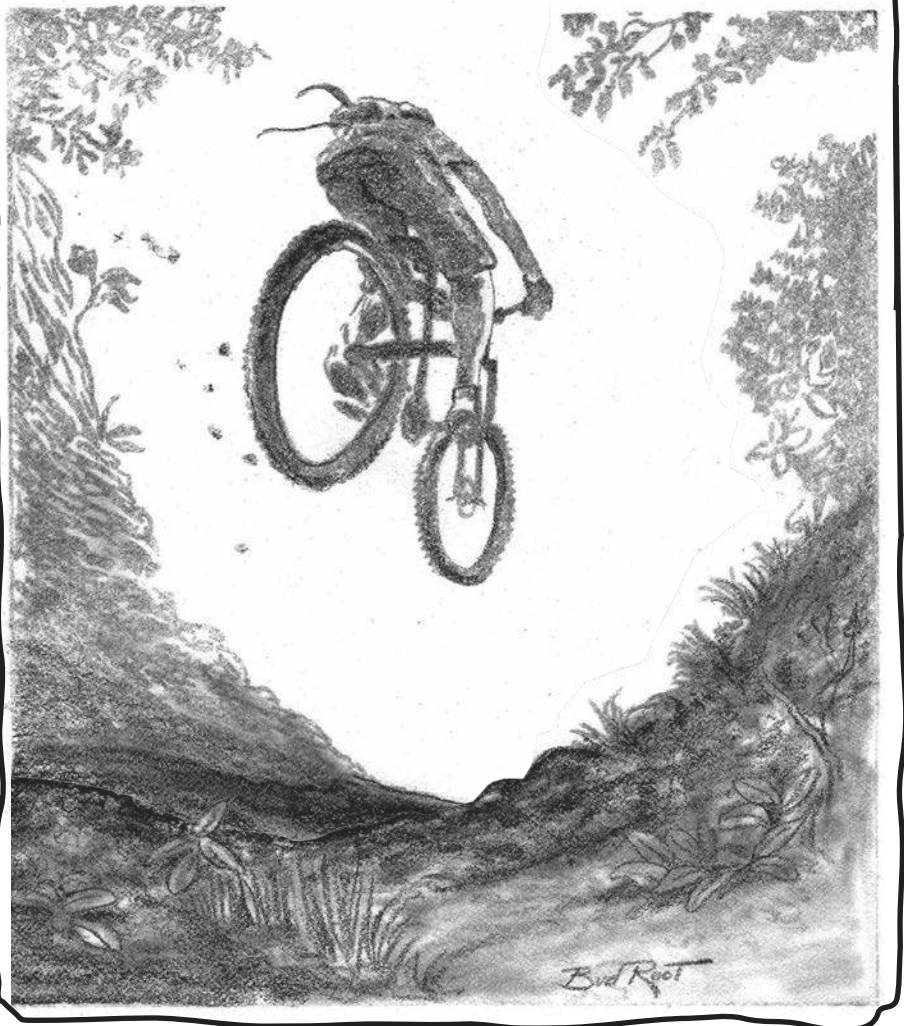
How the Anchorage Coordinated Resources Project works

The ACRP is a specialized thera-

Continued on page 4

Taking the write path

For the past five summers **Dan Branch** has spent 12 days attending the UAA MFA residency sessions. At night he slept in a UAA dorm room with other writing students. Each day he attended workshops and classes needed to obtain a masters of fine arts degree. He kept a journal recording the early morning rides he took on Anchorage's bike paths. See excerpts from that journal on Page 11.



Noreens reclaim egg-toss championship

By Ralph Beistline

Age was not the set-back many expected it to have been — nor was the quality of the competition — it was superb — but, thanks to dogged determination, undying



Bob and Betty Noreen enjoy their victory.

dedication, hours of practice, and a cool calm that permeated their very beings, Bob and Betty Noreen were crowned, once again, Egg Toss Champions at the annual Christmas party of the Tanana Valley Bar Association July 14, 2017 at Pioneer Park in Fairbanks. In doing so they re-claimed the title that had been theirs decades before.

Certainly the Noreens were the sentimental favorites, but few of the onlookers expected such a comeback. So there wasn't a dry eye on the field as the impending upset began to unfold and the assembled crowd began to realize the magnitude of the moment and see that history was being made before their eyes. But it happened. It did. We saw it.

And, of course, there were detractors as the losers clamored and complained about the quality of their eggs. But the Noreens were magnanimous. In the aftermath of this victory Bob was especially gracious as he held court in his Mexican Sombrero, signed autographs and shared some of the secrets of their success. But not all the secrets — for it was rumored that deep in the crevices of his mind Bob, like Mohamed Ali before him, craved yet another comeback, a third title at some future time. Impossible you say. Not to Bob Noreen. Not to Betty Noreen. They had climbed the mountain twice without breaking an egg. Having savored now the sweet taste of victory on two occasions one must wonder if their thirst will ever be quenched. Time will only tell.

Ralph R. Beistline is editor of the Bar Rag and a senior U.S. District Court judge.

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New lawyers asked to help meet need for access to justice

By Darrel Gardner

For several years now, I have had the privilege of giving remarks at swearing-in ceremonies for new Alaska attorneys. It's one of the most enjoyable tasks I have undertaken as a member of the Board of Governors, and I highly encourage you to attend a swearing-in ceremony now and again, even if you don't know any of the new lawyers. Perhaps you remember your own swearing-in, and perhaps you don't; however, every one of us remembers

the incredible amount of work, money and personal sacrifice that we invested in our law school educations, the bottomless pit of despair known as "studying for the bar exam," the agony of waiting for bar exam results, and the ultimate elation after having learned that we passed the bar. For the new lawyers at the swearing-in ceremony, the sense of accomplishment and pride



"I highly encourage you to attend a swearing-in ceremony now and again..."

is palpable. I especially enjoy looking at the faces of the friends and family members in attendance. They have provided tremendous measures of support, both financially and emotionally, and I often see tears of joy in the eyes of loving parents and spouses. The typical swearing-in ceremony takes about an hour, and afterwards the Anchorage Bar Association hosts a

reception.

Talking with these new lawyers is always a pleasure. Some have jobs and some do not at this point, but they all are filled with unbridled enthusiasm and hope for the future. They want to get out there in the world, engage in their careers, and — most important — *make a difference*. I always take away a renewed appreciation for the honor that it is to serve our clients and our communities as a lawyer.

I have some prepared remarks that I usually share with the new lawyers. A couple of years ago legal analyst and author Jeff Toobin gave a speech to the graduating class of Harvard Law School. I think he had some excellent comments, which I paraphrase: "You've undoubtedly heard in the news media that there is currently an oversupply of law-

EDITOR'S COLUMN

Bar Rag offers something for everyone, writer or reader

By Ralph R. Beistline



Can you hear me now? Sometimes speaking quietly just doesn't do it, especially if you are moderating an egg-toss competition. And sometimes a whisper can be the loudest form of communication. Either way, we are trying to get your attention. We want to know you, what you can teach us, and how you can inspire us. The **Earnhart** article in this edition was particularly insightful and certainly appreciated. And you will note that this edition covers a wide variety of topics — some serious — some not — and some unintelligible. We have something for everyone and we continue to solicit input from the bar in the form of articles and suggestions. You too can be a part of this great publication. In return we can offer immortality.

On another topic, I recently obtained a list of all the past presidents of the Alaska Bar Association which is included herewith and has the birth place of every past president. As an investigative reporter I was checking the veracity of **President Gardner's** assertion that he was the first president of the Alaska Bar Association actually born and raised in Anchorage. And, sure enough, he was. In the process however I MADE A MONUMENTAL DISCOVERY. Five of our past presidents were born outside of the United States and another five or so were born in Alaska before statehood. I guess you don't have to have been born in the United States to become president of the Alaska Bar Association. **Arnold Schwarzenegger** could have even been president. My next question, of course is what is the average age or and the median age of a Bar Association president. That's what investigative reporters do. Anyway, **can** (whispering now) **can you hear me now?**

Have a great fall. We'll talk next winter.

Ralph R. Beistline is editor of the Bar Rag and a senior U.S. District Court judge.

Past Presidents of the Alaska Bar Association

No.	Term	President	City	Birthplace
65	18-19	Brent Bennett	Fairbanks	OH
64	17-18	Darrel Gardner	Anchorage	Anchorage, AK
63	16-17	Susan Cox	Juneau	Canada
62	15-16	Nelson Page	Anchorage	OR
61	14-15	Jeff Wildridge	Fairbanks	CA
60	13-14	Mike Moberly	Anchorage	NB
59	12-13	Hanna Sebold	Juneau	CA
58	11-12	Don McClintock	Anchorage	Japan
57	10-11	Jason Weiner	Fairbanks	NY
56	09-10	Sid Billingslea	Anchorage	Anchorage, AK
55	08-09	Mitch Seaver	Ketchikan	IA
54	07-08	Matthew Claman	Anchorage	MA
53	06-07	John Tiemessen	Fairbanks	Fairbanks, AK
52	05-06	Jon Katcher	Anchorage	MI
51	04-05	Keith Levy (resigned February)	Juneau	NY
50	03-04	Larry Ostrovsky	Anchorage	OH
49	02-03	Lori Bodwell	Fairbanks	CA
48	01-02	Mauri Long	Anchorage	Germany
47	00-01	Bruce Weyhrauch	Juneau	CA
46	99-00	Kirsten Tinglum Friedman	Anchorage	WI
45	98-99	William Schendel	Fairbanks	MN
44	97-98	David Bundy	Anchorage	MA
43	96-97	Beth Kerttula	Juneau	OK
42	95-96	Diane Vallentine	Anchorage	VA
41	94-95	Dan Winfree	Fairbanks	Fairbanks, AK
40	93-94	Philip Volland	Anchorage	NY
39	92-93	Barbara Blasco Ritchie	Juneau	CA
38	91-92	Elizabeth "Pat" Kennedy	Anchorage	PA
37	90-91	Dan Cooper	Fairbanks	TX
36	89-90	Jeff Feldman	Anchorage	RI
35	88-89	Larry Weeks	Juneau	IL
34	87-88	Robert Wagstaff	Anchorage	MO
33	86-87	Ralph Beistline	Fairbanks	Fairbanks, AK
32	85-86	Harry Branson	Anchorage	IL
31	84-85	Harold Brown	Ketchikan	Panama
30	83-84	Mary Hughes	Anchorage	Kodiak, AK
29	82-83	Andrew Kleinfeld	Fairbanks	NY
28	81-82	Karen Hunt	Anchorage	NB
27	80-81	William Rozell	Juneau	NY
26	79-80	Donna Willard	Anchorage	Canada
25	78-79	Ken Jarvi	Anchorage	MT
24	77-78	Dick Madson	Fairbanks	MN
23	76-77	Edward Stahl	Sitka	NB
22	75-76	Keith Brown	Anchorage	Juneau, AK
21	74-75	James Blair (resigned)	Fairbanks	IA
20	73-74	Lloyd Kurtz	Anchorage	OH
19	72-73	James Bradley	Juneau	NY
18	71-72	Peter LaBate	Anchorage	VT
17	70-71	Millard Ingraham	Fairbanks	OK
16	69-70	Warren Christianson	Sitka	MN
15	68-69	Lester Miller	Anchorage	MN
14	67-68	Roger Connor	Juneau	NY
13	66-67	Eugene Wiles	Anchorage	SD
12	65-66	Karl Walter, Jr.	Anchorage	CO
11	64-65	Robert Ziegler	Ketchikan	MD
10	63-64	David Thorsness	Anchorage	MN
9	62-63	William Boggess	Fairbanks	IN
8	61-62	Robert Boochever	Juneau	NY
7	60-61	Clifford Groh, Sr.	Anchorage	NY
6	1/60-5/60	John Connolly	Anchorage	
5	59-1/60	James von der Heydt (resigned)	Nome	MT
4	58-59	Wilfred Stump	Ketchikan	Ketchikan, AK
3	57-58	Edward Davis	Anchorage	ID
2	56-57	Charles Clasby	Fairbanks	WA
1	55-56	M.E. Monagle	Juneau	WA

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The Alaska BAR RAG

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Federal rules complicate growing Alaska marijuana business

By Jason Brandeis

Since October 2016, when Alaska's first licensed marijuana retail stores opened their doors, adults 21 and older could readily purchase marijuana in the marketplace. Between then and now, much has changed in Alaska's marijuana law landscape, and much has stayed the same.

What changed is the ongoing process of developing a new industry. What stayed the same is the continued tension between state and federal law.

Before the first retail stores opened here, Alaska's marijuana legalization was largely theoretical. Stakeholders spent months poring over drafts of proposed regulations, reviewing processes in other states,

and trying to plan the best approach for Alaska. Best guesses were made about how the regulations would work in practice. Regulators endeavored to codify processes that would promote, rather than hinder, a

developing industry, while still protecting public health and safety and complying with the federal priorities outlined in the Cole Memo.

Except for some minor tinkering, the new regulatory framework has worked well. There are now approximately 100 licensed cultivation businesses growing marijuana plants throughout the state. Around 40 licensed retail stores sell traditional marijuana flower, joints (modernly rebranded as "pre-rolls"), a variety of concentrated oils, tinctures and other substances and edible products such as cookies, candies and the nostalgic brownie. The new industry has created several hundred new jobs, and most critically, customers are showing up: Marijuana sales for the first half of 2017 totaled nearly \$17 million statewide, generating more than \$1 million in tax revenue.

Though the launch of Alaska's marijuana industry has been successful from a business and regulatory standpoint, it is too soon to tell what the public health and safety or social impact ramifications will be. Indeed, many disapprove or are skeptical of this industry, and local option elections, which allow communities to ban any of the four types of marijuana establishments from operating within their borders, continue to spark public debate.

With the birth of an industry come natural growing pains. New marijuana businesses, having just figured out how to navigate tricky land use codes and stringent ownership and investment rules, are now having to quickly get up to speed on regulatory compliance, tax collection, and employment law. Regulators feel those pains as well, none more so than the five members of the Marijuana Control Board (MCB) and the staff of the Alcohol and Marijuana Control Office (AMCO), a group of just 18 state employees who are tasked with responding to public inquiries, providing guidance to the industry, investigating complaints, enforcing regulations, and working to support the policy decisions made by the MCB — and that's in addition to overseeing the state's alco-

hol industry as well. Currently, the AMCO staff administers 1,900 alcohol licenses and nearly 200 active marijuana establishment licenses.

Effectively regulating marijuana in Alaska is an ongoing process. As the industry has transitioned from imagined to real, regulators are now responding to issues on the ground. They are functioning in a more reactive mode, plugging unforeseen regulatory holes and responding to changes in technology and customer demand. They are further adjusting to the realities of working through the marijuana supply chain in Alaska — not to mention the daunting task of re-training players in an industry that has moved from the black market to a highly regulated legal market.

Over the past few months, the MCB and AMCO have been drafting an additional slate of regulations to streamline all sides of the business. Proposed regulations include revised guidelines for transporting marijuana; approving additional waste

disposal techniques; extending public comment deadlines; clarifying advertising and promotional practices; and developing product quality control guidelines. The most controversial of the recently proposed regulations would allow for "onsite consumption." This is an oft-discussed topic which refers to allowing space within a marijuana establishment for individuals to consume marijuana, in a bar or café-like setting.

No other adult-use marijuana state has yet been able to implement statewide onsite consumption parameters, as the practice raises numerous public health and safety concerns, as well as legal and logistical challenges. Alaska's regulations are poised to undergo a lengthy public comment period, and if they are approved, Alaska could allow for onsite consumption by next summer's tourist season.

Despite adjustments to state regulations, federal problems persist for marijuana businesses in Alaska. The continued federal prohibition means that industry participants cannot necessarily access traditional banking services, requiring them to operate mostly in cash. Some of the challenges facing cash-only businesses were anticipated (such as security concerns, inability to accept credit card payments, and figuring out how to pay bills without a checking account), but others were not (such as the U.S. Postal Service's refusal to mail a cultivator's cash tax payments to the processing center in Anchorage, because proceeds from selling marijuana are "considered drug proceeds under federal law.").

Alaska's geography also poses unique challenges. With numerous communities off the road system, transportation of marijuana and marijuana products throughout the state can be difficult. Shipping via air or water is restricted, as the federal government heavily regulates both.

These problems highlight a persistent dissonance between the laws in the eight states that have legal-



ized marijuana for adult use; the 29 states that have medical marijuana programs; the additional 17 states that allow the use of cannabidiol (CBD; a non-psychoactive marijuana compound) to treat certain medical conditions; and the federal government.

Marijuana remains a contentious topic in Washington, D.C. The Obama Administration's Cole Memo established a policy of respecting

state marijuana laws so long as they meet certain policy objectives. Though that "delicate truce" remains in effect, Attorney General Jeff Sessions has made no secret of his opposition to marijuana legalization and his desire to return to the War on Drugs strict prohibition of marijuana. Sessions has openly questioned the efficacy of state legalization programs, and has suggested shifting away from the status quo.

Facing a reticent federal administration, members of Congress who want clarity on marijuana law and policy have taken matters into their own hands. Once again, this time over Sessions' objection, Congress approved the Rohrabacher-Blumenauer (formerly Rohrabacher-Farr) Amendment, an appropriations rider that prohibits DOJ from using resources to prosecute individuals who are in compliance with state medical marijuana laws. A variety of other legislation has been introduced that seeks to harmonize state and federal law. This includes bills that would broadly require the federal government to respect state medical and adult-use marijuana laws, de- or re-schedule marijuana, and focus on specific aspects of the marijuana industry, such as banking services and tax laws.

Then there is Sen. Cory Booker's, D-NJ, Marijuana Justice Act of 2017 (MJA), a far-reaching piece of legis-

lation that would legalize marijuana at the federal level; withhold federal funds for building prisons from states where criminal marijuana laws have disproportionately incarcerated minorities; expunge federal marijuana use and possession crimes; allow individuals currently serving time in federal prison for marijuana use or possession crimes to petition a court for a resentencing; and create a community reinvestment fund to assist compli-

ant states with job training, re-entry programs, legal assistance, and other programs for those impacted by prior marijuana crimes.

Realistically, such radical change is not politically feasible right now. The MJA would be a fundamental shift in the federal government's approach to marijuana. Though such sweeping legislation is unlikely to pass at this time, the issue is not going away, and something must eventually give. As Sen. Lisa Murkowski, R-AK, stated in a hearing earlier this summer, "People in my state are worried about the inconsistency between the state marijuana laws and the federal policy."

That worry has existed for some time. The tension between state and federal law is a continuing issue for marijuana businesses, marijuana consumers and patients, and state and local regulators alike.

The Alaska marijuana industry is still in its nascent stages. The industry, and its governing laws and regulations, continue to grow, adapt, and change. However, the stark tension and resulting confusion between state and federal marijuana law remains as stubborn as ever.

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.

Regulators endeavored to codify processes that would promote, rather than hinder, a developing industry, while still protecting public health and safety and complying with the federal priorities outlined in the Cole Memo.

The tension between state and federal law is a continuing issue for marijuana businesses, marijuana consumers and patients, and state and local regulators alike.

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District Judge leaves Mental Health Court as her legacy

Continued from page 1

peutic court which employs a problem-solving approach to criminal case processing, and conducts three hearings each week. Case managers/probation officers employed by the Division of Behavioral Health assist the ACRP to determine a defendant's clinical eligibility, developing individualized case plans for defendants who are interested in participating in the program, linking them to services, and monitoring their adherence to court-ordered conditions of release.

Support from community partners is essential to the success of the program, as linkages to community services are vital to participants' success during and after their participation in the ACRP.

Operations of the ACRP require collaborative partnerships with both criminal justice and health and social services organizations. The day-to-day operations of the ACRP are managed collaboratively by stakeholders from the Alaska Court System, the Alaska Alcohol Safety Action Program, the Alaska Department of Corrections, the Alaska Department of Law, the Alaska Public Defender Agency, the Office of Public Advocacy, the Law Offices of Denali Law Group, and the Anchorage Municipal Prosecutor's Office. In addition, the ACRP has a variety of partners within the community that support the court's efforts. Substance abuse, medical, behavioral health, housing and benefits systems, law enforcement, and consumer groups work alongside the ACRP to provide a holistic system of care for participants. Support from community partners is essential to the success of the program, as linkages to community services are vital to participants' success during and after their participation in the ACRP.

