

Justice Robert L. Eastaugh retires in November

Justice Robert L. Eastaugh retired November 2, 2009, after 15 years on the Alaska Supreme Court. On October 30, over 250 colleagues, friends, and family members gathered to honor him at a reception at the Hotel Captain Cook in Anchorage.

His fellow justices paid tribute in verse and song, former colleague Alex Bryner offered a personal tribute, Clerk of the Appellate Courts Marilyn May presented him with a volume of selected opinions, and former law clerks Jahna Lindemuth and Stacey Marz offered a gift of appreciation on behalf of past and present clerks.

Justice Eastaugh was born in 1943 and raised in Juneau, where both his father and grandfather practiced law and engaged actively in civic affairs. He graduated from Juneau-Douglas High School in 1961, then received an undergraduate degree in English Literature from Yale University and a law degree from the University of Michigan Law School.

In 1968, he was admitted to the Alaska Bar Association. The same year, he also entered the Alaska Army National Guard, where he would serve until 1975. From 1968-1972, he worked for the State of Alaska Department of Law, first

as an Assistant Attorney General and later as an Assistant District Attorney.

In 1972, he entered private practice with the firm Delaney, Wiles, Hayes, Reitman & Brubaker, Inc. During 22 years with the firm, he developed a reputation for excellence in appellate practice. In 1994, Justice Eastaugh was appointed to the Alaska Supreme Court by Governor Walter J. Hickel. Gov. Hickel observed at the time: "With his extraordinary talents, impeccable integrity, and devotion to neutral principles, Justice Eastaugh promises to serve the court and this unique state as a powerful force for good." Justice Eastaugh has since served on the state's highest court with great distinction for over 15 years. His retirement in November 2009 marks more than a century of service to the legal profession and people of Alaska by three generations of his family.



Justice Eastaugh displays the Tlingit drum that was presented to him on retirement.

More on page 30

A Cautionary Tale: The Ted Stevens Prosecution

By Anna Stolley Persky

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On April 7, 2009, Judge Emmet G. Sullivan of the United States District Court for the District of Columbia unleashed his fury before a packed courtroom. For 14 minutes, he scolded. He chastised. He fumed. "In nearly 25 years on the bench," he said, "I've never seen anything approaching the mishandling and misconduct that I've seen in this case."

It was the culmination of a disastrous prosecution: the public corruption case against former U.S. Senator Ted Stevens (R-AK).

Stevens was convicted in October 2008 of violating federal ethics laws

by failing to report thousands of dollars in gifts he received from friends. But a team of prosecutors from the U.S. Department of Justice is accused of failing to hand over key exculpatory evidence and knowingly presenting false evidence to the jury.

The Stevens case is a cautionary tale. It reminds lawyers and nonlawyers alike of the power and failures of our legal system and those who have sworn to uphold the rule of law. At the center of the story are real people: an old and powerful politician, a crack defense team, determined prosecutors, and their supervisors.

"This is a fascinating case study for all lawyers," says criminal defense lawyer Stanley M. Brand, a partner at Brand Law Group, P.C. "In these high-stakes cases, both sides can get pretty aggressive and push the envelope. It's great to be aggressive—it's great to push, but this case reminds people that they have to observe the limits and the rules."

For months Judge Sullivan had warned U.S. prosecutors about their repeated failure to turn over evidence. Then, after the jury convicted Stevens, the Justice Department discovered previously unrevealed evidence. Meanwhile, a prosecution witness and an agent from the Federal Bureau of Investigation (FBI) came forward alleging prosecutorial misconduct. Finally, newly appointed U.S. Attorney General Eric H. Holder Jr. announced that he had had enough and recommended that the seven-count conviction against the former Alaska senator be dismissed.

On April 7, Judge Sullivan did just that. But he was far from done.

In an extraordinarily rare move, he ordered an inquiry into the prosecutors' handling of the case. Judge Sullivan insisted that the misconduct allegations were "too serious and too

Stowers appointed to Supreme Court

Gov. Sean Parnell appointed Anchorage Superior Court Judge Craig F. Stowers to the Alaska Supreme Court on Dec. 1. Stowers is the 21st justice appointed to the Court.

"Judge Stowers' character, legal experience, his strong work ethic, his intellect, and his record of service to Alaska's people have prepared him to be an outstanding member of our state's highest court," Gov. Parnell said. "Alaskans will benefit immensely from his service on the Supreme Court."

Stowers, 55, was born in Daytona Beach, Florida, and graduated with honors in biology and liberal arts from Blackburn College in Illinois in 1975. In 1985, he graduated from law school at the University of California Davis, winning American Jurisprudence awards for his studies in torts, and in criminal and administrative law.

After clerking for U.S. Court of Appeals Judge Robert Boochever, and then Alaska Supreme Court Justice Warren Matthews, Stowers joined Atkinson, Conway & Gagnon and spent eight years practicing in malpractice and general business law. He opened his own trial law practice in 1995, and was a partner in the firm of Clapp, Peterson & Stowers upon his appointment in 2004 as an Anchorage Superior Court judge.

Stowers serves as president of the board of directors of Christian Health Associates, Inc., a non-profit faith-based organization, and has been a board member for the Alaska Natural History Association, the Brother Francis Shelter and the Anchorage Neighborhood Health Center.

Stowers replaces Associate Justice Robert L. Eastaugh, who was appointed to the Supreme Court in 1994, and retired on Nov. 2, 2009.

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IN THIS ISSUE



Annual budget & dues pg. 3

Advising your clients pg. 11 & 29

History of the Federal court pg. 13

Satterberg is rebutted pg. 27

How to print anything pg. 6

Continued on page 18

Board raises bar dues

By: *Hanna Sebold*

Treasurer, Board of Governors

At the October meeting, the Board of Governors set active member bar dues for 2010 at \$500. Inactive members will pay \$165. In 2007, for the first time, the Board reduced the dues from \$550 to \$410 reflecting a policy change made on a "pay as you go" basis. This change has been reducing our Unappropriated Capital.

The \$1.2 million Unappropriated Capital balance from 2007 is projected to be depleted by the end of 2010 unless dues are raised. Several options were explored. It was determined by the Board that in order to meet our financial obligations, a raise in dues was necessary. The bar still maintains \$1.2 million in the Working Capital Reserve account. Current accounting practice is to maintain a working capital reserve balance equal to 6 months of expenses.

2010 Bar Dues Breakdown Per Active Member

Discipline	\$223
Administration	149
CLE	77
Pro Bono	34
Fee Arbitration	25
BOG	19
MCLE	17
LFCP	10
Bar Rag	9
LRE/Land Interp/MLK	9
Law Review	8
Casemaker	7
Web Page	4
Committees	3
Capital Reduction	(94)
Total	\$500

ALASKA BAR ASSOCIATION 2010 Budget

REVENUE

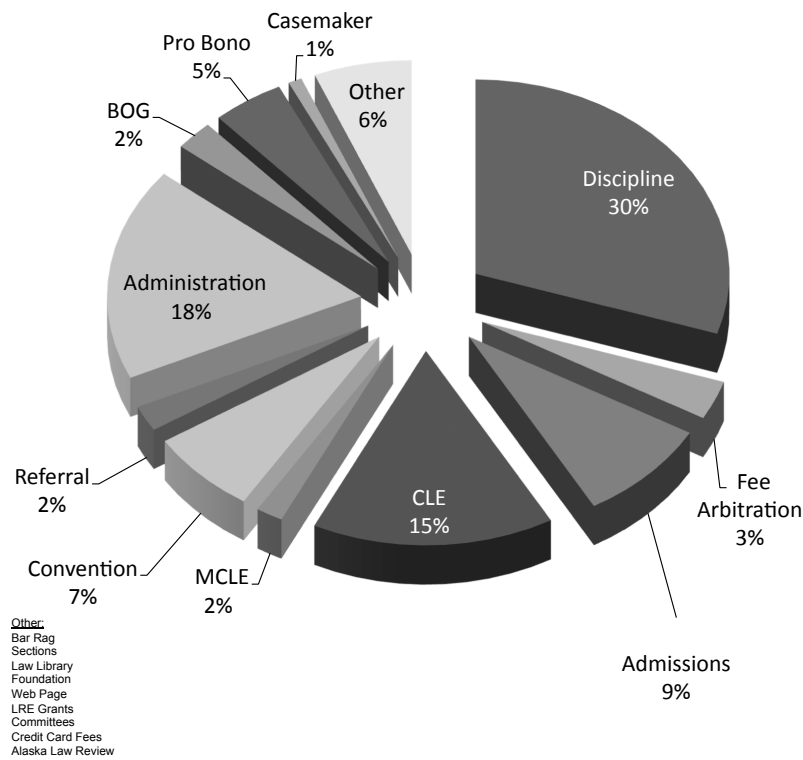
AdmissionFees-Bar Exams	93,300
AdmissionFees-MotionAdmit	45,000
AdmissionFees-Exam Soft	6,400
AdmissionFees-Rule 81s	120,000
CLE Seminars	126,635
Lawyer Referral Fees	35,000
Alaska Bar Rag - Ads,Subs	8,052
Annual Convention	191,450
Substantive Law Sections	20,990
ManagementSvc LawLibrary	296
AccountingSvc Foundation	12,599
Special Projects	0
Membership Dues	1,571,200
Dues Installment Fees	9,100
Penalties on Late Dues	15,755
Disc Fee & Cost Awards	0
Labels & Copying	1,783
Investment Interest	57,539
Miscellaneous Income	500
SUBTOTAL REVENUE	2,315,599

EXPENSE

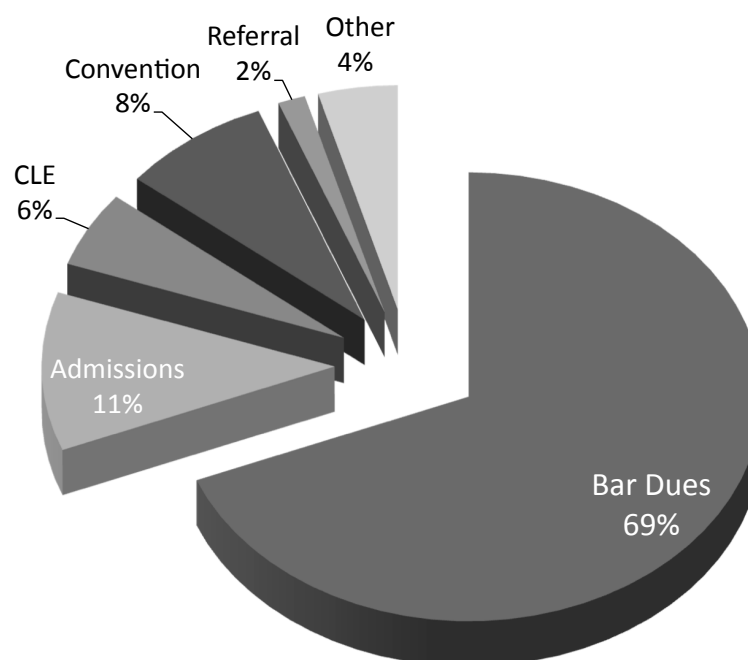
BOG Travel	49,933
Committee Travel	9,739
Staff Travel	38,617
New Lawyer Travel	3,000
CLE Seminars	105,871
Mandatory Ethics Course	6,200
Alaska Bar Rag	39,789
Bar Exam	70,899
Other Direct Expenses	89,855
Annual Convention	183,114
Substantive Law Sections	9,386
ManagementSvc LawLibrary	4,891
AccountingSvc Foundation	12,599
Law Related Education Grants	20,000
Language Interpreter Grant	5,000
MLK Day	5,000
Casemaker	23,172
Committees	9,111
Duke/Alaska Law Review	22,500
Miscellaneous Litigation	10,000
Internet/Web Page	15,320
Lobbyist/BOG, Staff Travel	0
Credit Card Fees	25,417
Miscellaneous	5,800
Staff Salaries	1,032,230
Staff Payroll Taxes	86,278
Staff Pension Plan	45,000
Staff Insurance	338,428
Postage/Freight	24,295
Supplies	30,444
Telephone	1,254
Copying	10,115
Office Rent	133,171
Depreciation/Amortization	39,680
Leased Equipment	38,631
Equipment Maintenance	29,447
Property/GLA/WC Insurance	17,430
Programming/Database	26,100
Temp Support Staff	4,961
SUBTOTAL EXPENSE	2,622,676

NET GAIN/LOSS -307,078

2010 Expense Budget



2010 Revenue Budget



The Alaska BAR RAG

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

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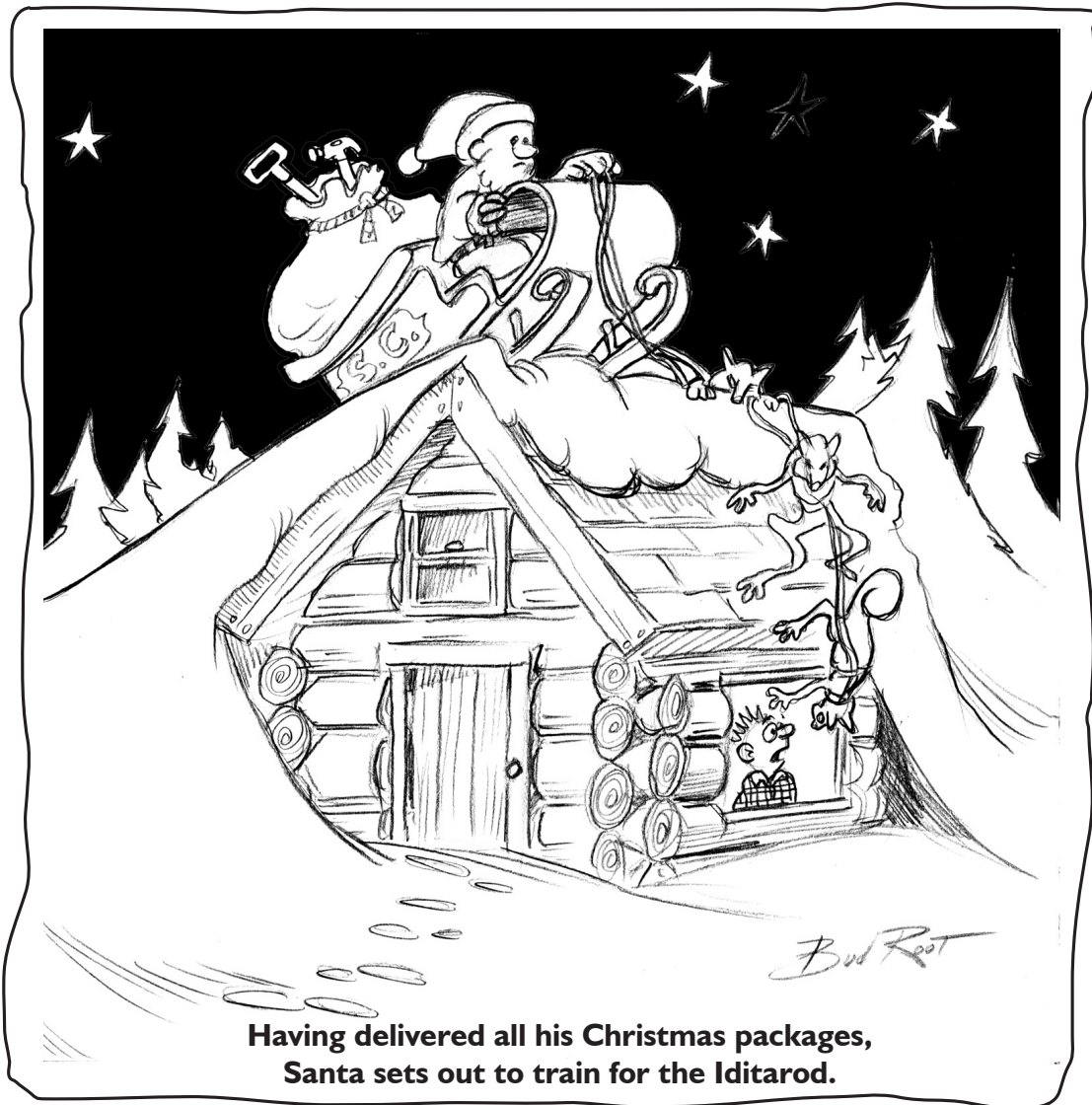
Board of Governors meeting dates
 Sept. 17-18, 2009
 Oct. 29-30, 2009
 January 28-29, 2010
 April 26-27, 2010
 April 28-30, 2010 (Annual Convention, Anchorage)

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Alaska Bar Convention 2010 Dena 'ina Convention Center, Anchorage April 28-30, 2010

Keynote Speaker: Jan Crawford Greenburg • Author of "Supreme Conflict: The Inside Story of the Struggle for Control of the United States Supreme Court"



Having delivered all his Christmas packages, Santa sets out to train for the Iditarod.

Federal courts celebrate 50

To celebrate the 50th anniversary of the United States District Court for the District of Alaska, the court, in conjunction with the Cook Inlet Historical Society, is presenting a program at the Anchorage Museum on Thursday evening February 18, 2010.

Read a history of the court -page 13

The program will commence at 6:30 p.m. with a reception featuring wine and light refreshments.

At 7:30 a panel of Alaska federal judges will offer their perspective on "The United States District Court for the District of Alaska-the First Fifty Years." Participating in the discussion will be four Alaska federal judges: Judge H. Russel Holland, Judge James K. Singleton Jr., and Magistrate Judge John D. Roberts. The panel will be moderated By Judge Ralph R. Beistline.

This will be followed by a celebration of the event with a birthday cake. The guests will have an opportunity during the event to view a new display in the museum honoring the anniversary.

--Leroy Barker, Chair, Bar Historians Committee. Mr. Barker is also co-chair of this US. District Court 50th Anniversary planning committee.

A Judiciary for Alaska



On November 12, 2009, Justice Warren W. Matthews (Ret.) presented an in-depth review of the history of the Judiciary Article adopted at Alaska's Constitutional Convention. The event was the second in a three-part series on Alaska legal history being presented this fall by the Alaska Bar Association and Alaska Court System in honor of the 50th Anniversary of Alaska Statehood. Pictured here with Justice Matthews (L) at the end of his presentation are, L-R: Leroy Barker, Chair of the Bar Historians Committee, and Justice Robert Eastaugh (Ret.). Justice Eastaugh's grandfather, R.E. Robertson, was a delegate to Alaska's Constitutional Convention who served on the convention's Committee on the Judiciary. *A Judiciary for Alaska* was recorded on DVD and is available for check-out through the Alaska Bar Association.

40 (+2) join ranks of the Bar



Let it never be said that youngsters Leah (5) and Greg (3) Fallon don't obey an order when given.

They attended the ceremony in the Anchorage courthouse when their dad, Martin C. Fallon, was sworn in as a new member of the Bar.

"All rise and raise your right hand," ordered the clerk in preparation to give the oath. Far back in the audience, Leah and Greg obeyed (thereby becoming the Bar's youngest ever to be sworn).

Fallon's wife Jayne just happened to catch the kids in the act as their father (being sworn far right) took the oath.

Fallon is among 40 successful Bar applicants who passed the Bar Exam in July. They were sworn in Nov. 13:

Rachel L. Ahrens
David Lee Anderson
Heidi M. Andre
Lindsey S. Bannan
Laura Barson
Laurence Blakely
Kevin M. Boots
Daniel C. Coons
Jeffrey F. Davis
Bridgette N. Ellis
Martin C. Fallon
Sarah C. Gillstrom
Megyn A. Greider
Jenna L. Gruenstein
Steven S. Hansen

Elizabeth Hensley
Loren P. Hildebrandt
David R. Hobstetter
Max D. Holmquist
Kirsten M. Kinegak-Friday
Michelle J. Lampton
Courtney R. Lewis
Emily M. Maass
Alison F. MacManus
Emily A. McCoy
Matthew A. Michalski
Daniel F. Poulson
Lee P. Rudofsky
Christina M. Sherman
James M. Shine, Jr.

Owen D. Shortell
Arne F. Soldwedel
Gretchen L. Staff
Geoffery A. Stauffer
Henry I. Stern
Nikki C. Swayne
Matthew A. Tallerico
Jessy J. Vasquez
Jon S. Wakeland
Austin E. Williams

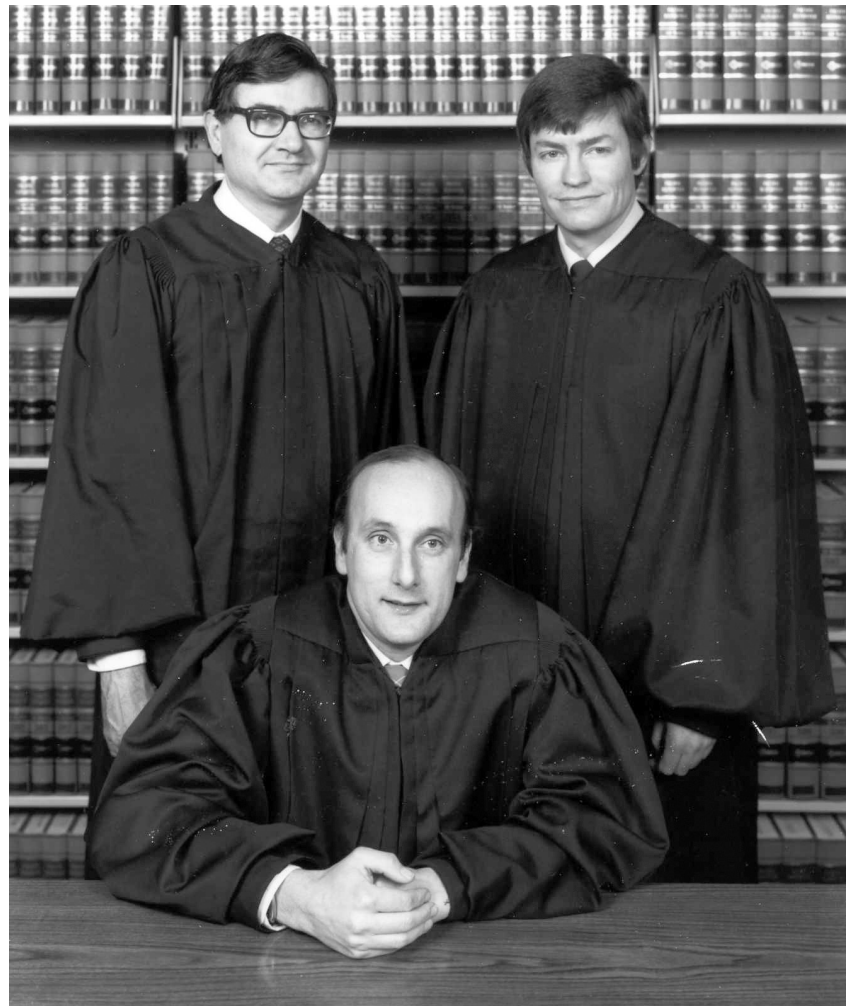


Chief Judge Robert Coats honored for 40 years of state service

Chief Judge Robert Coats of the Alaska Court of Appeals was recently honored by the Alaska Court System for 40 years of service to the State of Alaska. Judge Coats was appointed to the original Alaska Court of Appeals when it was first created in 1980, and has served on the court ever since. Prior to his appointment to the court, he served as a law clerk to Justice Jay A. Rabinowitz in Fairbanks and as an attorney for the Department of Law.



Judge Robert Coats is congratulated on the receipt of his 40-year pin, L-R: Justice Dana Fabe, Chief Justice Walter Carpeneti, and Judge Coats.



The original Alaska Court of Appeals in 1980, L-R: Judge James Singleton, Chief Judge Alexander Bryner, Judge Robert Coats.

Nominations sought for public service awards

Robert Hickerson Public Service Award

The Board of Governors is soliciting nominations for its Robert K. Hickerson Public Service Award. This award recognizes lifetime achievement for outstanding dedication and service to the people of the State of Alaska in the provision of pro bono legal services.

Please send your letter stating your nomination and why this person should receive the award to the Alaska Bar Association, attn. Deborah

O'Regan, Executive Director, P.O. Box 100279, Anchorage, AK 99510 or via e-mail to oregan@alaskabar.org.

Deadline: March 1, 2010.

Judge Nora Guinn Award

The Board of Governors is soliciting nominations for an Alaska Bar Association award honoring Alaska District Court Judge Nora Guinn of

Bethel, who died July 6, 2005. The award will be presented to a person who has made an extraordinary or sustained effort to assist Alaska's Bush residents, especially its Native population, overcome language and cultural barriers to obtaining justice through the legal system, a goal to which Judge Guinn was firmly committed throughout her long career as a judge and community activist.

The award will be presented at the annual Bar Convention. Nominations should include a detailed description of the nominee's contributions to

Natives and other Bush community residents.

Please send your letter stating your nomination and why this person should receive the award to the Alaska Bar Association, attn. Deborah O'Regan, Executive Director, P.O. Box 100279, Anchorage, AK 99510 or via e-mail to oregan@alaskabar.org.

Deadline: March 1, 2010

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Have a
wonderful
Holidays

The rule of law

By Dan Branch

Whether you are a member of the defense bar, a plaintiff's attorney, or a government lawyer you are all in service of the rule of law. The Rules of Professional Responsibility mandate this.

In the most basic sense, the rule of law is a system that attempts to protect the rights of citizens from arbitrary and abusive use of government power. (What is the Rule of Law, University of Iowa Center For International Finance and Development, http://www.uiowa.edu/ifdebook/faq/Rule_of_Law.shtml).

America's architects, recent witnesses to the failure of the Articles of Confederation, hammered out a constitution that allowed for a strong federal government but preserved each state's sovereignty and included a bill of rights to protect the people from the excesses of governmental power. The system of checks and balances created by the constitution has defined the rule of law in America for over 200 years.

The same year that the constitution went into effect, revolution broke out in France. The revolutionaries

wanted a society governed by ideas like liberty, brotherhood and equality, not laws. The Terror that soon enveloped France, resulted in a chaotic blood bath that made a strong case for the rule of law.

Early in American history it looked like the U.S. was also about to abandon the rule of law. In 1798 Congress passed the Alien and Sedition Acts, which gave the President the power to imprison or deport aliens he considered "dangerous to the peace and safety of the United States." He was given these extensive powers to deal with representatives of the revolutionary government of France that were in America trying to convince the U.S. to support France in its war against Britain.

As was to happen time and time again since, the American people used their constitutionally protected



"Consider what it would be like to be a lawyer in a society where the judges are not constrained by constitutional and case law."

right to vote to elect leaders more willing to serve the rule of law. In 1802, four years after their effective dates, all the Alien and Sedition Acts had either been repealed or allowed to expire by a new Congress.

By zealously representing clients within the boundaries of the law, attorneys are an important part of the rule of law. Prosecutors and assistant attorneys general enforce the laws. The defense bar push back for their responding clients, making

sure that their constitutional right to fair treatment by the government is honored. Members of the civil plaintiffs' bar do their part by using rights of redress to make their clients whole.

The path set out for lawyers in a society governed by the rule of law is easy to follow for the ethical. Do

your job, follow the rules and you will be serving your clients and even in a small way, history. Judges, our traffic cops, have the tougher task. They must find the grey of truth in every case put before them by advocates who represent that their cases are either black or white.