Who the ACRP serves

Defendants charged with misdemeanor and class C felony offenses are legally eligible to participate in the program. A defendant must be a beneficiary of the Alaska Mental Health Trust Authority (AMHTA)⁴, reside in Anchorage for the duration of their program participation, be eligible to receive community behavioral health services and voluntarily agree to participate in an individualized case plan in lieu of traditional

bail or sentencing conditions.⁵ The ACRP utilizes a risk assessment tool, the Level of Service Inventory-Revised, to prioritize services for medium to high risk offenders to address criminogenic risk and needs.⁶ The following figures detail characteristics of 203 individuals who participated in the ACRP during FY14.

Figure 1 ACRP participants by diagnostic category

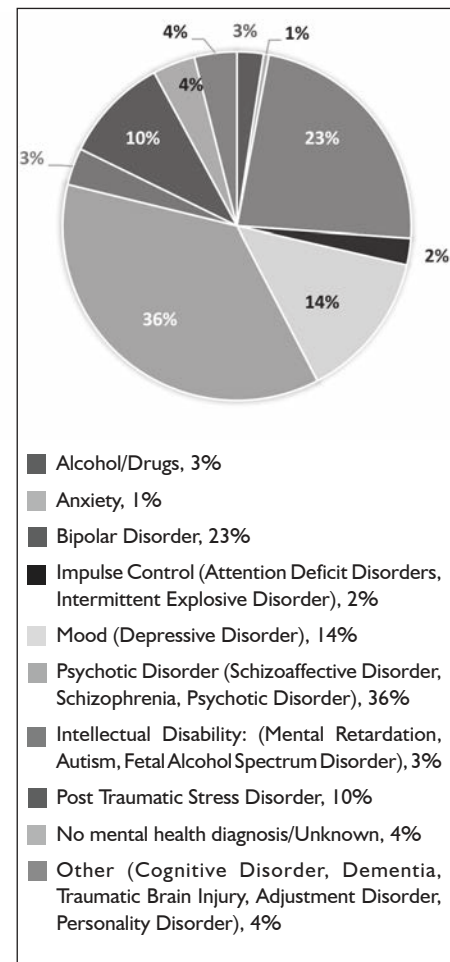


Figure 2 Co-Occurring mental health and substance disorders of ACRP participants

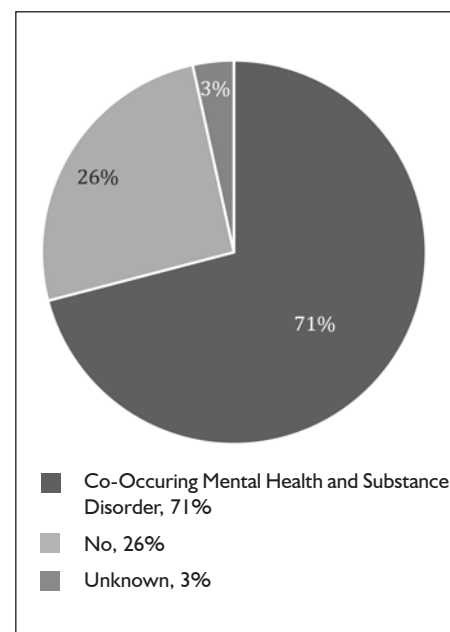


Figure 3 ACRP participants by age

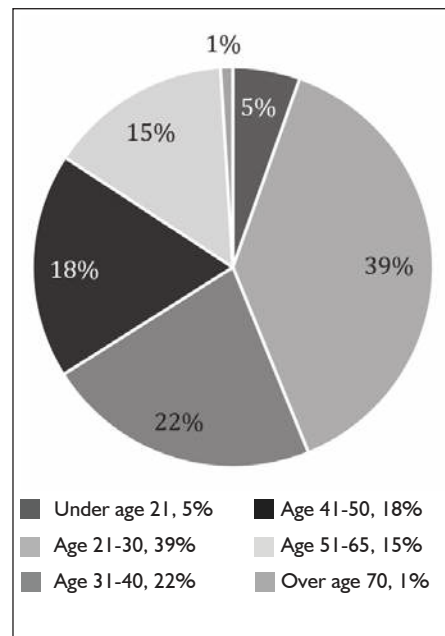
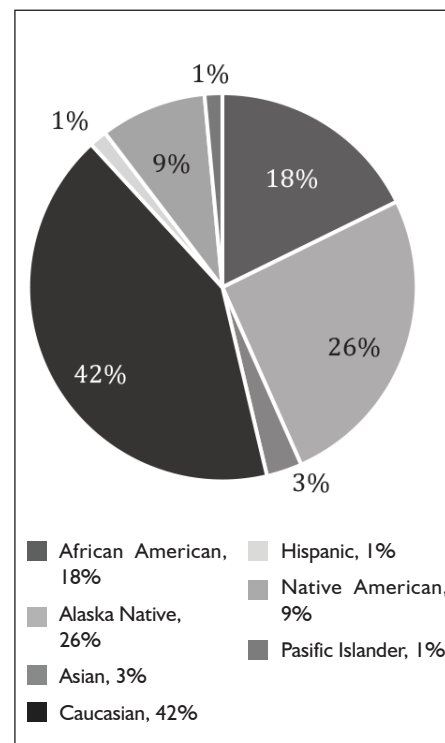


Figure 4 ACRP participants by race



Role of the judge in Mental Health Court

The role of the judge in a mental health court looks very different from the traditional role of a judge in a regular court. In addition to being a detached arbitrator of facts and law, the ACRP judge assumes the role of team leader, overseeing a variety of legal and non-legal professionals (e.g., project coordinator, case manager/probation officers, attorneys, and behavioral health providers). The ACRP judge uses judicial leadership and convening skills to coordinate the work among these diverse players to promote the best possible outcomes for the ACRP participant. For the program to work, judges must make a strong commitment to the mission, an investment in time, education on mental health disorders, the behavioral health system and other resources, and possess a compassionate interest in helping people who experience mental disorders escape the revolving door of the criminal justice system.

For judges new to the mental health court process, this is not only unfamiliar - but a very challenging role to undertake — as Judge Rhoades, the court founder, learned:

"It can sometimes be hard to find judges to do this work, because judges have to acquire clinical knowledge and an understanding of ever-changing health and social-service systems, and there are added work demands. But, with the emphasis on problem solving jurisprudence and

the demand to reform the criminal justice system to achieve better results at reduced costs, the need for judges with knowledge of the behavioral health issues that underlie recidivist criminal behavior is becoming as important as the need for adjudication skills. Not only judges, but prosecutors, defense counsel, and the larger community will be required to expand their knowledge and skills to make our criminal justice system more effective.

"I have recruited and trained several judges to succeed me in assuming the convening, collaborative, administrative, and presiding judge duties of ACRP Court. I have apparently chosen potential successors too well over the years since several of them have either been appointed to or reassigned to the Superior Court bench."

Mental Health Court results

Nationally, studies on mental health courts have consistently shown they can successfully divert defendants from jail into treatment and achieve better outcomes for the defendants and the public.

The ACRP Court has been the subject of descriptive studies as well as studies relating to outcomes⁷. A 2008 study, involving a pre-post study design, showed mental health court participants improving across all major criminal and clinical domains (i.e., fewer arrests, incarcerations and psychiatric hospitalizations before and after participation in ACRP)⁸. Diverting Trust Beneficiaries with severe mental illness from incarceration into ACRP Court was also shown to pose less of a risk to public safety than traditional adjudication and cost less than incarceration⁹.

According to the ACRP's most recent program evaluation¹⁰, the one year post-discharge recidivism rate for all ACRP participants formally opting into the program is 39 percent, which compares very favorably against a matched comparison group of similarly-situated offenders who were not referred to the ACRP (47 percent recidivated). Among those discharged from the ACRP, program graduates were least likely to re-offend overall (30 percent). Among those who did engage in new criminal conduct, ACRP participants were less likely to commit new felonies, violent or drug related crimes. Hence, diversion of people with mental disorders from incarceration into the ACRP poses less of a risk to public safety than traditional adjudication.

More recently, the Alaska Justice Information Center Alaska Results First Benefit-Cost Findings indicate that ACRP court is an evidence-based program with benefits in avoided criminal justice and victimization costs exceeding per participant program costs.¹¹

Although research indicates ACRP participation results in a reduction in recidivism and improvement in quality of life, if the challenge of serving all those who would benefit from the mental health court and other therapeutic efforts is only growing. A 2014 study shows that 65 percent of all inmates in custody in Alaska's Department of Corrections are beneficiaries of the Alaska Mental Health Trust Authority¹². Among those identified, Trust Beneficiaries are more likely to recidi-

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New lawyers asked to help meet need for access to justice

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yers in the country. There was a recent op-ed in the *New York Times* titled “Too Many Law Students, Too Few Legal Jobs.” They say that there are just too many of you — of us. But that’s not quite accurate. In recent years, it’s become quite apparent that there are actually not enough lawyers out there — at least, not in the right places. Here are some melancholy facts. A study of women seeking restraining orders found that 83 percent of those with lawyers secured an order, while only 32 percent of those without lawyers got them. Tenants represented by lawyers are 3 to 19 times more likely to prevail over their landlords in wrongful eviction cases. Or let’s talk about foreclosures: people facing foreclosure and eviction are dramatically more likely to be able to keep their homes if they are represented by a lawyer.

“It’s easy to make fun of lawyers, and the media often does. But the statistics show the value that lawyers can provide in the real world, through pro bono services. You can be that lawyer. You *should* be that lawyer. This is life-changing work. I mean that in two

ways. It’s obviously life-changing for your clients, but it can be life-changing for you too. Everyone wants to be paid well. But there are lots of other satisfactions that we get from our work. To feel needed. To feel accomplishment. To believe that our work matters. Being a lawyer gives you a rare chance to experience that kind of success. And the more you feel that kind of success, the better you get at the work. It’s a virtuous circle. But you have to go out and look for it in the first place. You have to go out and make that honorable and expensive law degree work for yourself—and for all of us.”

I encourage you to consider pro bono service as a priority in your practice, and to actively seek out opportunities to serve low-income individuals. The Alaska Rules of Professional Conduct provide that “every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono legal services per year.” (ARPC 6.1). As stated by the American Bar Association, “It is often said that people go to court to

seek justice. The outcome of litigation is one measure of justice, but research shows that many other factors affect the perception of court users and the public.” Pro bono service is one of the most important factors that contribute to the public’s positive perception of lawyers and our system of justice.

According to Legal Services Corporation, in the past year 71% of low-income households experienced at least one civil legal problem, including problems with health care, housing conditions, disability access, veterans’ benefits, and domestic violence. Sadly, 86% of the civil legal problems reported by low-income Americans received inadequate or no legal help.

The Bar is pursuing several projects that would expand access to justice in Alaska, including the “Justice for All” project. Alaska’s Access to Justice Commission applied, and was one of seven states awarded \$100,000 for this year to develop an action plan to provide 100% access to appropriate legal information and services for all Alaskans. Mara Kimmel has been contracted to coordinate the planning effort, working with a variety of stakeholders. For the purposes of this project, “justice” is defined broadly using a people-centered approach that identifies the range of factors that contribute to justice for Alaskans. The focus is to identify and engage non-legal community service providers who can refer their clients to legal services. The mission is to understand (1) what service providers and infrastructure exist within communities and (2) what providers do when their clients present with legal problems, using two approaches involving technology tools. By the end of the year, the goal is to create an action plan for how to provide Alaskans with 100 percent access to appropriate information and services to address their civil legal needs. The plan will center on a campaign to educate non-legal providers about where to turn when their client/patient/customer presents a legal issue or potential legal need. They will be educated to turn to a centralized electronic resource: a legal access portal.

In that regard, Alaska’s Access to Justice Commission also applied and was one of two states chosen to receive technical assistance from Microsoft to create an online legal access portal to information and services for civil legal issues. The project is run by Legal Services Corporation, probono.net, and Microsoft. A wide range of governmental and non-governmental stakeholders supported the application and will be involved with the project. Microsoft will help the court create a cutting edge electronic gateway to information and services for Alaskans to address their civil legal needs. The goal is to create an information and

referral system through an online portal that matches users who have civil legal needs with appropriate services and resources at any time, and from any location. The portal will serve as a one-stop interactive tool that allows users to assess their needs, obtain information about resources and services, and connect to services and providers. Microsoft is using an inclusive design approach that originated in their work designing for people with disabilities. In this case, they are looking at the

population to be served as disabled and at how that population addresses their legal issues. The goal of inclusive design is to design for the way in which the

population *actually* addresses those issues, instead of trying to change their behavior. To understand the workarounds that individuals use to address their legal needs, Microsoft is conducting immersion studies in Alaskan communities with the assistance of a local consulting firm.

Additionally, the Alaska Bar has already joined numerous other state bar associations in providing a preliminary online resource to qualified low-income individuals, at “alaska.freelegalanswers.org.” The service is hosted by the American Bar Association and allows participants the opportunity to ask three legal questions per year. The questions go into an online “pool,” which is reviewed by volunteer attorneys, who can then choose to respond to a particular question in their practice area. If you are interested in registering to become a volunteer attorney, please contact the Bar’s Pro Bono Director, Krista Scully, at scullyk@alaskabar.org.

Finally, on a personal note, I was in New York City in August to attend the National Conference of Bar Presidents. The experience provided a vivid reminder of the importance of our role as lawyers in society.

Each and every one of you makes a fundamentally vital contribution every day. As lawyers, we are entrusted with a special duty; the last sentence of the attorney oath for Alaska states: “I will uphold the honor and maintain the dignity of the profession,

and will strive to improve both the law and administration of justice.” The controversies in our streets are often resolved in our courts of law. As attorneys, we should strive both personally and professionally to stand up against racism and bigotry and hatred. We should champion the rights of the most impoverished and vulnerable members of our communities. We should speak out against injustice and violence, and strive to ensure that true justice is served, and that it prevails.

Darrel Gardner is an assistant federal defender in Anchorage; he is a past president of the Alaska Chapter of the Federal Bar Association, and the current president of the Alaska Bar Association.

The Bar is pursuing several projects that would expand access to justice in Alaska, including the “Justice for All” project.

The controversies in our streets are often resolved in our courts of law. As attorneys, we should strive both personally and professionally to stand up against racism and bigotry and hatred. We should champion the rights of the most impoverished and vulnerable members of our communities.

Judge retires, leaves legacy

Continued from page 4

vate, recidivate sooner, and spend more time in custody of the ADOC than other inmates¹³.

What the future holds

When Alaska’s first mental health court was initially implemented, it was theorized that providing linkage to medications, case management, assistance obtaining benefits or employment and basic housing would be enough to end the cycle of recidivism. We now know that addressing medication, finances, money and housing is not enough — if we do not address the more complex underlying issues that led to criminal justice involvement we can predictably expect individuals to return to the criminal justice system.

Recent research reflects that mental health courts must also address other criminogenic risk and need factors. Criminogenic risks and needs include problems with relationships (marital/family dysfunction), substance abuse problems, lack of education/employment, lack of pro-social leisure activities, anti-social peer group, and anti-social attitudes and values. Second generation mental health courts must address the full range of criminogenic risk and needs. But that alone will be insufficient. Alaska must also ensure that behavioral health and social service providers are adequately funded and have a workforce sufficient to provide ready access to essential services (such as behavioral health treatment and housing supports) to Alaska’s Trust Beneficiaries.

The Honorable Jennifer Henderson, who was co-presiding over the ACRP prior to her recent appointment from the District Court to the Superior Court bench, will continue presiding over the ACRP. Her inter-

est in the ACRP, and the commitment of the presiding judge to allow her to continue hearing cases in the project, along with the Honorable J. Patrick Hanley, a co-presiding District Court judge, will mean that the court will continue to offer this effective criminal justice program after Judge Rhoades’ retirement.

Kate Sumey is the Project Coordinator for the Mental Health Court.

Editor’s Note:

- To refer a case to the Anchorage Coordinated Resources Project, contact: Kate Sumey, Project Coordinator 907-264-0886 ksumey@akcourts.us

- Website for Alaska’s therapeutic Courts: <http://courts.alaska.gov/therapeutic/index.htm>

¹ Council of State Governments, 2017.

² Goldkamp & Irons-Guynn, 2000.

³ Beneficiaries of the AMHTA are individuals with: 1) mental illness; 2) developmental disabilities; 3) chronic alcoholism with psychosis; and 4) Alzheimer’s disease, related dementias and other cognitive impairments.

⁴ Id.

⁵ The Alaska Court System also operates other mental health courts in Juneau and Palmer.

⁶ *Criminogenic risk and needs* include problems with relationships (marital/family dysfunction), substance abuse problems, lack of education/employment, lack of pro-social leisure activities, anti-social peer group, and anti-social attitudes and values. *Non-criminogenic* need areas include housing, income/benefits, mental health treatment and medication adherence. Summarized from the Level of Service Inventory-Revised (LSI-R).

⁷ Carns, McKelvie, Scott & Grabowski, 2003, and Horny Zeller Associates 2008.

⁸ Outcomes from the Last Frontier: An Evaluation of the Anchorage Mental Health Court, Horny Zeller Associates 2008.

⁹ Id.

¹⁰ Id.

¹¹ Alaska Results First Benefit-Cost Findings: Adult Criminal Justice Programs, August 2017.

¹² Trust Beneficiaries in Alaska’s Department of Corrections, Horny Zeller Associates, 2014.

¹³ A Study of Trust Beneficiaries in the Alaska Department of Corrections, Horny Zeller Associates, 2007.

Alaska health care costs: facts, causes, consequences, remedies

By Cliff Groh

Alaskans are used to superlatives, but when it comes to health care costs we have really outdone ourselves.

The United States has the world's highest health care costs, and it sure looks like Alaska has the highest health care costs in the U.S. as well as the fastest-rising costs.

The Last Frontier's sky-high costs show up in various ways. The Kaiser Family Foundation's data from 2014 (the most recent year released) has Alaska as highest among the states in per capita health expenditures, with only the District of Columbia higher.

Relying on data collected from 264 areas around the U.S., the Anchorage Economic Development Corporation reported that in 2016 the three cities with the highest health care costs in the nation were Juneau, Fairbanks and Anchorage. And the story is the same regarding health insurance, as the premiums for Alaskans on the exchanges for 2017 are at the top among the states.

No other state has experienced higher annual percentage growth in health care costs since 1991, according to the federal government's Centers for Medicare & Medicaid Services. In the old lingo of the popular music charts, Alaska is No. 1 with a bullet.

What are the causes of Alaska's extremely high health care costs? What are the consequences of this "Alaska premium" in the prices of health care? Do remedies exist for the Great Land's great costs for health care?

Causes

Observers have offered more than half a dozen explanations for Alaska's extra-high health care costs. The list includes:

- Our state's relatively small population and isolation from larger markets
- Distribution of a substantial percentage of Alaskans in a variety of remote areas, including off the road system
- Limited numbers of providers of medical services
- Limited competition among providers, especially specialty physicians
- Particularly high compensation for providers, especially specialty physicians
- Hospital profit margins that are higher than national averages,

particularly in urban Alaska

- Particularly risky and/or antisocial behavior by patients
- Regulation by the State of Alaska, particularly the "80th percentile rule"
- Absence of government-operated and/or teaching hospitals that are open to all patients

There is insufficient space allowed for this column to explore all these potential factors, but a few points are highlighted below.

Dr. Alan Gross, an Alaska orthopedic surgeon, has written that Alaska doctors often charge and collect 500 percent — or more — than the costs for obtaining

the same service outside the state. These higher fees appear to be mostly charged by specialty physicians. Lori Wing-Heier, the Director of the Alaska Division of Insurance, told *Alaska Dispatch News* columnist Charles Wohlforth in 2016 that some specialist procedures cost 10 times as much in Anchorage as they do in Seattle.

Other observers have cited particularly risky and/or antisocial behavior by patients on the Lost Frontier that could increase health care costs. Along with Alaska's well-known problems with domestic violence and alcohol abuse, doctors point to what they see as a tendency of Alaskans to present their medical problems later than other Americans. Alaskans, however, do not on average have higher rates of utilization of medical services than other Americans.

Consequences

Alaska's extremely high costs for health care and health insurance have generated some individual sad stories, including lost opportunities to start businesses and forced departures from the state.

It's becoming increasingly clear that these high costs are having big impacts on Alaska's economy and fiscal circumstances as well.

Two reports issued this year by the Anchorage Economic Development Corporation provide a window on the schizophrenia health care introduces into economic discussions. The most recent outlook by AEDC celebrates job growth in the health care sector while noting declines in employment in oil and gas, construction, professional and business ser-



Cliff Groh

vices and state government.

Another AEDC report gives quite a different picture, however. A survey of more than 300 Anchorage businesses and organizations identified health insurance as one of the two top barriers to their organization's growth, behind only the condition of the state economy.

Mark Foster, a long-time financial analyst and former Chief Financial Officer of the Anchorage School District, has even argued that the high costs of medical services in Alaska serve as a significant deterrent to the long-held dream of bringing natural gas on Alaska's North Slope to market. His contention is that other expensive petroleum projects competing for investment dollars around the globe benefit from locations with much lower health care costs, a significant factor to consider for those deciding where to put in big money.

Whatever effect high health care costs might have on the prospects for monetizing Alaska North Slope natural gas, those costs are a giant driver in Alaska's fiscal challenge. Dr. Alan Gross—an Alaska orthopedic surgeon who also holds a master's degree in public health — has estimated that 35 percent of the total state budget is now devoted to health care. This figure appears to cover all the ways the State of Alaska spends in this area, including on employees of departments, teachers, University of Alaska employees, retirees, Medicaid and prisoners. Health care expenditures for the State of Alaska have also increased as the overall budget has fallen for the fifth straight year.

Remedies

Alaska health care costs appear to be unsustainable, as even those who some observers would perceive as the system's winners are recognizing. Dr. Stanley Watkins, an Anchorage vascular surgeon, told Alaska Public Media's Annie Feidt in 2016 that "the prices are probably going to have to go down up here."

A useful data point is that Alaska did not always stand alone on top of the health care costs mountain. An article by Natasha von Imhof (now a Republican state senator from Anchorage) in *Alaska Business Monthly* in 2014 pointed out that the health care costs in Alaska and Wyoming were the same in 1990. Two decades later, Alaska's costs had doubled, while Wyoming's grew a quarter of that.

Dr. Robert Hall, an Anchorage orthopedic surgeon, was nodding to the same facts when he wrote in 2017 that medical fees in Alaska were "much more aligned with the rest of the country" 20 years or so ago. Dr. Hall observed that every other state has been undergoing "a gradual process of reduction," and added that "Alaska will have to do this reduction more quickly but it cannot be done all at once if the system is to withstand the process."

Whatever the pace of this reduction, there are a lot of ideas out there about how Alaska's costs could be cut (or at least made to go up more slowly). With suggestions drawn from articles by Natasha von Imhof, Charles Wohlforth and Columbia University economist Jeffrey Sachs, here's a list roughly set out in or-

der from smaller-scale proposals to more thoroughgoing changes in the system. (Note that an idea's appearance on this list does not imply an endorsement of it.)

- Telemedicine, which allows doctors, nurses, local health aides and patients to communicate about diagnosis and treatment through electronic means, avoiding the cost of travel
- Expanded home visits for community-based health care, which could combat obesity, opioids, and mental illness as well as follow up on patients' compliance with instructions following hospital discharge
- Increased communication among employers regarding costs of health insurance and ways to encourage employee wellness
- Medical travel/"medical tourism," which provides patients opportunities to seek lower-cost and high-quality care outside of Alaska
- Required transparency of fees and outcomes, which would allow patients to have important information before making decisions on their health care
- Government-operated clinics for employees, employees' dependents, and maybe others
- Facilitation of "task shifting" from doctors to lower-cost health workers for routine procedures
- Greater use of foreign-born and/or foreign-trained doctors
- Customer-driven whole person care, in which health care providers engage their patients to take control of their wellness and providers' efforts are coordinated with each other
- Capping of compensation for hospital CEOs and other top managers
- Movement away from traditional fee-for-service medicine to various forms of value-based reimbursement. As laid out by Michael E. Porter and Robert S. Kaplan in the *Harvard Business Review*, alternative methods could include capitation (where a health care organization receives a fixed payment per year per covered life and must meet all the needs of a broad patient population) and a bundled payment system (where providers are paid for the care of a patient's medical condition across the entire care cycle).
- Creation of a single health care plan in Alaska for all government employees, with companies and individuals allowed to buy in at cost, that could dictate fees and prices to providers
- Adoption of a single-payer health care system in which the government, financed by taxes, covers basic health care costs for all residents, thereby eliminating for-profit health insurance

Alaska Common Ground is holding a series of events in Anchorage on Alaska's health care costs over the next 6-12 months. This series will cover in more detail the costs and trends, the causes, the consequences, and potential remedies. Speakers will include a variety of experts, including doctors, on this critical topic.

Cliff Groh is a lawyer and writer in Anchorage. He is also the volunteer chair of Alaska Common Ground, a non-profit organization that focuses on helping Alaskans understand and reach consensus on the major issues facing our state.

No other state has experienced higher annual percentage growth in health care costs since 1991 . . .

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ATTORNEY CONDUCT AND DISCIPLINE

Legal profession plays catch-up addressing well-being issues

By Nelson Page

Lawyers as a group are in the business of friction, confrontation and high-stakes decision making. We tend to be competitive, status-oriented and driven by a desire for recognition by our peers. There are powerful incentives for us to be the best professionals we can be. Unfortunately, this makes the practice of law potentially highly toxic to us as human beings.

Statistics bear out that the practice of law can be hazardous to health in many ways. In 2016 the American Bar Association Commission on Lawyers Assistance Programs, in conjunction with the Hazelden Betty Ford Foundation published a ground-breaking comprehensive study regarding lawyer well-being. The study found that 21 percent of responding attorneys qualify as problem drinkers. The study also

found an extraordinarily high rate of depression and anxiety among the respondents.¹

These problems start early.

In fact, law students and younger lawyers seem to be more at risk for problems relating to substance abuse and mental health than older lawyers. The study found that younger attorneys in the first 10 years of practice exhibit the highest incidence of these concerns.²

In addition to the problems identified in the National Task Force report, there is the phenomenon euphemistically called the “graying of the bar.” Since 1980 the average age of lawyers in the United States has increased substantially.³ That means there is a significantly higher percentage of practicing lawyers who may be facing slowly diminishing capacity and energy as they get older. The problem is insidious: Very few professionals are equipped to realize that their best days may be behind them. Many are not economically or emotionally able to simply say, “I’m slowing down and it’s time to move on from my life’s work.” But the problem of lawyers who are past their prime and not able to function adequately imposes real costs on the profession and the public in general, and the problem is getting bigger.

Aside from the sheer human cost of these problems, there is a huge professional cost as well. When I took the job of Bar Counsel I had an intellectual understanding of the toll caused by stress, mental health and substance abuse problems. But I did not have an emotional understanding of how many of the discipline concerns the Bar deals with on a daily basis are rooted in emotional, mental and substance-abuse concerns. These can often remain hidden from view. No one wants to admit that they have a substance-abuse problem, or that their personal life has affected their ability to function professionally. But these have a powerful influence on our professional abilities whether we admit it or not.

A new report has just been published that should form the basis of efforts to respond to this growing concern. In 2016 a joint task force, sponsored by the American Bar Association Commission on Lawyer Assistance Programs, the National Organization of Bar Counsel and the Association of Professional Responsibility Lawyers formed the National Task Force on Lawyer Well-Being. The task force has just published its report, titled, “The Path to Lawyer Well-Being; Practical Recommendations for Positive Change.”⁴ The report is comprehensive and is well worth taking time to study. It makes no fewer than 44 recommendations across the profession from law schools to judges. Some of these recommendations are already being implemented in Alaska. For example, Alaska lawyers can satisfy their mandatory ethics CLE requirements by taking CLE courses on “general attorney wellness.”⁵ Alaska also has an active Lawyers Assistance Committee, which can accept referrals to provide confidential assistance to lawyers who are experiencing difficulties related to substance abuse. But these efforts are just a start.

Alaska should consider a number of other possible approaches

aimed at the problem of lawyer well-being. These include efforts to emphasize that well-being is an essential element of competence required under ARPC 1.1. But an approach that focuses solely on professional discipline and sanctions is likely to be counterproductive. Programs and policies that encourage well-being need to be put into place across the profession. There should be a long-term goal of reducing the stigma associated with seeking help for substance abuse, mental health and stress related problems. That means ensuring that there are outreach and educational resources available to the profession as a whole and to lawyers who are experiencing problems in particular. Judges need to have resources to help facilitate help for attorneys who appear before them who clearly need some assistance. And law firms and other employers need to be aware of the stressors the practice of law places on their professionals and have tools available that allow them to identify and assist those in need. The traditional assumption that mental health and substance abuse concerns are a private and personal matter for the individual lawyer to deal with needs to change.

The medical profession recognized this truth years ago and put into place comprehensive reforms to its professional training and regula-

tion. This was not just an altruistic concern; it was a recognition that addressing the problems would result in a higher quality of service to the public and a higher standard of mental health and well-being among colleagues.⁶ Lawyers are at least a decade behind the medical profession in addressing this issue. That should change.

Nelson Page is the Bar counsel at the Alaska Bar Association, formerly of Burr, Pease and Kurtz and former Alaska Bar president.



Nelson Page

Statistics bear out that the practice of law can be hazardous to health in many ways.

The traditional assumption that mental health and substance abuse concerns are a private and personal matter for the individual lawyer to deal with needs to change.

¹ The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys, available at: http://journals.lww.com/journaladdictionmedicine/Fulltext/2016/02000/The_Prevalence_of_Substance_Use_and_Other_Mental.8.aspx

² Id.
³ https://www.americanbar.org/content/dam/aba/administrative/market_research/lawyer-demographics-tables-2016.auth-checkdam.pdf

⁴ The Path to Lawyer Well-being: Practical Recommendations for Positive Change, The Report of the National Task force on Lawyer well-being, August, 2017, available at: <https://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportRevFINAL.pdf>

⁵ On Friday, November 3, 2017 the Bar will sponsor a seminar on “Lawyer Opioid Addiction in Alaska: What Does it Mean for You?” The program is eligible for 3.0 hours of mandatory ethics CLE credit. Allow me to also make a pitch for the Bar’s “CLE at Sea”, which will take place February 16-25 2018. The course offerings will include 2.0 hours of training on lawyer self-care. The training will qualify for mandatory CLE credit. Information is available at <https://goo.gl/itQf3n>. Space is limited and rooms are booking fast.

⁶ For example, Stanford Medical School established its Stanford Medicine Wellmd Center to study the impact of wellness issues on physician satisfaction and health outcomes in 2015. See, <https://wellmd.stanford.edu/>

NOTICE OF PUBLIC DISCIPLINE

By order of the Alaska Supreme Court,
Dated July 24, 2017

PAUL L. HENDERSON
Member No. 7705024

is suspended
from the practice of law for four months,
effective July 24, 2017,
based on reciprocal discipline imposed by the
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Lawyers' Assistance Committee
Alaska Bar Association

Ivy vs. Cala: Slip opinion 7176 deconstructed

Peter J. Aschenbrenner

Two figures appear in togas according to local custom.

"This is not unusual in Spenard," Gov. Egan preambles the assembly. "After all, I myself wear whites of a nature suiting apothecaricature," he adds.

The more ancient of the two guests introduces himself.

"Gen. Thucydides, the author of *The History of the Peloponnesian War*. Servila!"

"I assume," James Madison declines to follow suit, "I need no introduction."

"Now Jemmy," the Wife nudges the Fourth President and first to craft detailed instructions for the day-to-day conduct of the War Department, "politesse obliges."

"Thucydides was the first to craft detailed instructions for historians," Gov. Egan helps matters along.

"I met him at the Anchorage Law Library," Madison explains. "We were reading *Deborah Ivy v. Calais Company*, Slip Op. 7176 (June 2, 2017)."

"We were both impressed," the General continues, "with your Supreme Court's grasp of inside-out history. Methodologically considered. I sweep *Calais v. Ivy*, 303 P.3d 410 (2013), within the scope of the foregoing praise."

"Doesn't my husband look great in a white sheet?" Dolley asks us.

"Value Village, Dimond Boulevard," the General sniffs at Madison's garb, "judging by the price tag."

"How could you possibly link your *History* with the Alaska Supreme Court's two decisions defining in precise detail (a) the do's and don'ts of arbitratorial conduct in a 'fair value' case," Dick Cheney intervenes, "with (b) the activity of the Athenian assembly?"

"It's probably the revolt of the Mytileneans," Governor Palin replies. "Book Three, sections 3.36 through 3.50. Am I right?"

"As an historian one's first order of business is to get one's hands dirty with process and productivity. In his case," Cheney signals 'the General who lost the battle at Amphipolis.' "Thucydides had to make sense of what was happening on the first day of the debate over the fate of the Mytileneans, and then — all over again — what happened on the second day."

"The same thing, but with a different result. Just like the *Ivy* case," Thucydides nods. "The year was 427 B.C. The Mytileneans chafed under the yoke of Athens."

"Better speed it up," Gov. Egan counts the yawns.

"The Athenians crushed the revolt and its Assembly ordered all male inhabitants put to the sword," Gen. T gasps his way to the finish line.

"There are superficial similarities, to be sure," Cheney ticks them off. "There were two occasions when the arbitrators convened to decide the case. The arbitrators fell out, just as in the case of the Athenian Assembly, on their next day in court, so to speak, over the scope of

their second-time-around review of the matter at hand."

"The arbitrators, again standing in for the Athenian Assembly," I interrupt, "disagreed about the procedures that should guide and govern their performance. They also disagreed about the merit standard to apply to the outcome."

"The company defendants argued," The Palin continues, correcting my confusion, "that the arbitrators should compute what would happen if you broke the company apart and sold the pieces. *Ivy*, however, argued that the panel had to take into account the going value of the business."

"I'm glad someone got it," Thucydides congratulates the Governor. "Cleon, strong-man of Athens, argued that you should take into account all transactions, of which there were two, one approving the death penalty and one substantially modifying the death penalty for the innocent. This diversity of merit outcomes proved that the Athenians didn't know how to run an empire."

"So what *Ivy* argued," Gov. Egan continues, "is that the arbitrators, like the members of the Assembly on the day after their first resolution, failed to look at the totality of transactions. These supply the data that could be projected to occur under a 'sale of the going concern' analysis."

"It's all rather Smithian, and by that I refer to the watershed between process-based analytics and transactional analysis," Gov. Egan picks up the slack.

"Where's Adam Smith in all this?" Cheney growls his signature growl. "And how the heck does this reflect credit on the Alaska Supreme Court?"

Le Baron himself arrives.

"Permettez-moi," he commences. "The year was 1748. I had just published *The Spirit of the Laws* when a reviewer asked, 'couldn't you boil this down just a bit?'"

Montesquieu continues: "I thought it was obvious, but maybe it wasn't. If you asked what happened *before* the merit outcome, in the Athenian Assembly or in the Calais arbitration, you're asking about process. Productivity questions come to the fore. Validity, feasibility, longevity spin off from there."

"It's inside-out history," Thucydides nods. "So that leaves transactions to be sorted out, right?"

"Indeed," Le Baron continues. "So you need two more cadres of officials here, since legislators are process oriented. Get it? Two plus one equals three branches of government."

"Isn't he awesome?" Dolley rhapsodizes.

Le Baron quiets dissent and continues: "One supplemental cadre deals with transactions on a looking forwards basis. These are execu-

tives. The second cadre are judges, historians, journalists and scribblers who are always looking backwards at transactions and sorting expected outcomes from those that actually transpired: that is, that which is prescribed parsed from that which is describable."

"Hence," Governor Egan concludes, "historians and judges get a branch of their own. Even if they are called on to tinker with process, it's always through the lens of transactions. That's why the *Ivy* decision is — and superbly so — a work of art. A Vermeer-like gazing into a glass and taking an oblique angle on events."

"Now you've done it," I count the figures pressing their way into the environs which the assembly inhabits. "Manet, Rembrandt, Samuel F. B. Morse. They all want a piece of the action."

"What about me?" Madison appeals for an extension of time. "I set out to be my own Secretary of War. I wrote a detailed memo on the productive affairs of that ministry, eleven days before Bladensburg."

"How'd that turn out for you?" Thucydides taunts Madison.

"You lost your battle, the one at Amphipolis," Jemmy sneers back. "422 B.C. 1814 A.D. So there."

"You left the field of battle over which you presided, *ex officio*," Thucydides shoots back.

"Well played, sir!" Dolley intervenes in favor of her husband's tormentor.

"The Alaska Supreme Court wrote rules for the arbitrators to apply so the falling out should be laid partly at their doorstep," Madison bleats. "That's what happened to me when my memo to Armstrong failed to bring him to heel at Bladensburg."

"You do know the difference between blame and responsibility?" Gen. T asks our Fourth President. "I got a trial, punctuated by exile, to be sure."

"You're saying I should have been impeached?" Madison ripostes.

"He's saying," Dolley steps in, "that the highest public officials should be impeached, every now and then, just to give them a chance to explain their otherwise inexplicable conduct."

"Gentlemen!" Governor Egan restores civil peace. "You're here in Alaska as our guests. Isn't that reward or punishment enough for the both of you?"

Peter J. Aschenbrenner has practiced law in Alaska since 1972, with offices in Fairbanks (until 2011) and Anchorage. From 1974-1991 he served as federal magistrate judge in Fairbanks. He also served eight years as a member of the Alaska Judicial Conduct Commission. He has self-published 16 books on Alaska law. Since 2000 the Bar Rag has published 48 of his articles.

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TALES FROM THE INTERIOR

'G'-rated cruise satisfies despite lack of adult entertainment

By William R. Satterberg Jr.

It had been well over 15 years from my sunburned maiden voyage on Carnival Cruise Lines. Although my wife, Brenda, and my two daughters, Marianne and Kathryn, had taken several cruises since my ill-fated trip to the Mexican Riviera, I personally had avoided cruising. Not only were the memories still painful and my back still suffering from massive scarring from the sunburn that I had experienced on Carnival's topless tanning deck, but I had already come to the conclusion that the life of a vacationer afloat was not for me. Nor a pirate's life. I have always marveled at how some folks, like the late attorney Don Logan, actually can enjoy the quietness of sailing.

All that changed in 2008. It was then that my grandson, Jacob, came to live with us as a human being. At first, Jacob was just a food processor unit. Deathly afraid of diapers, I tried to avoid close contact with the baby beyond cuddling. Besides, Jacob was known to regularly throw up his meals after nursing. Fortunately, as Jacob grew older, his interests changed from food processing to actually crawling and chewing on any piece of furniture he could find to watching cartoons and, ultimately, to interest in Walt Disney shows, Disneyland and Disneyworld. In time, Mickey Mouse and Donald Duck became childhood obsessions for the young man.

By the time Jacob was seven, not only Jacob, but his mother, his aunt, and his grandmother were all aggressively lobbying me to go on a Walt Disney cruise. I was told that Walt Disney Cruises were special. Contrary to most cruises that I had studied in my high school collection of Playboy magazines, where suntan-oiled young college coeds lie around the myriad of pools soaking up sun, Disney Cruises were "kid-oriented." It was a happy place. Cartoon characters abounded on the vessels. Games and entertainment were plentiful. Even adults could find things to do, I was assured. In retrospect, I should have inquired more about the available adult activities, rather than simply assuming that traditional adult entertainment would be present on the ship.

I recalled the fun that I had on my one and only Carnival cruise. I realized that I could undoubtedly locate certain adult entertainment on the Disney Cruise Line and would be able to amuse myself. So I relented. Where, normally, our family would travel to Saipan during the summer to spend time with our adopted relatives, this time we collectively voted to take a Walt Disney cruise. It was to be a true Griswold family vacation.

Brenda made the arrangements, trying to avoid telling me as much as possible about the expenses part. We would first fly to Orlando, Florida, and then take a bus from the Orlando airport happily singing Mickey Mouse songs all the way to Cape Canaveral while wearing our

obligatory mouse ears. After checking in and receiving our colorful Disney passports, we would then pose for one of many family photographs and next board the massive Disney "Dumbo" cruise ship; home to several thousand people for the next week.

The trip to Orlando was uneventful except for a flight diversion to Tampa by virtue of multiple thunderstorms. Unfortunately, Tampa had its own thunderstorms as well, after we landed. As such, we were further delayed. Still, the light show was amazing. Moreover, after every lightning strike within five miles of the airport, we had to delay our departure for another fifteen minutes under some obscure flight regulation. Eventually, our jet was cleared to leave. When we finally landed in Orlando, my daughters were already well into the shopping mode for retail therapy, hitting many local outlets stores to obtain the necessary provisions. To my relief, the ship did not have any published baggage weight restrictions. After one day of respite, we boarded the bus for Cape Canaveral. As predicted, we were regaled en route by various Disney cartoon characters on the overhead television screens for one and one half hours as we worked our way to the seaport. The singing was terrible.