In my 32 years of lawyering in Alaska, I've appeared before some pretty good judicial referees. They read the parties' passionate briefing, considered evidence and measured oral arguments. In the end the judges did their job and applied the laws, including the Alaska and U.S. Constitutions, to the facts.

Consider what it would be like to be a lawyer in a society where the judges are not constrained by constitutional and case law. What if our judges were free to ignore the law and the rights the laws guaranteed if they felt that to do so would bring a fairer result? In a society like that, the rights of the many would be at the mercy of the personal prejudices of a very few.

New socks & more for the holidays

The Alaska Association of Legal Administrators (Alaska ALA), a local chapter of the international Association of Legal Administrators (ALA), recently participated in ALA's 11th Annual Community Challenge Weekend.

Alaska ALA has been a part of this worldwide charity event since its inception in 1999. To help those in need tackle their every day challenges, ALA created its Community Challenge Weekend (CCW) program to encourage ALA chapters, its members, firms, vendors, relatives and friends to come together to contribute time, energy and resources toward improving their own communities.

This year Alaska ALA chose to help the Brother Francis Shelter in its caring for the homeless men and women of Anchorage. The shelter houses an average of 200 people per night in a warm, safe place. Due to Alaska ALA's efforts 650 people will have new socks, another 280 will have new undergarments and another 225 will have coats, sweaters, pants or shoes.

An additional donation of cash collected by the Chapter provided hand soap, laundry soap and paper supplies that the shelter desperately needed. Also, at Bean's Café's special request, Alaska ALA collected and donated 55 pairs of reading glasses. The Brother Francis Shelter not only provides sleeping accommodations but also a laundry facility, reading room and some resource referrals.



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To print, or not to print (and how)

By Joe Kashi

Should a law office print most documents and photos or not?

Even in the era of instant Email and ubiquitous Adobe Acrobat files, paper documents remain highly useful even though more than 95% of all business documents are electronic and FaceBook and Emails to grandparents are now far more common than scrawled letters and thank you notes.

Paper handouts are usually a more effective way to conduct meetings. A few sheets of paper can be folded and carried easily in a pant or jacket pocket. Printed documents can be read by any literate person when there's no computer around and are often a more effective way to present data and reasoning, particularly in complex matters. Courts will require paper exhibits for the foreseeable future, even if they are photocopies. A high quality fine art photo enlargement is almost always preferable to transitory photos displayed on a computer screen.

In my opinion, though, paper is no longer the data recording, archival and filing medium of choice. Paper is easily misfiled, cannot be easily searched, and expensive to reproduce and store off-premises in case of a disaster. Losing your business records, especially accounting records, to any sort of casualty like fire, flood, or storm is tantamount to ultimately losing your business. That's happened to several of my business clients over the years.

I believe that the best overall approach is to preserve documents electronically, in a standard, easily searchable format and to print paper copies only when needed. This approach has several benefits. It maximizes your business efficiency and effectiveness. It minimizes storage and filing costs, is much more economical, and is more ecologically sound. It's also more convenient, especially when you can Email signed copies in seconds and enable electronic marginal notes and comments by readers, who can then electronically return their comments to you with a few mouse clicks.

Let's first look at the more modern approach to "printing" electronically. Adobe Acrobat PDF files are already the de facto standard for the federal government, for most state and local governments and for businesses generally. Thus, first printing a document to Adobe's PDF makes the most sense as a long term medium for storing data electronically in a way that's easy to search, backup and protect.

It's always been important to store data in an open data file format like

Acrobat's PDF and to avoid long term storage of data in proprietary data file formats. It's unwise to trust that most niche vendors, or their file formats, will be around next year or that the data will be usable with another program. That's especially true in tough economic times.

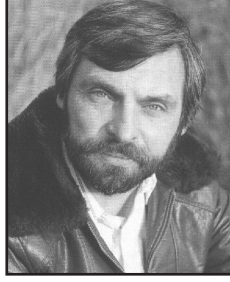
Acrobat documents can be "printed" to a standard format electronic file directly from digital data stored on your computer, such as Email, web browsers, spreadsheets, word processing programs or photographic programs. Basically, printing data to an PDF file costs you nothing in supplies. Unlike printing paper documents, "printing" to an electronic PDF file is essentially without any cost - it's only some electrons being moved around the computer and hard disk. If you already have paper documents that you wish to preserve electronically, then you can scan them directly into Acrobat using a wide variety of flat image scanners and document scanners that can feed and scan many pages a minute.

Adobe has recently provided a new, archival version of Acrobat, PDF/X, that should be suitable for long term data storage so long as you take care to ensure that the physical storage (hard disks, portable USB flash drives, CD disks, etc.) are in good working order and that you regularly transfer the electronic files to newer types of data storage hardware. In order to make Acrobat PDF documents easy to search across a large hard disk, you'll need to run the Optical Character Recognition (OCR) process so that the internal contents become readable to search programs and to Acrobat itself. I personally like Brainware and Copernic's Desktop Search because you can search an entire network rather than solely data stored on your own computer. Google's desktop search program also has its enthusiasts but is less suitable for searching across mapped network drives. Downloads of each are free and worth trying.

Thus, even if you are committed to storing all of your data electronically, there will definitely be many times when you will want, or need, paper copies. That obviously requires a printer.

Choosing a printer

There are several types of printers in common use: color laser printers, monochrome laser printers, ordinary inkjet



"...paper documents remain highly useful even though more than 95% of all business documents are electronic..."

printers, and photo grade inkjet printers. Each has unique uses and advantages and disadvantages.

Inexpensive compact home printers are usually ordinary inkjets, often part of "multifunction" devices that also include a slow scanner, light copying functions, and perhaps some fax capability. These are typically very inexpensive units to purchase, are suitable for light home and home office use but are too slow, and insufficiently robust, for heavier business use.

Because smaller inkjet printers use very low capacity but expensive ink cartridges, your ink cost is the killer. Light duty inkjet printers are like the reputed Gillette razors of years past - the razor itself is basically given away to induce you to buy only Gillette razor blades and at a pretty high unit cost. As with razor blades, the real profit for inkjet vendors is in the supplies.

Some mid-range consumer inkjets, such as HP's Photosmart series, the Kodak ESP-7 and ESP-9, and some Canon or Epson multifunction devices can do a very creditable job printing lab quality photographs up to 8.5" by 11". If you don't care about photo quality printing, then almost any inexpensive multifunction device will be suitable for home use.

Businesses should generally consider getting a laser printer. Laser output is typically faster, looks better and is more water-resistant than inkjets. If you do not believe that you will ever need color output, then a monochrome (black and white) laser printer will be sufficient. Low end monochrome laser printers tend to be fairly inexpensive while upper end ones tend to be quite fast. I have tried several brands but HP LaserJets have always proven to be the most reliable.

Realistically, though, color laser output is becoming the norm and it is quite useful. Color laser printers are often more convenient. Most color laser printers run slower than advertised, so don't buy an inexpensive one that claims high output speed and then expect quick results. I have had several Lexmark color laser printers costing less than \$1,000 and I have been disappointed.

I have, as a result, reverted to HP's slow Color LaserJet 2605 series for use on my desktop. One major feature, from my standpoint, is that most HP laser printers still have an easily accessed front envelope feed, something that I find extremely handy when printing and mailing a letter myself. In fact, for light duty use in my own office, I found a handy envelope feed to be more useful than faster printing speeds. Of course, we have a very fast networked color laser printer for heavy duty printing jobs such as exhibits.

The HP 2600 series printers provide quality output but their slow speed renders them suitable only for fairly low volume needs despite being advertised as a printer sufficiently fast to service an entire small business. I found that was not the case and purchased an excellent Konica-Minolta 5670 printer, which I then networked for use by my entire office. The Konica-Minolta laser printers are generally very fast, indeed as fast as advertised, and their quality is very adequate although not quite as good, in my opinion as the photo output from my HP LaserJet 2605. Konica-Minolta

also makes some less expensive, slower color laser printers that I also found to be very good values.

Color laser printers are generally limited to 8.5" x 11" output and their photographic print quality is not very good compared to good inkjet printers. If you want any sort of printout larger than 8.5" X 11", particularly photographic work, then you'll need to buy a large format inkjet printer. These vary from 13"x19", which are relatively affordable through 60" wide professional models.

Large Format and High Quality Photographic Printing

Large format and high quality photo printers are a breed apart. They're physically larger, with a higher initial purchase price but lower ink costs, and can produce very high quality prints at least 13"x19" or larger. All affordable large format printers, even those designed for professionals like engineers and graphic designers, are based upon inkjet technology.

Only a few vendors make affordable consumer grade large format printers. Should you consider a large format printer? A surprisingly large number

I believe that the best overall approach is to preserve documents electronically, in a standard, easily searchable format and to print paper copies only when needed.

of businesses might find one useful, even if you don't need photographic quality printing. Attorneys, real estate professionals, engineers and other professionals who must work with

larger paper documents will use a large format printer on a fairly regular basis. For example, most real property documents, such as aerial photos, plats and surveys, and most construction plans, are intended to be printed at 11"x17" or larger and smaller copies are hard to read and use.

If you want to make high quality large images at home or in your business, then you'll need a large format printer. There are several good models currently offered in the \$200 to \$800 range. Unfortunately, since the recent bankruptcies of CompuUSA, Circuit City and other large retail computer vendors, you'll have a hard time finding most of the products on store shelves for immediate purchase. You'll need to buy them from a reliable Internet vendor like www.amazon.com or www.newegg.com.

Consumer grade large format printers usually make prints up to 13"x19". Somewhat more expensive printers can use 17" or 18" wide paper while professional models can handle 24" or wider rolls of high end paper.

Only three vendors, HP, Canon, and Epson, market readily available consumer grade large format printers. All of them produce good quality systems but the right choice depends upon your needs. HP pioneered several of the most important printing technologies, including laser printing and photo grade inkjets. For many years, HP basically owned the market for business printers. Epson focused upon very high quality photographic printing. Canon put out excellent models in both of these areas but tended to be underappreciated.

There are a few basic printing concepts that are useful in determining which printer is best for you. Generally, printers with a larger number of separate ink colors produce more natural looking photographs and detailed color images. At least six different ink colors, including light magenta and light cyan, are needed for high quality results. Printers that use larger (27

Continued on page 7

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To print, or not to print (and how)

Continued from page 6

ml or more) separate cartridges for each color are much more economical to use. If you want to make high grade black and white prints for exhibition, then you'll need a printer with at least two, preferably three or four, shades of "black", "grey", "light grey", and "light light grey". Almost all printers now use the USB 2.0 computer interface.

Paper handling is important, too, because paper jams and scratched prints are a true annoyance. Printers with a straight-through rear paper feed, like that used by Canon and Epson, are usually more reliable. HP's tray and folded paper path approach is usually more troublesome when making larger prints and photographs. Using rolls of paper with an automatic roll feeder attached to the printer, is much more reliable and far more economical in the long run, sometimes saving as much as 75-80% in paper costs.

There are two general types of high grade printing inks: dye-based and pigment-based. Pigment inkjets are generally usable on many different brands of photo and fine art paper and are considered to be less prone to fading. Dye-inkjets are a slightly older technology that often can provide more brilliant colors but generally must be used with specific types of paper specified by the printer's manufacturer. Dye ink prints are more vulnerable to moisture damage and thus must be handled with greater care. Except for HP's archival rated Vivera inks when used with HP's Premium Plus papers, dye ink images are not very resistant to fading over the years, mostly due to atmospheric ozone and UV light. However, in comparison, traditional color prints made from film usually fade even more quickly than dye inks.

For consistent and much more economical results, the entire printing system from monitor through printer should be regularly checked, calibrated and "color managed" so that what you see on the monitor is what you get on the print. Printers should be used, or at least cleaned and calibrated, regularly to avoid problems.

Be sure that you know what you're getting into with a larger format printer. They're big, heavy and need a lot of table top space, with sufficient room allow top loading of 19" or larger cut paper. Getting consistently high quality prints and good economy from large format printers will require some study, patience and effort on your part.

With that, let's look at some current large format printer models. Unlike cameras, whose models usually change from year to year, specific printer models are usually marketed without significant changes for two to five years. High grade inkjet printing is a fairly mature technology and improvements from model to model are usually incremental rather than revolutionary.

Be careful when purchasing: the real cost for these printers is in the ink and many of them ship with low capacity, quickly exhausted "starter" cartridges. Before you know it, you'll be spending another few hundred dollars for real ink cartridges. Such practices are something of a scam that vendors occasionally do with some large format printers.

The following models are among the more common large format printers, warts and all. All prices were current on Amazon.com as of April, 2009. There is no one perfect choice, so shop carefully and know your own needs and technical limitations. Replacement ink sets for most printers listed here can usually be ordered through amazon.com, Newegg.com, or better local stationery supply stores.

HP, Canon, and Epson often run excellent sales and trade-in promotions for their more expensive 17" and 24" wide printers, so if you are interested in any of these devices, watch for the sales. You might save \$500 to \$1,200. As of this writing, the best discounts are found at Amazon for Canon's 17" wide iPF500 printer, which is an outrageously good bargain at \$449.

Canon:

Canon Pixma II 9000 (\$410) This is an eight dye ink printer that is excellent for color photos up to 13x19. Because it does not have a second grey cartridge, it's less useful for exhibition grade black and white photographic prints. I own the predecessor to this model and it has been fast, reliable and easy to use. This would be an excellent choice for most users who do not need archival permanence. My only complaint is that Canon's small ink cartridges increase the price per print.

Canon Pixma Pro II 9500 (\$760) The Pixma Pro II 9500 is a ten pigment ink 13x19 printer that includes several levels of black. The preceding Pro 9500 model was criticized for very slow output speed but the output is very nice. Canon claims that the new Pro II model is significantly faster. Given the choice in this price range, though, I would get the Epson 2880, especially if doing a lot of black and white.

Canon iPF 500: This printer, whose list price is near \$2,000, is currently an outrageously good bargain at the lowest Amazon listed price of about \$449. I assume that the vendor is closing out stocks. This is a large stand-mounted machine primarily intended for roll feed and high daily outputs. It takes up to 17" wide sheet and roll paper and is designed for high volume day to day large format business output. Because it uses only four colors, most of which are dye inks, the iPF 500 is not really suitable for exhibition grade photographic printing but should be excellent for daily business and legal use.

Canon iPF 5100 (\$1,995) and **iPF 6100** (\$2,795): The Canon 5100 and 6100 are essentially identical except that the 5100 is limited to 17" wide sheet and roll paper while the 6100 can handle 24" wide paper. Both of these printers are very heavy and large, stand-mounted machines that use twelve archival permanent pigment inks with several levels of black and grey inks. They are thus are very suitable for both regular business use and for exhibition grade fine art and photographic printing. Compared to HP and Epson, Canon does not enjoy as much market share of the large format printer market but users seem to like these printers a great deal.

Epson:

Epson Stylus Photo 1400 (\$214) from Amazon.com This is the least expensive large format 13x19 printer from a major vendor. It uses six dye inks and is a good choice for a low cost general use business and photographic larger format color printer. It is not intended to print exhibit grade black and white images. Low capacity ink cartridges significantly increase the cost per page.

Epson Stylus R1900 (\$549) The R1900 is a 13x19 printer using seven pigment inks plus a gloss optimizer. It's basically designed to produce high

quality glossy photos and includes a manual roll feed that allows you to print longer panoramic photos while reducing your paper costs. Similar to the Epson 1400, the R1900 does not have an intermediate grey level ink, reducing its suitability for fine art and black and white photos. Low capacity ink cartridges significantly increase the cost per page. However, its color output has been nationally reviewed as excellent.

Epson Stylus Pro 2880 (\$735) includes the full Epson K3 eight pigment photo ink set, including three levels of black and grey. Its output is considered to be the best of any printer under \$1,000. If you need to do occasional 13"x19" exhibit grade photos, including black and white images, then this is the printer for you. However, it has been criticized because its expensive low capacity ink cartridges increase the cost per page.

Epson Stylus Pro 3800 (\$1,095) is a 17"x22" printer that, although a three year old design, is still considered to be the best all around fine art printer in its size and price range. The 3800 is a large printer using much more economical high capacity ink sets that include three levels of black/grey for optimum black and white printing. Unfortunately, it does not have a roll feed option that would otherwise greatly reduce paper costs, but paper handling is considered to be quite good. Output quality is excellent, but this is really intended as a high quality fine art printer rather than a production business machine. This is a fairly large machine that's intended for desktop use.

Epson Stylus Pro 4880 (about \$1,800) is Epson's roll-fed high volume printer. It is a very heavy and large stand-mounted printer that's more robust than the Epson 3800 and includes a few mechanical improvements, such as a vacuum plate to hold paper flat. These help image quality. Otherwise, it has the same inkset and high quality as the Epson 3800.

Epson Stylus Pro 7880/7900 (About \$2,900): This is basically the same printer as the Epson 4880 but handles 24" wide paper.

HP:

HP 8350 (\$290) is HP's least expensive 13x19 large format printer that includes a photo grey option for better black and white images but it has mixed customer reviews.

HP B8550 (\$304) This printer uses five dye inks, prints up to 13x19, and has decent customer reviews. Ink is a little less expensive than equivalent Canon and Epson printers.

HP B8850 (\$472) is a 13x19 printer that uses eight pigment inks and includes a straight rear paper path, although HP does not include the very useful fold-down rear paper loading trays included with the Canon printers. This is a somewhat newer, slightly stripped down version of the highly regarded HP B9180 semi-professional printer. It has received excellent reviews and would be a very good choice for an amateur photographer intending to print occasional exhibit quality photos. It uses higher capacity ink cartridges for better economy.

HP B9180 (\$594) is another 13x19 printer quite similar to the B8850 but includes an LCD panel and network connection. This is also a highly regarded choice for a semi-professional

photographer, with excellent quality color and black and white output, but the B9180's paper handling has been criticized on occasion.

HP DesignJet 90 (Q6656A, under \$1,000, Q6656B with roll feed, list \$1,150) is an interesting printer that includes six long life Vivera dye inks. This is the least expensive printer for 18" wide paper. I have the 24" DesignJet 130 version with roll feed. If you get the roll feed version and use HP's Premium Plus papers, you will find this to be a very economical 18" wide printer that's able to produce exhibition grade color images with a rated 82 year archival life. Because it does not include a second black/grey ink, it is not as useful for black and white images. Although fairly large and heavy, this printer can be used on a large tabletop.

HP DesignJet 110Plus, (\$995) This printer uses four Vivera dye inks and prints up to 24" wide. It's useful for making exhibits and regular large format business printing but not for exhibition quality fine art and photo printing. It uses economical high capacity ink cartridges. Although quite large and fairly heavy, this printer can be used on a large tabletop but a stand is preferable.

HP DesignJet 130 (\$1,150 street price but for best reliability and economy, I recommend that you also get the \$450 roll feed and the \$350 stand mount.) A newer, somewhat higher end DesignJet 130nr, which usually retails between \$1,900 and \$2,000 includes the roll feeder and an Ethernet network connection. Although quite large and fairly heavy, this printer can be used on a large tabletop but a stand is preferable.

I use this 24" printer with roll paper regularly to make very high quality large color images for court and for fine art exhibits. In fact, I used it so regularly that I finally wore one out. It's the DesignJet 90's big brother and the most economical all-around large format choice for the color photographer or business requiring high quality color images up to 24" wide. Because it does not include a second grey/black ink, black and white image quality is decent but not spectacular. It uses economical high capacity ink cartridges. The DesignJet 130 can be very slow when used at its highest quality settings and I have never found it to reliably feed cut sheet paper and includes basic self-calibration. However, when used with 24" wide roll paper in a properly calibrated computer/monitor/printer system, it can produce exceptionally high quality prints. The DesignJet 130 produces decent exhibits and business graphics on standard HP Heavyweight coated roll paper and very lovely, archival fine art photo prints when used with HP Premium Plus Photo Satin paper (HP part number Q5491A).

HP DesignJet z3200 (\$3,395 base price with roll feed, stand and network connectivity): If I had a spare \$3,400, I would buy this printer in a flash. It includes unique high-end self-calibration and uses twelve pigment inks including four black and grey inks along with a gloss enhancer. This may be the most desirable 24" wide exhibition quality photographic printer that affordable by small business and semi-professional users, although it is of course very useful for normal large format business needs. This printer has a reputation for good output speed. One of the problems inherent to high volume large format printers is that they require fairly regular servicing. I have found that HP and its dealer network is generally more helpful and amenable, which results in better long-term business usefulness.

If you want to make high grade black and white prints for exhibition, then you'll need a printer with at least two, preferably three or four, shades of "black", "grey", "light grey", and "light light grey".

Liars & Lawyers — Being Refuted Beats Refuting.

Part Three

By Peter Aschenbrenner

Meanwhile back at the ranch, or the magnificent restaurant in which the assembly has gathered itself, Paul pleads for lawyers to redeem the world's most famous logical blunder in scripture.

We're speaking of the Epistle to Titus, chapter one, verses twelve and thirteen. All Cretans are liars, on the authority of a Cretan.

Socrates has the floor.

"Rhetoric," Socrates begins, "and I merely repeat what Plato said I said — is best used against one's own self. 'A man who has done something wrong is wretched, but a man who gets away with it is even worse off.'"

"509b," Cyprian ticks off the citation.

"Perhaps you should," Titus nods to Socrates, "rewind the celluloid —"

"A half a reel?" Socrates takes Tertullian's hint. "Gorgias the sophist was obliged to admit — under my blistering 'cross-ex' — that rhetoricians have power over words, but are unable to instruct their students in morality."

"A tactical concession," Cyprian ahems.

"Most certainly," Tertullian slips in, "as all statements about the world are instructions."

"Excuse me?" I blurt my confusion. "Do you mean 'jury instructions'? As in how the judge lays down the law for the jury?"

Newcomers join the assembly.

David Hume clears his throat and signals his desire to take the floor.

"Undoubtedly," Marie Antoinette asides while sniffing, "the Scotsman Hume seeks to expiate is yields *ought* for which he is justly famous."

"Gorgias does not deny," Xantippe continues, "that his students might use their skills for immoral purposes (such as persuading the assembly to let a guilty man go free), but he says the teacher cannot be held responsible for these crimes."

"Old hat, counselor," Tertullian interrupts. "Gorgias points that we do not banish the martial arts instructor because the pupil picked a fight in a dark alley."

"456d-457c," Cyprian ahems the citation.

"The teacher must assume that the student will not abuse the arts," Tertullian concludes, "she receives from her teacher."

"I am one of those," Xantippe speaks up for her husband, "who is glad to be refuted if I do not speak the truth. This is the greater benefit. 'Meizon agathon'," she concludes.

"In English and Greek," Socrates adds. "I am impressed."

All eyes turn to Cyprian.

He seems to have missed his cue.

"458a," he gulps his white wine spritzer. "Meizon gar auto agathon egoumai."

Cyprian shrugs off his lapse.

"I'm enthralled," David Hume declares.

Edward Gibbon pulls up a chair. They exchange pleasantries in two or three Indo-European languages.

Paul squares his shoulders and defends himself.

"I was writing Titus a letter. A training artifact," Paul nods to me as he is familiar my work. "Instructions for dialog."

"Allow me," Titus cuts Paul short. "You wrote the letter to me. You quoted a guy who was so *well known* and so *really dead*," Titus excuses his Apostle, "that mention of his name was a waste of time. 'I cannot tell a lie,' he said *he* said."

"An example," Marie Antoinette speaks up, "would be Parson Weems. Quoting George Washington."

"I tossed out a classy quote," Paul picks up the thread. "Let me try it again." Paul clears his throat. "Hey, Titus, when you're out on the job as Bishop, you may run across some pretty tough hombres. They might insult you or overcharge you for a meal. They might even lie to you."

"Here's the punch line," Xantippe nudges her husband.

"Let him tell the story," Socrates cools his wife's jets.

"And how do I know this?" I asked Titus, Paul reminds us. "I've got a witness to prove it," I told Titus. The guy who said, 'beware of Cretans, they're all liars,' was himself a Cretan."

"Hot water," Cyprian confesses the truth of the matter.

"We've all been there," Tertullian sighs.

"You died in bed!" Cyprian objects.

"You lapsed under torture!" Tertullian shoots back.

"Gentlemen, gentlemen!" Charlemagne restores order.

"What if a lawyer told you," Titus picks up the pace. "All lawyers lie."

"Maybe," you say to yourself, Augustine takes the bait, "when he said he was lying he was lying about lying, he was telling the truth. That would be one instance of a lawyer telling the truth. I would be a sap," Augustine concludes, "to rely on a lawyer for the proposition that all lawyers lie."

"Paul enjoys his sainthood," I address the assembly. "His honorifics are of apostolic dimensions. Several nice cathedrals."

"Peter's," Xantippe informs her husband, "is bigger."

"Many churches of lesser dimension," I continue. "They even named a city after him. It's somewhere in the Midwest. Dunno where, but you could look it up."

"Thanks for the recognition, Professor," Paul remarks, "but nobody has flat-out, no-holds-barred saved me."

"Wouldn't it be kind of cool," I drop into the demotic, addressing my remarks to Xantippe, whose raised eyebrow encourages my endeavor, "if some people did save him and they were people that everyone loved to hate, but even weirder, these people doing the saving didn't even take credit or give themselves credit for saving Paul? Wow, that would be like stranger than fiction. And worse it would suggest that the world hasn't really talked enough about talking, because there is something new to say on the subject."

"Which proves," Marcus Aurelius and Charlemagne agree, "that, if this planet needs more of anything, it needs more lawyers."

"We're back to your crimes," Titus nudges Paul.

"This can be taken in one of two ways," Holmes speaks up. "I'm Conan Doyle's creation," he adds, "for the benefit of those on the fringes of our assembly."

"You're Sherlock?" Beethoven adjusts his ear trumpet.

"If I say, *when in the course of human events*," O.W. Holmes, Jr. minds his cue, "you may assume the author must be quoting the Declaration of Independence.' It's a quote everyone knows, so you and me, writer and reader, we don't have to concern ourselves with this: am I pretending that I wrote those sonorous words? Am I lying, in essence, when I say 'here are some words I wrote,'

when I didn't write them?"

"There's another possibility," The Sherlock re-takes the floor. "When I quote an author's phrase that seems obscure, maybe I'm winking at you, the learned reader, who is going to 'get it' but my wink leaves other readers ignorant of my fine scholarship."

"Hence," The Sherlock concludes, "two classes of readers. The illuminati and the illiterati."

"It's a bit of a problem," Sir William Gilbert joins the fray, "for moderns to tease through this puzzle. Authors did not write footnotes for their readers. It was simply a 'name-and-a-quote,' for convention's sake (This is an age when *kai* and *de* were punctuation!) and on rare occasions, the reader was told the name of the work. The reader was supposed to know her ancient authors. For example, Paul ignores Aristotle's discussion of this question, 'can a sentence be both true and false at the same time?'"

"Here's the cite, *Sophistical Refutations*, 180b1, Bekker edition," Cyprian addendums. 'I may be repeating myself,' he mumbles.

"Does this happen to you," Jean d'Arc leans over to console Cyprian, "a lot?"

"Your blouse is unbuttoned," Cyprian gasps. "Wanna make something of it," she carresses his cheek, "big fella?"

"Is Paul ignorant of Aristotle?" Sherlock Holmes asks. "Or ignoring Aristotle?"