On the other hand, I was quite impressed with the organization of the Disney Company. Virtually everything was anticipated, as well it should be. After all, Disney had to contend with rambunctious underage children screaming and scrambling all over the place while being chased by dodgy grandparents who were having problems just negotiating their walkers up and down the various hallways. Sort of a cross between simultaneously herding cats and turtles. Yet, despite the multitudes, we finally made it on board. In short order, we found our stateroom where Jacob immediately started using his bed as a trampoline, almost knocking himself out on the ceiling before being ordered to cease and desist.

I began my traditional walk around the ship. I still had hope. Something inside me told me that I would still be able to find my favorite, topless only, sundeck. After all, wasn't it mandatory? To my dismay, I scoured the ship for over an hour. In the end, I was only able to locate two outside bars, both of which had only old, fat, grey-haired, or bald people as guests. I recognized immediately that this was not going to be the best of cruises. I would have to amuse myself through other methods. Rather than sunbathing, I would have to work on my physique.

To accomplish this physical task, even before the ship departed port, I began eating. To me, clearly the most important part of being on a Disney cruise without a topless sundeck would now be the eating.



"I was quite impressed with the organization of the Disney Company. Virtually everything was anticipated . . ."

In fact, I ate for seven days straight. In retrospect, it was not a good thing, but everywhere I went on the ship there was something to eat as kids dashed by with chocolate syrup smeared on their faces from some hidden ice cream parlor which I never seemed to locate. But I did find the pizza stand.

Entertainment was a different factor. We attended a number of shows which were first rate. However, even with the "adults only" shows, there

was no profanity ever used except for my own which even I tried hard to control. Still, it was sometimes difficult. Normally my profanity would spout out when some kid would run across my feet chasing his or her brother or when my hand would get stuck to some guardrail covered with peanut butter and jelly.

In addition to the Broadway quality shows, which had superb special effects, there were also musicians, cameo appearances by cartoon characters, and parents/kids games to play. So all in all, the time on the ship went fast.

Ports of call were also interesting. Snorkeling, swimming with stingrays, and land tours were

abundantly available, but spendy. As such, on the Jamaica stop, we chartered a private taxi and had a self-organized tour which somehow seemed to replicate the packaged tours, although cheaper and more flexible.

After seven days in the Caribbean, we returned to Port Canaveral, complete with souvenirs, alleged Cuban cigars, and Jamaica Rum. Not to mention a bunch of Mexican blankets, T-shirts, and junk jewelry.

But the best souvenir of all, which will last forever, were the memories and family bonding which took place over seven days. Marianne now has a serious boyfriend and lives in Washington. Kathryn

has become married, and both she and Jacob have moved from Fairbanks. But, at least my golden retriever, Teddy, still is weird and remains un-

changed, if that is a good thing. Life changes and is constantly changing. It is something that must be accepted. But, for seven intense days the Satterbergs, a/k/a The Griswolds, had a remarkable time together which far overshadows any topless sundeck on a Carnival cruise.

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

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Remembering a remarkable person, Peter C. Ginder

By Steven T. O'Hara

This year Alaska lost a great practitioner in the estate planning field. Born in 1946, Peter C. Ginder passed away on Feb. 5, 2017, apparently of a heart attack. Here I share some simple remembrances about a remarkable person who left us too soon.

I first met Peter, known to me as Pete, many years ago when he and his good friend and fellow attorney Bob Manley presented a seminar on Probate in Alaska. You know Peter was an effective communicator.

Not long after I attended Peter's seminar I had occasion to work on a matter involving a trust document he had drafted. I called with an issue relating to the rule that in order for a gift to qualify for the annual exclusion from federal gift tax, the gift must be of a present interest (IRC Section 2503(b)). Peter explained his theory of how the law applied under the facts. And thus began many discussions we would have over the years wherein we might disagree on details but shared a mutual respect and understanding.

One of Peter's many gifts was the ability to tell a story, and by the same token he was a good listener. He was so gracious when I shared about my father. I am known to go on and on about my father and boxing and maintain a website on the subject, www.60yearsofboxing.org, which Peter said he liked.

While my father looked the part of a professional boxer, he was unfit for military service during World War II due to the gout. Peter's father was a war hero. A story Peter told was one his father never shared but I believe Peter grew up hearing from others. I believe he always thought

the story was apocryphal. He said he was amazed years later after his father had passed and he came across evidence that the event actually occurred.

As I recall, Peter said his father was an army officer, I believe a captain or major, in the D-Day invasion of Normandy. He was inland now and charged with protecting a bridge. The trouble was he knew German tanks were on the way. He could see behind him a British tank unit that had stopped on a hill. Peter's father went up to the British officers and informed them that they need to come now to help counter the anticipated attack. They demurred, as the story goes, saying they were in the middle of tea, whereupon Peter's father drew his sidearm with immediate effect.

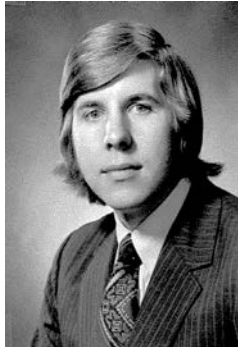
On at least one occasion I ticked Peter off. He had called on behalf of a client demanding information; he was passionate about what he wanted. I took notes and sent him a letter with my client's responses. Peter then called and was a gentleman but nevertheless let me know he had not necessarily wanted the phraseology of his demands to be recorded in writing.

Seemingly always in a white shirt and tie, Peter served regularly as a mediator. I understand from members of my firm that he was excellent in that position. I understand he was patient and not what you would call a table pounder.

Peter and I participated in family meetings in which family members had their respective counsel present. He certainly was unflappable in those settings.



"One of Peter's many gifts was the ability to tell a story, and by the same token he was a good listener."



Peter C. Ginder as he looked for his 1974 application to the Alaska Bar Association.

A bona fide sports nut, Peter knew sports history and amazed me with what he could instantly call to mind about the sport of boxing. You know there was a time in U.S. history when the most athletic, best conditioned (not to mention best paid) athletes were boxers. Think of Jack Johnson, Jack Dempsey, Harry Greb, Sugar Ray Robinson, and Muhammad Ali, to name a few.

With the dearth of trainers and gyms and competition today, boxers are not what they once were. Today perhaps the most athletic, best conditioned athletes are basketball players. And we can remember that Peter was Mr. Basketball.

Whenever we talked sports you could tell Peter assumed I knew the extent of his involvement in Alaska's premier basketball tournament, the Great Alaska Shootout. It is true I knew he was involved in a big way, but I never knew the full extent. In consulting attorney Brian Durrell, who is a big supporter of the Shootout, Brian mentioned Peter's "encyclopedic knowledge of teams and players" and listed Peter's involvement to include: Shootout committee member; host to visiting players and teams and general problem-solver of things that may come up; timekeeper; scorer; perhaps game announcer on occasion.

If Peter was not talking sports, he was talking political history and war history. You could rely on him to recommend a good book on those subjects.

He was a risk taker. You could

tell that he worked out and that his workouts included weightlifting. I remember one occasion when we were discussing his car in my firm's parking lot and his arms looked exercised even as he smoked. He drove a well-preserved green 1994 Mitsubishi Diamante. He liked the way the car drove so much, I believe, that he had replaced its engine when needed rather than get another car. I had owned an identical vehicle for a while and thus the topic of our conversation.

Peter was elected to the American College of Trust and Estate Counsel in 1985. At the time of his death he was the Alaskan who had been a member of the college the longest period of time. A Dartmouth graduate, Peter received his law degree in 1974 from the University of Denver. So he had been a lawyer for a little over 10 years when he was elected to the college.

A couple of must-read cases in the area of trust and estate litigation are *Barber I* and *Barber II* — i.e., *Barber v. Barber*, 837 P.2d 714 (Alaska 1992) and *Barber v. Barber*, 915 P.2d 1204 (Alaska 1996). Therein you will find Peter working in the best interests of all concerned,

Peter worked his entire career to settle cases; but if he determined additional issues needed to be addressed, he would take the appropriate stand even if it contradicted an earlier position.

including making the tough decision to withdraw consent to a settlement after he learned a contingent beneficiary had objections. Peter worked his entire career to settle cases; but

if he determined additional issues needed to be addressed, he would take the appropriate stand even if it contradicted an earlier position.

Peter, you are missed.

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

Anchorage high school student wins 9th Circuit contest

Olivia Tafs, an incoming sophomore at West Anchorage High School, was the overall winner in this year's Ninth Circuit essay contest with her essay entitled "*The Ugly Abyss of Racism: Lessons of Japanese Internment.*" Olivia received \$500 from the District of Alaska, \$2,000 from the Ninth Circuit, and an all-expense-paid trip for her and her mother, Cristina Tafs, to San Francisco for the Ninth Circuit Judicial Conference and a meeting with U.S. Supreme Court Justice Neil Gorsuch for whom she read her winning essay.

For the last two years the Ninth Circuit has conducted the contest for high school students for the purpose of highlighting the Constitution and the rule of law. Cash awards are given to the District of Alaska winners and more cash is awarded to circuit-level winners. Hundreds of students participate throughout the circuit. Despite these emoluments Alaska's involvement has been limited, with last year's winners coming from Guam and the Lower 48 states.

The District of Alaska is proud of Cristina's accomplishment as are her parents and very likely even her grandfather, attorney Philip Paul Weidner.



Olivia Tafs addresses the ceremony audience.



Olivia Tafs receives her award from Supreme Court Justice Neil Gorsuch.

ECLECTIC BLUES

Morning rides provide student with plenty to write about

EDITOR'S NOTE: For the past five summers Dan Branch has spent twelve days attending the UAA MFA residency sessions. At night he slept in a UAA dorm room with other writing students. Each day he attended workshops and classes needed to obtain a masters of fine arts degree. He kept of journal recording the early morning rides he took on Anchorage's bike paths. Here are some excerpts:

Story and photos By Dan Branch

July 9, 2017

It rained hard all night, which didn't keep the seagull perched outside my dorm window from screaming me awake at 4:30 in the morning. Thanks to him, I watched the pink and pearl sunrise through blurry eyes. I wheel my bicycle toward the Campbell Creek bike trail, past a new-looking wheelchair parked near a front-yard fire ring. While riding the trail I think about the wheel chair when I should be looking for wandering bears or grazing moose. Had a paraplegic used the chair to sit close to the fire until suffering a heart attack? Or is he sleeping in his bed while his chair steams dry in the morning sun?

July 10

The sun returned to Anchorage yesterday afternoon. As last night softened toward sunset, low angled light transformed the normally nondescript Chugach Mountains into Swiss Alps. The drama continues this morning as I ride from the university past University Lake. With no wind to whiff it, the lake forms

a polished mirror for the rising sun.

July 11

Pearly-gray has replaced blue as the prominent color in Anchorage skies today. I ride against the flow of morning commuter traffic on Elmore Road and then swing into the woods that hide the Campbell Creek Science Center. On my return to the university I spot a cow moose and two calves feeding on the Elmore Road verge. Workers listening to talk radio whiz by. While the mom turns her butt to the traffic, her two calves dance along the road. One bucks like a bareback bronc and drives its sibling toward the rushing traffic stream. I'm close enough to see the startled look in the shy moose's eyes when she freezes just before being crushed by a northbound SUV.

July 12

It's six a.m. I'm riding through the international neighborhood of Mountain View, passing Pho shops and a Hawaiian plate lunch place. The restaurants are closed and I can't find anyone on the street to ask for directions to the Ship Creek bike path. I veer onto a side street. A woman of Indian origin stands in the middle of the pavement. She wears a sari covered by a robe as white as a J.C. Penny's sheet. One hand gestures toward a road dropping sharply to my right. Seeing no clues that it will connect to the bike path and wanting to avoid the sharp



"Writer's school is a loud place. The necessary noise of craft techniques being shared and stories told provides the sound track for each UAA MFA summer residency."



Goslings hide in the grass while their parents guard the bike path.

climb out up the street if I have misread her message, I peddle forward until she gestures again. This time I take the drop and find the bike path entrance.

I am not surprised that she knows her way around the neighborhood. But how did she know my intent. Was she an apparition or fakir? I pass a sign, decorated with street art hearts that warns of a narrowing path. It does constrict before climbing over train tracks and creek gravel bars covered with sulking gulls. The path corkscrews off the bridge and drops me into a land of factories and junkyards. Bordered by a tented pile of crushed cars and other industrial waste, is an active beaver pond. One of the toothy rodents swims across the pond, rippling the reflection of a rusty excavator.

July 14

School field trip today to Hatcher Pass, an alpine area pimpled by mining ruins. While clouds fragment against sharp-edged peaks, I follow some writers up to Gold Cord Lake. They are gone by the time I reach the lake, disappeared as if raptured into the clouds. But a beagle, mom, dad, infant and chocolate guzzling pre-teen lurk on the lake's edge. The baby cries. The daddy promises to bring food as soon as he has messaged off his selfie. The pre-teen whines because there is only trail mix left. But the beagle doesn't bark.

July 15

It's 6:30 A.M. and a gang of Canada geese blocks my access to the Campbell Creek bike path. Most relax on the grass verge but two are firmly planted on the path itself. A puppy pile of downy goslings sleep under a nearby birch tree.

That was weird. After clearing the avian traffic jam, I peddle over goose scat and onto the Tudor Road bridge. In five minutes I brake again, this time to read a muddy set of tracks that cross the pavement. Very recently a single moose trotted through a bog hole and then over the path. But, I can't see far enough into the trailside birch forest to see him. For a minute I wonder if the geese jam was designed to buy time for the moose to pass unmolested over the path. But, only for a minute.

July 17

Writer's school is a loud place. The necessary noise of craft techniques being shared and stories told

provides the sound track for each UAA MFA summer residency. But even beneficiaries of this cacophony need quiet time. That's why I rode my bicycle this gray morning deep inside a birch forest. It would be winter quiet but for the distant commuter traffic mimicking a slow moving stream. I could stand here until it is time for the morning talk if not for the biting mosquitoes. Even they are considerate enough not to buzz.

July 18

It rained last night, darkening the bike path pavement to black. In a solemn mood, I turn onto the Campbell Creek Trail. It is marked every mile or so with odd assemblages. A bag of Sun brand corn chips reclines against a waterproof container of corn flakes. I wonder if both were left as offerings to the maize god. Farther on I find a rain jacket, ball cap, and high quality lace up boots. They rest next to a tooth flossing tool and a pair of ice grippers. They are splayed out as if their owner melted away while cleaning his teeth.

All these signs mean nothing to the beaver that swims without hurry along Taku-Campbell Lake. Having learned to dodge fishing lures and lunging Labrador retrievers, he is not going to be put off by strange signs or a poetry student on a folding bicycle.

July 19

It's the last day of writer's school and it's raining. A man sleeps on a trailside bench as rain beads up on his tourist-grade rain gear. Another stands just off the trail as if waiting for a bus that will never come.

There will be no animal drama on this ride. No moose or bear will break across the path before me. No bird song will rise above the white noise of commuter traffic. I will hear the too-sad song of an Alaska Railroad whistle. I'll watch water dimple Goose Lake and speed up the demise of trailside iris flowers. But the rain won't dampen my appreciation for Anchorage, its bike paths and its college. I've enjoyed being part of writer's school, a village that forms each summer on the land drained by Campbell and Chester Creeks. But, it will be good to be back home in Juneau — a town that knows how to look its best in the rain.

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. He can be reached at avesta@ak.net



A mom and her calves enjoy breakfast together.



A moose finds plenty of browse along an Anchorage bicycle trail.

Correct diagnosis only half the battle in lawyer's return to practice

By William Earnhart

As attorneys, many of us have type "A" personalities; always striving to be successful in our careers. We never take a step back for fear of stopping the momentum. Almost all of us have imagined taking a hiatus from our chosen career and every once in awhile someone does. Most of us would likely benefit from a sabbatical, but rarely does this happen as we all feel loyalty to our clients and worry about sacrificing all that we have achieved. Some of us will take time off from the practice on our own terms; but for many such a break is the result of an unexpected health or family circumstance. I hope that by sharing my story, I can encourage others who find themselves in a similar situation to start over and perhaps grow an even better practice.

In February 2009, I was a successful private attorney specializing in litigation. In 15 years of practice, I had progressively advanced my career. I had my own book of long-standing institutional clients, was fully engaged in firm management and watched many of the young attorneys I mentored become successful practitioners in their own right.

Nothing foreshadowed what happened next. On Feb. 12, 2009, I left work early and attended the "Battle

of the Books," where my daughter (then 9 years old) was participating with her school team. I remember speaking with several other parents after the competition and then going to dinner with my family. I also remember not finishing my dinner, something that typically does not happen. My recollection of the next three months is like a long dream, one that has very little relation to what actually occurred.

My recollection of the next three months is like a long dream, one that has very little relation to what actually occurred.

As has been related to me, my behavior over the course of the next several days grew increasingly strange. I did not go to work, I had trouble understanding the world around me and I could not tell if my coffee was hot or how the mini-blinds worked. I was taken to the emergency room at Providence Hospital. Despite having suffered numerous seizures and hallucinations, it still took a number of days to determine that I belonged in the neurological unit. My condition quickly worsened and I was medevacked to Oregon Health Sciences University, where I spent the next two months. My diagnosis at that point was "encephalitis, unknown origin."

I have no recollection of the two months I spent in intensive care and the recovery unit at OHSU. In mid-May 2009, I was treated at the rehabilitation unit at Providence Hospital in Anchorage. I have partial

memories of that time – I could not express myself, had lost 50 pounds, and had to learn how to walk again. I remember being angry and frustrated about my inability to communicate and lashing out at visitors.

I was released several weeks later and spent the summer in speech and cognitive rehabilitation therapy. At the end of the summer of 2009, my physicians declared me fit to return to work. Despite this clearance, I quickly found that I continued to struggle. While by all reports, the minimal work I did during that brief return to the office was competent, I was by no means myself and the skilled practitioner I was prior to my illness seemed lost.

Refusing to accept the new and unimproved version of me, my wife with the assistance of a friend (a former coworker of mine) researched and harangued my doctors until I was eventually accepted at the Mayo Clinic. After extensive testing, I was diagnosed with NMDA Receptor Antibody Encephalitis. In response, my medical team immediately placed me on an intensive course of steroid infusions. As if in an instant, the mental fog that had overtaken me began to lift and I became myself again.

My family survived almost solely due to the strength of my wife Lisa who took care of me and our young children. We were lucky to have the assistance of family and the support of close friends who helped secure the proper medical assistance. We also learned that paying the monthly premium for disability insurance was not a waste after all. The ability of my children to come through this ordeal and thrive is a testament to their own character and my wife's herculean strength and energy.¹

During the summer of 2010, I hit the streets, distributed my resume, and looked for a new position. Despite a strong resume, I found only a little bit of contract work and some interest from the public sector. In October 2010, I secured a position as an assistant municipal attorney. It was a sacrifice to take a 50 percent pay cut from my previous employment, but I welcomed the opportunity to focus on employment and labor and get away from being a "general litigator." I quickly moved into lead counsel in arbitrations, successfully advocated before the Alaska Supreme Court in two appeals, conducted a two-week jury trial, and eventually became lead negotiator on several labor contracts. I enjoyed my time at the city; my coworkers were a great group of attorneys, and Dennis Wheeler was an exemplary supervisor and colleague. The work was diverse and always challenging. But my own professional goals, a desire to prove myself, and a sense of "unfinished business" drew me back to private practice.

Despite my record of success at the city, it took almost a year of sending out resumes before I was able to secure an offer. The first clear indication that finding a new job would be an uphill battle came early on when I applied for a Superior Court judgeship. My Bar poll results dropped almost a whole point on average, indicating my peers felt that I was far less qualified in 2012 than I had been in 2002, when I previously applied. But what was really frustrating was the sample of



William Earnhart

"edited comments" provided by the council. Every candidate receives a negative comment (and some of us abrasive litigators expect to have a few detractors). However, the majority of comments about me, both signed and unsigned, questioned my mental capacity or whether I had a substance abuse problem. The comments did not appear to stem from actual interactions with me during my practice, but rather conjecture and presumptions. It became very apparent that our legal community is a small one where whispers in the halls can quickly become "truth." In addition to the misperceptions of my peers, I also had to face my own insecurities surrounding my diagnosis, which undoubtedly magnified the challenges I faced in rejoining the private legal sector.

After struggling to find my place and overcome the challenges I faced, a year and a half ago, I was asked to join Birch Horton Bittner & Cherot, a well-respected firm I had admired for years. It has been a long journey, but I now have a thriving employment, labor and municipal practice in a great Alaska firm where I work alongside an exceptional group of attorneys.

While there are risks with sharing my story and we Type "A" attorneys certainly try to avoid appearing vulnerable in this highly competitive legal environment, we are all human and, except for a lucky few, we will all have to face the losses and challenges that life inevitably throws our way. However, it is these challenges and our ability to overcome and learn from them that make us greater, not only in our personal lives, but also in our professional lives. My name is Will Earnhart, and I am here to say, just in case you need to hear it, "yes, you can come back stronger."

¹At the time I suffered the initial 2009 hospitalization, Susannah Cahalan, a New York Post reporter, also suffered a similar experience and was ultimately diagnosed with the same illness. Ms. Callahan collected all of her records, interviewed all available witnesses to her fight with NMDA and her efforts to get a proper diagnosis, and wrote "Brain on Fire: My Month of Madness," a New York Times bestseller and 2016 movie. I mention the book because, reportedly, I experienced the same symptoms and strange behavior, and received the same neurological test results and misdiagnoses. My wife cannot read the book; it comes too close to what she witnessed firsthand.

William Earnhart is a member at Birch Horton Bittner & Cherot.



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Compromise eventually settled Bar-Bench dispute

By Robert C. Erwin

In the last week of July The Alaska Dispatch News featured a comment by Dermot Cole of Fairbanks concerning the dispute between the Alaska Supreme Court and the Alaska Bar Association. This dispute was over the responsibility of the Bar and the Court on Bar matters during the first years of statehood.

This article featured a picture of the front page of the Anchorage Times showing a state policeman pointing a revolver at the cashier of the First National Bank to obtain the funds of the Alaska Bar Association by the appointed trustee of the Bar designated by the Alaska Supreme Court.

The appointment of the trustee and the seizure of funds resulted in a federal lawsuit, against the Alaska Supreme Court, the Alaska Bar Association and 150 out of 200 individual members of the Bar Association.

The lawsuit was ultimately settled through the efforts of a panel, who mediated the dispute, consisting of the Chief Justices of the Supreme Courts of Washington and Oregon and the dean of the University of Washington Law School. However, the hard feelings over the dispute lasted many years and complicated cooperation between the bench and the Bar.

The basis of the dispute is set forth in the unusual opinion of the Alaska Supreme Court in the case entitled “*In RE Alaska Supreme Court Orders 64, 68, 69, 70 & 71*”, 395 P2d 853 (Alaska 1964). The opinion is unusual because it was a denial to a motion to dismiss an appeal filed by an individual member of the Bar challenging the orders because the opinion was not circulated to the general public as were all other opinions of the Supreme Court.¹

The mystery surrounding the opinion in even greater since it followed the circulated opinion in the case over the actions of the Bar Association in the disciplinary action against Bar Member Neil MacKay (See *In Re MacKay*, 395 P2 838 (Alaska 1964)), which was ordered immediately withdrawn by the Supreme Court (See *Index Alaska Reporter* 389-386 P2d, page XII).

A MacKay opinion was subsequently re-issued in 416 P2d 823, 837 (Alaska 1966) with the additional 15 pages on various motions for rehearing (*id at 835-852*). The new opinion, however, does not mention the Opinion on Orders 64, 68, 69, 70, and 71, but does generally discuss the effect of such orders and the lawsuit in the United States District Court, id 844-845. Parts of the old opinion are referred to in the new opinion, but the original opinion is not published.

The dispute between the bench and the Bar arose over the Court's rules adopted by the Supreme Court in June of 1964 governing the Alaska Bar Association and placing it in the Judicial branch of government (Order No. 64). The Bar Association had previously adopted a resolution in May of 1964, which requested its Board of Governors not to follow the pending rules.

The response, in August, were orders 68, 69, and 70, which removed the Board of Governors, appointed a trustee for the Bar Association, and ordered the seizure of Bar funds. Order number 71, issued in October, was the repeal of the previous orders.

It is somewhat difficult to assess the extent of hard feelings which resulted from the dispute after 50 years, but it did have some far reaching consequences. Justice Harry Arend was defeated in his retention in 1964 and was replaced on the Supreme Court by Justice Jay Rabinowitz in 1965.

In 1968 the Alaska Supreme Court was increased, by the Legislature, from three to five members. In 1970 a Constitutional Amendment was passed changing the term for service of the Chief Justice to three years with a limit to non-consecutive terms.

The addition the Supreme Court from three to five justices and the previous withdrawal of Court Order 64, which contained the rules for the governance of the Bar Association, resulted in a reaffirmation of the Alaska Integrated Bar Act passed in 1955, and presently found in A.S. 08.08.010 to 08.08.100.

A.S. 08.08.080(e)(4) provided that the Board of Governors may adopt bylaws and regulations affecting the organization and functionality of the Alaska Bar.

This interaction between the Court and the Bar is also referred to by Justice Dimond in his dissent in the case authored by this writer in 1976 in the following language (*In Sullivan v Alaska Bar Assn.*, 551 P2 531, 540 (Alaska 1976)).

“The majority states that the final power and authority to determine standards for admission to the practice of law in Alaska resides in this court. In support of this proposition, the majority cites the *Houston, Brewer, Steelman, Peterson*, and *Stephenson* cases, and then goes on to refer to the fact that the Bar Association is an administrative arm of the judiciary with respect to admission to practice law.”

The Alaska Bar Rules are a product of joint action of the Bar and this court. The Bar adopts the rules, but they are not effective until further adopted by the court. Bar Rule 60(b) Provides:

These rules may be changed at any time by a majority vote of the committee at a duly held meeting at which a quorum is present, subject, however, to the approval of a majority vote of the Board of Governors of the Alaska Bar Association and the adoption of the change by the Supreme Court of the State of Alaska.

What this rule means is that an accommodation has been made between the authority of the Supreme Court to determine who may practice law in Alaska and the authority and independence of the legislatively integrated Alaska Bar Association in providing rules for admission to practice law. By virtue of such accommodation, the essential relationship between the parties requires comity to be exercised by both the court and the Bar, and a proper recognition by each of the authority that each is to exercise in the regulation of the legal profession.

To put it another way, Bar Rule 60(b) means that the court will refrain from imposing rules on the Alaska Bar Association without its consent, and the association, in turn, will not adopt rules without the approval of the Supreme Court. That is how the matter stood when

Harvey Sullivan appeared before the court and sought permission to take the February 1976 bar examination, despite his noncompliance with the Bar Rule relating to the taking of the examination.”

The case clearly rebuts any suggestion of previous cases that the Supreme Court was to dictate the overall governance of the Bar Association. It, however, does not shed any light upon the circumstances which caused the clash of the Bench and the Bar, which resulted in Court Order 64 and the emotions caused thereby.²

The tensions between the bench and the Bar were also noted a number of years later by Justice Rabinowitz at the memorial service of Justice John Dimond in Juneau:

“I came from an entirely different background and religious faith than your husband maintained. I didn't know whether we would get along on the Supreme Court. I came on in 1965 and — these things aren't of public record — but there were tremendous internal tensions, and I'm sure that Justice Conner and Justice Erwin can testify that for years these internal strains existed. And John has the remarkable ability to take our problems, and they were really monumental and of importance to the state — and make decisions. And if he lost, he lost without rancor, without bitterness. He was always a gentleman and he was always encouraging. John was the cement at the time when our court system at the very top could have blown apart. He was just a magnificent human being and it was

an honor and a privilege to have been fortunate to work with John for the number of years that I did. I had a profound personal respect for him and I hope that I earned it from him.”

The lessons learned from the past are sometimes difficult to follow.³ This is a reminder that compromise produces further cooperation for the common good: something that the national political scene appears to have forgotten, or refuses to believe.

Robert C. Erwin was admitted to practice in 1961 and had done over 200 appeals. He served on the Alaska Supreme Court from 1970 to 1977.

¹ In the comment on the Bar/Bench Dispute noted in footnote 3, the appeal of order 68, 69, and 70 is attributed to a scheme by Chief Justice Nesbett and the attorney representing, in federal court, the Alaska Supreme Court to file a Petition for Review by private attorney, Harlan Davis, in order to petition the Alaska Supreme Court to decide whether it had the power to make rules for governing the Bar Association (Page 23). Davis, acting in accord with Nesbett's plan, based his petition on the memorandum he received from the court attorney and the court staff. Anchorage Bar Members persuaded Davis to withdraw his petition, but the court denied his request leaving itself vulnerable to charges of procuring cases to enhance its own power.

² The change apparent in the Sullivan opinion may have occurred by a change in the personnel on the Supreme Court. Only one of the five Justices had been a member of the Court in 1964 and Justice Conner had been president of the Alaska Bar Association before his appointment to the court in 1967.

³ There is an extensive examination of personal motives and ambitions of the persons involved in the Bench/Bar Dispute found in the comment by Pamela Cravez entitled “A Revolt in the Ranks: The Great Alaska Court – Bar Fight”, Volume XIII, Alaska Law Review, (Duke University 1996).

... the hard feelings over the dispute lasted many years and complicated cooperation between the bench and the Bar.

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Federal Bar Association names a new president

By Darrel J. Gardner

The Alaska Chapter of the Federal Bar Association welcomes new chapter president Andrea Hattan. She is replacing Stoel Rives partner Lane Tucker, and will assume her FBA chapter presidency Oct. 1, 2017, at the conclusion of Lane's term. Hattan is an Assistant U.S. Attorney. Prior to joining the Anchorage office, she worked as an AUSA at offices in New Mexico and Hawaii. She was raised in Fairbanks and graduated from Lathrop High School. She attained her B.A. at Middlebury College in Vermont, and her J.D. from Seton Hall in New Jersey.



New President Andrea Hattan

The Fourth Annual Alaska Federal Bar Conference was held Aug. 16 at the Dena'ina Center in Anchorage. The conference was to be opened by a special guest, Magistrate Judge Michael Newman, the current national president of the Federal Bar Association. Judge Newman would have been the fourth consecutive FBA president to visit Alaska in as many years. However, Judge Newman had to cancel at the last minute due to pressing matters in his court. He did, however, send along some gracious written remarks.

Featured speakers at the conference included Loyola Professor Laurie Levenson, who presented a comprehensive case summary update of the 2016-2017 term of the U.S. Supreme Court. Following lunch, Alaska's resident Circuit Judge, Morgan Christen, gave a fascinating talk on the "behind the scenes" workings of the Ninth Circuit. Her presentation covered topics such as case assignments, weighting, and



Loyola Professor Laurie Levenson talks about the Supreme Court.

statistics; the decision process for scheduling oral arguments; and tips to attorneys for dealing with the unique acoustics in several Ninth Circuit courtrooms. After Judge Christen's program, there was an informal discussion with the three members of a visiting Ninth Circuit panel, who were in Anchorage to hear oral arguments. Panel assignments vary from year to year, so the panel is rarely, if ever, comprised of the same three judges. This summer's panel included: Senior Circuit Judge Richard R. Clifton, with chambers in Honolulu; Circuit Judge Susan P. Graber, with chambers in Portland; and Circuit Judge Milan D. Smith, with chambers in El Segundo. The judges discussed their backgrounds and their "paths to the bench," followed by a question-and-answer session with the enthusiastic audience. The conference then concluded with a reception, where the judges and attendees mingled and conversed. Then



Circuit Judge Morgan Christen explains Ninth Circuit workings.

you to everyone who attended the conference, and particularly to the circuit judges and our Alaska district judges for their support and participation.



Darrel J. Gardner

The Annual Ninth Circuit Judicial Conference was held in San Francisco in mid-July. The last time the Ninth Circuit conference took place in San Francisco was 1973. The theme of this year's conference was "Law, Society, and Technology: The Challenges and Opportunities Ahead." San Francisco's proximity to Silicon Valley provided a wellspring of speakers, including general counsel from Twitter, Uber, and Oracle, who spoke on "Cutting Edge Technology and the Law;" and representatives from Google, Facebook, and Microsoft, who spoke on "Artificial Intelligence Today — Tomorrow's Legal Challenges of Machine Learning." There was also a terrific program on the prosecution of Ku Klux Klan members responsible for bombing a Baptist church in Birmingham in 1963 and killing four young girls. The first conviction occurred in 1977; it took more than 20 years for the U.S. Department of Justice to obtain convictions of two other aging Klansmen.

The conference opened with welcoming remarks from Chief Circuit Judge Sidney Thomas (Montana); Alaska Chief District Judge Timothy Burgess, who was this year's conference chair; and San Francisco's mayor, Edwin Lee, and former mayor, Willie Brown. The first day also included welcoming remarks by U.S. Supreme Court Associate Justice Neil Gorsuch. Typically, Associate Justice Anthony Kennedy, who is from the Ninth Circuit (California), attends the conference; however, he had to cancel his appearance because his wife sustained an injury while in Austria shortly before start of the conference. Justice Gorsuch graciously agreed to attend the conference on behalf of Justice Kennedy. Justice Gorsuch also presided over a naturalization ceremony held during the opening session, which was preceded by a highly moving historical presentation on the Fred Korematsu case, which successfully challenged (via writs of coram nobis)

the U.S. Supreme Court's decision upholding the legality of Japanese incarceration during World War II. Speakers included Senior Ninth Circuit Judge Mary Schroeder, Retired District Judge Marilyn Hall Patel, and Karen Korematsu.

Alaska was well represented at the conference; attendees included:

- Circuit Judge Morgan Christen
- Chief District Judge Timothy Burgess
- District Judge Sharon Gleason
- Senior Judge Ralph Beistline
- Senior Judge H. Russel Holland
- Senior Judge Jack Sedwick
- Magistrate Judge Deborah Smith
- Bankruptcy Judge Gary Spraker
- Federal Public Defender Rich Curtner
- Acting U.S. Attorney Bryan Schroder
- L.R.C.C. Chair Elect Darrel Gardner
- L.R.C.C. Alaska Representative Dick Monkman
- Lawyer Representative Jamie McGrady
- Lawyer Representative Mary Pinkel
- FBA Alaska Chapter President Lane Tucker
- Chief Probation Officer Rhonda Langford
- Clerk of Court Lesley Allen

Judge Michael Newman (from the Southern District of Ohio), the current national president of the Federal Bar Association, was a special guest at the Alaska District dinner, held at the San Francisco landmark restaurant, Boulevard. The delightful event was planned by Dick Monkman of Juneau. Dick has spent the last year working as Alaska's delegate on the Lawyer Representatives Coordinating Committee which helps plan many of the CLE programs presented at the annual conference. Dick was also responsible for writing the Alaska District Report, which summarized all of the important federal court news in Alaska from the past year. All of the district reports are available on the Ninth Circuit's website. Lawyer Representative Mary Pinkel, an Alaska assistant attorney general, takes over as Alaska's delegate on the LRCC for the upcoming year. In October, Mary will participate at a meeting in San Francisco to start planning the 2018 conference, which will be held in Anaheim, California.

For more information, or to join the Federal Bar Association, please contact Andrea Hattan (andrea.w.hattan@usdoj.gov) or Lane Tucker (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 us on Twitter "@bar_fed."

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



Circuit judges Milan D. Smith, Susan P. Graber, Richard R. Clifton and Morgan Christen attended the conference.

Young Turks eventually gain status despite the Old Guard

By John Havelock

Coming into Alaska on the cusp of statehood was a glorious experience. Scenic wonders and the freedom of an outdoors without limits were breathtaking. More than that, the new state brought on, not a gold rush, but the excitement of unspecified but glorious opportunity. The social environment sounded, if a bit romanticized, entertaining and inviting. Participating in the making of a new economic and political environment out of the tattered old Territory could be just plain exciting.

For new lawyers, in that era, of course it was a young “male” thing. Some of the new wives who came along did not find the roughness of Hicksville to their taste and pulled their husbands back to civilization or cancelled marriages.

Though Alaska was nationally famous for the friendliness of its Territorial inhabitants, with stories of Alaska Highway rescues, universal helping hands, etc., not every segment of the population and not every Alaska institution was welcoming the new arrivals. A majority of Territorial Lawyers joined in this class of suspicion and rejection.

This hostility to newcomers was natural enough as we look at it now. The Territorial lawyers and their bar association made a tight membership club and considered any legal requirements of the Territory’s population their personal monopoly. Many lawyers did not see a rapid, general expansion coming in the economy and if they did, why shouldn’t it all be all theirs?

It is easy to overlook the quality of the Territorial Bar from the perspective of 2017. There are far too many lawyers now for any single one, even a very social one, to know everybody or even a small fraction of the lawyers in Anchorage, never mind, the whole state. These days, almost any new litigation involves meeting new faces. Today’s Bar is not a social unit but a governmentally related bureaucracy.

Back then, the Bar’s work was meshed with social events. The lawyers in Anchorage, Fairbanks, Juneau and Ketchikan met for lunch every day. Meeting for “a drink” “at the end of the work day” was often added. In Ketchikan, the off-record disposal of legal issues was close to mandatory, keeping the judge’s desk clean and orderly. Discovery was all but unknown. Inter-lawyer negotiation was the way to go and if that didn’t work, cases were disposed of within a few weeks of their filing. Much of this process was oiled with alcohol. On today’s standards, most members of the bar qualified for Alcoholics Anonymous.

Virtually every lawyer was a general practice lawyer with some real estate negotiators an exception. Solo practice or a two-lawyer partnership were the standard forms of organization except in Juneau where two firms dominated. The rules on admission had been lightly administered and more than a few lawyers had gaps in their education and lawyering background. But the best skills are derived from experi-

ence. Lawyers of legendary skill practiced in the Territory and more than a few of them found it easy to spin a new arrival from Harvard Law School. Then there were, sorrowfully, the few who crashed from alcohol or misjudgment.

Lawyers knew lawyers statewide because everyone joined in the annual bar convention. Every law office in the state closed for the bar convention. At least one convention was scheduled in Hawaii until the cost and state-disloyalty brought an end. The Hospitality Suite was crowded early and lasted until the early hours, with occasionally a lawyer or two ending up sleeping in it. Much of this tone of camaraderie persisted into the sixties and I remember fondly still the pleasures of this environment and a few embarrassments.

But in 1958-61, entry to this club was restricted by orders formal and informal of the organized bar. Peter J. Kalmarides operated the organized bar from his solo office as a part-time job with a loyal female assistant Carol actually doing most of the work.¹ To begin with there was a residency requirement – probably of unconstitutional length. There was only one exam once a year, composed locally. Those who failed could appeal to the Board of Governors.

Then there was the discouragement. Those who wrote to the bar office enquiring about opportunity or application information were either ignored or told there was no room. In at least one instance, the prospective

applicant was told that the opportunities were to be found at Cold Bay. There was some exception in this general discouragement for those interested who were children of Alaska lawyers or otherwise enjoyed local prominence. Some applicants were inclined to blame all this negativity on Pete, but it was pretty clear that he was just carrying out the wishes of the association.

Grading of the bar exam might not have been fair. The exam offered in the winter of 1958-9² was taken by a new record number of applicants, almost all recent law school grads, and those were the days of a few tough law schools. The association failed most of them, including some real locals.

The ensuing outrage boiled over. Remember, all of these candidates had been in an underpaid clerking or legal assistant status for months and now had to await another year plus the months it took to grade. Meanwhile, throughout Alaska but particularly in Juneau, the number of new residents or law school returnees eager to take an exam had grown. The two groups hooked up. I remember in particular Jerry Wade, Bob Ely and Gerry Gucker as heroes of the outrage, but many others were involved.

First a petition was organized asking for an exam in the summer of 1960. Some did not want to sign it for fear of retaliation but still a well-fortified petition was presented to the Bar and somewhat to the surprise of the petitioners, the association scheduled an additional exam that summer and we all took it. The

regular exam remained scheduled for the following November.

The association knew how to deal with uppity young upstarts. The graders of the July Bar slept, issuing their results early the next year, a few weeks before the results of the regular bar exam. The July exam had just given those who took it several months of extra tension, wondering whether they had passed or not— while remaining in a pre-admission salary status.

The so-called Young Turks who had organized the petition and who had smarted from the negativity of the admissions application process were not through. Within weeks, they began plotting to see what could be done about the board which had supervised these outrageous admissions practices.