"Or," Justice Holmes continues, "and this is the poser. Does he think that none of his readers read Aristotle?"

The dipping of platter'd veg ceases.

We all pay close attention.

"That latter possibility is," T. Roosevelt observes — while coring a fresh pineapple in the air, and with his cavalry saber — "disturbing. Imagine you'd like to start up a new religion. Or branch off from an old one. Do you assume that no one with an education would read your theology? Maybe you didn't care. Maybe you figure those lacking education will take you to their unlettered bosoms."

"Perhaps," Paul drawls his grudging response.

"Now take Joe the Apostle," T. Roosevelt continues. "He's a bit of a boob. But hey, I'd down a brewsky with him. Isn't it all about me? I mean, like, they've got to convert me and keep me happy. So appeal to the lowest common denominator? Writing obviously illogical stuff is the best way to get folks like me on your side. Aristotle, Smeristotle."

"I am enthralled," Theodora sighs, and I notice that her hand slip up Xantippe's thigh.

"Which brings us back to Augustine," The Sherlock picks up the thread.

"He was defending Paul, as best he could," Justice Holmes continues, "by saying that the Liar's Paradox was a 'flimsy trick.' Yep, and so it is. Self-referring sentences aren't that tough to deal with. Lawyers and judges deal with them every day without tripping and falling on the sidewalk. Juries don't get confused when the government informant swears that he is truthfully relating the lies he told the defendants to gain their confidence."

"Too bad," Cleopatra sighs, "logicians get all hot and bothered over this stuff."

"If the Liar's Paradox is such a flimsy trick," Dwight D. Eisenhower motors into the fray, "how come Paul didn't get it? Or, how come Paul didn't get that Aristotle got it? Wasn't anyone reading his stuff and shooting him a Tweet? 'Yo, Paul. Your epistle to Titus needs a bit of tightening up. That's no lie.'"

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- Ensure it is in high resolution (aka, "fine," "superfine," "high res" or "best") setting on your digital camera, scanner, or photo-processing software.
- Rename all digital photo filenames with the subject or individual's name!!! (Example: lawfirmparty.jpg or joe_smith.jpg)
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DON'T

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

In which I drink alone, with nobody else

By Kenneth Kirk

The bar was dimly-lit, the grill greasy, the floor dirty. It wasn't the kind of place you'd bring your mother for her birthday dinner. But this was where the message from the *Bar Rag* staff told me to meet my contact.

They hadn't said who would be meeting me, but as soon as my eyes adjusted to the dingy light, I knew who it was. She was sitting in a booth in the back, past a gaggle of bikers. I knew who it was despite the hat, the dark glasses, the trench coat with the collar pulled up.

"What happened to Tim?" I asked as I sat down, using the code name for my regular *Bar Rag* contact.

"Tim had other things to do," she said as soon as she finished downing another shot of bourbon. "Now that he's a flack for the rich and political, the rest of us have to handle some of his..." she hesitated... less savory duties."

I smiled at that. "So I get to deal with the big cheese, eh?"

She looked like she was about to heave, or maybe it was the tequila shooter she just popped. Then she looked off into the distance, or at least I think she did behind those dark shades.

"I thought I was just going to chair a couple meetings and help organize the next convention," she finally said. "Nobody told me I'd have to deal with you and your ... antics. I thought the *Bar Rag* was a separate department or something."

I raised my eyebrows slightly but said nothing, waiting for the other shoe to drop. Finally she started in with "Do you like not having any friends at all?"

"Au contraire," I said, startled, "I have lots of friends. Well, some. A few."

"Facebook doesn't count," she said, chasing the sarcasm with a gulp of beer. "You certainly don't have many friends left in the Bar. You realize the estate planners were the last ones who actually kind of liked you? Were. As in past tense, as in before your last column."

"Oh, come on. They still like me. They're not thin-skinned, like those public defenders or the Judicial Council."

"No, they don't like you," she said. "They sent us a letter they all signed, saying they didn't like you and asking

you not to come to their section meetings any more." I thought she was just being sarcastic again, but then she pulled out the letter, signed by 27 different estate planning attorneys. Even Tonja, which hurt.

"They shouldn't be offended," I finally offered. "I was just pointing out, in a fun and colorful way, how changes in the law can change the nature of an area of law practice, and how sometimes lawyers fail to adapt to those changes."

"You called them dinosaurs!" She hollered. "You compared them to big, fat, lumbering, stupid lizards! How do you expect them to react?"

"With introspection and a new way of seeing things?" I offered, helpfully.

"No! That's not how people react! They get defensive, they retaliate, and they cancel their *Bar Rag* subscriptions!" She got so apoplectic she started coughing, and had to stop to take a big swig of her mint julep.

"Look, it's not my intent to make people mad," I said while she got her breath back. "I try to get people to think. There's a lot of group-think within the Bar, if you hadn't noticed. I just try to open up conversations, get people talking. That some people get upset, well, that's a necessary side effect."

She took another sip. "I would have thought your experience with the Judicial Council last year, would have gotten it through your thick skull that other lawyers don't see it that way."

I took a deep breath. It had been almost a year since my interview, but the wounds were still fresh. Most of the Council members wanted to challenge something I said in one *Bar Rag* column or another. One even accused me of lying. "One member asked me how he could possibly go back home and tell his lawyer friends he voted for me," I said, sliding back from reverie to verbalization. "Another said I shouldn't have poked a stick at the Council. They couldn't seem to understand that these weren't a set of position papers, just an attempt to get people thinking."

"So you sued them," she shot back. "You tried to have the whole



"But win or lose, it's still right. It makes no sense for a small group of elites to control selection to such a powerful branch of government."

judicial selection process thrown out as a violation of the federal constitution. Was that just to 'get people thinking'?" She sounded a bit snide this time.

"No, believe it or not, that was coincidental. The right attorney just happened along at the right time and offered to take the case."

Her face showed she didn't believe me. "You really thought a federal judge would declare that lawyers shouldn't have any more say than anyone else in selecting judges? How naive are you anyway?"

My blood pressure started to rise. "You know, what really pissed me off, is when the Judicial Council's lawyer argued that lawyers should have more say-so because they're disproportionately impacted."

"That's a fair point, though," she countered. "Most professions get to control the regulation of their work in some way. If half the Board of Hairdressers have to be licensed hairdressers, nobody says that's unconstitutional."

"Your hairdresser can't put you in prison, or take away your kids or your life savings," I said. "We have a unique privilege, to advise and represent people in a system which can potentially devastate their lives. And it makes me sick to hear lawyers whining about how they're disproportionately impacted by the court system. It's the clients who are disproportionately impacted, not the

lawyers."

She uttered that word you're not supposed to use on Saturday Night Live, and polished off her rum and Coke. "The judge didn't think much of your argument, did he though?"

I was getting annoyed, and came back with "There's still the Ninth Circuit. But win or lose, it's still right. It makes no sense for a small group of elites to control selection to such a powerful branch of government."

"Well it can't be too right, since the judge said otherwise, can it?"

"Did you think your buddy Chemerinsky was right in the Solomon case?" I asked. "They lost 8-0 at the Supreme Court. Even Ginsburg thought they were off their rockers. Does that make them wrong?" I knew that would piss her off.

She uttered something in response, but I won't repeat it here. After all, impressionable young law clerks read the *Bar Rag*.

And with that, she drained the last drops of her martini and headed to the ladies' room. I sat and thought for a while. Would it be so wrong if my peers liked me? So wrong to stifle my less popular opinions, go along to get along, say the same things everybody else is saying? So wrong to tailor my actions for my own professional advancement? Or at least to couch my ideas more diplomatically, even if it meant they wouldn't get through to a lot of people? Oh well, I realized, too late now. That bridge has already sailed.

I thought for a long time. It was half an hour later that I realized she snuck out the back and stuck me with her bar tab.

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Voices That Carried: The framing of Alaska's three branches

On October 22, 2009, over 150 people attended the 7th Annual Alaska Bar Historians Luncheon at the Hilton Hotel in Anchorage. The luncheon, entitled *Voices That Carried: The Framing of Alaska's Three Branches*, focused on the debates at Alaska's Constitutional Convention in 1955-56 that led to adoption of the articles governing our state's three branches of government.

Four prominent Alaskan attorneys presented the program, which included audio clips from the actual convention debates. Anchorage attorney Joe Josephson, himself a former legislator, highlighted key debates on the Legislative Article.

Talis Colberg, former Alaska Attorney General and current mayor of the Matanuska-Susitna Borough, discussed major debates leading to adoption of the executive article. Judge Karen Hunt (Ret.), who served for 16 years on the Anchorage Superior Court, introduced the audience to important moments in the debate over whether to adopt merit selection of judges in the judiciary article.

Anchorage attorney Doug Pope, who was a child in Fairbanks when the convention took place, served as moderator. Together, the luncheon speakers and the voices from the past conveyed the thoughtfulness, dedication and sense of purpose our state's founders brought to the task of creating a new constitution for Alaska. The luncheon was videotaped and may be checked out for viewing by contacting Deborah O'Regan at the Alaska Bar Association, 907-272-7469.



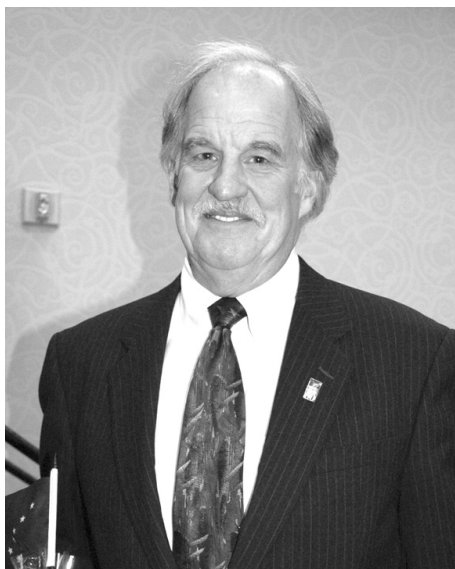
Judge Karen Hunt (Ret.) visits with Anchorage attorney Michael Sean McLaughlin, whose father George McLaughlin served as Chair of the Committee on the Judiciary at Alaska's Constitutional Convention. Judge Hunt's presentation on the Judiciary Article featured audio clips of George McLaughlin advocating for the merit selection of judges.



Luncheon speakers, L-R: Talis Colberg, Judge Karen Hunt (Ret.), Joe Josephson, and Leroy Barker, Chair, Bar Historians Committee.



Sen. Lesil McGuire and Rep. Anna Fairclough at the luncheon.



Anchorage attorney Doug Pope served as moderator for this year's luncheon.



Members of the Bartlett High School We the People team attended the Historians luncheon with their teacher Jenni Faris (3rd from left).

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Helping your clients make good decisions

By Steven Pradell

As professionals, attorneys often see themselves as being responsible for advising clients to take certain actions in order to solve their problems. We hold ourselves out as having answers to legal questions due to our training and expertise. However, there are many factors in family law cases that can affect how decisions are made, and consequences that can go far beyond what may seem to be a simple solution to a client's presenting problem. This article explores how a practitioner can work with clients to help them make what are often among the most difficult decisions in their lives.

When building a practice we sometimes try to sign up as many clients as we can, thinking that volume will equate with success. Armed with an education and a degree we think that we have special tools for solving problems and can in a short time discern a legal issue and tell a client what they need to do to solve it.

However, apart from a true emergency presenting itself or a party in an ongoing case with an immediate deadline requiring action, often at an initial interview a client may be telling you much more than the words that are used in the office.

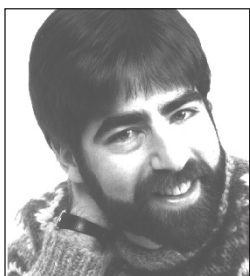
For example, even if a client comes in to discuss a potential divorce, he or she may not really be ready to take that step. Perhaps reconciliation is still possible. A client who is on the fence about beginning a long and expensive adversary process may later regret feeling pressured to file a

Complaint without learning all of the options and discussing the potential consequences of each decision.

By attempting to really listen to what the client is telling you, rather than immediately going into lawyer mode, you may be able to help the client make otherwise emotional and overwhelming decisions in a more rational and effective manner. Other options such as mediation, dissolution, counseling, financial or estate planning, etc. can be explored in appropriate cases with potential clients so that they understand the full range of potential choices that are available.

Similarly, if a grandparent comes in to discuss a potential visitation or custody case, the enormous impact of filing a lawsuit against a son or a daughter should be explored, in addition to the appropriate legal standard, so that the client can have some idea of the consequences of filing such an emotionally charged lawsuit prior to beginning the process.

In the past, attorneys were known as counselors for a reason. Even if you assist a client in deciding not to go forward with a case, the client has realized that you are attempting to help him or her rather than simply trying to see how you can put more attorney fees in your own pocket. Telling a client that you don't know the answer, don't have experience



"For a moment, take a look at the world from the client's perspective. You may find that you have another approach apart from what your initial inclinations and advice might have been."

Sometimes, there may be a good reason to advise a client to consider the option of doing nothing at the moment,

and waiting until later to consider making a move. This advice may be counter-intuitive to your way of thinking. A client who passes quickly through your office and feels like they have been treated fairly can be a good referral

source to others who need legal advice, and may return in the future as the need arises.

When I underwent treatment for cancer almost twenty years ago, I had a paradigm shift. The medical provid-

ers I ultimately worked with were in the top echelon of their respective fields. Rather than quickly telling me exactly what I had to do to eradicate the disease, they patiently answered my questions, explored options, kept me informed of alternatives, risks and potential consequences, and empowered me to participate in the decision making process over a lengthy period of treatment and follow up care. Upon my recovery and return to practice, I used that experience as a lesson in my own professional life to help clients going through what can be an equally stressful process: the dissolving of a family relationship.

During your initial consultations, try to put yourself in the shoes of your clients who are sitting on the other side of your large and imposing desk. For a moment, take a look at the world from the client's perspective. You

By attempting to really listen to what the client is telling you, rather than immediately going into lawyer mode, you may be able to help the client make otherwise emotional and overwhelming decisions in a more rational and effective manner.

may find that you have another approach apart from what your initial inclinations and advice might have been.

Steve's book, *The Alaska Family Law Handbook*, (1998) is available for family law attorneys to

assist their clients in understanding domestic law issues. Steve's website, containing additional free legal information, is located at www.alaskanlawyers.com.

World justice project goes independent

The World Justice Project, launched in 2007 to strengthen the rule of law worldwide, has become an independent not-for-profit Washington State corporation with tax exempt status, announced William H. Neukom, the project's founder, president and CEO.

"The World Justice Project was intended from its inception to become an independent organization," said Neukom of San Francisco, who was American Bar Association president from August 2007 to August 2008. "After several years of nurturing under the umbrella of the ABA, the WJP's leaders believe that it is ready to stand alone," he said. Neukom pledged that the project will expand its work to promote adherence to the rule of law in countries across the world. "The ABA has been a generous host for the WJP and we are very appreciative of its cooperation and support for the new entity during its start-up phase," Neukom continued.

The ABA "is enormously proud of the work of the WJP, and its efforts to advance communities of opportunity and equity around the world. The project's innovative approach draws together leaders from all segments of society to support the rule of law as a foundation to foster environments where human potential can be fully realized and culture, health, education, commerce and political development can thrive," said ABA President Carolyn Lamm, of Washington, D.C.

During the transition, contemplated to continue through March 31, 2010, the project and its staff will continue to occupy space in ABA offices at 740 15th St., N.W., Washington, D.C., and the ABA will continue to provide certain facilities and services. WJP will pay the association rent and service fees. The ABA will remain an active participant in the WJP, along with other co-sponsors, including the International Chamber of Commerce, the International Trade Union Confederation, the World Federation of Public Health Associations and the American Society of Civil Engineers.

The World Justice Project is unique in its engagement of stakeholders from a variety of disciplines around the world and is building an active network of governmental and nongovernmental leaders from more than 15 disciplinary fields, representing all socio-economic levels of society. Its work is being carried out through the creation of a comprehensive Rule of Law Index, the convening of global and regional mainstreaming meetings of world leaders on rule of law issues, the issuance of seed grants from the WJP's Opportunity Fund to rule of law initiatives and the origination of new scholarship on rule of law issues. All of the WJP's efforts are dedicated to developing practical programs in support of the rule of law.

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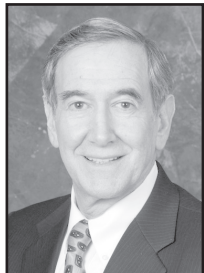
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Bar People

Patrick Reilly, former Seward attorney and City Clerk, Assistant North Slope Borough Attorney, and Local Governance Advisor in Somalia now works in Kosovo as a Legal System Monitor for the Organization for Security and Cooperation of Europe.

The law firm of Sedor, Wendlandt, Evans & Filippi, LLC is pleased to announce **Carolyn Heyman-Layne** as a new member of the firm. Ms. Heyman-Layne practices in the areas of health, corporate and real estate law, and was recently named to the 2010 Alaska Top 40 Under 40. She received her law degree from Duke University and her undergraduate degree from Smith College.

Gary A. Zipkin is celebrating his 35th anniversary with the law firm of Guess & Rudd P.C. Mr. Zipkin's practice emphasizes insurance bad faith and coverage issues, the defense and trial of claims alleging personal injury, wrongful death, products liability, automobile negligence, aviation accident liability, and premises liability, as well as commercial contract litigation and mineral law litigation and trial. Mr. Zipkin has been selected for inclusion in Best Lawyers in America since 2007 in the field of Insurance Law, and he has been selected for inclusion in Super Lawyers since 2007 in the field of Personal Injury Defense.



Gary Zipkin

Guess & Rudd P.C. Has announced that **Matthew Cooper** of its Fairbanks office and **Christina A. Rankin** of its Anchorage office have become shareholders of the firm. Mr. Cooper's area of practice includes: Litigation; Natural Resources; Public Utilities; Real Property; Commercial Transactions. Ms. Rankin's area of practice includes: Litigation of insurance bad faith and coverage issues, personal injury defense, wrongful death, products liability, automobile negligence, uninsured and underinsured motorists, premises liability, and commercial litigation.

George Lyle is celebrating his 25th year Guess & Rudd P.C.. Mr. Lyle's areas of practice emphasis include oil and gas, mining, and environmental law. He has been recognized since 2003 in Chambers USA - America's Leading Lawyers For Business for environmental law, and in Who's Who Legal - The International Who's Who of Business Lawyers for mining law. Mr. Lyle is the co-author of the Alaska environmental law chapter in an Environmental Law Practice Guide published by Matthew Bender, and also authored an article on environmental insurance coverage issues for the Rocky Mountain Mineral Law Institute.

The law firm of Holmes Weddle & Barcott is pleased to announce that **Jim Reeves** joined the firm, Sept 1, 2009. Mr. Reeves recently completed three years of service as Anchorage Municipal Attorney after many years in private practice in Anchorage. He has a broad range of experience in commercial transactions and real estate, civil litigation and appeals, Alaska natural resources and administrative law.

At the Fall, 2009, meeting of NACDL, **Steven M. Wells** was appointed to be one of the Board of Directors of the National Association of Criminal Defense Lawyers.



Matthew Cooper



Christina Rankin



George Lyle

The law firm of Delaney Wiles, Inc. announces the addition of **Timothy W. Bowman** as associate attorney with the firm. Timothy is a 2005 graduate Creighton University School of Law in Omaha, Nebraska. He clerked for Anchorage Superior Court Judge William Morse over the last year. Prior to his clerkship, Timothy worked as an associate at Dyer Law Office in Omaha, Nebraska. Timothy is a member of Alaska, Nebraska and American Bar Associations.



Timothy Bowman

Perkins Coie adds Christine Williams to litigation practice

Perkins Coie is pleased to announce that Christine Williams has joined the firm as an of counsel. She will be based in the firm's Anchorage office.

Williams focuses her practice on complex civil litigation matters, including construction litigation. She is experienced in working with Alaska Native and 8(a) clients on a wide range of issues. She also advises clients on issues related to competing in the government contracts arena, including bid protests, contract negotiations, claims preparation and litigation.

"We are delighted that Christine has joined the firm," said Eric Fjelstad, Anchorage managing partner. "We are committed to providing our clients with exceptional service. Christine's experience is an excellent addition to our strong government contracts and litigation practice in Alaska."

She joins a team of more than 300 litigators who represent plaintiffs and defendants across a spectrum of disputes. In addition to complex civil litigation, she also represents clients in other dispute resolution procedures, including mediation and arbitration.

Williams earned her J.D. from the Santa Clara University School of Law and her B.A. from the University of Alaska.

It's the Bar elections season

Interested in Running for the Board of Governors, the Alaska Judicial Council, the ALSC Board or the ABA Delegate?

Nominating Petitions will be sent to all active Bar members in early February. Nominations must be signed by 3 active Bar members and returned to the Bar office.

Think about getting involved. For more information, look for the nominating petition or contact Deborah O'Regan at the Bar office, 272-7469 or oregan@alaskabar.org.

Bar elections to be online in 2010!

The Bar is going online for elections in 2010. All members who have an e-mail address listed with the Bar will receive nominating petitions and ballots via e-mail. Members who do not list an e-mail address with the Bar will receive the nomination forms and ballots via regular mail.

The online voting will be handled by the Center for Behavioral Research & Services (BHRS) at UAA. BHRS handled the online judicial surveys for the Judicial Council for many years.

Nominating petitions will be sent in early February and ballots will go out in early March. Elections and bar polls will be conducted for:

- Board of Governors – Alaska Bar Association
- Alaska Judicial Council
- ABA Delegate
- ALSC Board of Directors

Claman rejoins Lane Powell's litigation practice group

Matthew W. Claman has returned to Lane Powell as Counsel to the Firm in the Commercial Litigation Practice Group, following a six-month leave to serve the Municipality of Anchorage, as its first Acting Mayor.

Claman focuses his practice on commercial litigation disputes and advising businesses in a wide range of commercial matters. Claman also has extensive experience as a mediator and arbitrator in civil disputes.

Claman received his J.D., *cum laude*, from the University of Texas Law School, and his B.A. in History from Colorado College.



Matthew Claman

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Historical Bar

A brief history of the federal district court in Alaska



By Harry A. Branson

After the United States purchased Alaska from Russia in 1867, not much thought was given to how the investment was to be managed, or the land governed. For the next 17 years, the federal presence was minimal. Essentially, there was no government and no uniform law for the inhabitants.



Harry Branson

Alaska was designated a military district of the United States and placed under the control of the War Department. The United States Army was charged with maintaining law and order. When the troops were withdrawn in 1877, authority over the new possession passed to the Treasury Department, where it remained for two years until a threatened massacre at Sitka resulted in the transfer of power to the Naval Department

Early Legislation

The issue of governing Alaska was finally addressed by the Organic Act of May 17, 1884. 23 Stat. 24 (1884). Under the terms of the Act, Alaska was made a civil and judicial district subject to the laws of the State of Oregon. The Act created the office of Governor, to be appointed by the President, and designated Sitka the temporary seat of government. The Act established a single district court for Alaska with general civil and criminal jurisdiction, and provided for the appointment of a single district judge, a clerk, a district attorney, a marshal, and four commissioners. The district judge was to reside in Sitka and was expected to hold at least two terms of court each year: one at Sitka beginning on the first Monday in May and one in Wrangell, beginning the first Monday in November.

During the Gold Rush Era (1890-1900) over 30,000 people came to Alaska and the Yukon in search of gold. The increase in population and the subsequent growth in fishing, trapping, mining, and mineral production, as well as criminal activity in essentially a lawless frontier, spurred several important changes to the laws.

On June 6, 1900, the Fifty-Sixth Congress enacted a law containing further provisions for the governing of Alaska. 31 Stat. 321 (1900) Alaska was divided into three judicial divisions: Southeastern Alaska, Western Alaska, and the remainder of Alaska with judicial seats in Juneau, St. Michaels, and Eagle City. Each division was reassigned a resident federal judge, a clerk, a marshal, deputy marshals where justified, a district attorney, and commissioners.

On March 6, 1909, the Sixtieth Congress passed a law providing for a government for the Territory of Hawaii, which included a subdivision dividing the judicial divisions of Alaska horizontally and adding a fourth division. 35 Stat. 838 (1909) Under the terms of the act, the judicial headquarters for the four divisions were designated as follows: First Division - Juneau; Second Division - Nome; Third Division - Valdez; and Fourth Division - Fairbanks. Each division was provided with a resident judge, a clerk, a marshal, a district attorney, and commissioners.

At the time, there were no roads or public buildings in the whole of the Interior. The court was the only instrument of civilian government with the exception of village or town functionaries. Besides traveling around the circuit, the judges were expected to procure the land and materials to build their own courthouse and jails with the funds acquired from the collection of licensing fees. Congress provided no other funds. The only available means of transportation at the time were boat and dogsled.

The Second Organic Act passed in April of 1912 granted Alaska territorial status. The Alaskan

Territory retained its judicial and legal enforcement authority from the earlier Act, but the new Act allowed an exception for incorporated municipalities permitting citizens to elect judges whose jurisdiction was limited to misdemeanors. Because all crimes were deemed federal under the Code of Criminal Procedure, the lower court sentences could be, and often were, appealed to the federal district courts.

Early Judges

Early judicial appointments were often short-lived. The first judicial appointment to Division I at Sitka, Alaska, was Ward McAllister, Jr., a native of San Francisco and an assistant United States Attorney in California. He was appointed on July 5, 1884, and removed from office a mere four months later following complaints by Dr. Sheldon Jackson, a prominent and politically well-connected promoter of Alaska and the Presbyterian missions and churches in the territory. The next appointment, on August 28, 1885, was Edward J. Dawne from Salem, Oregon. Before he arrived in Alaska, Oregon lawyers complained to the President that he was a scoundrel and unfit for office. When he became aware of these complaints, he fled the territory for British Columbia.

Arthur Noyes was appointed as a Second Division judge in 1900. The following year he left Nome to stand trial for contempt of the Ninth Circuit Court of Appeals, was found guilty, and fined \$1000. He was removed from office by President Teddy Roosevelt in February of 1902. Silas Reid was appointed as a Third Division Judge in November of 1907 and resigned in June of 1909 following accusations of corruption involving employment and compensation of friends and relatives.

There were some exceptional men among the early Territorial Judges, however. They went to extraordinary lengths to meet the challenge of providing justice across vast distances with no roads, remote settlements, few resources, and virtually no law. An early example was Charles Johnson. He was appointed as a Federal District Judge for the First Division on July 28, 1887. Two years into his term, Judge Johnson left his base in Juneau for Dawson and traveled along the Yukon River, holding court at various villages along its banks. He stopped at St. Michaels and Nome and returned by way of Dutch Harbor - a trip of thousands of miles.

Judge Wickersham was appointed District Judge for the Third Division in 1900 by President William McKinley. Eagle City, a town on the Yukon River, was the official court site for the division. The Eagle-to-Rampart circuit involved a thousand mile round trip by boat or dogsled. When gold-claim jumping disputes at Rampart required the attention of the court in 1901, Wickersham traveled the route by dogsled in order to conduct hearings. He also presided over the Second Division in Nome when it was without a judge and traveled to the Aleutians to try a murder case. He took a similar trip in 1903 in Southwestern Alaska, holding court in various villages along the way.