Since proportionately, new lawyers were the largest part of the Southeast Bar, I was chosen to be a candidate for that regional candidacy and won. I sat with the board through the next exam appeals noting, among other things, that anonymity of petitioners was only formally observed. One exchange was sufficiently memorable to hold on for half a century.

Member A: “His answer to this question ignores the last twenty years of constitutional development.”

Member B: “He answered it the way the law ought to be.”

The other members of the board treated their new member cordially, but at the end of the session they unanimously passed a resolution amending the Association Rules to

add a provision that nobody could be a candidate for a board seat without at least five years of bar membership.

Along with other routine changes, this came up for confirmation at the next meeting of the bar association which happened to be in Anchorage. I will never forget Cliff Groh who stood up and lashed out at the limitation in angry and eloquent terms. The result, the bar unanimously rejected the amendment. The board got rid of me later in the year anyway as I moved to Anchorage, losing my regional qualification.

But the work was done. The Old Guard faded away. The admissions practices of the Bar were reformed and regularized and a new era in bar administration began.

John Havelock is an Anchorage attorney and university scholar. In a long legal career, he has served on the Board of Governors, as delegate to the American Bar Association, Bar Association administrator (once it took only part of one person’s time), professor and founder of University Justice programs and attorney general in Gov. Bill Egan’s administration.

¹ In ‘64 and ‘65 I did this too, part time, including admissions, discipline and litigation- so eat your heart out, those of you that think the bar association is too big and expensive. Actually I am not in your camp. Times change, everything changes. I am impressed by the whole array, particularly the executive leadership.

² Vintage members of the Juneau Bar told me that elected Attorney General J. Gerald Williams (who later befriended me but that’s another story) used to give the exam and grade it.

Lawyers of legendary skill practiced in the Territory and more than a few of them found it easy to spin a new arrival from Harvard Law School.

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New dance for an old shoe – Revised Rule 147 & New Rule 147A

By: Julius J. Brecht

Overview

Earlier this year, entrepreneurs were provided with a new path under federal law to capitalize a startup or existing small business through the use of a securities offering (Offering)!

The path comes in the form of revised Rule 147 and new Rule 147A (Revised Rule 147 and New Rule 147A, respectively, or collectively New Rules).

When I first went into private practice in the early 1980s (after serving several years as the administrator of securities for the State of Alaska), under then federal law, there were few means available to an entrepreneur or small business owner (collectively, Business Owner) to capitalize or recapitalize a small business through an offering and in reliance upon a registration exemption. One of them was the exemption found under Rule 147 (Rule 147).

Rule 147 was initially adopted by the Securities and Exchange Commission in 1974 pursuant to Section 3(a)(11) of the Securities Act of 1933, as amended (Securities Act). It is a registration exemption for an intrastate Offering.

While Rule 147 provides a registration exemption under the Securities Act, that exemption does not apply to the Business Owner's responsibility to comply with the securities law of the state or territory (collectively, state) in which the Offering is made. As a result, the Business Owner might still have to register the Offering in that state, should there not be an appropriate state registration exemption available on which the Offering might rely.

The SEC announced in October 2015 its proposal to expand upon Rule 147. A year later and after taking into consideration public comment on its proposal, the SEC announced its final determination to adopt the New Rules. The effective date of the New Rules was April 20, 2017.

The SEC's release on this action (SEC Rel. No. 33-10238 (October 26, 2016), Release) states that the purpose of the New Rules is, in part, to assist smaller companies with capital formation. The Release further states that the New Rules are adopted consistent with the SEC's other public policy goals including public investor protection.

The Release describes Revised Rule 147 and New Rule 147A as alternative registration exemptions available to the Business Owner contemplating a public Offering within a single state. However, the Business Owner is still subject to the disclosure provisions of the Securities Act. Similarly, the Business Owner continues to be subject to the registration provisions (unless an appropriate exemption is available) and the disclosure provisions of the securities law of the state in which the Offering is made.

The following outlines some of the important aspects of the New Rules. However, to get the full impact of the New Rules on a particular Business Owner requires a careful reading of them and the Release.

Rule 147—

Briefly, Rule 147 provides a registration exemption for a public Offering of securities by a Busi-

ness Owner to offerees under limited conditions. Those conditions include that the Business Owner, i.e., the offeror of the securities, is a person resident in, and doing business within, a state. If a corporation, the Business Owner must be incorporated by, and doing business within, that state. At the same time and under Rule 147, all offerees and purchasers of the Offering must be residents of that same state as the Business Owner.

Now you say, why are the New Rules of importance to the Business Owner?

While perhaps well intended, the provisions of Rule 147 have for over 40 years had a significant drawback. An offer, once made (inadvertent or otherwise) to an offeree in a state other than the

state of residence of the offeror, goes beyond the scope of the exemption. In such a case, the offeror likely has lost the cold comfort of reliance upon the exemption. That is, the offeror may find that his or her Offering is thereby in violation of the registration provisions of the Securities Act. The New Rules address this drawback.

Revised Rule 147—

Revised Rule 147 retains much of Rule 147 but also revises it as a safe harbor for an intrastate Offering exempt from registration under the Securities Act. The Release states that, by keeping within the statutory parameters of Section 3(a)(11) of the Securities Act in adopting Revised Rule 147, the rule continues to allow the Business Owner, in making an Offering in reliance upon that rule, to rely upon corresponding state exemptions which are precisely tailored to the provisions of Rule 147.

The Release specifically gives, as an example of such exemptions, intrastate crowdfunding provisions of state law that are conditioned upon compliance with Section 3(a)(11) of the Securities Act and Rule 147. In 2016, the Alaska legislature enacted specific legislation relating to intrastate crowdfunding as an amendment to the Alaska Securities Act (AS 45.55, Alaska Securities Act). The legislation became law later that year, and the Alaska Department of Commerce, Community and Economic Development subsequently adopted regulations implementing provisions for that amendment to the Alaska Securities Act.

That Alaska legislation is specifically tied to the provisions of Section 3(a)(11) and Rule 147. The Alaska intrastate crowdfunding regulations became effective on Nov. 26, 2016. They are the subject of a separate article.¹

Under Revised Rule 147, the provision of Rule 147 limiting the offeror continues in making offers and sales in an Offering only to persons resident in the same state in which the offeror is resident.

The Release states offers made over the internet, that can be viewed by a significant number of out-of-state residents, are not consistent with Section 3(a)(11) of the Securities Act and Rule 147. The Release further states that this position applies, notwithstanding should there

be prominent disclosure in the Offering materials stating that sales are to be made only to residents of the same state as the offeror.

The Release further states that, in light of retaining the existing Rule 147 as a safe harbor to Section 3(a)(11) of the Securities Act for purposes of Revised Rule 147 and for consistency between that Revised Rule 147 and New Rule 147A, the Revised Rule 147 replaces the "principal office" requirement of Rule 147 with a "principal place of business" requirement. That is, under the New Rules, both Revised Rule 147 and New Rule 147A refer

to "principal place of business" to mean the location from which the officers, partners or managers of the offeror primarily direct, control and coordinate the activities of the offeror.

New Rule 147A—

New Rule 147A has been adopted by the SEC under its general exemptive authority pursuant to Section 28 of the Securities Act. Therefore, New Rule 147A is not subject to the statutory limitations of Section 3(a)(11) of the Securities Act. For example, New Rule 147A does not include the limitation that offers can be made only to offerees of a state in which the offeror is resident or otherwise organized and doing business.

The Release states that New Rule 147A, in being based in authority of Section 28 of the Securities Act, will limit sales to in-state residents but will not limit offers by the offeror to in-state residents. Furthermore, New Rule 147A does not require an offeror to be incorporated or organized in the same state where the Offering occurs so long as the offeror can demonstrate the in-state nature of its business.

The Release goes on to state that New Rule 147A will permit offerors to engage in general solicitation and general advertising of an Offering. This effort may include using any form of mass media, e.g., unrestricted, publicly available internet websites, so long as sales of securities as offered are made only to residents of the state in which the offeror is resident.

Consistent with these provisions, the Release further states that both New Rule 147A and Revised Rule 147 require offerors to include prominent, specific disclosure with all Offering materials. That disclosure must state that sales are made only to residents of the same state as the offeror. The Release further states that such disclosure requirements do not prevent a state from imposing additional disclosure requirements or other requirements on offers or sales made to persons within that state.

A commenter during the New Rule 147A adoption process sought relief to accommodate space-constrained social media communications. In response, the Release states that, when Offering materials are distributed through such communications, an offeror can satisfy the disclosure requirement by including an active hyperlink to the required disclosure.

The Release goes on to note that

such communication ought to convey prominently reference to the hyperlink. The Release further states that such hyperlink option ought not to be used in instances where the communication can otherwise accommodate the entirety of the disclosure without use of the link.

The Release states that New Rule 147A relies solely upon the principal place of business requirement in determining the state in which the offeror is deemed a resident. This approach applies to all offerors, not just ones organized through incorporation. In addition, it also includes entities that may not be organized under state law. The Release gives, as an example of such an entity, a general partnership.

Requirements Common to Revised Rule 147 and New Rule 147A—

The specific description of the New Rules given in the Release is prefaced by the statement that the amendments to Rule 147, resulting in Revised Rule 147 and resulting in the establishment of New Rule 147A, are substantially identical, with limited exception. The limited exception is characterized as New Rule 147A allowing an offeror to make offers accessible to out-of-state residents and to be incorporated or organized out-of-state.

Both of the New Rules address or otherwise provide the following as further requirements on an Offering made in compliance with the rule:

- An offeror is required to satisfy at least one "doing business" prerequisite set forth in the rule which demonstrates the in-state nature of the offeror's business.
- A new "reasonable belief" standard is set forth for offerors to use in determining the residency of an offeree-purchaser at the time of sale of the securities.
- An offeror must obtain a written representation from each offeree-purchaser as to that person's residency.
- The residency of an offeree-purchaser that is a non-natural person, e.g., an entity such as a corporation or partnership, is defined as the location where, at the time of sale, the entity has its principal place of business.
- For a period of six months from the date of the sale of a security by the offeror in the Offering, any resale of that security is limited to only a person or persons resident in the state in which the offeror was resident at the time of that security sale.
- An Integration safe harbor is established for the Offering—Offers and sales made in reliance upon the rule will not be integrated with offers and sales made prior to commencement of the Offering or offers or sales after completion of that Offering that fall in one or more of several categories, including offers and sales otherwise specifically identified in the rule as exempted or registered, or that were made more than six months after the completion of that Offering.
- Disclosure requirements, including legend requirements to offerees and purchasers about the limits on resales, are imposed.

These seven provisions are fur-

Continued on page 17

100 attend defense lawyers' association summer conference

By Darrel J. Gardner

This year marked Alaska Association of Criminal Defense's seventh conference, held June 22-23. 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 also presented at the National College of Criminal Defense (NCCD), the National Institute for Trial Advocacy (NITA), and the National Association of Criminal Defense Lawyers (NACDL).

The AKACDL was founded in November 2009. The association has approximately 125 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, as well as an annual two-day summer conference held at the Alyeska Resort in Girdwood. This year's All*Stars Conference was once again very well attended, with about 100 participants. Featured presenters this year included:

Hilary Lee Potashner has been the Federal Public Defender for the Central District of California since 2014. Potashner oversees an office of about 240 attorneys, paralegals, investigators and other staff members. The office provides legal representation for indigent defendants in federal criminal proceedings. Last fiscal year, the office opened about 3,400 cases. Potashner has been a public defender in state and federal courts for more than two decades — first for the San Diego County public defender's office, and then for the federal defender's office in the central district beginning in 2001. Residing in Los Angeles, Potashner has represented former baseball star Lenny Dykstra on charges of bankruptcy fraud and accused LAX shooter Paul Ciancia. She graduated from Duke University in 1989 with degrees in psychology and philosophy, and received her J.D. in 1993 from the University of California, Hastings.



Greg Razo received the non-member award.



Award winner Kevin Fitzgerald and Phil Shanahan display their awards.

Barry Pollack is the 2017 president of the NACDL. Pollack, a private practitioner residing in Washington, D.C., represents individuals and corporations in criminal investigations and trials and in other government enforcement matters. He is best known for his skills in the courtroom. He obtained acquittals on all counts on behalf of a former executive of Enron Corporation in a federal criminal case, following a month-long jury trial. Pollack's client was one of only two Enron executives to be acquitted by a jury. He also represented Martin Tankleff, whose double-murder conviction was reversed and all charges against him dismissed after he had spent 17 years in prison. The Mid-Atlantic Innocence Project honored Pollack with its "Defender of Innocence Award," and he received the "Gideon Champion of Justice Award" from the New York State Association of Criminal Defense Lawyers. In 2008, Pollack was inducted as a fellow into the prestigious American College of Trial Lawyers.

Andrea Lyon is the dean of Valparaiso University Law School since 2014. Formerly, she was a clinical professor of law, associate dean of Clinical Programs, and director of the Center for Justice in Capital Cases at DePaul College of Law. Lyon received her undergraduate

degree from Rutgers University and her law degree from Antioch School of Law. She has defended more than 30 potential capital cases at the trial level and has taken 19 through penalty phase; she won all 19. In 1990, she founded the Illinois Capital Resource Center and served as its director until joining the University of Michigan Law School faculty as an assistant clinical professor in 1995. A winner of the prestigious National Legal Aid and Defender Association's Reginald Heber Smith Award for best advocate for the poor in the country, Lyon is a nationally recognized expert in the field of death penalty defense and a frequent continuing legal education teacher throughout the country. She has also authored several books, including *Angel of Death Row* and *The Death Penalty — What's Keeping it Alive*.

Also speaking this year was accomplished Alaska attorney Susan Orlansky. Orlansky arrived in Alaska in 1980. She worked for the Alaska Court System for one year, then spent the next 11 years with the Alaska Public Defender Agency, where she concentrated on criminal appeals. In 1992, she moved to private practice, where she expanded her criminal defense practice to include white-collar and environmental cases in both state and federal courts. Orlansky joined Reeves Amodio in an "of counsel" capacity in 2014, and has continued her diverse practice, with a particular emphasis on appellate cases. Apart from her Reeves Amodio practice, Ms. Orlansky volunteers as a staff attorney for the ACLU of Alaska, serves on the Alaska Bar Association Ethics Committee, and is a frequent presenter at CLEs, especially on matters involving appellate practice. She has received awards for her commitment to pro bono legal services.

A large number of public defense attorneys attended because, for years now, the Alaska Public Defender Agency and the Office of Public Advocacy have encouraged them to participate since those offices have lacked adequate 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 a lunch event on the first day of the conference, AKACDL presented its annual "Champion of Liberty Award." The award, a large

engraved decorative gold pan, is presented 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 "Champion of Liberty Award" that could be given to a non-AKACDL member or member of the public. This year's AKACDL member award went to Anchorage lawyers Phil Shanahan and Kevin Fitzgerald for their Palmer "Sockeye Fire" trial victory. In the case, an Anchorage couple was accused in 2015 of starting a fire in the Mat-Su that burned more than 7,000 acres and destroyed 55 homes. The jury found the couple not guilty of the dozen charges against both of them.

This year, the AKACDL board also presented a non-member award to Greg Razo for his work as chair of the Alaska Criminal Justice Commission. Greg is in-house counsel for CIRI in Anchorage. He played a key role in reaching the consensus legislation of Senate Bill 91. Greg is quoted on Gov. Bill Walker's website:

"This reform package follows the best research in the field and the best practices around the country," said Greg Razo, chair of the Alaska Criminal Justice Commission. "Today Alaska is making an historic investment into treatment and programming for those in our criminal justice system, and services for victims of crime. I'm very proud of our work on the Commission, and applaud the courage and conviction of our Legislature and governor."

Congratulations to all of these outstanding practitioners!

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 current president of the Alaska Bar Association.

New dance for an old shoe

Continued from page 16

ther described in the Release and as set forth in the New Rules.

Understanding the New Rules—

The prudent Business Owner considering involvement in an intrastate Offering in Alaska in reliance upon Revised Rule 147 or New Rule 147A, as an allowable exemption from registration under the Securities Act, ought to become more familiar with the provisions of these New Rules. That Business Owner also ought to review appropriate provisions of the Alaska Securities Act and regulations adopted pursuant to that act which may impact such an Offering made in Alaska and simultaneously in reliance upon the New Rules.

Best wishes in your entrepreneurial efforts!

Julius J. Brecht is an attorney in private practice and Of Counsel with the law firm of Bankston Gronning

& O'Hara, P.C. with offices in Anchorage. His concentration of practice is in state and federal securities law and corporate and finance law. This article was prepared solely to provide general information about the topic. The content of this article was not prepared as, and must not be construed as, legal, tax or investment advice to anyone. Nothing in this article is intended in any way to form an attorney-client relationship or any other contract. The author may be reached at jbrecht@bgolaw.pro.

Julius J. Brecht, "Intrastate Crowdfunding for Alaska," November 2016, published in two parts in *Alaska Bag Rag*, January-March and April-June 2017 issues, respectively.

(Endnotes)

¹ Julius J. Brecht, "Intrastate Crowdfunding for Alaska," November 2016, published in two parts in *Alaska Bag Rag*, March and April 2017 issues, respectively.

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Bar People

Attorneys mark 2 years in practice

The Anchorage law firm **Brena Bell & Clarkson (BBC)** is pleased to announce the two-year anniversary of **Jon (“Jack”) S. Wakeland’s** employment with the firm. Wakeland is a lifelong Alaskan who grew up in Eagle River. He was a National Merit Scholar and received his B.A. in philosophy and J.D. from Willamette University. In law school, he competed in moot court competitions, acted as a student assistant for legal research and writing courses, worked on land-use issues for a legal clinic, and clerked for the Oregon Department of Justice in the Government Services section. Wakeland has represented Alaska clients for more than six years, focusing on oil and gas pipeline transportation, ad valorem tax, municipal law, and general civil litigation. He has also presented before the Alaska Government Finance Officers Association and provided pro bono legal services through the Alaska Legal Services Corporation. **Jake W. Staser** also marked two years with the firm. Staser is a lifelong Alaskan who grew up in Anchorage. He received his B.A. in politics from Princeton University in 2008 and graduated *cum laude* with his J.D. from Willamette University in 2011. He has represented Alaska clients for more than five years, focusing on oil and gas pipeline transportation, ad valorem tax, municipal law, and general civil litigation. Prior to joining BBC, Staser worked at Walker & Richards, LLC and at the State of Alaska, Office of Public Advocacy. He is admitted to practice in Alaska and the United States District Court for the District of Alaska. **BBC** also announced as part of its ongoing utility and pipeline training that attorneys **Matt Clarkson, Kelly Moghadam, Jack Wakeland,** and **Jake Staser** have successfully completed the National Association of Regulatory Utility Commissioners’ sponsored course on the economic regulation of public utilities and pipelines, utility rate setting, choosing a test year, and developing a rate base.

Three named to ‘Super Lawyer’ list

The law firm of **Sonosky, Chambers, Sachse, Miller, Monkman & Flannery, L.L.P.**, with offices in Anchorage and Juneau, is pleased to announce that three of its Alaska attorneys have been named to the Thomson Reuters “2017 Super Lawyers” list.

Myra Munson was named a “Super Lawyer” in the areas of Native American, Health Care and Nonprofit Organization Law. **Richard Monkman** received the “Super Lawyer” designation in Health Care, Native American and Appellate law. **Lloyd Miller** received the “Super Lawyer” designation in Native American, Appellate and Government Relations law.

Super Lawyers, part of Thomson Reuters, is a research-driven, peer influenced rating service of outstanding lawyers who have attained a high degree of peer recognition and professional achievement.



Look-alikes attend TVBA lunch

Retired attorney and Judge **Jim Blair**, left, made an appearance at the weekly Tanana Valley Bar Association lunch June 16, as did look-alike attorney **Mark Andrews**. TVBA photo by Gail Ballou.

Anchorage attorneys form new firm

As of May 1, 2017, **Nora Barlow, Leonard Anderson,** and **Constance Livsey** left **Burr, Pease & Kurtz** to form the new law firm of **Barlow Anderson, LLC**. They are joined by their associate, **Martha Tansik**, and their excellent long-term staff. Barlow Anderson is honored to have a robust practice dealing with workers compensation defense, estate planning, probate, guardianship and business transactions and formation.

Four selected as 2018 Best Lawyers®

Four lawyers from the Anchorage office of **Davis Wright Tremaine LLP (DWT)** have been selected by their peers for inclusion in the 2018 edition of *The Best Lawyers in America (2018)®*. The list is compiled from detailed, confidential evaluations of lawyers by other lawyers. Two of the four partners have been recognized with “Lawyer of the Year” Awards: **Joseph L. Reece**, Anchorage office Partner-in-Charge received this award in two categories: Corporate Law and Litigation – Mergers and Acquisitions. **Jon S. Dawson** received recognition for in the area of Litigation – Real Estate. Best Lawyers® “Lawyer of the Year” award recognizes individual attorneys with the highest overall peer-feedback for a specific practice area and geographic region. Only one attorney is given the honor for each practice/market. The complete listing of DWT’s Alaska partners named to the 2018 Best Lawyers® list is below:

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

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

Joseph L. Reece – Commercial Litigation, Corporate Law, Litigation - Mergers and Acquisitions, Real Estate Law

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

Anchorage firm adds two lawyers

Jermain, Dunnagan & Owens, P.C. has announced **Scott J. Gerlach** has joined the firm. Scott has 10 years of experience in business and commercial transactions and civil litigation. His commercial practice includes entity formation, intellectual property rights, commercial leasing, real estate transactions, employment matters, asset and stock sales, mergers and acquisitions, and dissolutions. Scott also has an active litigation practice that includes matters involving commercial and business disputes, medical malpractice defense, personal injury and wrongful death, wage and hour, premises liability, construction defects, products liability, indemnification and subrogation, and environmental contamination. Scott earned his law degree from the Louis D. Brandeis School of Law, *cum laude*, and his undergraduate degree from Campbellsville University. **Robert A. Royce** has joined the firm expanding the labor, employment and employee benefit trust practice. He has been practicing law in Alaska for more than 30 years. Rob is a former administrative law judge and a former senior assistant attorney general for the state, where he represented the Regulatory Commission of Alaska, the Alaska Department of Labor and the Alaska State Commission for Human Rights. Rob graduated from the State University of New York at Oswego and received his law degree from California Western School of Law in San Diego. He clerked for Chief Judge James M. Fitzgerald, U.S. District Court for the District of Alaska after graduating law school.

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Project addresses foreclosure issues paired to other difficulties

From Alaska Legal Services

Foreclosures can be devastating to Alaska families, leading to homelessness, instability and poor credit that limit options. While foreclosure rates in Alaska have decreased since the national foreclosure crisis in 2008, they are still above the rates that existed prior to the rapid increase that began in 2007.¹

Foreclosures are also prevalent in domestic violence cases. For example, a domestic violence survivor might be able to secure primary physical custody of her children, but their well-being would be endangered if the family home went into

foreclosure. Yet, foreclosures and other consumer credit issues tend to be underserved in domestic violence cases. According to a 2012 study by the Center for Survivor Agency and Justice, 72 per cent of domestic violence professionals reported screening for foreclosure issues “rarely” or “never.”²

As a result of these problems, and with generous funding from the Alaska Bar Foundation, ANDVSA and ALSC have begun a Default Avoidance and Foreclosure Prevention Project (“DAFP”). An attorney can protect homeowners rights to ensure that mortgage servicers correctly document their legal standing to foreclose, that mandated pre-

foreclosure notices — including loss mitigation options — are sent to homeowners, and that homeowners are properly reviewed for loan modifications and/or home savings options prior to foreclosure. Attorneys can also prevent a foreclosure by addressing other income and debt issues, such as working to increase spousal/child support or defend a consumer against a creditor lawsuit.

The DAFP project is currently providing legal assistance to help Alaskans who are struggling to manage mortgages, loans, credit card debt, and who are at risk of losing their homes. DAFP attorneys are also conducting outreach and education to vulnerable populations, such

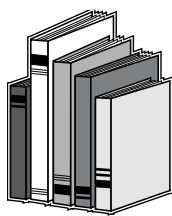
as elders and veterans, to prevent foreclosures. If you have a client who might benefit from this project or know of a group that would benefit from a presentation about DAFP services, please contact either Jonathan Fork at ALSC, jfork@alsc-law.org or ANDVSA at cpate@andvsa.org.

¹ Alaska Dep’t of Labor & Workforce Dev., Research & Analysis Section, *Alaska’s Housing Market, a Snapshot of the First Half of 2015* (Dec. 2015), available at <http://laborstats.alaska.gov/trends/dec15art1.pdf>.

² Sara J. Schoener & Erika A. Sussman, *Economic Ripple Effect of IPV: Building Partnerships for Systemic Change*, DOMESTIC VIOLENCE REPORT 83, 84 (Aug. 2013), available at https://csaj.org/document-library/Shoener_and_Sussman_2013_-_Economic_Ripple_Effect_of_IPV.pdf.

Law Library News — New digital tools are available at the Law Library

By Susan Falk



Have you visited your local law library recently? We have computers for public use in all branch locations, each offering access to the court and law library websites, Microsoft Word and Excel, and a bevy of subscription databases for legal research. Here are some recent additions to the library’s electronic resources.

WestlawNext Patron Access

Last winter the library added loads of content to our patron access WestlawNext account. While you still have access to primary law from all 50 states and the federal government, we’ve added far more secondary sources, including state-specific practice material and a great many more treatises than were previously available. The new

Litigation Collection includes briefs, pleadings, motions and memoranda, trial court orders, expert materials, jury verdicts, arbitration, and dockets. And we still have Practical Law, which provides how-to guides and explanations of current law and practice ranging from basic overviews to detailed analyses. It also includes timelines and flowcharts.

HeinOnline

The wonderful HeinOnline adds content every month, from new journal titles to additional state historical resources to legal history materials. One recent addition that will be of interest to some Alaska lawyers is the expanded tribal code collection. Although Alaska is not well represented on this list at the moment, they really do add content all the time, so this is a collection to watch.

Brennan Center for Justice Publications

Another new collection is the Brennan Center for Justice Publications at NYU School of Law. This nonpartisan law and policy institute aims to be a think tank, public interest law firm, advocacy group and communications hub. The scholarly material in the collection, covering issues such as voting rights, campaign finance reform, racial justice in criminal law, and Constitutional protection in the fight against terrorism, is largely written by attorneys and is extensively peer-reviewed by scholars and legal practitioners.

Lexis Digital Library

The Lexis Digital Library also continues to roll out improvements. Their newest feature is Search this

Set functionality, which allows you to search all volumes of a multi-volume treatise at once for an issue or phrase. While this new feature is welcome and works well, it’s not entirely intuitive, so grab a staff member the next time you’re in the library, or give us a call for assistance. We’ll be happy to walk you through the process, and help with other functions like highlighting and bookmarking.

Don’t have a User ID and PIN for the Digital Library yet? What are you waiting for?? Contact the law library for access to digital treatises from Lexis from the comfort of your home or office.

Susan Falk is the Alaska law librarian.

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Robertson, Monagle & Eastaugh, had major role in Alaska history

By Leroy Barker

Royal Arch Gunnison

The firm was originally founded in Juneau in 1909 by Royal Arch Gunnison. He was born on June 24, 1873, in Binghamton, New York. He graduated from Cornell Law School in 1896. While in school he was a member of Delta Epsilon and Delta Theta Phi fraternities. After graduation he worked as a newspaper reporter in Elmira, New York. He was admitted to the New York Bar in 1897. He served as Referee in Bankruptcy in the Northern District of New York from 1898 until 1904. During that time he was the secretary-treasurer of the National Association of United States Referees in Bankruptcy. On Dec. 3, 1904, he was appointed a District Court Judge for the First Division of Alaska by President Theodore Roosevelt and took his oath of office Jan. 1, 1905. He served in that position until 1909. In 1913 he was one of two men appointed by Gov. Walter Eli Clark to a commission to make recommendations for the revisions of the Alaska Code. Their report was read at the first Alaska Territorial Legislature in 1915. He began private practice in 1909 in Juneau. He was elected president of the Alaska Bar Association for the First Division May 28, 1917. He was a member of the American Bar Association and had been President of the Juneau Chamber of Commerce from 1909 to 1911. He was a non-resident lecturer of bankruptcy at Cornell College from 1901 to 1908. He died in Juneau June 18, 1918.

John B. Marshall

John B. Marshall was born in Lancaster, Kentucky, Sept. 12, 1872. He was a graduate of Texas Law School and came to Juneau in 1911. He initially worked as a stenographer for Judge Gunnison and then joined him as a partner in 1912. The firm became Gunnison and Marshall. Shortly thereafter their partnership dissolved.

Ralph Elliot (Bob) Robertson

On May 31, 1912, Ralph Elliot Robertson joined Gunnison as a partner in the practice of law. In 1915 they advertised in the Yukon Gazetteer and Directory (1915-1916) as "Gunnison & Robertson." Robertson was born in Sioux City, Iowa, Oct. 18, 1885. He attended the Omaha Commercial College, the Michigan School of Mines and

the University of Washington. He moved to Juneau in 1906. In Juneau he had a varied legal career. He was Chief Deputy Marshal of the First Division, Court Reporter of the District Court, United States Commissioner in Juneau and Ketchikan, Deputy Clerk of the District Court in both the First and Third Divisions, and private secretary to District Court Judge Thomas R. Lyons from 1911-1913. A notable experience was his service as Deputy Clerk of the "Floating Court." He studied law in the offices of a Juneau law firm and was admitted to the Alaska Bar in 1911. His important clients included the City of Sitka, the Juneau Chamber of Commerce, and the Alaska Steamship Company. He was mayor of Juneau (1920 to 1923) and a member of the Board of Trustees of the Alaska Agriculture College and School of Mines (now the University of Alaska) from 1925 to 1933. He was president of the Juneau School Board for 30 years and a member of the Juneau Chamber of Commerce (president 1924 to 1935). He was a member of the bars of the District Court of Alaska (territorial) and the United States Court of Appeals for the Ninth Circuit. He was a member of the Alaska Bar Association and the American Bar Association House of Delegates. He served on the Board of Uniform Law Commissioners for Alaska and was a member of the Board of Territorial Law Examiners First Judicial Division from 1925 to 1955. He was a leader in the Republican Party and in 1952 he was nominated by the party to run for the position of territorial Delegate to the United States Senate. He lost to the Democratic candidate, E. L. (Bob) Bartlett. Subsequently he was elected as a delegate to the Alaska Constitutional Convention in Fairbanks in 1955, where he served on the Committee on the Judiciary. He resigned from the convention two days before the document signing and returned to Juneau. His major concern was about the apportionment of the legislative districts. He eventually signed the constitution shortly before his death on March 1, 1961. He had two sons and a daughter, Carol Benning. Her role with the firm will be discussed later in this article.

Michael (Mike) Edward Monagle

Michael Edward Monagle joined the firm in 1930. It then became Robertson and Monagle. He was ad-



Judge Gunnison driving the first (a copper) spike of the first rails of the Valdez – Yukon Railway, August 16, 1906. Credit: P.S. Hunt, Crary-Henderson Collection; Anchorage Museum, Gift of Ken Hinchey, B1962.1A.400.

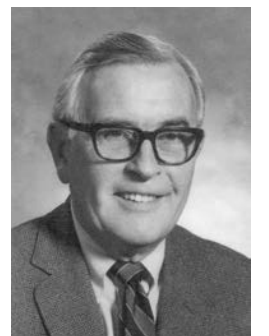
mitted to the Alaska Bar in 1930. He had been admitted to the Wisconsin Bar in 1929 and he was the first person admitted to the Alaska Bar on reciprocity. He was also admitted to the Ninth Circuit Court of Appeals. He was born Nov. 21, 1902, in Palmer, Washington, but grew up in Juneau. He attended Seattle College (now Seattle University) for two years and then transferred to Marquette University, where he received a LL.B in 1929 and a J.D. in 1930. He was a member of the Sigma Nu Phi national legal fraternity. He worked as a legal intern for the Milwaukee firm of Slensby and Zardenz. On July 9, 1930, he married Elenore Knetzegeer and the couple returned to Juneau. He was a member of the Juneau Bar Association and served as its president in 1955. He was the first president of the newly integrated Alaska Bar Association in 1955 and a member of the Alaska Bar Association Board of Governors. He was a life member of the American Bar Foundation. He was active in the Democratic Party and was the Committee Chairman of the First Division Committee of the party. He had the honor on Dec. 5, 1939, of swearing in Alaska Territorial Gov. Ernest Gruening. He died in Juneau Dec. 11, 1985.

The highlight of his legal career was his service to the 35 Japanese residents of Juneau who were interned by the United States shortly after World War Two began. Before the war they were integrated into the community and owned several local businesses. He was furious Juneau's Japanese residents, who were American citizens, were forced to leave Juneau after the bombing of Pearl Harbor and were sent Outside by ship to relocation camps where they were effectively incarcerated. He prepared paperwork that helped some of the interned Japanese protect and keep their property and local businesses until the war was over. This prevented the government from seizing their property. Without Monagle's help, they would have lost everything. He took the initiative to establish trusts for their businesses that could be held in the names of people who were not being removed to Idaho. This preserved their property until after the war ended.

Frederick (Fred) Orlebar Eastaugh

Frederick Orlebar Eastaugh was employed by Robertson and Monagle as an associate after passing the

Alaska Bar in 1948. He became a partner in 1958. He was born June 12, 1913, in Nome. He graduated from the University of Washington with a Bachelor of Arts degree in 1937 and was a member of Alpha Delta Phi. He worked his way through college as a freight clerk and purser for the Alaska Steamship Company. He was an accountant in Seattle for Pan American Airways 1940 to 1946. In 1942, while working for Pan American, he began the study of law as a registered law clerk with the Seattle law firm of Medley & Haugland. He spent a brief time studying at the University of Washington Law School. On Aug. 8, 1942, he married Carol Benning Robertson in Seattle. They originally met in Juneau in 1933 when he was working as a carpenter's helper on an addition to St. Ann's Hospital. In 1939-1940 she was working for the firm as a legal secretary. She had attended secretarial school in Washington, D.C., and the University of Washington in Seattle. The couple returned to Juneau to live in 1946. In the same year, Eastaugh began working as a registered law clerk for the firm, reading the law. In 1948 he passed the Alaska Bar and began working as an associate for the firm. He became a partner in Robertson, Monagle and Eastaugh in 1958. He was elected Municipal Magistrate, serving from 1950 to 1955. He was the Juneau Municipal Attorney from 1955 to 1962. He also served as the Skagway City Attorney (1959 to 1970s) and Wrangell City Attorney (1958 to 1970s). He was admitted to practice in the United States District Court (territorial) in 1948, the Board of Immigration Appeals in 1952, the United States Court of Appeals for the Ninth Circuit in 1956, and the United States Supreme Court in 1958. He was a member of many law-related associations including the Juneau, the Alaska, and the American Bar Associations. He served on the Alaska Bar Association Board of Governors 1961 to 1963. He was a Fellow of the American Bar Foundation, member



Fred Eastaugh (Photo from Alison Browne)



Ernest Gruening being sworn into office by Judge Si Hellenthal, with Mike Monagle administering; Gov. Troy is seated to the right; 1939. Credit: Ordway's Photo Shop. Ernest Gruening Papers; UAF Archives, 1976.21.55145.

Continued on page 21

Robertson, Monagle & Eastaugh, had major role in Alaska history

Continued from page 20

of the National Conference of Commissioners on Uniform Laws 1969 to 1974, and member of the Fellows of American College of Probate Counsel. He was a trustee of the Pacific Legal Foundation. He was president of the Alaska State Chamber of Commerce (1955 to 1956). He served in the Alaska Territorial House of Representatives in 1953 and 1954 and was a delegate to the 1972 Republican National Convention. He served as the honorary Norwegian Vice Consul for Alaska from 1953 to 1966 and full Consul from 1966 to 1986. He served as honorary Consular Agent and Vice Consul for France for Southeast Alaska, 1953 until 1985. In 1977 he was named Outstanding Alaskan by the Alaska Chamber of Commerce in 1982. He received an honorary Doctor of Humanities from the University of Alaska and in 1969 he received the title of "Knight of the Royal Order of King Olav."

His passion was mining law. He came by it naturally. His father, Edward (Ted) Orlebar Eastaugh, was a mining engineer and a graduate of the Camborne School of Mines in Cornwall, England. It is one of the oldest mining schools in the world. His father immigrated to Nome in 1900, and prospected on the Seward Peninsula and the southern flank of the Brooks Range from 1900 to 1913. Fred's uncle, James Read Girling, was also a mining engineer; he had prospected on the Seward Peninsula in the years immediately before the Nome discovery in 1898. Fred Eastaugh's mother was Lucy Evelyn Ladd. From a prominent San Francisco family, she came to Nome as a schoolteacher, where she met and married Ted Eastaugh.

Fred Eastaugh was a member of the Alaska Miners Association since 1960 and a director since 1989. He was a member of the Northwest Mining Association, and was appointed to the Alaska Minerals Commission in 1961. He also served on the Joint Federal Land Use Commission and the Oversight Committee for Alaska National Interest Lands. In 1968 he joined the Rocky Mountain Mineral Institute. Some of his major clients included BP Canada, U.S. Borax and Chemical Company, Getty Minerals, and United States Steel Company.



Committee on the Judiciary. Standing from left: Tom Harris, Ralph Rivers, Irwin Metcalf, and Warren Taylor. Seated from left: R. E. "Bob" Robertson, Chairman George McLaughlin, and Maurice Johnson. (Alaska Bar Association Archives)

He retired from the firm in 1988 and died in Juneau Feb. 17, 1992. In June 2006 he was inducted posthumously into the Alaska Mining Hall of Fame. He was survived by his wife Carol, daughter Alison Browne, and son, retired Alaska Supreme Court Justice Robert L. Eastaugh.

Robert (Bob) James Annis

Robert James Annis was born in Detroit, Michigan, Jan. 25, 1923. He attended George Washington Law School and in 1955 came to Juneau where he worked for the Alaska Territorial Attorney General. He joined the firm in 1957 and became a partner in 1960. The new firm name was Robertson, Monagle, Eastaugh and Annis. He left the firm in 1972.

He died in Juneau March 8, 1977.

James (Jim) Burton Bradley

In 1962 James Burton Bradley joined Robertson, Monagle, Eastaugh and Annis. The firm then changed its name to Robertson, Monagle, Eastaugh, Annis and Bradley. He was born in Citizens Springs, New York Aug. 30, 1932. He graduated with a B.A. from the

University of Michigan in 1955. He then served two years as a lieutenant in the United States Navy. He was stationed at Guam. He then returned to the University of Michigan where he earned an LL.B. He moved to Juneau where he served as an Assistant Attorney General from 1961 to 1962. He served on the Alaska Bar Association Board of Governors, was president of the bar association from 1972 to 1973, and served on the Alaska Judicial Council from 1981 to 1986. He was president of the Juneau Bar Association in 1968, and a member of the Defense Council of Alaska and the American Bar Association. In 1982 he was inducted as a fellow into the American College of Trial Lawyers. He served on the Board of Directors of the Juneau Chamber of Commerce. He was instrumental in getting a branch of the University of Alaska in Juneau. He left the firm in 1986. The firm then resumed the name of Robertson, Monagle and Eastaugh.

Recent history

Although its center of operation remained in Juneau, Robertson, Monagle, Eastaugh and Bradley opened an Anchorage office in 1974 with two attorneys (including the author of this history). In 1984 the firm opened an office in Washington, D.C. At that time approximately 25 attorneys worked for the

firm in its three offices. In 2008, after the Anchorage office had closed, the firm became Hoffman, Silver, Gilman and Blasco to reflect the four remaining partners still practicing in Juneau and Washington, D.C. In 2011, Hoffman and Blasco formed their own LLC in Juneau and Silver and Gilman changed the name of their law partnership in Washington, D.C. back to Robertson, Monagle and Eastaugh. Having originated when Royal Arch Gunnison began his law practice in 1909, the firm has operated for 108 years (even though it did not use the Robertson, Monagle and Eastaugh name from 2008 to 2011).

Leroy Barker is the past Chair of the Bar Historians Committee. He was a partner in this firm

AUTHOR'S NOTE: I had the good fortune to be a member of the firm for more than 30 years. I would like to thank the individuals who provided me helpful comments, criticism and research materials. Bob Eastaugh and Alison Browne carefully edited the entire manuscript. Alison Browne provided much of the background on Bob Robertson and Fred Eastaugh as well as helpful comments on the content. Jacki Swearingen at the Alaska State Library provided many of the research materials that made this article possible. Many others assisted along the way.