Wickersham resigned his post as a District Judge in 1908 and was elected Alaska's Congressional Delegate. He served until 1920 and was re-elected in 1930. While in Congress, he introduced the Alaska Railroad Bill and legislation to establish McKinley National Park. He secured the passage of the Organic Act of 1912 - overcoming the political opposition to home rule by unregulated outside commercial interests controlling the mining, fishing, cannery, steamship, railroad, and other businesses, which treated Alaska as a colony. In 1916, he introduced the first Alaska Statehood Bill - 43 years before statehood became a reality.

The Floating Court

Peter Overfield, a Third Division judge appointed on March 3, 1909, proposed to the United States Attorney General that one of the U.S. Revenue cutters stationed in the Bering Sea come to Valdez in mid-July and transport court officials to towns and settlements along the coast - Kodiak, Chignik, Unga, Unalaska, and Dillingham. Judge Overfield's successor, Edward E. Cushman, convened the Floating Court and recommended the

court repeat the voyage in 1911, which it did with First Division Judge Lyons holding court.

The 1911 voyage of the Floating Court was reported in a lengthy feature article in the New York Times edition of August 13, 1911, under the headline "Floating Court Dispenses Justice from Port to Port." The author attributes its origin to Judge Wickersham's efforts, citing his previous trips and quoting the Judge's comments on the trip taken by Judge Cushman in 1910:

Alaska is so large that it is impossible at present to cover it by any but this itinerant method . . .

. . . the floating Court has done a splendid work. It represents law and order and enforces them. Its visits are welcomed by the good citizens and feared by the lawless.

The article describes the mission of the 1911 Floating Court employing somewhat florid language by today's standards:

Somewhere off the Alaskan coast at this very moment a vessel flying the Stars and Stripes is working her way from port to port dealing out justice to those accused of breaking the laws of the United States. This ship is the United States Revenue Cutter Thetis and her mission is hers alone, for nowhere else on any of the seven seas can her counterpart be found. In her, Uncle Sam possesses the only Floating Court in the world.

Less than a quarter of a century ago it was the wild beast of the bold spirits who tempted Fortune in the Alaskan ice fields, where 'there's never a law of God or man runs north of fifty-three!' But today the law reaches that far-and-beyond-and spares no villages or waste places in so doing. And this is due in general to the strong arm of the Government, and in particular just now to this Floating Court that set out on her unique cruise on July 8.

Once every year - though this is only the second trip made - a ship of this Revenue Cutter Service visits the principal ports of Alaska, carrying on board the court officials from Valdez, who enforce the laws and administer justice over a territory so scattered that, but for them, lawlessness might reign as supreme as in the old days. At the various points touched rude buildings or school houses are turned into impromptu court houses and justice meted out. Not infrequently, the deck of the vessel becomes the scene of the trials of the offenders. In many instances those to be tried have been brought more than a hundred miles to answer their accusers.

The territory covered by this Floating Court is known as the Third District of Alaska and embraces the southwestern portion of the country and the Aleutian Islands. Courts in the other sections are maintained much as they are in the States. All cases of a grave nature are tried at Valdez, the headquarters of the district; and there, too, is the best-equipped jail and the waiting court officials . . .

Federal law still controlled most of the fishing and natural resources after the passage of the Organic Act of 1912. To make matters worse for Alaskans, Congress passed the Jones Act in 1920 and the White Act of 1924, which reinforced outside control of the shipping and fishing industries.

The District Court's Eventual Move to Anchorage

In 1916, Anchorage was in the Third Judicial Division - a region encompassing some 162,000 square miles, with its court seat in Valdez. The development of the Alaska Central Railroad linked Seward to Anchorage, and mining interests in the Talkeetnas and Matanuska Valley. The designation of Anchorage as the headquarters city for the railroad caused Fredrick Mears, a member of the Alaska Engineering Commission, to argue for the addition of another judicial division to meet the requirements of the Cook Inlet Region. Subsequently, Anchorage and Seward competed with

Continued on page 14

Historical Bar

A brief history of the federal district court in Alaska

Continued from page 13

Valdez for designation as the court seat in the Third Division, arguing that they better served the Cook Inlet region because of their proximity, resources, and convenience, noting the cost and time involved in traveling to and from Valdez (three days by steamship to go from Valdez to Anchorage). Anchorage grew in population over the years, surpassing both of the competing cities. Notwithstanding the periodic efforts of Anchorage and Seward boosters, no decision was made, and Valdez remained the court headquarters for over two decades. In 1929, Anchorage had a population of 2,736. The population of Valdez was 442. Ten years later, the Anchorage population had risen to 4,229. Seward had 949 and Valdez had 529. Finally, in 1939, the Department of Justice moved the court headquarters to Anchorage when the Valdez court facilities were destroyed by fire.

Rising Population Growth Threatens Court System

In 1939 and 1940, the Federal Government built two military bases in Anchorage, Fort Richardson and Elmendorf. Ladd Field outside of Fairbanks, which later became Fort Wainwright, was initially built as a cold weather test station and then became an airfield for the military. When the Army took over the facility, Air Corps operations were consolidated at Eielson. All of these bases were significantly expanded with the coming of World War II. The Army Corps of Engineers joined Canadian forces in building the Alaska Highway following the Japanese attack on Pearl Harbor and built a series of small airfields along the Alaska Highway.

The increase in military personnel both during and after the war spurred population growth, especially in Anchorage and Fairbanks. By 1950, the population of the City of Anchorage had reached 11,254. The population of Fairbanks was 5,771. By 1960, the Anchorage population had quadrupled, and the Fairbanks population had doubled.

The Federal Territorial Courts experienced increasing difficulties coping with a corresponding rise in civil and criminal case filings. Inadequate funding made it impossible to increase court staff. Large case backlogs developed. Judges in Nome and Juneau spent increasing amounts of their time assisting their fellow judges in Anchorage.

It became obvious that the system could no longer cope with the rising case load.

The Integrated Bar Act

Alaska lawyers, outraged by the delay they faced in having their cases heard in court, also strenuously objected to the disciplinary power the judges exercised over them in the absence of an integrated bar with that authority. Three discipline actions were particularly bothersome to Alaska attorneys. The disposition of these cases ultimately led to the full integration of the bar. In an article in the July 1979 edition of the Alaska Bar Rag (Vol. 2, No. 6), former territorial lawyer Russ Arnett discussed two of the three cases:

Herald Stringer was a lawyer and the Third Division's most powerful Republican at the time of the death of District Judge Anthony J. Dimond in 1953. Herald backed the appointment of J.L. McCarrey Jr. as his successor and told some of the Anchorage Bar they were going to get him whether they liked it or not. He was right. Not long afterward he found himself before Judge McCarrey on a disciplinary matter. Judge McCarrey disqualified himself and sent the case to Fairbanks. The Fairbanks judge sent the case back to Anchorage. Assistant United States Attorney Jim Fitzgerald prosecuted the case, and Judge McCarrey suspended Stringer.

Arnett quotes the Ninth Circuit opinion reversing Judge McCarrey's decision:

Stringer, represented by many attorneys . . . vehemently complains of a procedure in which he acquiesced. In our judgment, once having disqualified himself for the cause, on his own motion, it was incurable for the district judge to resume full control and try the case.

The second case involved Anchorage attorney Bailey Bell.

Bailey Bell was handcuffed in his office in the Central Building by a Deputy marshal because of a disciplinary charge against him and marched across the street to the Federal Building. A Fairbanks judge who was new to Alaska and had spent most of his time in Fair-

banks tried the case. He held that the prevailing ethical standards in Anchorage were so abysmal that it would be unfair to punish only Bailey. We now realized something had to be done, if only to quit referring Anchorage grievances to Fairbanks judges.

A third case, involving a 30-day suspension of Ketchikan attorney Wilfred Stump by District Judge George Folta for unethical conduct arising out of a political argument between Stump and a territorial legislator, William Boardman, fanned the flames for the passage of an integrated Alaska Bar Bill that would give the bar control over the discipline of its attorneys. The Bill was introduced in the 1955 session of the Territorial legislature and passed easily.

A Model Constitution

In the same session, the legislators passed a measure calling for a constitutional convention to draft a model constitution for what the Bill's supporters hoped soon would be a new state. Fifty-five delegates subsequently met at the Fairbanks campus of the University of Alaska to draft the constitution. A proposal concerning the judicial branch was the first order of business. It was based upon ABA and Missouri Plan models and provided for the state court system and the method of selecting judges Alaska has today. The proposal adopted by the delegates became part of the model constitution, and was ratified by the voters in 1956. It could not go into effect, however, until Alaska was admitted to the Union.

Statehood

Between 1943 and 1955 there were several attempts to secure statehood for Alaska. In March of 1950, the U.S. House of Representatives approved a bill for statehood that failed to get through the Senate. Another statehood measure died in the Senate in 1952. Also in 1952, passage of the Immigration and Naturalization Act required those traveling between Alaska and the Lower 48 to go through Customs.

However, by the time the House of Representatives reconvened in January 1958, President Eisenhower had endorsed the idea of Alaska Statehood. An Alaska Statehood Bill circumvented the powerful Rules Committee whose Chairman, Representative Howard W. Smith of Virginia, was hostile to statehood for Alaska and clearly intended to obstruct the bill. It was brought up on a "privileged status" by a roll call vote of 217 to 172.

On June 30, 1958, following six days of debate, the Senate approved the House Statehood Bill by a 64 to 20 vote. The House then passed the bill by a vote of 210 to 166. Enabling legislation provided that the federal territorial district courts continue in operation for approximately three years to give the state time to establish its own judicial system. The Act was subject to ratification by Alaska voters.

Celebrations

Alaskans enthusiastically celebrated the passage of the Statehood Act in Anchorage, Fairbanks, and Juneau and elsewhere in the State.

Eric Morrison, a Juneau Empire reporter, reviewed archived newspapers and interviewed participants in the celebrations that followed the enactment of the Statehood Act for an article published in 2008 in a special newspaper edition commemorating the 50th anniversary of statehood. The article describes the scene in Anchorage, Fairbanks, and Juneau.

In Anchorage, there were bells and sirens. A giant American Flag with 49 stars was draped over the front of the Federal Courthouse on 4th Avenue. The Fur Rendezvous Queen, Rita Martin, pinned the 49th star on the flag with the assistance of the Anchorage Fire Department in front of an enthusiastic crowd of citizens. That evening, an enormous bonfire was lit on the Anchorage Park Strip.

Call for nominations for the 2010 Jay Rabinowitz Public Service Award



ANDY HARRINGTON
2009 Recipient



JUDGE SEABORN J. BUCKALEW, JR.
2008 Recipient



BRUCE BOTELHO
2007 Recipient



LANIE FLEISCHER
2006 Recipient



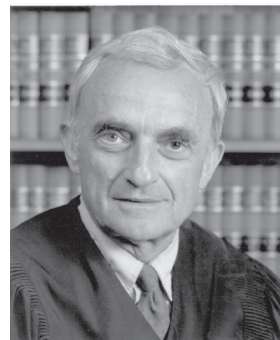
JUDGE THOMAS B. STEWART
2005 Recipient



ART PETERSON
2004 Recipient



MARK REGAN
2003 Recipient



Jay Rabinowitz

The Board of Trustees of the Alaska Bar Foundation is accepting nominations for the 2010 Award. A nominee should be an individual whose life work has demonstrated a commitment to public service in the State of Alaska. The Award is funded through generous gifts from family, friends and the public in honor of the late Alaska Supreme Court Justice Jay Rabinowitz.

Nominations for the award are presently being solicited. Nominations forms are available from the Alaska Bar Association, 550 West Seventh Avenue, Ste. 1900, P. O. Box 100279, Anchorage, AK 99510 or at www.alaskabar.org. Completed nominations must be returned to the office of the Alaska Bar Association by March 1, 2010. The award will be presented at the 2010 Annual Convention of the Alaska Bar Association.



ALASKA BAR
FOUNDATION



Continued on page 15

Historical Bar

A brief history of the federal district court in Alaska



The eight original Superior Court Judges prepare to board the plane to fly to New Jersey for training - 1959. Front to back: Walter Walsh, Harry Arend, James Fitzgerald, Hugh Gilbert, Edward Davis, Everett Hepp, James von der Heydt, and J. Earl Cooper.

Continued from page 14

Fairbanks celebrated by raising a giant star and dumping dye into the Chena River from the Wendell Street Bridge with the intention of turning the river color to gold. Unfortunately, the dye turned the river bright green, a color more suitable for a St. Patrick's Day celebration.

There was enormous celebration in the Capitol city on June 30, 1958. According to Morrison, there was dancing in the streets, the wailing of sirens, and the tolling of the replica of the Liberty Bell in front of the federal office building, as well as a fireworks display and a large bonfire.

Populations

The city of Anchorage at the time had a population of approximately 44,000 according to the 1960 census. The town then looked nothing like today's modern city. The only buildings over three stories high were the identical 1200 L Street and McKinley Buildings, the Anchorage/Westward Hotel, the Turnagain Arms, the Hohn Apartments, and the Knik Arms, all of which are still standing. The Fourth Avenue Theater and the Federal Building were the principal downtown architectural landmarks. None of the modern downtown hotels or office buildings were in existence. Many of the town streets ended at 15th Avenue. Spenard was a separate community that would not be joined with the City of Anchorage until 1975. There was no commercial development along Northern Lights Boulevard. There was scattered housing around the periphery of the city; but the large housing developments that extend South and East and fill today's Anchorage Bowl did not exist. Most of these areas were blank on Geological Survey maps of the period. Some indicated the presence of swamps and an occasional gravel pit. The few roads that crossed these spaces were dirt.

The 1959 Martindale-Hubbell directory showed 60 attorneys admitted to practice in Anchorage, including one Federal Judge, J. L. McCarrey, Jr. Fairbanks had 22 lawyers listed as admitted to practice in Alaska, including Federal Judge Vernon Forbes and City Judge Hubert Gilbert. Juneau had 26 lawyers. Ketchikan entries showed 12 attorneys. In Nome, there were two attorneys, only one of whom, James von der Heydt, was practicing law, and one Federal Judge, Walter Hodge. Sitka had one attorney.

Final Steps to Statehood

On August 27, 1958, Alaskan citizens voted for statehood by a 5-1 majority. The Anchorage Daily News story carried the banner headline: "STATE-

HOOD! On January 3, 1959, President Dwight D. Eisenhower signed the official proclamation that made Alaska the 49th state. In an article dated Monday, January 12, 1959, captioned "THE PRESIDENCY: New Stars, Old Stripes" Time magazine reported the event:

... Using six pens to be handed out as souvenirs, President Eisenhower signed the proclamation in the White House at 12:01 p.m., Jan. 3, 1959, that admitted Alaska to the Union as the 49th state. Last state to be admitted: Arizona, Feb. 14, 1912. Reason for the precise timing: the 85th Congress expired at noon, and signature any earlier would have given Alaska's two Senators and single Representative a seniority lead on the new members of the 86th Congress.

Thus last week the U.S. picked up a new frontier state more than twice the size of Texas, a vast treasure chest of iced-in natural resources, a strategic base with frontiers on the Bering Strait, three miles from Asia. The U.S. also picked up in Alaska its first noncontiguous state, and thus added a new dimension - and a new promise - to the Union that had grown from Plymouth Rock and Philadelphia through Appomattox and Omaha Beach to become the bulwark of the free world.

Using six more pens, the President next signed an executive order designating a new 49-star national flag to become official on the Fourth of July. Design of the new flag: seven staggered rows of seven white stars set in a blue canton within the field of 13 alternate red and white stripes. Said the President as he signed: 'Well, that is a historic thing.' ..."

The Establishment of the Alaska Court System

Notwithstanding the three-year extension in the Statehood Act, Alaska lawyers and legislators didn't waste any time designing the State Court System. On January 29, 1959, the Judiciary Committees of both houses met and, after consulting with the Board of Governors of the Alaska State Bar and local Bar Associations, provided a bill for that purpose.

In May and June of 1959, the new Judicial Council presented the names of nominees for the State Supreme Court. Governor Egan selected Walter Hodge, John H. Dimond, and Buell Nesbett, with Nesbett designated as Chief Justice. In October 1959, the Governor chose the first Superior Court Judges: Walter Walsh, Ketchikan; James von der Heydt, Juneau; Hugh Gilbert, Nome; Ed Davis, James Fitzgerald, and Earl Cooper, Anchorage; and Evertt Hepp and Harry Arend, Fairbanks. The new Alaska judges were sworn into office on November 29, 1959. Walter Hodge, one of the three new state Supreme Court Justices, was nominated by Dwight D. Eisenhower to be the first judge of the United States District Court for the District of Alaska. He was confirmed by the United States Senate on February 18, 1960, and received his commission on February 19, 1960, replacing Interim Judge J. L. McCarrey, Jr.

Judge Hodge, Joe Kroninger, and the New Federal District Court

Beyond his brief tenure as an Associate Justice of the Alaska Supreme Court, Judge Hodge brought a wealth of experience to the new Federal District Court. Following his graduation from the University of Washington School of Law in 1919, he served as a law clerk for the Supreme Court of Washington State for one year and then went into

private practice. He served as a deputy prosecuting attorney for Skagit County, Washington between 1921 and 1929, then resumed private practice in Seattle from 1929 to 1934 before moving to Cordova, Alaska, where he practiced law until 1954. He next served as the U.S. Territorial Judge in the U.S. District Court for the Territory of Alaska in Nome, Alaska.

In 1956, while serving as the Territorial Judge in Nome, Hodge asked Joe Kroninger to accept the post of Clerk of Court in Nome. At the time, Kroninger was the Regional Deputy in Charge of the Department of Taxation for the Territory of Alaska, Second Judicial Division, which consisted of all of Northwestern Alaska. In that capacity, Kroninger was responsible for the collection of income and excise taxes, as well as licensing in the district. After accepting the position, Kroninger served as Clerk of Court in Nome until 1960. After Hodge was appointed to the Alaska Supreme Court, Kroninger continued to serve as the Clerk of Court in Nome without a resident judge. When Judge Hodge was selected as the new District Judge in Anchorage, he appointed Kroninger as the first Clerk of the new U.S. District Court.

In his Oral History for the Ninth Circuit on September 8, 1997, Kroninger described the political process by which Hodge was selected as the first Federal District Court Judge for the District of Alaska:

A little story about how politics enters into the appointment of judges. Judge Hodge was, of course, a Republican as the administration in Washington was Republican. Towards the end of 1959, it appeared that the state would be ready to start operating, so a name had to be submitted to the Justice Department in Washington, D.C. for a person to be appointed as the one U.S. District Judge for the District of Alaska. The State Bar and also the Republican Committee endorsed Judge Hodge. His name was to be submitted by the Republican National Committeeman, who happened to be Wally Hickel ...

Wally said he would not submit the judge's name as he was the only Republican that had been appointed by Democrat Bill Egan to the Supreme Court. Things were at an impasse. I, of course, knew that if Judge Hodge was appointed, I would be appointed as the first clerk. I think it was in January of 1960, the headlines of the Anchorage Times that we got in Nome were 'Judge Hodge Out. Hickel Refuses to Endorse.' So things looked pretty sad to me.

The Justice Department in Washington knew that everyone else was for Judge Hodge and they just ignored Wally Hickel and submitted the name to President Eisenhower who nominated Judge Hodge to be the first U.S. District Judge.

Continued on page 16



Judge Walter Hodge was one of the first judges appointed to the Alaska Supreme Court at Statehood in 1959. Shortly thereafter, President Dwight D. Eisenhower nominated Hodge as the first judge of the U.S. District Court for the District of Alaska. Here, he is being sworn by Alaska Supreme Court Justice Anthony Dimond.

Historical Bar

A brief history of the federal district court in Alaska



Continued from page 15

“Nome’s Triple Contribution”

The triple appointments of Judge Hodge, first to the Alaska Supreme Court, and then to the Federal District Court; James von der Heydt to the Alaska Superior Court in Juneau; and Joe Kroninger to the office of Clerk of Court in the new Federal District Court - all of whom had worked and resided in Nome, Alaska - was duly noted in the Wednesday, February 17, 1960 edition of the Nome Nugget newspaper:

Nome and Northwestern Alaska may be at the wrong end of the State when it comes to getting allocation of funds or providing road money or proper defenses, but it has done more than its share in providing distinguished members to the official family of the new State.

Nome’s only lawyer, Jim von der Heydt, was chosen for one of the Alaska Superior Court Judges; Nome’s District Judge, Walter H. Hodge, was chosen as one of the three Supreme Court Justices, only to be selected as the first Federal Judge of the State.

Nome’s Clerk of the Court, Joe Kroninger, steps up to be the first U.S. Clerk for the new U.S. District Court in the State.

They achieved their high offices by outstanding service to their community, serving faithfully and giving their time unselfishly, thereby demonstrating their leadership and character.

Although Judge Hodge was kept busy in other parts of the State much of the time, he took an active part in Rotary, Chamber of Commerce, Boy Scouts and his church here. Von der Heydt gave his time to assist the City in its legal problems, served as President of both the Chamber of Commerce and Rotary, and added much valuable research on the study of wild birds in this area.

Joe Kroninger has been most active in the road program for Northwestern Alaska and mining problems, and has given much of his time, keeping posted and alert on developments in these fields. Through his determined efforts, the road program has been given much publicity, support and recognition.

Nome will miss these outstanding residents, but we know they will continue to assist this area whenever and however they can. We are fortunate to have had such men who understand the little-known legal problems peculiar to the “back door of America,” now stationed in other areas of the big State.

The community extends to these three gentlemen its best wishes for continued success.

Judge Hodge wasted no time starting up the new court. He instructed Kroninger to fly to Anchorage to interview and select his new staff from a list of applicants. Among the applicants selected was JoAnn Myres, who would someday succeed Kroninger as Clerk of Court. Hodges called Kroninger again a few weeks later and informed him that the President intended to issue a proclamation that the New Court was established, staffed and open for business. He told Kroninger that he was to go to Anchorage, take his oath of office, give his staff their oaths, and set up the office. Shortly after he arrived in Anchorage, Kroninger was met by Anna May Vocacek, the Clerk of the Alaska Superior Court, along with the Court Administrator. They were concerned that the new Clerk might not cooperate with them, because the previous Clerk of the Territorial Court in Anchorage had made things very difficult for them as they were trying to set up their new offices. Kroninger assured them that he intended to fully cooperate. And he did.

Until the new State Court system had its own courthouse accommodations, the State and Federal Courts shared all the office space and courtrooms in the Federal Courthouse on 4th Avenue. There were two courtrooms in the Federal Building. One was partitioned and made into two courtrooms. The Superior Court Judges used these along with a small courtroom and office used by the third Superior Court Judge. The remaining full Courtroom was reserved for the Federal Court.



The U.S. District Court judges & magistrate judges gathered for a group photo in November of 2007. Seated in the front row, left to right, were Senior Judge H. Russel Holland and Judge Timothy M. Burgess. In the back row (left to right) were Senior Judge James M. Fitzgerald, Magistrate Judge John D. Roberts, Senior Judge James K. Singleton, Judge John W. Sedwick, Magistrate Judge Deborah M. Smith, Judge Ralph R. Beistline, and Senior Judge James A. von der Heydt. Photo by Family Art Photo

Initially, all the files were kept together. But once Alaska became a state with its own court system, it was necessary to distinguish between state and federal jurisdictions. The Territorial Judges during the transition period started to identify the cases that came under state jurisdiction and entered the necessary orders to insure they were in the right court. This process continued with the old cases until it was completed.

Federal cases outside of Anchorage were filed in the various state court locations in duplicate and a copy was sent to the Federal District Court Clerk’s office in Anchorage. The U.S. District Judge acted as a circuit judge in these cases and traveled to the various cities to hold hearings and trials.

Additional Judges

On August 28, 1961, President John F. Kennedy nominated Raymond E. Plummer, a former U.S. Attorney for the District of Alaska, to become the second Judge of the U.S. District Court in Alaska. He was confirmed by the United States Senate on September 18, 1961, and received his commission on September 18, 1961. Judge Plummer had his headquarters in Fairbanks until 1964, when he moved to Anchorage.

On August 30, 1966, Judge Hodge assumed senior status. He was replaced by Juneau Superior Court Judge James A. Von der Heydt, who was appointed by President Lyndon B. Johnson and commissioned on November 3, 1966. Judge von der Heydt moved to Anchorage. Judge Plummer became the Chief Judge. When Judge Plummer took senior status on June 1, 1973, Judge von der Heydt replaced him as Chief Judge. He served in that capacity from 1973 to 1984, when he assumed senior status.

Judge Plummer was replaced by Alaska Supreme Court Justice James M. Fitzgerald, one of the original Superior Court Judges appointed by Governor Egan in 1959. He was the Presiding Judge of the Superior Court from 1969 until 1972, when he was appointed an Associate justice of the Alaska Supreme Court. Judge Fitzgerald was nominated for the position of Federal District Judge by President Gerald Ford on December 2, 1974. He was confirmed on December 18, 1974, and received his commission on December 20, 1974. He succeeded Judge von der Heydt as Chief Judge and served the court in that capacity until he assumed senior status on January 1, 1989.

A Remarkable Pair

Judges von der Heydt and Fitzgerald set the

bar for the judges that followed them. But even before they began their distinguished careers in the State and Federal Courts, they had led two of the most adventurous lives imaginable.

Judge von der Heydt

James Arnold von der Heydt was born in 1919 in Miles City, Montana. He grew up in the Butte/Ramsey area of Western Montana and Oak Park, Illinois. He attended Albion College in Michigan, where he received his B.A. degree in 1942. In his first job after graduation, he worked as a teletypist for Western Union. His next employment was with an Iowa construction company that was building a steel bridge across the Tanana River, just south of Tok, Alaska. When the bridge was finished, he spent that winter working on a highway maintenance crew at Gardiner Creek, about 25 miles North of the Canadian border near Northway, Alaska. The crew was expected to keep their section of the Alcan Highway open to Military traffic during the long winter months when temperatures sometimes dropped as low as seventy degrees below zero.

In June of 1944, he was employed as a truck driver by a Juneau construction company that was building the Marks Air Force Base in Nome (now the Nome Airport). When that job was finished, he was hired as a Deputy U.S. Marshal in Nome. His law enforcement work required a great deal of traveling that took him from Nome, to Barter Island, Hooper Bay, Cape Prince of Wales, Kotzebue, Unalakleet, Stebbins Village, and other remote locations by bush plane, native boats, and occasionally dogsleds. Many years afterwards, Judge von der Heydt authored two books inspired by his experiences in Nome and Northern Alaska and the characters he met there: “Mother Sawtooth’s Nome” and “The Short and Long of It.”

In 1948, after three and a half years as a Deputy U.S. Marshal, his interest piqued by his experiences in law enforcement, von der Heydt decided to pursue a career in the law. He applied to the Northwestern University School of Law in Chicago, was accepted, and graduated in 1951. Following graduation, von der Heydt returned to Nome, where he served as U.S. Commissioner for the Territorial Court for six months before he was appointed a U.S. Attorney for the District of Alaska by President Truman. He held the latter position for about two and a half years, from 1951 to 1953, when he established a solo law practice in

Continued on page 17

Historical Bar

A brief history of the federal district court in Alaska

Continued from page 16

Nome that continued until his appointment to the State of Alaska Superior Court in 1959. In 1952, he married Verna Johnson. He was a Member of the Alaska House of Representatives during the 1957 - 1959 term. Finally, he was elected to the Board of Governors of the Alaska Bar Association and served briefly as President in 1959, before he was appointed to the Alaska Superior Court in Juneau.

Judge Fitzgerald

James Martin Fitzgerald was born in 1920 in Portland, Oregon. He attended Jefferson High School, where his major interest was sports - football and track. He had been accepted by the University of Oregon and was attending early football practice in the fall of 1940 when his National Guard Unit was called up for active duty. In February 1941 he received his honorable discharge. He returned to the University of Oregon in time for spring training. While he was there, a football coach from Willamette University recruited him for their football team, offering him a spot on the team beginning in the fall. Fitzgerald accepted, and was enrolled as a freshman at Willamette, where he made the starting team.

On December 6, 1941, the team played a football game against the University of Hawaii on Oahu. The following morning, Pearl Harbor was bombed by Japan. The team members were conscripted, given uniforms and rifles, and were put on guard duty until just before Christmas. They were put on board an American ship, the Coolidge, that took them to San Francisco, along with military personnel wounded in the bombing. While aboard, the team members helped take care of the wounded. When they returned to the United States, Fitzgerald enlisted in the United States Marine Corps.

After boot camp, Fitzgerald initially was trained to be a torpedo man on a dive bomber. After the naval torpedo squadron at Midway was unable to score a single hit on a Japanese ship at the battle of Midway, the program was scrapped. Fitzgerald was sent to the South Pacific as an ordinance man. He was trained in aerial gunnery and became a radio gunner in a torpedo squadron operating in the Solomon Islands. The squadron's principal target was Rabaul - a major Japanese air base and supply center for Japanese troops in the Solomons.

Following his honorable discharge from the Marine Corps in December of 1946, Fitzgerald returned to Portland where he was employed by the Fire Department. While he was a firefighter, he took a court stenographic course and attended a night law school. Subsequently, he returned to Willamette University, where he was allowed two years of college credits for his military service. After completing one year of Liberal Arts, he was admitted to the Willamette Law School in a combined program. He received his B.A. in 1950 and his law degree in 1951. After completing the Oregon Bar exam, he and his new wife, Karen, took the summer off and drove up the Yellowknife Highway to Prince Rupert in their Model A Ford. They took a Canadian ferry over to Ketchikan where he worked at a lumber mill for several weeks, and then, when the salmon season started, on a salmon cannery tender out of Ward Cove.

After he received a letter informing him that he had passed the Oregon Bar, Fitzgerald returned to Seattle, where he had a fellowship in a graduate program at the University of Washington Institute of Public Affairs. At some point, he decided to take a year off from his studies and wrote to some attorneys he had met while he was in Ketchikan to see if he could land a job with their firms. One lawyer suggested that he apply for an Assistant U.S. Attorney position in Ketchikan that was about to open. Fitzgerald applied for the job and was accepted. Instead of returning to his studies in Seattle, he remained in his position for four years. During that time, he brought indictments against and successfully prosecuted the Chief of Police and the U.S. Marshal on corruption charges.

Subsequently, Fitzgerald was employed as Anchorage City Attorney, legal counsel to the Governor

of Alaska, and the first State Commissioner of Public Safety before he was appointed to the Alaska Superior Court in 1959.

Joe Kroninger Retires

After 16 years of devoted service to the Federal District Court, its first Clerk of Court, Joe Kroninger, retired and was replaced by JoAnn Myres. In his Oral History, Kroninger summed up his relationship with the judges he served:

During the time I was Clerk, I worked with four judges – Judge Walter H. Hodge, Judge Raymond E. Plummer, Judge James A. Von der Heydt, and Judge James Fitzgerald. Each of these men were not only great judges, but wonderful human beings. I don't recall ever a time that any of them criticized me for anything any way I ever conducted the Clerk's Office. For this I will always be grateful.

During my time as Clerk, I belonged to the Federal Court Clerks Association. Once each year, the clerks have a conference somewhere in the United States of all the clerks from all of the various districts, including Hawaii, Guam, in those days Panama, and Puerto Rico. At these conferences, we used to hear many horror stories from clerks about some of their judges and what terrible working conditions they had to endure. After each one of these conferences, I would return and shake hands with my judge and say thanks for being you.

A New Federal Court Building

When JoAnn Myres became Clerk of Court, she took on the responsibility of preparing the move to a new Federal Building. She describes the beginning of the transition process in her Oral History:

The first year of my Clerkship was taken up with the planning for the Court's move. It had finally been decided that the Court would move to the new federal building - its current location. The building was already under construction and the space to be occupied by the Court had to be designed. Judge von der Heydt and I spent most of our time on this project. When finalized, there was supposedly enough space to accommodate the Court far into the future and [it] contained one unfinished courtroom and chamber . . .

In July of 1984, H. Russel Holland was appointed as Alaska's fifth United States District Judge, replacing Judge von der Heydt who had taken senior status.

Judge Holland's appointment brought about the completion of the previously unfinished chamber and courtroom. The court space by then was filled to overflowing with every entity housing doubled or tripled. It was determined that [a] partial solution to space needs would be to relocate the Bankruptcy Court into the old Federal Building which was being renovated. That move allowed expansion of the Magistrate, Probation and Library space as well as additional space for the Bankruptcy Court.

JoAnn Myres retired in June of 1989 and was succeeded as Clerk of Court by Phyllis Rhodes. She summed up her years in the Clerk's Office as follows:

I believe overall the greatest impact on the Clerk's Office was the Speedy Trial Act and I look upon the Speedy Trial Act in a sense as the rebirth of the Clerk's office. The monitoring of criminal cases - the required tracking and record keeping



The U.S. Federal Building and Courthouse as it stands today at 222 W. 7th Ave. in Anchorage. Photo by Kazi Ashan

performed by the Clerk's Office grew to civil case management; the evolution of the Clerk's Office from pure record keeping to active involvement in the management of all cases; the evolution of Court recorders instead of Court Reporters handling all Court proceedings; the evolution of in-court deputies to true case managers assisting in the handling of cases; the beginning of the evolution into computers . . .

Over the years that followed Myres' retirement, three Clerks of Court, Phyllis Rhodes, Michael Hall, and Ida Romack, oversaw the conversion to a fully automated electronic case management and filing system.

The Computer Revolution

In 1985, there were no computers in Federal District Court in Alaska. The Clerks' Office docketed pleadings on a hard docket sheet using typewriters, put the original copy in the case file, and delivered the second copy to Chambers. Each Chamber had its own method for keeping track of cases. Law Clerks did the case tracking for their judges using card file boxes. By 1987, the first computers had appeared in a few chambers and court offices. They were used primarily as more efficient electronic typewriters. With the help of the new computers, the Clerk's Office began an automatic docketing system, still relying on paper.

In 1986, the judges decided that the chambers case management system wasn't working satisfactorily and directed the Clerks Office to take over this responsibility. The law clerks turned over their motion card file boxes to the Clerks' Office. In August of 1994, the Court created the Alaska Case Management System (ACMS) for civil cases. In 1997, criminal cases were added.

Advances in software, along with the growth of the Internet as a research and communication tool, brought needed changes and new efficiency to many court operations, but did not alter the Court and counsels' fundamental reliance on paper. Case management still involved the filing, duplication, sorting, retrieval, and storage of typed and, sometimes, handwritten paper documents. The storage of closed case files required more and

Continued on page 18

Historical Bar

A brief history of the federal district court in Alaska



Continued from page 17

more space and became an increasing concern as time passed.

It was not until January 2006 that the Alaska Federal Court ended its paper dependency. The Administrative Office of the U.S. Courts mandated the adoption by all Federal Courts of two electronic Internet services - one to provide public access to court electronic records (PACER) and the other to replace the existing case management system with an electronic Internet system (CM/ECF).

PACER offers public access to case dockets to retrieve such information as: (1) a listing of all parties and participants to an action, including judges, attorneys, and trustees; (2) a compilation of case related information; (3) a chronology of dates of case events; (4) a claims registry; (5) appellate opinions; (6) judgments; and (7) copies of documents on file.

CM/ECF allows the Court to maintain electronic case files and offers electronic filing of court documents over the Internet. Whenever pleadings are filed electronically, an automatic e-mail to court personnel and related agencies is generated. Non-public access documents, such as pre-sentence reports by the Federal Probation Office, are sent internally through CM/ECF. Today, most attorneys use these systems for research and filing their pleadings and related documents.

Three Elevations

Judge Holland

H. Russel Holland was born in Pontiac, Michigan, in 1936. He graduated from the University of Michigan in 1958 and received his law degree from the University of Michigan Law School in 1961. When he was enrolled in the fall semester of his last year of law school, he learned that a classmate who had taken a summer session and was graduating at the end of the fall semester, had been hired for an attorney position with the State of Alaska in Juneau. Encouraged by his friend's good fortune, Holland wrote three letters - one to the Alaska Supreme Court inquiring about possible law clerk openings, an identical letter to the Alaska Superior Court in Anchorage, and a third letter to the U.S. Attorney, Warren Colver, regarding possible openings for the position of Assistant U.S. Attorney.

These were inquiry letters only; no resumes were included.

Holland received a letter by return mail from Buell Nesbitt, the Chief Judge of the Alaska Supreme Court, offering him a clerkship. Holland immediately accepted the offer and began his clerkship with Justice Nesbitt the following summer. Almost two years later, he received a letter from U.S. Attorney Colver that was forwarded from his old address in Ann Arbor. The letter offered him the position of Assistant U.S. Attorney.

Holland accepted the U.S. Attorney's offer and worked as an Assistant U.S. attorney from 1963 to 1965 when he entered private practice in Anchorage. He practiced law in Anchorage from 1965 to 1984. On March 6, 1984, he was nominated by President Ronald Reagan to fill the Federal District Court seat vacated by Judge von der Heydt when he took senior status. Holland was confirmed by the United States Senate on March 26, 1984, and received his commission on July 16, 1984. He served as Chief Judge from 1989 to 1995. He assumed senior status on September 18, 2001.

Judge Kleinfeld

Andrew J. Kleinfeld was born in New York City on June 12, 1945. He attended Wesleyan University where he received his B.A. in 1966. He graduated from Harvard Law School in 1969. Following his graduation, Kleinfeld clerked for Alaska Supreme Court Justice Jay Rabinowitz before entering private practice in Fairbanks. During his years in private practice, he also served as the part-time U.S. Magistrate for the Federal District Court in Fairbanks. While in practice, he was elected President of the Tanana Bar Association. He also served on the Board of Governors of the Alaska Bar Association from 1981 to 1984. He was President of the Bar Association from 1982-1983.

Kleinfeld was nominated for the position of U.S. District Court Judge for the District of Alaska on March 26, 1986, confirmed by the United States Senate on May 14, 1986, and received his commission on May 15, 1986.

On May 23, 1991, President George H.W. Bush nominated Kleinfeld to a seat on the Ninth Circuit Court of Appeals. He was confirmed by the Senate on September 12, 1991, and received his commission on September 16, 1991.

Kleinfeld is only the second individual from the State of Alaska to serve on the Ninth Circuit Court of Appeals. Former Alaska Supreme Court Chief Justice Robert Boochever preceded him in 1980.

Judge Singleton

James K. Singleton, Jr. was born in 1939 in Oakland, California. He attended the University of California at Berkeley, earning his A.B. in 1961 and his LLB from the Boalt Hall School of Law in 1964. He was in private practice in Anchorage from 1964 to 1970 when he was appointed an Alaska Superior Court Judge at Anchorage. He has the distinction of being the youngest person in the history of the State of Alaska to be appointed a Superior Court Judge. In 1980, he was appointed to the Alaska Court of Appeals, where he served until 1990.

Judge Singleton was nominated by President George H.W. Bush on January 24, 1990, to a seat on the United States District Court for the District of Alaska. He was confirmed by the United States Senate on May 11, 1990, and received his commission on May 14, 1990. He served as Chief Judge from 1995 until 2002, and assumed senior status on January 27, 2005.

The Current Court

There are three full time U.S. District Court Judges currently serving the District of Alaska: Judge John W. Sedwick, Chief Judge Ralph R. Beistline and Judge Timothy Mark Burgess. Judges Holland and Singleton carry reduced caseloads based on their elevation to senior status.

Judge Sedwick

John W. Sedwick was born in 1946 in Kittanning, Pennsylvania.

His family moved to Alaska, arriving on December 7, 1951. He recalls having heard his father reassure his mother that Anchorage was much like any other western town. He was very unhappy to discover that Anchorage was nothing like the West that inhabited his 5 year old's imagination - no cowboys, no horses, no gunslingers, not even a hitching post in front of the hotel. He spent his growing-up years in Anchorage - from 1951 through 1964 - when he went off to college. He received his B.A. degree from Dartmouth College in 1968, and earned his J.D. degree from Harvard Law School in 1972. From 1972 to 1981, he was in private practice in Anchorage, Alaska. From 1981 to 1982, he was the Director, Division of Land and Water Management, Department of Natural Resources, State of Alaska. He returned to private practice in Anchorage between 1982 and 1992.

On July 2, 1992, he was nominated by George H.W. Bush to be a United States District Court Judge for the District of Alaska, filling the seat vacated by Judge Kleinfeld's elevation to the Ninth Circuit Court of Appeals. He was confirmed by the United States Senate on October 8, 1992, and received his commission on October 9, 1992. He served as Chief Judge between 2002 and September of 2009, when he was succeeded as Chief Judge by Judge Beistline.

Judge Beistline

Ralph R. Beistline was born in Fairbanks, Alaska, in 1948, and has lived in Alaska all his

life. He received a B.A. degree from the University of Alaska in 1972 and a J.D. degree from the University of Puget Sound School of Law in 1974. He was a law clerk to three judges on the Superior Court in Fairbanks from 1974 to 1975 when he entered private practice in Fairbanks from 1975 to 1992. His first criminal case was a first degree murder trial. Beistline was appointed to represent a gold miner accused of deliberately shooting and killing another miner who was unarmed and running away at the time. The case was tried to a Fairbanks jury that acquitted Beistline's client. The co-defendant, who was at the scene, was busy shooting another unarmed miner several times in the back with a handgun. He was convicted on two counts of manslaughter. After his initial success at criminal defense work, Beistline decided to quit while he was ahead and concentrated on civil cases thereafter.

While he was engaged in his law practice, Beistline was elected President of the Tanana Bar Association. Thereafter, he was the Fairbanks member on the Board of Governors of the Alaska Bar Association, and then was elected President of the Alaska Bar Association in 1986. He also served with distinction as editor of the *Alaska Bar Rag*.

Beistline was appointed to the Superior Court in Fairbank in 1992.

He served as the Presiding Judge from 1997 to 2002. On November 8, 2001, he was nominated by President George W. Bush to fill the U.S. District court seat vacated by Judge Holland when he took senior status. He was confirmed by the United States Senate on March 12, 2002, and received his commission on March 19, 2002. On September 1, 2009, he became Chief Judge of the U.S. District Court for the District of Alaska.

Judge Burgess

Timothy M. Burgess was born in 1956 in San Francisco, California.

He received his B.A. degree from the University of Alaska in 1978 and his M.B.A. in 1982. In 1987, he received his J.D. from the Northeastern Law School. He was in private practice in Anchorage from 1987 to 1989. In 1989, he became an Assistant U.S. Attorney. In 2001, he was selected United



The U.S. Federal Building and Courthouse in Fairbanks today. Photo by Sherry Mons

States Attorney for the District of Alaska. On July 28, 2005, he was nominated by George W. Bush to fill the seat on the U.S. District Court that was vacated when Judge Singleton took senior status. He was confirmed by the United States Senate on December 21, 2005, and received his commission on January 23, 2006.

U.S. Magistrates/Magistrate Judges

Throughout much of its 50-year history, the United States District Court for the District of Alaska has employed U.S. Magistrates in locations throughout the state to perform certain designated judicial functions. Initially, all of these were part-time positions similar to those of the U.S. Commissioners that preceded them. Commissioners previously were employed to try petty offenses

Continued on page 19

Historical Bar

A brief history of the federal district court in Alaska



Continued from page 18

committed on federal property, issue search and arrest warrants, set bail, and conduct initial proceedings in criminal cases.

The Office of United States Magistrate was established by the Federal Magistrates Act of 1968. The Act created a new federal judicial officer with expanded duties involving a wide range of proceedings to expedite both the criminal and civil caseloads of the United States District Courts.

In 1979, Congress expanded the U.S. Magistrates' authority to include all federal criminal misdemeanors. In 1990, Congress added the term "judge" to "magistrate," recognizing the increasing importance of the work and authority of the office.

In June of 1977, John Roberts, a former Assistant U.S. Attorney for the District of Alaska, was appointed to be the first full-time U.S. Magistrate at the U.S. District Court at Anchorage. He was the only full-time U.S. Magistrate in Alaska. There were part-time positions in Fairbanks, Juneau, Ketchikan, and Kodiak. In 1989, an additional half-time position was authorized in Anchorage in order to handle the increasing workload. The position was filled by Anchorage attorney Harry Branson. When it was upgraded in 1993, Branson became the second full-time U.S. Magistrate Judge. He retired in May of 2005 and was replaced in February of 2007 by Deborah Smith, a former Assistant U.S. Attorney for the District of Alaska.

Three part-time U.S. Magistrates later became judges: Andrew Kleinfeld, Patricia Collins, and Philip Pallenberg. Collins and Pallenberg were appointed to the Alaska Superior Court in Juneau, where Collins is now the Presiding Judge. At the present time, the part-time U.S. Magistrate Judges include: former Alaska Superior Court Judge Michael Thompson in Ketchikan, Leslie Longenbaugh in Juneau, Scott Oravec in Fairbanks, and Matt Jamin in Kodiak.



The U.S. District Court "family" as it has grown in 2009. Photo by Nick Dupont

Conclusion

This "Brief History" is intended to celebrate the 50th Anniversary of the U.S. District Court for the District of Alaska and the men and women responsible for its growth and development. To properly tell the story of this institution, it has been necessary to look back in time to the early Federal Territorial Courts, when most of Alaska was an unexplored wilderness and Federal Judges, U.S. Attorneys, Clerks, and U.S. Marshals were forced to resort to extraordinary means to build a system of justice from scratch. Along the way, some amazing individuals rose to meet these challenges. Their stories deserve far more attention than space allows in this article, as do those of many of the

remarkable people who followed them - all the way up to the present day.

Somehow, whether by chance or by choice, these individuals were drawn to Alaska and the challenges posed by life on the Last Frontier. Although many of those that distinguished themselves might well have done so elsewhere - the magnitude of their efforts and the effect on a whole society would not have been as great. Alaska changed them and they changed Alaska.

The author is a retired U.S. Magistrate Judge for the District of Alaska, and a founder and former Editor of the Alaska Bar Rag.

Law Library News

By Catherine Lemann

Frequently Asked Question: What were they thinking?

The most frequently asked question in the law library is how to do Alaska legislative history. What did the legislature intend when they passed a particular statute? There are handouts available in the library to walk you through the research process. There are print resources in the law libraries to do the research. There are some online resources available.

If you are looking for a bill that was passed from 1993 to the present, you may be able to do the research from your computer, using **BASIS: BILL ACTION AND STATUS INQUIRY SYSTEM** <http://www.legis.state.ak.us/basis>. BASIS has Bills, House and Senate journals, Committee minutes, and Session laws.

If you are researching legislative history from 1993 or later, and you already know the bill number, use BASIS. There are Help screens for every page displayed in BASIS. To read help screens click on the Blue H, usually located in the upper-right corner of the page.

1. The opening screen for BASIS is a search page for the current legislative session. To search an earlier legislative session, select it from the list on the lower right of the opening screen or near the top of the left hand side under Archive. It is not possible to search across more than one session.

2. Type the bill number in the Bill Root search box, e.g. hb215. The Bill history from the house and senate journals is displayed. This is the equivalent of the print House and Senate Journal index. The page numbers are live links that take you to the journal entries.

3. There are links to the text of all versions of the bill, fiscal notes, committee minutes, audio of committee meetings, documents submitted to committees, and the sponsor statement. (There is a note to check back as additional documents are being added.)

4. At the bottom of the screen is a list of the subject headings for the bill. You can look for other bills on the same subject.

BASIS can also provide additional information, such as bills by sponsor, bills by subject, committee information, and a list of all legislation that passed in a session.

The Legislature also hosts Infobases <http://www.legis.state.ak.us/folhome.htm> that can help with legislative history from earlier years. You can locate Bills 1983 to the present, House and Senate Journals since 1987, Committee Minutes from 1982, and Session Laws from 1981. The Infobases are not as easy to use as BASIS, but it is the source for legislative history before 1993.

As with BASIS, it is not possible to search across sessions. Select your Infobase (e.g., 20th (1997-1998) Legislature House and Senate Journals).

If you know exactly what you're looking for, use the main frame contents rather than a query search. Where there is a plus sign (+) to the left of a link, click this plus instead of the link itself, to expand the information. Continue expanding until you find the document you are looking for. The blue ovals at the bottom and top left of the screen are the Next and Previous icons.

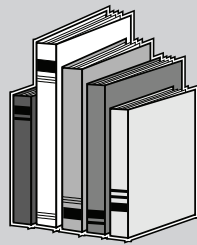
To search for a bill or document, click on the Query button and enter your search terms. When searching journals or committee minutes, use the house or senate bill number as your search term. Be sure to use quotes and put a space before the bill number: "HB 231" or "SB 146"

Check the Records w/Hits Only box and click the search button. Once search has run, click on the box displaying number of records retrieved.

The first record matching your search will display. Click on the Next Hit and Previous Hit buttons to move between your results. Your search terms are highlighted with red triangles. Information about the record you're viewing displays at the bottom of the screen.

This is a brief, general overview of Alaska Legislative History research. Please contact the law library, if you need additional assistance.

Fairbanks Law Library
907-452-9241
Juneau Law Library
907-463-4761
Anchorage Law Library
907-264-0585
toll free: 888-282-2082



A CAUTIONARY TALE: THE TED STEVENS PROSECUTION

Continued from page 1

numerous" to be left to an internal Justice Department investigation. He appointed Washington lawyer Henry F. Schuelke III of Janis, Schuelke & Wechsler to investigate whether members of the trial team should be prosecuted for criminal contempt.

"It's obviously a serious and not-everyday occurrence for a judge to sic an independent counsel on prosecutors," Brand says. "It's an auger for the Justice Department. This judge's tolerance was pushed to the limit, and prosecutors are not going to just go on their merry way. When judges do things like this, it tends to rattle the system a bit."

With two investigations pending—one court-appointed, the other conducted by the Justice Department's Office of Professional Responsibility—Justice Department officials say they are reviewing current discovery practices and retraining lawyers on their discovery obligations. It remains to be seen what consequences, if any, the prosecutors in this case will face.

"If all of our lives and careers were defined by our mistakes, nobody would have a job, so you hate to think that one mistake—even if it happens to be a highly publicized one—would damage someone's career," says Michael E. O'Neill, an associate professor who specializes in criminal law, criminal procedure, and constitutional law at George Mason University School of Law. "That said, prosecutors have to be absolutely fair and above board to ensure that justice is done."

Brendan V. Sullivan Jr., Stevens' defense lawyer and a senior partner at Williams & Connolly LLP, described the misconduct of prosecutors as "stunning." He says the case is a sad story and a warning to everyone that any citizen can be convicted "if prosecutors are hell-bent on ignoring the Constitution and willing to present false evidence."

But Assistant U.S. Attorney General Lanny A. Breuer, head of the Justice Department's Criminal Division, says in a statement, "As we move forward in the continuing fight against public corruption, it is essential that the Criminal Division learns from the Stevens prosecution and its aftermath." **Balance of Power**

It is a common occurrence, especially in criminal cases: Lawyers who are battling it out in court push for every procedural advantage; they overstep their bounds and must be reined back in by the judge. There often are accusations that one side or the other is failing to produce evidence. But in the Stevens case, transcripts of multiple hearings show Judge Sullivan continuously reprimanding prosecutors for withholding discovery evidence.

Over the past few years, a series of high-profile scandals have rocked the Justice Department. For example, the department faced public outrage over its hiring process for U.S. attorneys under former Attorney General Alberto Gonzales, the revelation of the Justice Department's role in the so-called "torture memos," and ongoing questions about aggressive prosecutorial tactics. For some, the Stevens case represents a government entity that had developed a "total indifference to ethics."

"This has built up over the years—the people at [the Justice Department] have come to believe that they are immune, that nobody can touch them, and that judges will ignore their prosecutorial misconduct," says Joseph E. diGenova, former U.S. Attorney for the District of Columbia and a founding partner and criminal defense attorney at diGenova & Toensing, LLP.

Concerns also have been expressed about the timing of the Stevens case, with the indictment coming just months before Stevens was up for reelection in his home state. The jury verdict against Stevens came eight days before Election Day. Subsequently, he lost to Democrat Mark Begich in an extraordinarily close contest, the effects of which benefit the Democrats. There are 60 members in the Senate's Democratic Caucus, giving the party a firewall against bill-derailing filibusters. Had Stevens been able to keep his seat, Democrats would have 59 members, one short of the key 60-member vote.

DiGenova says that the "consequences of what the prosecutors did are remarkable" and the harm incalculable. "Had things been different, Stevens

would have been elected. Prosecutors actually determined the outcome of the balance of power in the U.S. Senate by their misconduct. They affected politics in the United States," he adds.

The Prosecutors

The Justice Department probe into Stevens and other Alaskan officials, known as Operation Polar Pen, lasted several years. Lawyers from Washington fought with lawyers from Alaska over how to handle the case and whether to bring charges in Alaska or the District of Columbia.

Some observers blame the subsequent problems in part on the lawyers' personal conflicts and poor management. Others suggest that the Justice Department lawyers were no match for the stars that formed the defense team—they knew it and felt pressure to find any advantage they could.

But in actuality, some of the Justice Department's finest lawyers handled the case. The trial team was part of an elite group of prosecutors in the Public Integrity (PIN) Section, with experience pursuing high-profile and complex cases.

The PIN Section, which comprises about 30 lawyers, investigates and prosecutes corruption in all levels of government. Between 2001 and 2007, it brought public corruption charges against 416 individuals, winning 371 convictions. And just recently, the section was praised for its investigation of Washington lobbyist and convicted felon Jack Abramoff.

Seasoned litigator Brenda K. Morris, principal deputy chief of the PIN Section, was not assigned to the prosecution team until late into the investigation. A native Washingtonian, Morris received her juris doctor from Howard University and trained as a prosecutor in the New York County District Attorney's Office. She moved back to Washington, D.C., and joined the PIN Section in 1991. Promoted in 2004, Morris supervised high-profile cases, including the Abramoff probe and a series of cases involving the theft of funds meant for the Iraqi reconstruction. She is also an adjunct law professor at the Georgetown University Law Center.

Brand, who has opposed her in cases, describes Morris as "fair, forthright, and sensitive to the facts."

Chuck Rosenberg, Morris' lawyer and a partner at Hogan & Hartson LLP, declined comment.

The rest of the prosecution team included Nicholas A. Marsh and Edward P. Sullivan, Washington, D.C.-based trial lawyers. And then there were the Alaska-based lawyers, Assistant U.S. Attorneys Joseph W. Bottini and James A. Goeke.