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The firm's advertisement in the Yukon Gazetteer and Directory, 1915-'16. (Seattle Public Library)



Members of Southern Alaska's floating court stand on the deck of the Thetis. From left they are: District Judge Thomas R. Lyons; R. E. "Bob" Robertson, court reporter; Deputy U.S. Marshal George Goshaw; Assistant U.S. Attorney J. Lindley Greene; Charles Scott, defense attorney; and the last person remains unidentified. (Photo from Alison Browne)

In Memoriam

William B. (Bart) Rozell

From Legacy.com

William B. (Bart) Rozell, 74, died June 29, 2017, at his residence in Juneau.

Bart was born March 30, 1943, in Ossining, NY, to William M. and Doris M. Rozell. He graduated from Croton Harmon High School (1961), Brown University with a BS in Engineering (1965) and Cornell University with a Juris Doctor (1968), where he was editor of the Law Review.

He was a practicing attorney in Ohio, New York and Alaska. He was honored as a Life Member of The Fellows of the American Bar Foundation (1998), included in the 30th Anniversary Edition of Who's Who in American Law (2007), honored by Corporate Counsel as a "Top Lawyer" and then by the American Registry when he was added to the Registry of Business Excellence (2011).

Bart was an avid traveler with a joy for life who loved spending time with his family. He is survived by his daughters Becca and Mariah, his sister Phyllis, three grandchildren (Aya, Mikko and Walker).

A memorial will be this fall in Juneau. A memorial service was to be held at St. James Church, Hyde Park, NY.

Any remembrances may be made in Bart's name to: Church of the Holy Trinity, Bart Rozell Memorial, 415 Fourth St. Juneau 99801.



Rozell

John Michael Gray

Alaska attorney Mike Gray died suddenly June 11, 2017.

Mike was born in Botetourt County, VA on March 13, 1953, to his father, John, for whom he was named, and his mother, Mary Graybill Gray. He was educated in the public schools in Botetourt County and from there enrolled in Roanoke College and later transferred to and graduated from James Madison University in Harrisonburg, VA. He then enrolled in the Marshall Wythe School of Law at the College of William and Mary in Williamsburg VA and obtained his Doctorate of Jurisprudence in 1981. Not finished with formal education, he then was awarded a Duke fellowship for a doctorate of philosophy program at Duke University (while working simultaneously at the National Center for State Courts in Williamsburg) where he developed a fondness — some might say an obsession — with Duke basketball, an affliction from which he suffered for the rest of his life.

He began practicing law with the Legal Aid Society in South Boston, VA, then later moved to Seattle to work with the public defender's office there. In 1989 he returned to Virginia to practice law at a law firm in Roanoke. There his treasured daughters, Sarah and Annie, were born. He worked there until March 1994 when he moved to Alaska to fulfill a dream that began while on a church mission trip.

He began his career as a prosecutor with the State of Alaska on Kodiak Island. He worked several years as the chief prosecutor of Kodiak Island where seemingly everyone knew him, and of which he was fond of saying, "you have to remember, this is Mayberry, and I'm Andy (Griffith, of the long running TV show "The Andy Griffith show")." In Kodiak he met and married the love of his life, the former Kathryn Martin, then moved to Fairbanks to serve as the chief prosecutor. He finished his career in Bethel.

He retired from the State of Alaska June 1, 2017. An avid motorcyclist, he had recently purchased a new BMW motorcycle. The plan was to ride across Canada, then south to the family home on Smith Mountain Lake, VA where he would meet his good friend, Terry Grims, then fly to Missoula, MT to attend his daughter, Sarah's, one-year wedding celebration.

Mike left Fairbanks June 10, 2017 and headed west to Whitehorse, Yukon Territory, Canada. On the morning of June 11, 2017, he was run off the road by another vehicle and died.

Mike is survived by his wife, Kathryn; his daughters, Sarah (Ben) and Annie (Jared) and granddaughter, Madison; his mother, Mary; and sister, Kathy. His father predeceased him in November 2017. A man of peace, he was a lifelong member of the Church of the Brethren.

James E. Gorton Jr.

From Legacy.com

James E. Gorton Jr., 64, of Bonita Springs, Fla., and Silver Lake, N.Y., died unexpectedly May 8, 2017. Jim was born on Feb. 19, 1953, to the late James Sr. and Doris Davis Gorton.

Jim was a 1971 high school graduate. He earned a baccalaureate degree from Bowling Green State University and a law degree from the University of San Diego. Jim practiced law for 40 years, primarily in Anchorage, Alaska. He was well respected for his grasp of the law and compassion for his clients.

In addition to his accomplishments in the legal profession, Jim loved to play golf, boat and work in his yard.

Jim is survived by his wife, Judith Martin Gorton; children, Christopher (John) and Jeffrey; sisters, Lynn Gorton, Ann Schneider, Kathryn (Buddy) Houseknecht and Martha (Grant) Newton; grandsons, Snatcher, Trice and Mason; nephew, Matt Schneider; nieces, Megan and Ella Houseknecht, Sadie Newton and Sierra Rocili; sisters-in-law, Jane Rhode and Janet (Scott) Voss; and first wife, Janet Gorton.

A Mass of Christian Burial was celebrated May 12, 2017.



Gorton Jr.

Grace Berg Schaible

From Legacy.com

Grace Berg Schaible died June 9, 2017, in Fairbanks at the age of 91.

She had a long history in Alaska law.

This was her notice in the Alaska Women's Hall of Fame website:

"She started her law career in Fairbanks becoming the first person admitted to practice in the newly minted Alaska Court System. A graduate of the University of Alaska, she served on its Board of Regents from 1985 to '87, and most recently served as a member of the UAF Board of Visitors. From her private law practice, she was appointed in 1987 as the first (and to date only) female Alaska Attorney General. She served, again as the first woman, as chair of the Board of Trustees of the Alaska Permanent Fund from 1995 to '97. From 1998 to 2003 she was the president of the Board of Trustees, University of Alaska Foundation. She has been a major donor of money, land, buildings and art to the university system. Among her many awards she received an Honorary Doctor of Law degree from UAF in 1991 and in 2000, the William A. Egan Outstanding Alaskan award from the Alaska Chamber of Commerce."

Grace was the youngest of three children of Hans and Mandis Berg, of Juneau. She was born in 1925, in Tacoma, Washington, (to her lifelong chagrin), arriving in Juneau when she was a few weeks old. She graduated from Juneau High School, and after working to earn college money, she enrolled at the University of Alaska. She graduated in 1949 with a history degree.

After earning a master's degree at George Washington University, Grace attended Yale Law School, graduating in 1959. She married Dr. Arthur Schaible, of Fairbanks, in New York on Christmas 1958, and moved to Fairbanks in 1959 to practice law. She passed the bar exam in 1960, becoming the first female attorney to be admitted to practice after statehood.

In addition to her professional law practice, Grace led a very active life. She and Arthur traveled extensively, starting with a honeymoon in Africa, and including multiple trips to Europe and Africa, taking the trans-Siberian railroad (during the Soviet era), and sailing on tramp steamers in the Pacific and Atlantic.

In the 1960s, Grace started raising Great Pyrenees show dogs. She had an extensive kennel at her cabin near Fairbanks, and in the winter, the dogs took over most of her garage space. She raised several champions and grand champions during the '60s and '70s.

After Arthur died in 1980, Grace continued to travel. She was on the first tourist ship to transit the Northwest Passage in 1984 and continued to travel extensively in the Arctic until 2015, including more than 60 trips to Svalbard, Norway to see polar bears. During this time, she became a serious collector of Inuit and other Arctic and polar-bear themed art. She also traveled five times to the Canadian Arctic, twice to Antarctica and took three trips down the mid-Atlantic ridge.

Grace had a lifelong love of classical music. She studied piano and organ during her childhood, becoming an accomplished pianist. She supported classical music programs through her life, including KUAC's opera broadcast and the Sitka Music Festival. She subscribed to the Seattle Opera, and traveled to New York and Europe to hear music.

Grace was a needlepoint fanatic. She hosted a lunchtime needlepoint session at her law firm starting in the 1980s. She made pillows, Christmas ornaments and stockings for family and friends, and provided "Crimson Tiger" needlepoint coasters for her entire 50th high school reunion.

Grace was a lifelong philanthropist. Although she is recognized for her many gifts to the University of Alaska, she supported numerous other groups in Alaska and elsewhere. She was a strong supporter of the Literacy Council. She was active in the World Wildlife Fund and other organizations to support polar bear conservation.

Grace was preceded in death by her husband, Arthur, in 1980 and her older brother, Clifford Berg, in 2005. She was survived by her sister, Sylvia (Berg) Drowley and nephews, Dave, Jeff and Cliff Drowley.

A memorial service was to be Aug. 28.

The family asks that any donations in Grace's memory be made to FMH Hospice, P.O. Box 71396, Fairbanks 99707.



Schaible

Mark D. Osterman

Mark D. Osterman, 60, died May 23, 2017, at his residence following an extended illness. He was born on Nov. 30, 1956, in Muncie, Ind., the son of Don and June (Choate) Osterman.

Mark is a 1975 graduate of Muncie Central High School and later graduated with a Doctorate in Juris Prudence from the Thomas M. Cooley School of Law in Lansing, Mich. Mark served the U.S. Army as a radio operator having been stationed in Alaska with Company A, of the SPT Battalion, 172nd Division, FORSCOM Group. On June 12, 1998, he married Melanie (Elder) Osterman and she survives.

He had worked as a public defender for the State of Alaska Office of Public Advocates. He had been an attorney since 1990. Mark was a member of the Alaska and Michigan Bar Associations, a member of St. Paul's Lutheran Church where he was considered a pillar of the congregation and the secretary. He also was a member of the Central Emergency Services Board of Soldotna enjoyed his amateur ham radio and was a seminary student.



Osterman



Samantha Slanders

Advice from the Heart

Dear Samantha,

Lately, I've been on a losing streak in court. Just last week a Valdez jury rejected my client's claim for damages against a Cadillac Escalade driver who had rear-ended her while she waited to pick up her kindergartener from school. The defendant was swiping left on the Tinder profile of a working mom when he plowed into my client. My law partner suggests that if I want to start winning I should replace my old tweed sport coat with something that demands more respect. Should I splurge?

– Hapless in Haines

Dear Hapless,

Thank you for this question. As one who reads old copies of *Men's Health* and *GQ* while visiting my family practitioner, I consider myself somewhat of an expert on dressing for success. If you are looking for sympathy from the jury, try wearing a thrift store two-piece in a color that shows family man stains like baby vomit. For projecting confidence and power, nothing beats a Brook Brothers' navy blue three piece.

– Samantha

Dear Samantha,

I am 15 years old. Mom is a lawyer so copies of the Alaska Bar Rag show up in the mail. They make good liners for the bottom of our parakeet's cage. Just before slipping the April/June issue under Peety, I read your advice to the woman in love and think you might be able to help a friend. He met a girl online named Gertrude who lives in a Swiss convent, which is okay because my friend is Catholic. If my friend sends her his dad's bank password, she can escape and meet him in Palmer in time for the Alaska State Fair.

Then they can hold hands at the Doobie Brothers Concert. Should my friend free Gertrude?

– Team Gertrude

Dear TG,

It is a good thing you wrote for advice. Your friend is about to fall for the old "cute girl trapped in a convent" scam. Gertrude is really a

50-year-old bunko artist named Milton who spends his days at a public access computer in the Secaucus Library. I know because I almost fell for his "all I need is a bank password to send you a million dollars" scheme. Expect the FBI to drop by for a chat soon.

– Samantha

Dear Samantha,

I am a thirty-something guy. Until my dream to be a highly paid game designer becomes reality I am living with my parents in their South Anchorage duplex. The place is a war zone. Can you help me broker a peace deal? Dad does the yard work wearing a "Make America Great Again" ball cap. Mom dons her pink pussy hat to shop at Walmart. They fought for control of the TV remote until mom broke it while the

TV was locked on CNN News. To quote my father's favorite president, "It is very, very bad."

– Middling Millennial

Dear Middling,

If I could solve your domestic problems, I'd run for the U.S. Senate. And while I have your attention, suck it up and move out of your parents' house. You don't want to become the next Milton. (See answer to previous letter).

– Samantha

Dear Samantha,

This is the 13th letter I have written to you. You never answered the first 12. Don't think this makes you special. Only one person has ever answered any of my letters. It wasn't a real answer, just an invitation to attend a Delta Junction

timeshare presentation. What am I doing wrong?

– Perplexed in Petersburg

Dear Perplexed,

Because reading them is a sure-fire way to cure my insomnia, I have treasured all your letters. Unfortunately, I can never stay awake long enough to write a reply. If you want to write more compelling missives, consider other subject matter. The ideal length of toenails, a question that you raised in your 10th letter, didn't give this advice column much to work with. I never responded to your fourth letter because while a discussion about the right shade of blue to use on a Norwegian window shutter might be of interest to the 20 Alaskans who practice rosemåling, it lacks general appeal.

– Samantha



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This edition of My Five musical selections features three newly seated judges.

Judge Jon Woodman, Palmer — The songs that got me through my first marathon:

- “Ali in the Jungle” — The Hours
- “Sinnerman” — Nina Simone
- “Great DJ” — The Ting Tings
- “All These Things That I’ve Done” — The Killers
- “Son of a Preacher Man” — Dusty Springfield

Judge Romano DiBenedetto, Nome

- “Top of the World” — Karen Carpenter,
- “Blitzkrieg Bop” — The Ramones,
- “Hallelujah” — Leonard Cohen,
- “Bobby McGee” — Janis Joplin
- “Pride” — U2

Judge Christina Reigh, Dillingham — The songs that got me through house painting in a ferocious sea of no-see-ums:

- “Uncool” — The Derailers
- “No Phone” — Cake
- “Can’t Let it Go” — Lucinda Williams
- “Fish & Whistle” — John Prine
- “Bluebird” — Kasey Chambers



DO YOU KNOW SOMEONE WHO NEEDS HELP?

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

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

Fairbanks: Aimee Oravec, aimee@akwater.com

Mat-Su: Greg Parvin, 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.

Alaska Bar Association CLEs

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- Participants gain additional valuable experience by playing witness roles

Participants learn:

- Verbal, non-verbal and visual communication skills
- Thinking and communicating on their feet – without notes
- How to win over an Intergenerational jury or judge
- To gain confidence to meet any challenge from any opponent – no matter how experienced the opponent is



Dominic Gianna



David Mann



Lisa Marcy

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Mutiny in the Boardroom

February 19 | 9:00–11:00 a.m.
Skylight Chapel
2.0 General CLE Credits

Walking the Plank of Board Rights, Responsibilities, Fiduciary Duties, and Managing Conflict in Closely Held Organizations

Presented by Cheryl McKay

One of the most significant recent changes in the legal world is the concept of providing legal services from a remote location. Lawyers can be hooked into their practice from almost anywhere and can perform their legal functions under almost any circumstance. This one hour course will discuss the real world aspects of a remote practice. Topics to be covered include the maintenance and upkeep of files, the ethics of handling cases and clients remotely, using the cloud and the economics of a remote law firm. The discussion will also include practical tips on client relations and the challenges and pitfalls of managing a law firm from a distance.

If It's Tuesday This Must Be Phoenix

February 19 | 1:30–2:30 p.m.
Skylight Chapel
1.0 Ethics CLE Credits

Presented by Nelson Page

One of the most significant recent changes in the legal world is the concept of providing legal services from a remote location. Lawyers can be hooked into their practice from almost anywhere and can perform their legal functions under almost any circumstance. This one hour course will discuss the real world aspects of a remote practice. Topics to be covered include the maintenance and upkeep of files, the ethics of handling cases and clients remotely, using the cloud, and the economics of a remote law firm. The discussion will also include practical tips on client relations and the challenges and pitfalls of managing a law firm from a distance.

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Cruisin' Through Social Media

February 19 | 4:30–5:30 p.m.
Skylight Chapel
1.0 General CLE Credit

Presented by Carole Levitt and Mark Rosch

Learn tips and tricks to successfully navigate through social networking sites to dig up dirt on parties, witnesses, jurors... Uncover “secret” ways to determine whether someone has a Facebook profile...before they delete it. Find out three ways to find a Facebook profile if you don't have an account and two ways to find social media profiles other than searching by name. Get profile information admitted into evidence.

Cruisin' Through Social Media Research, Ethically

February 19 | 5:30–6:30 p.m.
Star Lounge
1.0 Ethics CLE Credit

Presented by Carole Levitt and Mark Rosch

Who's your friend? Learn how to avoid potential ethical traps when you research social media profiles to use as evidence. The speakers will review professional responsibility rules, social media research ethical guidelines, court decisions, and ethics opinions from state and local bars, and the ABA.

Self-Care for Lawyers: Carpe Diem. Using Cognitive Behavioral Techniques & Mindfulness Skills for Self-Care

February 23 | 9:30–11:30 a.m.
Skylight Chapel
2.0 Ethics CLE Credits

Law School is just the start for becoming a part of a challenging profession. Psychological distress, dissatisfaction and substance abuse that begin in law school follow graduates into practice. Depression and anxiety are reported by 26% of all lawyers who seek counseling. Unfortunately, many lawyers only seek counseling when they have been compelled or encouraged to do so as a result of disciplinary action. Sadly, lawyers rank 5th by occupation in incidences of suicide.

Self-Care is important in addressing chronic stress that can negatively affect psychological and physical wellbeing. Ms. Nolin utilizes an experiential approach that emphasizes skills and techniques that can be easily learned and implemented daily. Ms. Nolin will introduce Cognitive Behavior techniques, incorporated with Mindfulness skills, which will enhance self-care goals for attendees. Audio-visual materials and activities are used to enhance the learning environment. Attendees receive additional resources related to mental health and substance abuse, as well as resources to continue practicing Cognitive Behavioral techniques and Mindfulness skills.

Cruisin' Through Public Records

February 23 | 4:30–5:30 p.m.
Star Lounge
1.0 General CLE Credit

Presented by Carole Levitt and Mark Rosch

Discover how to find free public records on the Web to locate missing parties and witnesses. Discover how to unearth assets, from real estate and boats, to planes and patents. Locate criminal histories, current inmates, and sex offenders. Find vital records. Ascertain political persuasions.

Cruisin' Through Free Legal Research

February 23 | 5:30–6:30 p.m.
Star Lounge
1.0 General CLE Credit

Presented by Carole Levitt and Mark Rosch

Learn how to effectively work as a lawyer without the use of commercial legal research databases. Save time by cruisin' through someone else's research, for free (or at a minimal cost), from finding free articles, tweets, and blogs, to dockets and sample pleadings. Take advantage of a legal research database and mobile app that you already have free access to (Casemaker).

Heavy Sailing: Avoiding the Rocks and Shoals That Can Sink Your Practice

February 24 | 8:30–11:45 a.m.
with 15 min. break
Skylight Chapel
3.0 Ethics CLE Credits

Presented by Nelson Page

Lawyers operate in a tightly regulated environment. Almost every aspect of their practice involves ethical questions and rules. The ethical world has gotten even more complicated as legal technology has evolved faster than legal doctrine. This program will explore a number of issues that can sneak up on the unwary practitioner, including the use and misuse of technology, evolving standards for handling client funds and trust accounts, safeguarding client confidentiality and secrets in the digital era, and the complexities of representing government, private and corporate organizations and their leaders. Also addressed will be the evolving standards that apply to conflicts of interest in the modern world.

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Carole Levitt and Mark Rosch, principals of Internet For Lawyers and CLEseminars.com, have been internationally recognized CLE seminar speakers—full-time since 1999. They have been best-selling ABA Law Practice Division authors since 2003. Their areas of expertise are: Internet investigative, legal, and social media research; social media ethics; Google search; and Google cloud Apps.

Cheryl McKay focuses her practice on corporate governance, business, and Alaska Native law, with an emphasis on employment, real estate and commercial transactions. She excels in training boards of directors and management teams, conducting strategic planning and professional development, conflict management and dispute mediation.

Nancy Nolin LCSW, ACSW, CAS, CADCI graduated cum laude in 1996 from the Ethelyn R. Strong School of Social Work at Norfolk State University with her Master's Degree in Clinical Social Work. She is currently licensed for independent private practice as a Psychotherapist in the states of Utah (2007), Oregon (2014), and Idaho (2017).

Nelson G. Page graduated from Georgetown University Law Center cum laude in 1978, where he was on the Board of Editors of the Georgetown Law Journal. He clerked for the honorable Warren W. Matthews, Associate Justice of the Alaska Supreme Court, and then joined the Anchorage law firm of Burr, Pease and Kurtz.