Overseeing the case as supervisory attorney was William M. Welch II, chief of the PIN Section. Welch grew up in Massachusetts, the son of a local judge. He received his law degree from Northwestern University School of Law and worked in several parts of the Justice Department, including the U.S. Attorney's Office in Springfield, Massachusetts. There, Welch made his name prosecuting a serial killer nurse and Springfield City administrators for corruption. In 2006 Welch was recruited to Washington, D.C., and has been the head of the section since 2007. Prior to the Stevens meltdown, Welch allegedly was angling to be the U.S. Attorney in Massachusetts.

"Bill is the hardest working prosecutor I've ever worked with," says Kevin J. Cloherty, a former supervisory attorney at the U.S. Attorney's Office in Massachusetts. "He is of the highest ethical standards and is dedicated to public service and doing the right thing."

The Defense

Stevens was represented by Brendan Sullivan and Robert M. Cary, along with a team of nine other lawyers, two paralegals, and an information technology professional. Well known for his legal finesse and trial skills, Brendan Sullivan is at ease in the public spotlight. His legal career includes defending Lieutenant Colonel Oliver North and former U.S. Housing and Urban Development Secretary Henry Cisneros. Sullivan is famous for uttering the lines, "I'm not a potted plant. I'm here as the lawyer. That's my job," during a congressional hearing in the Iran-Contra Affair.

Brendan Sullivan has "a sort of quiet presence, but he has strength in his voice and can modulate—raise it for a very important point," says Michael



U.S. Sen. Ted Stevens

Madigan, a litigation partner at Orrick, Herrington & Sutcliffe LLP and a former federal prosecutor. "He's one of the best lawyers in the country."

The younger Cary, also a partner at Williams & Connolly, has represented his share of prominent clients and teaches a trial advocacy class at Georgetown University Law Center. Cary previously had worked with Brendan Sullivan on several cases, including the defense of former Cendant Corporation chair Walter Forbes in a fraud case.

In negotiations before trial, Stevens and his defense team refused a plea agreement. Instead, they opted for their right to a speedy trial in the hopes Stevens' name could be cleared in time for him to return to Alaska and win reelection. There were only 56 days between indictment and trial.

"For us, it was simple," Cary says. "We thought we owed it to him to try to resolve the case before the election. It may be the only time we've ever asked for a speedy trial."

That made preparing for trial a relentless project. The trial team worked on the case day and night, meeting twice a day over lunch and dinner.

Stevens, 84 when indicted, had been in Alaska politics since before its statehood. As the longest-serving Republican in Congress, Stevens wielded extraordinary power. A World War II veteran, Stevens earned his law degree at Harvard Law School. He served as U.S. Attorney in Fairbanks, Alaska, before moving on first to the Alaska House of Representatives in 1964 and then the U.S. Senate in 1968.

Stevens' clout in the Senate came from his longevity and his position as chair of the Appropriations Committee until 2005. His home sits at the base of Girdwood, Alaska, a ski resort. Once modest, the chalet had been expanded and remodeled to encompass 10 rooms and three bathrooms.

A Friendly Letter

The crux of the prosecution case was that Stevens had failed to list on Senate disclosure forms about \$250,000 in goods and services he had received, mostly in the remodeling of his home, from oil services company VECO Corporation. For years VECO executives have been known to be top contributors to Alaska politicians. Ultimately, the case hinged on the testimony of Bill Allen, the senator's personal friend pal—and cofounder and former chief executive officer of VECO—who spearheaded the remodeling project by hiring workers and providing the materials. Allen testified at trial that he never billed his friend for work on his house, and that Stevens knew he was getting special treatment.

Stevens was on the witness stand for three days. He said his wife paid their bills, and that, living in Washington, he could not possibly monitor the project.

Both sides fought over the meaning of an October 2002 letter from Stevens to Allen asking for a bill. The letter read:

Continued on page 21

A CAUTIONARY TALE: THE TED STEVENS PROSECUTION

Continued from page 20

When I think of the many ways in which you make my life easier and more enjoyable, I lose count! Thanks for all the work on the Chalet. You owe me a bill—remember Torricelli, my friend. Friendship is one thing—compliance with the ethics rules entirely different. I asked Bob P to talk to you about this, so don't get PO'd at him—it's [sic] just has to be done right.

Torricelli was a reference to Robert Torricelli, the former Democratic U.S. congressman and senator from New Jersey who was accused of receiving illicit gifts from a campaign donor.

Allen testified at trial that the note was Stevens' effort of "covering his ass." Allen said on the stand that he had been told by Stevens' friend Bob Persons to ignore the letter because the senator had written it to provide a false record to protect himself.

"That was a devastating piece of testimony delivered right before a break, as skillful lawyers do," Cary says. "As bad luck would have it, a juror got sick that afternoon, which meant that that testimony was left to resonate with the jury for several days."

Brady Battles

As any law student knows, prosecutors must disclose any potentially exculpatory evidence to the defendant in a case. The so-called Brady Rule stems from the U.S. Supreme Court's 1963 decision in *Brady v. Maryland*.^[1]

Throughout the trial, government and defense lawyers battled over the Justice Department's production of evidence. Judge Sullivan considered declaring a mistrial, but he decided against it. On several occasions, the judge admonished the prosecution and even struck the use of certain evidence.

Prosecutors, Cary says, purposely produced discovery information late, "in the middle of trial, when we had little time to incorporate it into our strategy and use it effectively."

Cary says the defense team was "incredibly distracted by the demands of briefing all of the issues that came up due to the prosecutors' failure to provide information to which we were entitled."

According to court documents, prosecutors told defense counsel before trial that Allen had said he believed Stevens would not pay the invoice. However, two FBI reports, known as 302 Forms, contained contradictory statements from Allen, in which he said he believed Stevens would have paid the invoice. The defense did not initially receive the FBI reports, even after court orders to turn over all Brady evidence. In fact, one of Allen's statements was actually redacted from a report by an FBI agent before it was given to defense lawyers.

Finally, October 1, 2008, on the eve of Allen's cross-examination at around 11 p.m., prosecutors produced the 302s showing that Allen had twice told the FBI he believed Stevens would have paid the invoice, which was in direct conflict with his testimony at trial.

During a hearing the next day, Judge Sullivan scolded prosecutors for failing to produce the evidence prior to trial and then stalling, despite court orders to hand it over. Judge Sullivan said, "It strikes me that this was probably intentional. I find it unbelievable that this was just an error."

Then came evidence that the government knowingly submitted false VECO accounting records to establish the proposition that employee David Anderson and others billed \$188,000 for the renovations. The records had been used by the prosecution to show the amount of time and money spent on renovations to Stevens' chalet—an important part of proving that Stevens had received a benefit.

At yet another hearing, Judge Sullivan said, "It's very troubling that the government would utilize records that the government knows were false."

According to court hearings, the judge also was angry over evidence that the prosecution sent a witness back to Alaska without informing the judge or the defense.

Conviction and Fallout

The case took a strange turn when a juror

disappeared, delaying deliberations after weeks of trial testimony. The juror had said she needed to fly to California because her father died, but Judge Sullivan was unable to reach her to determine when she would return. An alternate juror took her place. (In later proceedings, the juror admitted she had lied about her father's death and instead disappeared to go to the horse races.)

On October 27, 2008, the jury found Stevens guilty of seven felonies. Stevens did not talk to reporters, but he issued a defiant news release accusing prosecutors of misconduct while declaring, "I will fight this unjust verdict with every ounce of energy I have."

The jurors left the courtroom without commenting to the media.

A day later, Brendan Sullivan wrote to then-U.S. Attorney General Michael Mukasey, asking the Justice Department to "commence a formal investigation into the repeated misconduct by federal prosecutors in connection with this case."

In November, Judge Sullivan received a letter from prosecution witness Anderson, who had worked on Stevens' chalet. Anderson wrote that he falsely denied on the stand that he had an immunity deal with prosecutors in exchange for his testimony. He also claimed prosecutors left him in a room filled with confidential documents in an effort to coach him. Anderson also claimed Allen had a contract to have him murdered.

The Justice Department has vehemently opposed Anderson's allegations.

Then came the kicker. On December 2, 2008, FBI Special Agent Chad Joy filed a whistleblower complaint stating that prosecutors tried to hide a witness and intentionally withheld evidence from defense lawyers. Joy further accused a fellow FBI agent of having an inappropriate relationship with Allen.

"The week or so before Christmas, we had round-the-clock litigation over whether Joy's complaint would be made public or not," Cary says. "We took the position that it should all be made public."

According to a transcript of a previously sealed court hearing, Morris of the PIN Section argued that Joy's name should not be revealed nor should the complaint be made public. Judge Sullivan ultimately released the complaint to the public with Joy's name redacted. Subsequently, the judge grew increasingly irate when the Justice Department changed its position and said that since the complaint was made public, Joy's name should be revealed. After portions of the complaint were made public, the Justice Department then argued that it would be easier to respond in court filings if all the names were revealed. The Justice Department also said Joy had no whistleblower status, but then it changed its mind on that. In January 2009 Judge Sullivan made public the details, along with Joy's name. But Judge Sullivan was angry and wanted Mukasey to submit a declaration.

The week before President Barack Obama's inauguration, Judge Sullivan demanded that Mukasey submit a declaration addressing who knew what and when about Joy's status as a whistleblower. The postconviction scuffle continued, going as far as the U.S. Court of Appeals for the District of Columbia Circuit, which issued a temporary stay.

Judge Sullivan ordered full discovery on Joy's whistleblower status. The Justice Department then made yet another error—prosecutors only handed the discovery to the judge, not the defense.

"That was a court order. That wasn't a request," Judge Sullivan said at a February 13 hearing. "I didn't ask for them out of the kindness of your hearts....Isn't the Department of Justice taking court orders seriously these days?"

Judge Sullivan then held Morris, Welch, and Patricia Stemler, chief of the Criminal Division's Appellate Section, in contempt of court for failing to follow the court order to turn over documents.

At this point, the Justice Department removed its prosecutors from the case and assigned a new team, which found additional evidence that had never been handed to the defense.

April Fools

On April Fools' Day, U.S. Attorney General Holder announced that the Justice Department would move to dismiss the indictment "in the interest of justice."

"After careful review, I have concluded that certain information should have been provided to the defense for use at trial," Holder said in a statement.

On April 7, Judge Sullivan dismissed Stevens' conviction and ordered the Schuelke investigation. Schuelke, a partner at Janis, Schuelke & Wechsler, served seven years as an Assistant U.S. Attorney in the District of Columbia before turning to private practice in 1979. He declined comment for this story.

"Judge Sullivan is one of the most liked judges on the bench," says Jonathan Turley, a nationally recognized legal scholar and constitutional law professor at the George Washington University Law School. "He is smart and courteous and even-keeled. To get Judge Sullivan that irate, it takes monumental misconduct."

The dismissal was announced, Stevens' family sobbed, and Stevens gave a raised-fist salute. The hearing ended with applause in the courtroom. Outside the courthouse, Stevens posed for pictures with his family, declaring, "I'm going to enjoy this wonderful day."

Brady and Its Progeny

In *Brady*, a jury convicted the defendant of murder after the state withheld a confession by a codefendant who admitted being the killer. The Supreme Court held that withholding evidence violates due process when the evidence is material either to guilt or punishment.

Subsequent cases have clarified the prosecutor's duty to disclose. In *Giglio v. United States*,^[2] the Supreme Court extended the obligations of prosecutors to include impeachment evidence. Additionally, the Jencks Act governs the production of statements of government witnesses.

However, defense attorneys and criminal procedure experts say that prosecutors routinely provide information late and reluctantly. But it is rare, they say, that a case is so riddled with apparent violations, especially one that goes to the core of the case.

"Many cases have small Brady violations, but this is something that is pretty extraordinary—an interview that directly contradicts the testimony of the leading witness would have obviously been used," Turley says. "There's no question it would have undermined the credibility of the witness."

Not surprisingly, Stevens' lawyers are convinced that the failure to disclose led to the conviction. "It's our belief that they never would have elicited that testimony from Bill Allen if they knew we had this evidence at the time," Cary says. "It was the heart of the government's case that there was a so-called scheme to conceal information, and the letter went to the heart of our defense that Senator Stevens was acting in good faith."

"It was our position that the 'covering his ass' testimony was a fabrication, and the notes that were produced months after the trial proved that this was a fabrication."

One still-unanswered question is, Was there a deliberate intention to withhold evidence, a series of mistakes, or some combination of motives? George Mason University's O'Neill describes intentional Brady violations as relatively rare, but says that inadvertent failure to turn over evidence is far more common "especially when you have a lot of attorneys working on something, like a complicated fraud case."

"It's always possible that something could slip through the cracks," O'Neill says.

Blame Game

Some outside observers question whether the prosecutors' zeal got out of hand, and Welch looked the other way or even encouraged tactics that may have crossed the line.

"It is fundamentally unfair to criticize Bill Welch for supervision failures in connection with the Stevens discovery," says his lawyer Bill Taylor, a partner at Zuckerman Spaeder LLP. "The head of the Public Integrity Section, even in high-profile cases, does not get involved in the management of discovery. The trial team consisted of extremely experienced prosecutors who had been involved

Continued on page 22

A CAUTIONARY TALE: THE TED STEVENS PROSECUTION

Continued from page 21

in the Polar Pen cases from the beginning. He had no reason to believe they were not complying with their constitutional obligations to turn over material favorable to the accused."

Matthew W. Friedrich, former head of the Justice Department's Criminal Division, approved Morris' addition to the team around the time of the indictment. Persons familiar with the trial team say that Morris' late arrival on the team—and questions over who was to be in charge of the case—created tension. The other four main lawyers previously had worked on other Polar Pen cases. Morris, with more trial experience and a higher position at the Justice Department, ended up taking on a larger role in the Stevens prosecution than some involved in the case had initially anticipated.

"A smooth, almost seamless trial team is critical to the success of any prosecution or defense," Orrick's Madigan says. "When internal bickering or whatever causes the wheels to come off, disaster is usually not far behind."

Friedrich, now a partner at Boies, Schiller & Flexner LLP, declined comment on the internal decision making, but says, "I have always believed that Brenda Morris ... is an outstanding attorney, with enormous experience and integrity."

Justice Out of Control?

As criminal defense attorneys are quick to point out, the Justice Department has in the past decade been sullied by a series of high-profile case implosions and accusations of misconduct across the board, from failing to disclose evidence to using politics to choose what cases to pursue.

In the wake of the September 11 attacks, the Justice Department aggressively pursued terrorism cases, and some of them have since been entangled in accusations of improper tactics. The PIN Section even ended up trying to prosecute one of its own former terrorism prosecutors, Richard G. Convertino, for withholding evidence in a trial.

In 2007 U.S. District Judge Lewis A. Kaplan in New York described as "outrageous and shocking" threats by the Justice Department to indict KPMG LLP if the accounting firm paid the legal bills of its employees. The Justice Department's conduct pushed Kaplan to dismiss criminal tax charges against former KPMG executives accused of participating in an illegal tax shelter.

And in January 2009, U.S. District Judge Mark L. Wolf in Boston said that Justice Department prosecutors in Boston had a "dismal history" of failing to produce exculpatory evidence.

"The Justice Department has a certain culture," Turley says. "It is commonplace for federal prosecutors to argue that they couldn't imagine why something is exculpatory when it is obvious that it is."

Some defense counsel say that part of the problem is that in recent years the Justice Department's Office of Professional Responsibility has not provided an adequate check on conduct within the department. H. Marshall Jarrett, a longtime Holder colleague, ran the Office of Professional Responsibility for 10 years. In April, however, Jarrett was reassigned to the Executive Office for U.S. Attorneys, and Mary Patrice Brown has taken the helm.

"[The Office of Professional Responsibility] has become known as the Bermuda Triangle of complaints against prosecutors. They go in, and they never go out," diGenova says. "As a result, it's made a mockery of the accountability process, and every seasoned lawyer knows it's a mockery."

There are new concerns about the propriety of the PIN Section. In June the Justice Department requested the release from prison of two former Alaska legislators after it was revealed the lawyers from the Stevens team, excluding Morris, also failed to hand over evidence in their cases. The Criminal Division is reviewing the prosecutors' conduct.

"There is a special obligation that the Public Integrity Section has to act according to the highest ethical standards because they are policing government conduct," says Brand of the Brand

Law Group.

Justice Continues

In the months since Judge Sullivan dismissed the charges, Cary and Brendan Sullivan have continued with their thriving legal practices. Stevens is considering writing a book about his six terms in office.

The Justice Department awaits reports from both the Office of Professional Responsibility and Schuelke's investigation. In July Judge Sullivan signed an order giving Schuelke the power to issue subpoenas.

As of this writing, Morris and Welch remain in their same roles. Prosecutors Marsh and Edward Sullivan were transferred out of the PIN Section to the Office of International Affairs. Bottini remains at the U.S. Attorney's Office in Alaska.

Some criminal defense lawyers say the case will have a lingering effect on the justice system. "Our system of justice is built upon having confidence that prosecutors are doing an honest and fair job," Madigan says. "If you start to lose confidence in them, it just erodes the entire system of justice. It's of enormous magnitude."

But even the staunchest critics of the Justice Department admit that it is still known for being home to skillful lawyers who take to heart their job as trusted public servants.

In a July speech before the National Black Prosecutors Association, Holder said the Justice Department is reviewing how it complies with discovery obligations. "We will correct any errors and we will see to it, once again, that justice is our primary goal," he said. "When we are wrong, we will admit our errors. When we see an affront to justice, we will rectify the problem."

Notes [1] *Brady v. Maryland*, 373 U.S. 83. [2] *Giglio v. United States*, 405 U.S. 150 (1972).

Reprinted with permission from the October, 2009 issue of the Washington Lawyer, District of Columbia Bar, Tim Wells, Managing Editor.

Judge Beverly Cutler retires after 32 years on the bench

A crowd of friends, colleagues and well-wishers gathered at the Palmer Courthouse on September 11, 2009, to bid farewell to Judge Beverly Cutler, who retired from the Palmer Superior Court after 32 years as a jurist. Judge Cutler came to Alaska in 1974 after receiving her law degree from Yale University. She began her legal career as a staff attorney for the Alaska Judicial Council, followed by two years as an Assistant Public Defender in Anchorage. In 1977, while still in her twenties, she was appointed to the Alaska District Court in Anchorage by the late Governor Jay Hammond. At the time, she was not only one of Alaska's youngest judges, but also one of very few women serving on the bench in our state.



Judge Beverly Cutler, 1978.

In 1982, an Alaska Superior Court judgeship was created in Palmer for the first time. Judge Cutler was again appointed by Governor Hammond to fill the position, becoming the first woman superior court judge in Alaska's history. For many years thereafter, Judge Cutler was the sole superior court judge in the Mat-Su Valley, handling a variety of both civil and criminal cases and one of the heaviest court caseloads in the state. Today, there are four superior court judges in Palmer—two of whom are women—and a courthouse that is greatly expanded from the small facility that served the region in Judge Cutler's early days on the bench.

For 32 years, Judge Cutler has been a vital member of the judiciary and a great contributor to the administration of justice in our state. She is an active member of the National Association of Women Judges and a co-founder of NAWJ's Alaska Color of Justice program, which seeks to encourage young women and youth of color to pursue careers as judges. She also has served for many years on the court system's Criminal Pattern Jury Instructions Committee, which she recently chaired. Over the past



The Atrium of the Palmer Courthouse was dedicated to Judge Beverly Cutler in honor of her retirement. With Judge Cutler at the dedication ceremony are, L-R, Alaska Court System Administrative Director Christine Johnson, and Chief Justice Walter Carpeneti.

three decades, Judge Cutler has raised four children in a log home on her family's potato farm near Palmer, where she continues to reside with her husband. In honor of Judge Cutler's retirement from the Alaska Court System, the Alaska Supreme Court has dedicated the new Atrium of the Palmer Courthouse in her honor, and extends its deep appreciation for her many years of dedicated service to the people of Alaska.

NEWS FROM THE BAR

Board of Governors action items for September & October

September 17 & 18, 2009

- Voted to grant a hearing in the admissions appeal of an applicant from the February 2009 bar exam.
- Voted to not take any action on a reciprocity application until all the paperwork is complete.
- Voted to recommend 10 reciprocity applicants to the Supreme Court for admission.
- Voted to approve Rule 43 (ALSC) waivers for Nicholas Gasca and Robert Lynch.
- Directed the staff to send Russ Winner's letter requesting a modification of the regulation regarding rounding of MCLE credits to the CLE Committee for consideration.
- Voted to determine that Roger Snippen has complied with the recommendations of the Lawyers Assistance Committee as modified by the Board.
- Voted to refer a reciprocity applicant to a Board subcommittee (McClintock, Maassen, Sebold.)
- Voted in the disciplinary matter of Eugene Cyrus to recommend to the Supreme Court a five year suspension, with two years stayed, three years probation; that while on probation he be required to practice law solely as an employee of an agency or firm, that he commit no further discipline violations, that he pay all fines and sanctions imposed by any court, that he obtain certification from his employer on an annual basis that he is employed, and that he must notify the Bar within 10 days of any change in his employment status.
- Voted to adopt a stipulation in a discipline matter as modified: that respondent attorney be suspended for three years, commencing with his voluntary transfer to inactive status in 2008; that he make full restitution to the Lawyers' Fund for Client Protection for services provided by Trustee Counsel; that he serve a two year probation and practice under a mentor or with an agency and that he meet with his mentor at least bi-weekly and that the mentor report to the Bar quarterly whether the respondent is meeting bi-weekly; that respondent complete 12 hours of CLE in law office management, trust accounting and legal ethics.
- Considered six Lawyers' Fund for Client Protection Committee recommendations and voted to approve all of their recommendations.
- Voted to delete Bylaws Article IV, section 10 regarding action of the Board without assembling.
- Redrafted the Legal Intern rule (Bar Rule 44) per the Board review and comments and asked staff to circulate it to the affected agencies and have it back to the Board in October.
- Voted to publish a proposed amendment which would permit appearance by legal interns before the appellate courts.
- Voted to publish a proposed amendment to Bar Rule 26(d) which requires attorneys to self-report any criminal conviction within 30 days to the Bar Association.
- Voted to publish a proposed amendment to Bar Rule 3.8 regarding special duties of a prosecutor.
- Took no action on ABA Model Rule 1.10(a) regarding imputation of

conflicts of interest.

- Voted to suspend the Standing Policies which provides that a nominating committee will present a proposed slate of officers to the Board. The Board will accept nominations for officers from any board member.
- Reviewed a request that the Board consider adding the Alaska Administrative Code and Workers Comp decision on to Casemaker. They said that the AAC can be found online for free and asked if the Workers Comp decision could also be found online for free.
- Voted to add two new sections: Appellate Law and Public Contracts Law.
- Voted to appoint Natasha Singh to the vacancy for the ALSC Board, alternate position to Corinne Vorenkamp in the 4th Judicial District.
- Voted to approve the minutes for the Board meetings of May 5, May 29 and July 21.
- Voted to accept the Findings and Conclusions of the Area Hearing Committee in the disciplinary matter of Ra Shipps, but not the recommendations for discipline. The Board voted to recommend five years suspension (none stayed), that reinstatement is subject to Shipps complying with Bar Rule 29(b) and also submitting the information and complying with the requirements in Bar Rule 30(g) for reinstatement from disability practice; that he take 15 hours of CLE including law office management and legal ethics; that he pay the Bar Association \$1,000 as partial reimbursement of costs; that he reimburse the Lawyers' Fund for

Client Protection for any amounts expended; that following reinstatement that he be on probation for two years and may practice law only if employed by a law firm or agency and submit a certificate from his employer regarding his employment and notify the Bar within 10 days of any change in employment.

October 30, 2009

- Voted to approve the September 2009 Board meeting minutes.
- Approved the results of the July Bar Exam, which had 63 applicants and 40 passing applicants.
- Approved a reciprocity applicant for character and fitness; approved nine reciprocity applicants for admission.
- Approved a Rule 43 (ALSC) waiver for Amy Robinson.
- Voted to adopt the 2010 budget as amended and set Bar dues at \$500 for active members, and \$165 for inactive members.
- Approved \$20,000 for the LRE grant for the LRE Committee to allocate. \$10,000 is to go towards new and developing programs, for seed money, and considering capacity building. The committee should return to the Board with a proposal on how the money should be spent.
- Voted to approve \$3,000 for New Lawyer travel to ABA YLD meetings. The money allocated for Law Examiner training will be reduced by half, to \$3,000.
- Voted to approve \$5,000 for the Language Interpreter Center.
- Voted to approve \$5,000 for the MLK Day event.

- Will report to the membership that the Board met with the presidents of the local voluntary bar associations regarding the civil case reporting requirements, discussed possible action items, and asked these leaders to go back to their members to determine whether they had the will or desire to be involved.
- Voted to adopt the amendments to Bylaws VIII, section 2, and XII, section 1 & 2, changing the wording from "special" meetings, to "emergency" meetings.
- Voted to republish Bar Rule 44 regarding legal intern permits.
- Voted to accept the Lawyers' Fund for Client Protection Committee's recommendation for reimbursement in a matter.
- Reviewed the final report and bill from Jason Weiner as Trustee Counsel for David York and voted to pay him \$12,436.29 and to pay Michael Wenstrup \$3,420, both from the Lawyers' Fund for Client Protection.
- Voted to amend the MCLE regulations, dropping the sentence that covers rounding. The regulation now simply states that one hour is equal to 60 minutes, referring to credit hours.
- Agreed that the Executive Director should investigate electronic voting for the Board elections.
- Voted to accept the Findings, Conclusions and Recommendations of the Area Hearing Committee in the Disciplinary Matter of Jody Brion for disbarment, with reimbursement, audit, and CLE conditions for reinstatement.

LRE grant applications due

The Alaska Bar Association Law Related Education (LRE) Committee is accepting grant applications for the 2010 program year. In 2010, \$10,000 will fund programs that are sustainable; \$10,000 will fund new or developing programs or programs that require capacity building. The LRE Committee anticipates announcing the names of the successful applicants on or about January 31, 2010. **Applications must be received by the Alaska Bar Association on or before Friday, January 8, 2010, 5:00 p.m. and must be delivered, mailed or faxed to:**

Alaska Bar Association, Law Related Education Committee
550 W. Seventh Avenue, Suite 1900 (Physical Address)
Anchorage, AK 99501
P.O. Box 100279 (Mailing Address)
Anchorage, AK 99510-0279
Phone: 907-272-7496 Fax: 907-272-2932
Website: www.alaskabar.org

Applications are recommended to be three to five pages in length and must include the following information, if applicable:

1. Name of Applicant (Organization/Individual)
2. Applicant's mission statement
3. Project description, including anticipated state-wide effects
4. Project timeline, including completion date
5. Budget: List organization's total budget (all sources, including in-kind), and total amount requested
6. Identify the proposed project participants
7. How will you recognize the Alaska Bar Association, LRE Committee in your project?
8. Contact information: The application must be signed, and include the paragraph below before the signature block, as well as the name of the individual completing the application, title or relationship to organization, address, telephone number, fax number, and email address.

"I understand that the project submitted must be completed by December 31, 2010, and a final report concerning the project is due on or before that date. If the project scope changes, I will contact the Alaska Bar Association for permission to use the funds for the revised project. If the project is unable to be undertaken or completed, I agree to return the funds to the Alaska Bar Association. I agree to provide a federal tax ID number, EIN, or SSN for the organization or individual to whom any funds would be disbursed, which I understand will be used to report to the IRS. I agree to these conditions on the grant."

9. Reporting is due to the Alaska Bar Association, Law Related Education Committee by December 31, 2010. **Future awards will consider the applicant's compliance with this reporting requirement.**

Comments invited on interns, criminal conviction rules

The Board of Governors invites member comments regarding the following proposed amendments to the Alaska Bar Rules and the Alaska Rules of Professional Conduct. Additions are in italics while deletions have strikethroughs.

Bar Rule 44. Legal Interns. This is a revised version of a proposed amendment to the legal intern permit rule that reflects further consideration by the Board.

Rule 44. Legal Interns.

Section 1. Practice Authorized When. The Integrated Bar Act prohibits the practice of law by anyone not admitted to practice in Alaska. This rule does not authorize an intern to perform any function prohibited by that Act other than those specifically set forth herein.

Section 2. Definition of Legal Intern. A "legal intern" is any person who has on file with the Alaska Bar Association an effective permit issued by the Bar Association through its Executive Director.

Section 3. Eligibility for Intern Permit. Every applicant for an intern permit shall:

(a) File a *written request for an intern permit, a letter from an attorney authorized to practice law in Alaska agreeing to supervise the intern, an application in the form prescribed by the Board and produce and file the evidence and documents herein required by this rule as proof of eligibility for the permit;*

(b) Be a student who:

(1) Is duly enrolled in a law school which was accredited or approved by the Council of Legal Education of the American Bar Association or the Association of American Law Schools when the applicant entered, or is enrolled in a law school in which the principles of English common law are taught but which is located outside the United States and beyond the jurisdiction of the American Bar Association and the Association of American Law Schools, provided that the foreign law school in which he or she is enrolled meets the American Bar Association Council of Legal Education Standards for approval;

(2) Has successfully completed at least one-half of the course work required for a law degree;

(3) Has filed with the application a certificate from the dean or other chief administrative officer of his or her law school, stating that he or she meets the requirements as set forth in subsections (b) (1) and (b) (2); or

(c) Be a law school graduate who:

(1) Has graduated from a law school which was accredited or approved by the Council of Legal Education of the American Bar Association or the Association of American Law Schools when the applicant entered or graduated, or has graduated from a law school in which the principles of English common law are taught but which is located outside the United States and beyond the jurisdiction of the American Bar Association and the Association of American Law Schools, provided that the foreign law school from which he or she has graduated meets the American Bar Association Council of Legal Education Standards for approval;

(2) Has never failed a bar examination administered by any state of the United States, or the District of Columbia, or, despite failure, has *otherwise subsequently passed such a bar examination administered by any state of the United States or the District of Columbia;* and,

(3) Has filed with the executive director a cer-

tificate from the dean or other chief administrative officer of his or her law school which states that the legal intern applicant meets the requirements set forth in subsection (c) (1), and either

(i) *A personal affidavit stating that he or she never failed a bar examination or despite failure has otherwise passed a bar examination administered by any state of the United States or the District of Columbia, as set forth in subsection (c) (2); or*

(ii) *A certificate from the supreme court of the state in which, subsequent to failure, a bar examination was passed;*

Section 4. Prior Admission. Any applicant who has been admitted to practice in another jurisdiction must file a certificate of good standing from each jurisdiction in which the applicant is admitted. If not in good standing, the applicant shall submit satisfactory proof that the applicant has never been disbarred, suspended or otherwise disciplined.

Section 5. Act Authorized by Permit.

(a) A legal intern may appear and participate in all proceedings before any district court, or superior court, or appellate court of this state to the extent permitted by the judge, or the presiding officer, or the appellate court if the attorney representing the client is personally present and able to supervise the intern and has filed an entry of appearance with the court and the office of the Alaska Bar Association substantially in compliance with the form set forth in Section 9 of this rule;

(b) A legal intern may also appear and participate before any district court in small claims matters, arraignments, pleas, bail hearings, sentencing and recorded in-chambers conferences without an attorney being personally present to supervise the intern under the following conditions:

(1) ~~If the attorney representing the client has filed an appearance in the case and with the Bar office substantially in compliance with the form set forth in Section 9 of this rule;~~

(2) ~~If the supervising attorney files a certificate with the presiding judge of the judicial district stating that the intern has previously been present and supervised in a similar proceedings and that the attorney believes the intern is competent to conduct such proceedings without the personal presence of the attorney;~~

(3) ~~If the client gives written consent to the appearance. A governmental body may grant approval through its attorney; and~~

(4) ~~If the judge or magistrate agrees to permit the legal intern to participate in the proceedings.~~

Section 6. Number and Length Termination of Permits. *A legal intern may receive two permits. Each permit shall cease to be effective for 10 months from the date of issuance. A permit shall expire upon the occurrence of one of the following events whichever occurs first:*

(a) ~~The expiration of a period of six months from date of issuance;~~

(b) ~~The failure of an intern to take the first Alaska Bar examination for which the intern is eligible;~~

(c) ~~The failure of an intern to pass any bar examination administered by any state of the United States or the District of Columbia unless the intern otherwise passed a bar examination administered by any state of the United States or the District of Columbia. Those persons appearing in court under the provisions of AS 08.08.210(d) are subject to the requirements of Section 3(c)(2) of this rule.~~

Section 7. Revocation Renewal of Expired Permit. *A permit may be revoked by the Executive Director on a showing that the intern has failed to comply with the requirements of this rule or violated the Alaska Bar Rules or the Alaska Rules of Professional Conduct which has expired under Section 6(a) may be renewed upon compliance with the conditions for issuing an original permit, providing there has been no prior revocation of any certificate, authorization or approval required by Section 5 of this rule. No other permit shall be renewed.*

Section 8. Prior Certification. *All interns certified prior to the effective date of this rule must comply with the provisions of this rule within 30 days of its effective date.*

Section 9. Form. *The form for entry of appearance under Section 5 of this rule shall be*

substantially as follows:

COMES NOW, ~~(Name of Attorney), attorney at law, and enters his/her appearance on behalf of (Name of Party). Please service all pleadings and notices at counsel's address of record:~~

Pursuant to Alaska Bar Rule IV-44, ~~(Name of Intern) hereby enters his/her appearance as a legal intern. Supervising counsel (Name of Attorney), certifies that he/she is supervising (Name of Intern) in all matters relating to this case.~~

~~(Name of Attorney), also certifies that (Name of Intern) has been supervised in previous proceedings and that the legal intern is competent to appear alone in the following proceedings: (Name of Intern) is a legal intern within the meaning of Alaska Bar Rule IV-44.~~

DATED: _____

SUPERVISING ATTORNEY

DATED: _____

LEGAL INTERN

CONSENT

~~I, (Name of Client), hereby agree that (Name of Intern) may represent me in this case under the supervision of (Name of Attorney):~~

DATED: _____

CLIENT

CONSENT

~~IT IS HEREBY ORDERED that (Name of Intern) may hereby appear in the above entitled case for all proceedings except _____~~

DATED: _____

JUDGE

Bar Rule 26(d). Duty to Report. Clerks of court are required to report a lawyer's conviction of a crime to the Bar Association, but often don't recognize a defendant as a member of the Bar. This amendment would require a lawyer to self report any criminal conviction within 30 days of the conviction.

Rule 26. Criminal Conviction; Interim Suspension.

d) Duty to Report. The clerk of court of any court of this state in which an attorney is convicted of a crime shall advise the Alaska Bar Association of the conviction, and upon request shall provide the Association with a certificate that the attorney has been convicted of a crime in that court, or with a certified copy of the judgment of conviction or another court document evidencing the conviction. *An attorney admitted to practice in Alaska shall also self-report his or her conviction of any crime to the Alaska Bar Association within 30 days of that conviction.*

Alaska Rule of Professional Conduct 3.8. Special Responsibilities of a Prosecutor. The American Bar Association House of Delegates adopted an amendment to Model Rule of Professional Conduct 3.8 at its August 2009 Annual Meeting adding new subparagraphs (g) and (h).

Subparagraph (g) adds that when a prosecutor knows of new, credible, and material evidence creating a reasonable likelihood that a convicted defendant did not commit the offense for which the defendant was convicted, the prosecutor must promptly disclose the evidence to an appropriate court or authority, and, if obtained in the prosecutor's jurisdiction, promptly disclose the evidence to the defendant unless a court authorizes delay and undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.

Subparagraph (h) adds that when a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy

Continued on page 25

Quote of the Month

“Laws should be like clothes. They should be made to fit the people they serve.”

Clarence Darrow

NEWS FROM THE BAR

Board of Governors invites member comments

Continued from page 24

the conviction.

The Alaska Rules of Professional Conduct Committee considered this amendment at a meeting on August 28, 2009. The Committee voted to recommend adoption of the amendments to the Board.

Rule 3.8 Special Responsibilities of a Prosecutor.

(g) When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:

(1) promptly disclose that evidence to an appropriate court or authority, and

(2) if the conviction was obtained in the prosecutor's jurisdiction,

(A) promptly disclose that evidence to the defendant unless a court authorizes delay, and

(B) undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.

(h) When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

COMMENT

[1] A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice, and that guilt is decided upon the basis of sufficient evidence, and that special precautions are taken to prevent and to rectify the conviction of innocent persons. Precisely how far the prosecutor is required to go in this direction and the extent of mandated remedial action is a matter of debate and varies in different jurisdictions. Many jurisdictions have adopted the ABA Standards of Criminal Justice Relating to the Prosecution Function, which in turn are the product of prolonged and careful deliberation by lawyers experienced in both criminal prosecution and defense. Competent representation of the sovereignty may require a prosecutor to undertake some procedural and remedial measures as a matter of obligation. Applicable law may require other measures by the prosecutor and knowing disregard of those obligations or a systematic

abuse of prosecutorial discretion could constitute a violation of Rule 8.4.

[7] When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a person outside the prosecutor's jurisdiction was convicted of a crime that the person did not commit, paragraph (g) requires prompt disclosure to the court or other appropriate authority, such as the chief prosecutor of the jurisdiction where the conviction occurred. If the conviction was obtained in the prosecutor's jurisdiction, paragraph (g) requires the prosecutor to examine the evidence and undertake further investigation to determine whether the defendant is in fact innocent or make reasonable efforts to cause another appropriate authority to undertake the necessary investigation, and to promptly disclose the evidence to the court and, absent court-authorized delay, to the defendant. Consistent with the objectives of Rules 4.2 and 4.3, disclosure to a represented defendant must be made through the defendant's counsel, and, in the case of an unrepresented defendant, would ordinarily be accompanied by a request to a court for the appointment of counsel to assist the defendant in taking such legal measures as may

be appropriate.

[8] Under paragraph (h), once the prosecutor knows of clear and convincing evidence that the defendant was convicted of an offense that the defendant did not commit, the prosecutor must seek to remedy the conviction. Necessary steps may include disclosure of the evidence to the defendant, requesting that the court appoint counsel for an unrepresented indigent defendant and, where appropriate, notifying the court that the prosecutor has knowledge that the defendant did not commit the offense of which the defendant was convicted.

[9] A prosecutor's independent judgment, made in good faith, that the new evidence is not of such nature as to trigger the obligations of sections (g) and (h), though subsequently determined to have been erroneous, does not constitute a violation of this Rule.

Please send comments to: Executive Director, Alaska Bar Association, PO Box 100279, Anchorage, AK 99510 or e-mail to info@alaskabar.org by January 15, 2010.

Civil case reporting requirement

The Board of Governors recently discussed the civil case reporting requirements and the resolution passed by the membership present at the annual business meeting during the Bar convention. The resolution asked the Alaska Bar Association Board and staff to work with the Judicial Council and the Legislature to seek repeal of the civil case reporting requirements. (AS 09.68.130 and Appellate Rule 511(e)).

At the September Board of Governors meeting, the Board met with the leaders of the following voluntary bar associations: Rob Stone, President, Alaska Trial Lawyers Association (ATLA); Laura Farley, President, American Board of Trial Advocates (ABOTA - Alaska Chapter); Marc Wilhelm, incoming President of the Defense Lawyers Association; George Cruickshank, President, and Ken Jacobus, Board member, Anchorage Bar Association. Also present were Larry Cohn, Executive Director, Alaska Judicial Council and Bob Evans, of Counsel, Patton Boggs, and lobbyist on the Alaska Bar Association sunset bill.

The Board and bar leaders discussed the requirements and the potential financial impact or political ramifications of seeking a bill to repeal these requirements. Lobbyist fees for promoting a bill would be substantial. This would come out of operating costs and result in setting a dues amount to cover this increased expenditure. Estimates ranged from \$60,000 - \$100,000 a year.

The leaders said they would talk with their members regarding funding or lobbying for a bill to repeal the requirements. Jacobus and Alaska Bar public Board member Carl Ekstrom said they would talk to Republican Party leaders about a cooperative effort to draft a bill for the legislature to consider.

The Board will periodically check with the voluntary bars regarding any progress in this area. Bar members who belong to any of the voluntary bar associations are encouraged to contact their leaders to discuss this issue.

Alaska Bar Association 2010 CLE Calendar

Date	Time	Title	Location
January 14	8:30 - 10:30 a.m.	<u>Children In The Middle Webinar</u> CLE# 2010 Price:\$20 2 general CLE credits Sponsored by: Alaska Court System	Webinar
January 27 TBA	TBA	<u>3rd Judicial District OTR</u> CLE# 2010-002 TBA general CLE credits Price: \$TBA	Anchorage Hotel Captain Cook
February 2 Live & Webcast	8:30 a.m. - 12:00 p.m.	<u>Administrative Law Update</u> CLE # 2010-010 3.25 general CLE credits Price: \$ 120 Sponsored by: Administrative Law Section	Anchorage Hotel Captain Cook
February 18 Live & Webcast	TBA	<u>Tort Law Update</u> CLE# 2010-007 TBA general CLE credits Price: \$TBA Sponsored by: Torts/Personal Injury Section	Anchorage Hotel Captain Cook
March 16 Live & Webcast	8:30 a.m. - 12:30 p.m.	<u>AK Constitutional Law Update</u> CLE# 2010-001 3.75 general CLE credits Price: \$120	Anchorage Hotel Captain Cook
June 16	TBA	<u>AK Native Law Update</u> CLE # 2010-003 TBA general CLE credits Price: \$TBA Sponsored by: Native Law Section	Anchorage Hotel Captain Cook
August 24 Live & Webcast	8:30 - 11:45 a.m.	<u>Ethics @ the 11th Hour</u> CLE# 2010-005 3 Ethics credits Price: FREE	Anchorage Hotel Captain Cook

Go to www.alaskabar.org for more CLE info.



Will litigate for retirement

By William Satterberg

My first job as a law school graduate was working for the State of Alaska. I was an envied and esteemed "Assistant Attorney General". I even had a large certificate to prove it. Like most fledgling lawyers at the time, I did have the certificate framed. I needed to impress people. It hung proudly on my office wall, next to my bookcase of green Hornbooks and Legalines textbooks. That certificate was really all I had to show for my academic success at the time.

According to current personnel in the state retirement system, I worked for the State of Alaska for 4.2 years. During that time, I believe I functioned without reproach in the Attorney General's Office, although some people might have disagreed. But, then again, those people have really never left state employment. Sort of like Linus with his blanket. For me, however, eventually, my tenure as a state servant came to an end. Valuing independence and the challenge of the real world, I entered the private practice of law. As I waved farewell to my former state employment, not wanting to exercise all of my fingers at the time, I did not consider the implications of my impetuous decision and how it would affect my lifestyle. Little did I realize that, thirty years later, my hormones would become replaced by hemorrhoids, and issues other than freedom and income would loom in my future. Ultimately, I would learn that .8 of a year could make a critical difference in my life.

In 2006, faced with an economic crisis, the State of Alaska retirement system, PERS, made a distressing announcement. Those people who had previously worked for the state and thus qualified themselves for coveted "Tier I" status, but had not fully vested, were faced with a deadline. In the event that prior unvested Tier I employees did not return to work in the state system by June of 2010, their retirement benefits yet to vest would be forever lost. In short, they would be outcasts, no longer envied, but pitied.

At first, I did not consider the notice to be that serious. After all, my private practice was successful.

Moreover, my follow-up plan to private practice was simply to retire. I expected to spend the rest of my days languishing on some tropical island in the South Pacific, continuing to write academic discourses on the practice of law. Besides, I had cashed out my retirement benefits when I left the State of Alaska. I had no money in the plan to worry about.

One day, a colleague pointed out to me that the State of Alaska Tier I benefits had their real value in the personal medical benefits. Realizing that my doctors had recently been looking into rather personal areas on me, as well, cautioning me about the advent of old age and the various symptoms which can develop, I began to focus more specifically on my old age medical benefits. That is, once I was able to focus, again, following one very personal examination. (Read my in depth article on my colonoscopy.) After much deliberation, I reluctantly decided that I should enter re-employment with the State of Alaska. In Tier I, I could vest for medical benefits and thus provide for my "Golden Years." Besides, I needed rest and relaxation. What better place to sleep than in a state office?

Previously, various people had suggested to me that I apply for a judgeship. Most of these people were my criminal defense clients looking for a favorable future. For a time, I actually considered that option, since I was running out of writing material for the Bar Rag. I learned that, in just five years, I would be qualified for judicial retirement. Judicial retirement was a far better "plum." Unfortunately, judgeships did not come without emotional baggage. All applicants had to submit not only extensive personal disclosures, but had to undergo often harsh public comment, as well. Eventually, the realistic side of me indicated that I would never make it through the judicial screening process, even though hazing is now illegal. Moreover, being



"My logic was simple. Because I had been instrumental in having many defendants committed to jail, the District Attorney's Office should immediately recognize my value."

an inherently sensitive individual, I could not endure the comments which undoubtedly would have been written about me. Besides, I am not a political animal. No, in my opinion, it was far better to go back to work for the State of Alaska strictly as a Tier I employee, and not enter the judicial hierarchy.

My plans made, I first sought work with the State of Alaska District Attorney's Office. My logic was simple. Because I had been instrumental in having many defendants committed to jail, the District Attorney's Office should immediately recognize my value. After all, I likely had more convictions to my record than any other attorney that worked for that office. Moreover, like any good professional, I should be able to hit the ball off of either side of the plate. As I viewed things, it would simply be a matter of readjusting my sights to become a prosecutor, as opposed to a defense attorney.

Conceptually, the proposal made sense. Accordingly, I contacted the head prosecutor in Fairbanks, Mike Gray, who indicated that I really needed to contact the head prosecutor somewhere else, who, in turn, referred me elsewhere. I was off to a bad start, already.

I eventually was referred to the Juneau office for the District Attorney's Office. I was pleased. After all, this was "head shed" stuff. I figured that there was something big in store for me, having supported the administration in the last election, or at least having claiming to have done so like all of the other applicants for exempt and partially exempt positions. I was a natural.

In time, I spoke with Rick Svodney. Rick is a veritable icon with the State. Rick has worked in the Department of Law since 1975, shortly before even I joined up. Setting aside my anti-government prejudices, I respectfully expressed my interest in working for the State. I volunteered

my most valuable services. To my surprise, Rick was non-committal. In fact, he was not encouraging at all. Perhaps, the others in Rick's command felt understandably threatened by my Mel Gibson, movie star looks. Regardless, it was not long, maybe five minutes to be exact, before I was told that there were no positions open. Furthermore, none were ever anticipated, even in Bethel. Clearly, I most likely would not be hired, at least if Juneau had any say in the matter. I was crestfallen. So much for the extended winter vacations to New Zealand for this old guy.

I conceived a different ploy. I would try the proverbial "end around" for which I was famous. I would apply for a job in Barrow, Alaska. I would hope that Juneau would not notice my application. After all, Barrow had previously hired my current associate, Tom Temple, hadn't it? Obviously, the standards were much different in the far Arctic. Where Juneau housed the mucky mucks, Barrow was but a distant outpost. Unlike others, I personally enjoyed Barrow. After all, I had recently won an unwinnable criminal defense case in Barrow. Shortly thereafter, the Barrow District Attorney, Sarah Stitzer, had left her Barrow job to move back to warmer Fairbanks and work for the local District Attorney's Office. Once again, there was an open position in Barrow. I was the obvious choice.

I was mistaken. Shortly after I made my interest in the Barrow position known, I learned that the District Attorney's Office had located a bright young attorney who actually was willing to live in Barrow. In addition, this professional actually already lived in Barrow. "Arctic Shock" would not be a factor. It did not take me long to do the math. I quickly realized that Robin Kouchak, a tough talking barrister who can make a long haul trucker blush, and one lady who I would never want to meet in a back alley, had taken the job.

I graciously contacted Robin after she received her appointment to congratulate her. I immediately told her how disappointed I was that she "stolen" my job from me. To my surprise, Robin did not see it that way. Still, Robin was uncharacteristically compassionate and profanely told me that, most likely, her position would come open again at some point in time. After all, the limited professional tenure of Barrow counsel was legendary. Iraqi suicide bombers had a better life expectancy.

One year later, as prophesied, Robin's position did become open. Again, I made my interest known. And, again, I was passed over. This time, the position was given to a young lady who had finished her job as a law clerk in Kodiak. I once again had to satisfy myself with the fact that my job had been "stolen." By then, I was having some profound self-esteem issues. I seriously considered returning to my group therapy sessions.

My future as a prosecutor with the State of Alaska was obviously limited, but I was not given to quitting easily. I had made that mistake once before after 4.2 years of employment, and was not going to make it by quitting easily again. I tried a different tact. I would reverse course entirely. I would apply for work with the Public Defender's Office. After all, I was an

Continued on page 27

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Will litigate for retirement

Continued from page 26

experienced attorney. In addition, I had a significant amount of defense time under my belt, and had kept scores of innocent victims out of jail. Given my time in the private defense practice, I felt that I had valuable experience that I could impart to the young pups who are regularly attempting to learn how to practice law with the Public Defender's Agency. I could be a legal granddaddy of sorts. The "Pappy Boyington of the PD's."

In preparation for the avalanche of interviews that I knew would undoubtedly come, I searched my closet frantically for appropriate attire. I was "wardrobe challenged." I desperately needed a Patagonia fleecy jacket, some brown corduroy pants, and a used looking set of Lobel boots in order to look the part. Since growing any appreciable hair and having an earring installed in one or both of my ears were out, liberal looking clothing was the next best option. Fortunately, Fairbanks had a Value Village. In the end, both Paul Canarsky and Judge Steinkruger would have been proud of my appearance.

"No sir! No Carhart pants for this candidate! Strictly imported, warm fuzzy stuff." The softer, kinder, gentler Bill Satterberg had finally arrived.

My strategy set, I made numerous overtures to the local Public Defender's office. Once again, to my dismay, all attempts were rebuffed. To add insult to injury, I was told that the likelihood of me being employed in Fairbanks was virtually zero. Apparently, some of those pinko liberals thought that I was "too hard to control." "Billy doesn't play well with others." Maybe it was a throwback to my baby days of potty training. Still, that was fine. I decided to pout. I didn't want to work with them anyway. I reluctantly reconciled myself to the latest local rejection. Practically, as well, it did not make sense to work in Fairbanks. I would have a hard time ducking my clients, especially as a free lawyer, and I was hard to control.

Eventually, I did receive an offer of sorts from the Public Defender's Office. Actually, it was more of a "feeler." The potential tender followed numerous phone calls and pressure being brought through another one of my proverbial end-arounds. In short, I had become a pest. One day, I was advised by the Agency's Anchorage office that, should I really be interested, there might be a "bush position" available at an "Attorney II" entry level. The location was not specified, but only that it was "in the bush".

Realizing that I had left the State of Alaska twenty-eight years earlier as an Attorney IV (F), it dawned on me that an entry-level position as a Public Pretender in the bush might not necessarily be to my elitist liking. Not that I did not like the bush. In fact, I occasionally drink at an establishment in Anchorage that bears the name. But, being assigned at St. Paul Island or some similar venue did not have much appeal. Besides, I had yet to reach such depths of desperation. And, when it came to hunting, I had never been much good with a baseball bat, and would likely starve. Even young fur seals were known to be skittish. In retrospect, my opinion on that topic, as well, probably did not do much to endear me to those doing the

hiring. Ultimately, I politely indicated that I actually was not interested in the position. Still, it was an "offer", which was some consolation. It also became apparent to me that I might have some value in the end as a law clerk for a new law school graduate attorney at the Public Defender's Office, if worse ever came to worse.

My next strategy was to try to go back to work for my old employer, the Attorney General's Office. I would practice transportation law, condemning land from innocent citizens. From time to time, announcements are circulated around the legal community advertising that the Department of Law has positions open for an Assistant Attorney General. I began to pay attention to the announcements. One circular caught my attention. It advertised that a trial counsel was needed for the transportation section of the Anchorage Attorney General's Office. Again, I was the natural choice. I had worked specifically for that unit in Fairbanks for 4.2 years, to be exact. Elated, I made contact to see whether or not I could fill the advertised position. Once again, following the submission of my resume on at least two occasions, since the first one was apparently lost (or at least I was so told), I was politely advised that my re-employment with the office was not likely. The Department wanted young, dedicated, energetic individuals who wanted to work for the Department longer than eight-tenths of one year. If necessary, I was prepared to represent otherwise, should that make the personnel folks feel better. But, I now suspect my ruse was apparent. No offer was tendered. Instead, I was told that the position was filled, a song I had grown to know all too well. For the first time in my life, I briefly considered filing an age discrimination case against my old section. However, the concept only made me feel yet even older, so I forgot about it. Besides, such a suit would have been futile, since both Bill Murphree and Bob Noreen, two really old guys, had successfully landed state jobs.

What really hurt my pride was when I was told that the Anchorage Transportation Section had no positions open, and then I saw the same job circular re-emerge two months later. I began to feel like I was on the proverbial "snipe hunts" of my youth.

I was beginning to conclude that a career with any branch of the Department of Law was not likely.

When things looked darkest, one state supervisor did have pity upon me. He was the superintendent for the local jail. I was told that, should I desire to be a guard, a position might become available. I could work at the local facility feeding prisoners, doing their laundry, and getting into the occasional sanctioned cage fight. Even that offer appeared to have merit, although I eventually recognized that such a position would not be the best job for me. As a uniformed guard, since I would continually have to interface with clients, or those who wanted to be my clients. At a minimum, I would have to have my name changed and undergo plastic surgery. I would also have to develop some intestinal fortitude and a profound tolerance for pain. I had always been a chicken when it came to fighting, and most of my clients knew as much, having watched me in

court. Like the bush "offer" from the Public Defender's Agency, I put the idea on the back burner, to be used only in an emergency.

I next inquired directly with the Alaska Court System. I was advised by Judge Funk that a position might be opening as a counselor for the therapeutic court. This position was tempting due to my proven ability to relate to drunks and druggies on their level. The fact that I apparently

was quite experienced in being able to watch males urinate was also a plus for the drug testing aspects of the job, according to Judge Funk. I never did figure out why Judge Funk felt that I fit that particular qualification so well, but I chose not to argue about it. Eventually, however, that job, too, went down the drain. Unbeknownst to me, perhaps Don Logan had secretly

Continued on page 28

A top class act --Satterberg gets a client

By: Logan

There are several well known sayings that apply here.
"What goes around, comes around."
"Paybacks are . . ."



After Billy Bob Satterberg's last *opus magnum*, I figure it is time for someone to talk about him, besides himself that is. Billy Bob you say? What else do you call someone named William Robert? Now, I know where lots of bodies are buried and what closet holds which skeleton, but since he didn't burn me on the good stuff, I guess he gets a partial pass.

It was, I think, early summer 2006 and I was bored. To quote another quote, a friend of mine says: "Hell hath no fury

like a Logan bored." Billy Bob and I have been playing elaborate practical jokes on each other for about 25 years. I figured I'd have a little fun.

There is an advertising flyer in Fairbanks called "Top Class Advertiser." There is a connection with the local education system, but I never figured it out. They advertise used cars, firewood, babysitters, used most everything. It's free, you find it in racks as you enter Safeway. You know the drill.

I stopped by Top Class that day and paid for an ad that said:

Criminal Lawyer, Eager for work. Call Bill Satterberg at 452-4454

After the issue appeared I waited to hear from Billy Bob – and waited – and waited – and waited. I was beginning to think the jerk had beaten me at my own game and was going to pretend he either didn't see it, or didn't care. But, finally, my hopes were answered and I got a call from Billy Bob. He was p@#%!

Billy Bob explained to me that he had just gotten off of the telephone with Top Class where he apparently complained vehemently, and loudly. According to Billy Bob I had ruined his practice and his reputation. I suggested that it would be very difficult to damage Billy's Bob's reputation since he had done all the damage possible over the years, often in the pages of this esteemed publication. This had the desired effect and raised Billy Bob's blood pressure another 20 or 30 points.

The conversation continued, loudly and angrily, without interruption (or even the chance to interrupt) for another 15 minutes while I, and 4 other lawyers, tried not to injure our abdominal muscles. You see, Billy Bob was so intent on screaming at me when the call began that he forgot that I told him I was working on something with others and would use the speakerphone.

Finally, Billy Bob made a fatal mistake. He unthinkingly divulged that he had discovered the ad because a potential DUI client called to make an appointment. When I asked him for a finder's fee, he hung up on me.

After we all finished laughing I headed over to Top Class to apologize and explain that I had expected Billy Bob to have a better sense of humor on this one.

Billy started talking to me again in a few months. He always does.

Wait! There's more. My devious mind hatched a follow up plan. I figured the next summer I would put an ad in Top Class, or if they wouldn't take it (likely), in the Newsminer, that said:

Criminal Lawyer, Eager for work. Call Don Logan at 457-4794.

I intended to refer any calls to Billy Bob's office. I knew everyone would think he was paying me back with the ad. I wanted to spend the entire summer listening to him deny it! But I chickened out.

By the way – you all do know that Billy Bob's birthday is April 1st? No really!

Will litigate for retirement

Continued from page 27

applied for the position. If so, my qualifications would have shrunk in comparison.

Most recently, to my surprise, the Department of Law expressed interest in me when Jay Fayette of the Office of Special Prosecutions in Anchorage suggested I apply to be a gang prosecutor. According to Jay, the job was a newly created position. It demanded an intrepid attorney — one who would not shrink from challenges. Jay did not say why he didn't apply, himself. Until then, I had never known Jay to be one to shrink at anything, but I decided not to push the issue. After all, a job was a job. I decided to take a serious look at the position.

The description parroted my qualifications. I briefly wondered if some unseen supporter of mine had

secretly released a copy of my resume to the drafters of the invitation, until I realized that I had yet to find any supporters. Still, I was ecstatic. I was tailor-made for the position, that is, until I read the part about prosecuting "retaliatory killings." The lack of specificity in the "retaliatory" part of the job announcement caused me to rethink how poorly qualified I actually was for the job. Rather than risk yet another rejection, I chose not to apply. After all, there were far better qualified lawyers than me fresh out of garage law schools to prosecute gang crimes. Although the position may soon be filled, like Barrow, I expect it to be regularly advertised. In retrospect, maybe I was being steered to the job out of some retaliatory motive by the higher-ups.

Time marches relentlessly onward. To date, I have yet to receive a realistic or genuine offer of em-

ployment for the State of Alaska. Fortunately, there are still over one and one-half years remaining before I fall into a total professional panic. As such, I am hopeful that I will become accepted to work in some capacity, somewhere, somehow. In fact, it does not have to be as a lawyer. I am even willing to drive a snowplow and kill roadside mailboxes. The job can be either high or low level, as far as I am concerned.

On the high level side of things, I have concluded that both Governor Sarah Palin and Lt. Governor Sean Parnell are still planning on leaving their jobs and on trying again to move up the political food chain. Setting aside the publicity rights, why else would Sarah leave now for the Vice Presidency and Sean for United States Congress in the same year? Although it may appear a bit

ambitious and presumptuous, I even thought of applying for one of their positions, until Sarah announced her hiring freeze, most likely as a preemptive defensive maneuver when she learned I was eyeing her slot. After all, nothing ventured, nothing gained. And, as far as I know, there are, as of yet, no Bill Satterberg look-alikes to sabotage me. Unfortunately, I have been unable to contact anybody in the Governor's office who seems willing to give me a call back, let alone a definitive answer.

In the end, I may be forced to hang a cardboard sign around my neck and to stand on a local street corner outside of the nearest state office building at 4:30 pm each work day, pleading with the crowd that predictably rushes out at quitting time for spare change and advertising that I will "Litigate for Retirement."

ATTORNEY DISCIPLINE

Attorney X privately admonished

Bar Counsel issued a written private admonition to Attorney X after finding that Attorney X violated Rule 1.1 on competency. A lawyer needs to demonstrate the legal knowledge, skill and thoroughness necessary to provide reasonably competent representation to a client.

Attorney X practiced before an agency that required compliance with

specific rules and procedures. Attorney X often failed to follow procedures that other attorneys followed as a matter of course. On occasion agency staff intervened to prevent harm to Attorney X's clients by Attorney X's failure to follow agency procedures. An agency member alerted Bar Counsel of its concerns.

Attorney X recognized that he had a problem and reduced the number of client matters that he handled. He

undertook continuing legal education using resources dedicated to his practice area. Bar Counsel concluded that Attorney X had made a commitment to improve his skills in the areas that needed improvement and that the goal of public protection would be adequately addressed by a written private admonition.

An Area Division member reviewed the disciplinary file and approved the issuance of an admonition.

Ketchikan lawyer disbarred

On August 4, 2009, the Alaska Supreme Court disbarred Ketchikan attorney Willard Woodell from the practice of law effective immediately. The Court's order adopted the discipline recommendation made by the Disciplinary Board and the Area Hearing Committee which first recommended disbarment as the appropriate discipline for wide-ranging misconduct.

In matters involving complaints from seven clients, the Area Hearing Committee earlier concluded that Mr. Woodell violated duties owed to his clients when he neglected their legal matters, failed to communicate with his clients, failed to provide written fee agreements, failed to provide

accountings for legal services, failed to safekeep client money, failed to return client files, failed to decline representation of new clients just prior to abandoning his practice, failed to avoid a conflict of interest and failed to respond to disciplinary charges against him. Noting that Mr. Woodell made no effort to make things right with his clients, the Committee was troubled by his failure to take any personal responsibility for his obligations to his clients, even after the Committee offered him an opportunity to provide a restitution plan to repay monies owed to clients.

In order to seek readmission to the Alaska Bar, the Court's order requires Mr. Woodell to make full restitution of any amounts owed to the Alaska Bar Association and the Lawyers' Fund for Client Protection. The Lawyers' Fund for Client Protection paid reimbursable losses in the amount of \$39,035 after finding that Mr. Woodell committed dishonest conduct as defined by Alaska Bar Rule 45(e).

The Clerk's File in this matter is available for review in the Office of the Alaska Bar Association.

Attorney X receives admonition

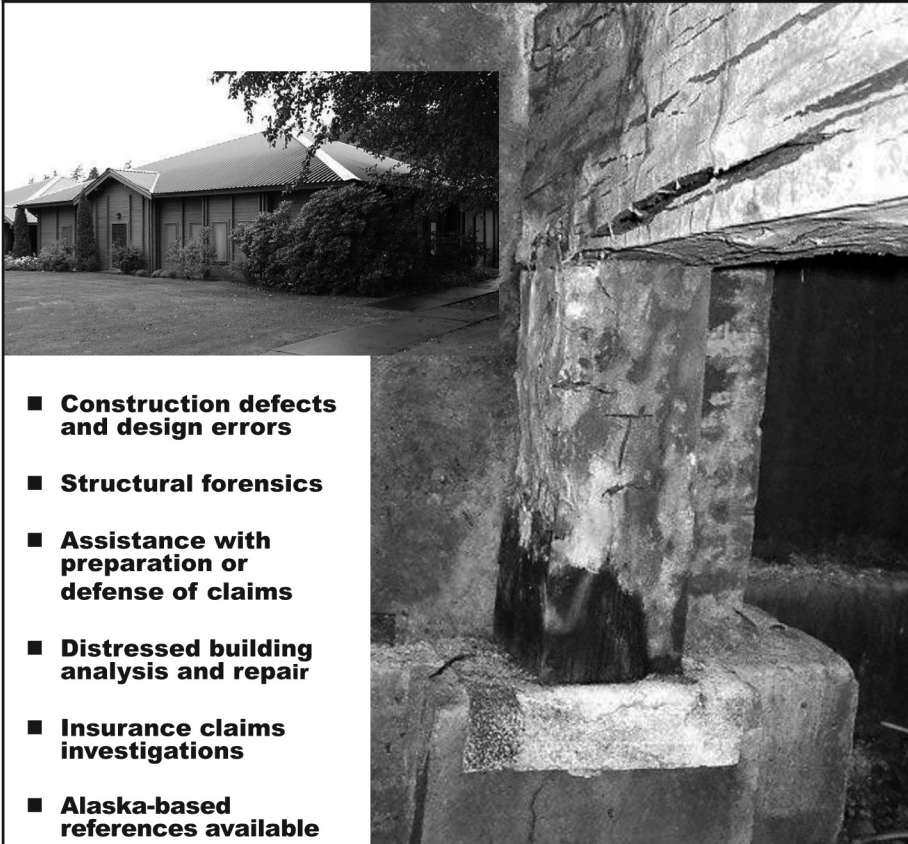
Attorney X received a written private admonition for neglecting to follow court orders, a violation of Alaska Rule of Professional Conduct 3.4(c).

Attorney X failed to comply with the court's briefing schedule and later failed to comply timely with the court's order to show cause why he should not be sanctioned for failing to respond to the court's order.

Attorney X admitted that he failed to file a brief timely and later missed a show cause hearing. At the time, Attorney X was dealing with a family emergency that required an extended absence out-of-state. Attorney X acknowledged that he failed to seek an extension of time due to his absence or to take steps to protect his client's interests. Attorney X complied with all subsequent orders and his client was not legally prejudiced.

An Area Hearing Division member reviewed the matter and approved the administration of a written private admonition in this matter.

Structural Engineers for Construction Law

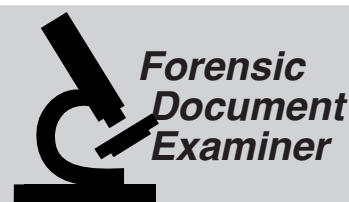


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Leading a horse to water

By Steven T. O'Hara

Suppose instead of benefiting a charity in your Will or other document you give all property to your family or other non-charitable beneficiaries. In the appropriate document you could then express your wish that the recipients make charitable gifts.

For example, consider the following provision that could be inserted into a Will or trust:

It is my wish, but not my binding direction, that after my death my descendants will donate \$X to Specified Charity and that each descendant will also pick a charity of his or her liking and donate a sum he or she determines to give. I wish to emphasize that the preceding sentence is not a direction; nor is it binding on any of my descendants.

This provision is for illustration purposes only and, in any event, must not be used without being tailored to the applicable law and circumstances.

Charitable planning does not need to be complicated. Perhaps the simpler the better. The above provision is simple and might create a tax deduction where otherwise there was none. Fewer estates under current law are subject to federal estate tax. Thus giving property directly to charity under a Will or a probate substitute in order to obtain the federal estate-tax charitable deduction may not be important, depending on your particular circumstances. On the other hand, if your children or grandchildren donate inherited property to charity they might obtain income-tax charitable deductions.

Another title and direction for this piece could have been "Creating Charitable Deductions." A review of the various methods could then have been made.

Tax deductions are important. But I believe a more important by-product of charitable giving may be to help donors live happy lives.

Many believe that wealth ruins children. I believe wealth as such does not ruin people; failing to prepare them for wealth may. Wealth is not bad; greed is the root of evil, not money (see 1 Timothy 6:10).

So if you have children and wealth and intend to bring them together one day, how do you prepare them? I believe by teaching, by example, that a happy life is not based upon possessions but upon relationships as well as work ethic, whether on a for-profit or non-profit basis.

A possible tool here is to include children, both while you are alive and after your death, in the decision-making process that goes into charitable giving. What charities are supported? Who, what, where, when, why and how? What is it about giving that helps donors guard against their own greed and pride based upon possessions?

Charitable giving includes donating services, whether of pro bono legal services or other volunteer work (Cf. Treas. Reg. Sec. 1.612(c)). The Alaska Rules of Professional Conduct provide: "Every lawyer has a professional responsibility to provide legal services



"Charitable planning does not need to be complicated. Perhaps the simpler the better."

to those unable to pay" (AK RPC 6.1). The rules mention "charitable, religious, civic, community, governmental and educational organizations . . . where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate" (AK RPC 6.1(b)(1)).

Greed is the root of problems with wealth. Steps to combat greed include charitable giving since it requires unselfishness. Undertaking

and sticking to a charitable-giving program also takes self-control and perseverance. Recently it was reported that despite the 2008 economic meltdown, Alaskans are persevering in their charitable giving and elected in early 2009 to donate a total of \$550,000 directly to charities from their Permanent Fund Dividends (Bluemink, *PF Dividend Cash Is A Boon To Alaska Charities*, Anchorage Daily News, Nov. 3, 2009, at 1, col. 4).

Exercising unselfishness and developing self-control and perseverance help guard against greed as well as pride based upon possessions. Charitable giving — with its required unselfishness, self-control and perseverance — can also engender hope, a necessary ingredient for a happy life.

Many expressions apply to estate planning, including the following: "You can lead a horse to water, but you can't make it drink."

Inviting someone to participate in your decision-making is about giving

up control and taking a chance that the horse will drink. Of course, where it is essential that a particular charity receive the property, you can benefit charity directly in your Will or other document or make the contribution during your lifetime. It can be beneficial to give before death, rather than by Will or otherwise at death, in order to capture a final income tax deduction. You can also then rest easy that the gift is complete.

Norman Rockwell painted a great picture around the theme of a parent giving his child a financial education. The painting depicts a father and son sitting before the living room fireplace, with the family dog looking on. The family lock box is on the floor with papers hanging out of its half-open cover. The father is holding up a stock certificate and explaining it to his son, who with hands folded is watching his father intently. Time will only tell whether the child will learn to use money usefully and prudently and to assume the responsibilities of adult life and self-support. Time will only tell if the child will lead a happy life.

Intentional family meetings are helpful. Here full and fair disclosure of wealth and intent are put on the table.

At family meetings you can teach your descendants that charitable giving is not about tax deductions but that tax deductions are helpful because they allow more to be given.

Charitable giving may be a barometer of a happy life, a life based upon relationships and work ethic and not upon possessions.

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Finding new ways to help

Dire financial conditions make the need for pro bono services even more acute

By Carolyn Lamm

Central to our system of justice, our profession and the American Bar Association is assuring that all people, regardless of income or personal wealth, have access to justice. Indeed, the ABA Model Rules of Professional Conduct call on lawyers, as "public citizens," to work on improving access to the legal system.

In 1963, the U.S. Supreme Court's landmark Gideon decision stated that all indigent criminal defendants are entitled to a lawyer's help. Yet our criminal justice system continues to deprive the poor of equal access to justice. Public defenders are still over-worked and the problem has been exacerbated by the recession and resulting justice system budget cuts.

Despite serious flaws in the criminal defense system, criminal defendants at least have a constitutional right to legal assistance. This is not the case in our civil justice system. Millions of low-income people and others affected by the economic crisis who face life-changing civil legal issues (e.g., loss of their home, loss of their family or custody issues) have no right to a lawyer, and at least 80 percent of poor people who need civil legal help do not receive it.

Here, too, the economic crisis is making the situation more dire. The need for legal assistance that can help avert or mitigate evictions, foreclosures, personal bankruptcies and other recession-related problems is greater than ever. The ABA Coalition for Justice is assessing the "justice gap" as a result of the economic crisis and will report on the scope of the legal services shortfall.

The ABA continually lobbies Congress to increase funding for the Legal Services Corp., which provides legal assistance to the poor in civil matters. Thanks to the grassroots support led by the ABA, legal services are due for a significant funding increase; but despite the additional funding, legal needs will remain greatly underserved. And because of our lobbying efforts, the White House and Congress are working to lift restrictions on federally funded legal services programs that impede the efficient delivery of legal services.

But we must do much more. Lawyers and advocates nationwide have been working hard, with ABA support, for the right to counsel in civil matters where basic human needs are at stake—a "civil Gideon" policy. They are making progress case by case, state by state, jurisdiction by jurisdiction. Most recently, in the Alaska Supreme Court case of *Office of Public Advocacy v. Alaska Court System*, the ABA filed an amicus brief supporting civil Gideon.

This fundamental right must be recognized by courts and legislatures—and fully funded.

Another equally critical component in bridging the justice gap is pro bono, and lawyers are rising to the challenge. A recent ABA study shows that 73 percent of lawyers reported doing pro bono work in 2008. The number of pro bono hours worked annually per lawyer increased from 39 in 2004 to 41 in 2008. While the profession's dedication to pro bono is to be applauded, those efforts alone cannot fill the justice gap.

The ABA's support for pro bono activity includes policies that encourage the adoption of pro bono practice rules for qualified retired or otherwise inactive lawyers, support transparency of law firms' pro bono practices when recruiting at law schools, and encourage courts to develop programs that facilitate and recognize pro bono representation. Also, in an effort to encourage retired and inactive members to provide services, the ABA has adopted a dues waiver program for those who have provided 500 hours of pro bono service in the prior year.

Other notable ABA initiatives include the Military Pro Bono Project, which provides pro bono services to active-duty service members, and the Medical-Legal Partnerships Pro Bono Support Project, which joins doctors and lawyers to help patients resolve health-related problems such as hunger, winter utility shut-offs and mold removal from the homes of asthmatic children.

This month marks the launch of the ABA's National Pro Bono Celebration (probono.net/celebrateprobono), during the last week of October. Organized by the ABA Standing Committee on Pro Bono and Public Service, it will recognize efforts of America's lawyers, recruit volunteers and mobilize community support for pro bono.

Events throughout the nation sponsored by law firms, bar associations, courts, law schools, programs and corporate counsel will acknowledge lawyers who have committed themselves to making access to justice for all a reality. But more important, the celebration will serve as a reminder of the ever-growing needs of this country's most vulnerable citizens—needs that are only accentuated by the current economic climate.

During the recession, the ABA is encouraging several law firms that deferred associates to urge them to work in pro bono and public service positions. This is yet another way we demonstrate our responsibility to help meet the legal needs of the poor. But while much has been accomplished, we still have much to do.

The author is the president of the American Bar Association.

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Justice Robert L. Eastaugh retires

Bob is Moving Out

A poem recited to the meter of Casey at the Bat

Chief Justice Carpeneti:

It started looking rocky back in April of '09
We'd conferenced several cases, our discussions went just fine;
We had gathered up our papers and were heading for the door,
When Bob asked us to sit back down, for another minute more.

Justice Fabe:

He looked a little . . . twitchy; not at all a Bob-like trait,
So we knew that something must be up, and we settled in to wait.
Then he made the fateful statement; "Finito! I'm done! That's it!"
We gasped, and wept, and moaned, but he insisted, "It's time to quit!"

Justice Winfree:

We shook; we quaked; we shuddered. Then cringed in a state of dread,
How could Bob up and leave us? Was it something that we said?

Justice Christen:

And then I got to thinking . . . about the strange connection,
Between my own arrival, and Bob's immediate defection!

Chief Justice Carpeneti:

It isn't easy being chief when the likes of Eastaugh calls it quits,
The franchise gets the jitters, the players go into fits!
Yet on we go; we trudge along; we've got no other option,
But our hearts are heavy; it's just us four . . . and it's really sort of rotten!

Justice Winfree:

Well, everything was rosey, until The New One made the scene.
Bob said *nothing* about leaving, until *she* joined our team.

Justice Christen:

But I suspected Winfree; I didn't make Bob flee!
I just barely got here - it couldn't possibly be me!

Justice Fabe:

It didn't help our egos when he biked through Italy,
He came back looking tan and fit; casual and care free.
And *did* he say he missed us? Not that I recall,
Only talk of wine and chocolate - he's really got some gall!!

Justice Winfree:

At first, I hoped he'd change his mind, and write some more decisions,
Or at least come back and lend a hand: maybe draft a few revisions?
But now he's tasted freedom; no use trying to get him back,
It's clear that we're not in his plans; he's given us the sack!

Justice Christen:

We'll miss his puns, and rhymes and verse; he'd make *this* poem much better,
And his eagle eye can always spy - the incorrectly-fonted letter!
Yes, losing Bob is going to hurt, no matter what we do,
I say we call the Gov, and beg: "Sir, could you arrange to send us *two*?"

Justice Carpeneti:

Oh, somewhere in this frozen land, the sun is shining bright,
The band is playing somewhere, and somewhere hearts are light,
And somewhere men are laughing, and little children shout,
But there is no joy on our fifth floor; 'cause Bob is moving out!

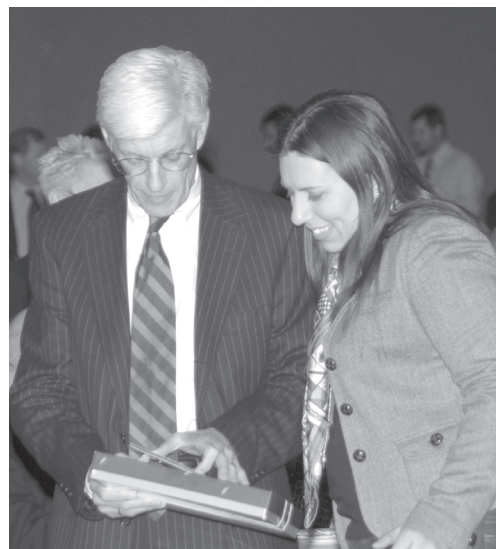


Justice Eastaugh received a photograph by Anchorage photographer Hal Gage from his law clerks, past and present. Former law clerks Jahna Lindemuth and Stacey Marz presented the gift. He also received a Tlingit drum from his fellow justices and Christine Johnson, Administrative Director of the Alaska Court System.



Photos by Joe Godsoe

Justice Eastaugh and his wife Suzanne Dvorak greet friends and colleagues.




Justice Eastaugh accepts well wishes from Anchorage attorney Natalie Landreth.




Alex Bryner paid tribute to his former colleague.

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A Great Man: A Tribute to Justice Robert Eastaugh

By **Erwin Chemerinsky**

Dean and Distinguished Professor of Law, University of California, Irvine, School of Law

By every measure, Robert Eastaugh was a great justice on the Alaska Supreme Court. In his 15 years on the high court, he produced an enormous body of decisions on a vast array of issues. His opinions were always thorough, carefully reasoned, and clearly written. In my yearly trips to Alaska to speak at the bench/bar conference, I never heard a lawyer or a judge say a negative word about him. It is clear that he has earned the tremendous admiration and respect from all who work with him and appear before him.

Yet, I know that this does not begin to describe his contribution to Alaska law and the Alaska judiciary. As I reread many of his opinions and as I thought about the man that I have gotten to know over my visits, I realized that what makes him so special as a justice is his inherent and tremendous decency. It comes across in his opinions and is apparent to all who speak with him, however briefly.

There has been much attention over the last several months as to whether justices should have “empathy.” To me, that is an easy question. Isn’t a person without empathy a sociopath, and surely that is not what we want on the bench. Of course, justices should not base their decisions on emotions, including empathy. Justices are expected to do their best to apply the law and follow precedent. But courts, especially supreme courts, often have discretion in interpreting the law. Justices should at least be aware of and hopefully consider the effects of their rulings on people’s lives. That is what empathy is about: having judges be cognizant of the impact of the law and their decisions on human beings.

Justice Eastaugh’s body of work on the bench shows that this is exactly who he was as a judge. His humanity and decency were powerfully present in his rulings.

Another characteristic of Justice Eastaugh on the bench is his courage. We want justices who are willing to do the unpopular when they believe that is what the law requires. Constitutions are inherently anti-majoritarian; they exist to limit what the elected branches of government can do. Judicial review, by definition, also is anti-majoritarian when it is enforcing the Constitution. There is a danger, especially in states like Alaska with retention elections, that justices will be influenced by the need for approval at the polls. But it is clear that Justice Eastaugh always calls them as he sees them, however popular or unpopular the rulings.

A few examples illustrate these wonderful traits. In *American Civil Liberties Union v. State*,¹ Justice Eastaugh wrote the opinion for the Court holding that public employers must provide benefits for same-sex partners. Justice Eastaugh explained that the government provides valuable benefits to married couples, which opposite-sex couples, but not same-sex couples, could obtain. He said that there was no need to consider whether heightened scrutiny was appropriate because even under minimal scrutiny the discrimination could not be justified.

As a matter of law, the Court seems unquestionably right in its unanimous conclusion. It is hard to imagine any legitimate reason for denying benefits to same-sex couples that opposite-sex couples can receive. But there is no doubt that this ruling required judicial courage. Alaska voters had adopted a Marriage Amendment which states that “[t]o be valid or recognized in this State, a marriage may exist only between one man and one woman.”²

Justice Eastaugh’s opinion logically explained that “[t]he Alaska Constitution’s equal protection clause and Marriage Amendment can be harmonized in this case because it concerns a dispute about employment benefits. The Marriage Amendment effectively precludes same-sex couples from marrying in Alaska, but it does not explicitly or implicitly prohibit public employers from offering to their employees’ same-sex domestic partners all benefits that they offer to their employees’ spouses. It does not address the topic of employment benefits at all.”³

Nor, as the Court explained, does denying benefits to same-sex couples have any benefit in terms of promoting marriage. Since same-sex couples are denied the ability to marry in Alaska, denying them benefits has no effect at all in encouraging marriage. As Justice Eastaugh explained: “making benefits available to spouses may well promote marriage; denying benefits to the same-sex domestic partners who are absolutely ineligible to become spouses has no demonstrated relationship to the interest of promoting marriage.”⁴

The government’s primary justification for excluding benefits to same-sex couples was cost-control. It was especially here that Justice Eastaugh’s decency and courage were expressed. For the Court, he wrote:

“Many same-sex couples are no doubt just as ‘truly close[ly] relat[ed]’ and ‘closely connected’ as any married couple, in the sense of providing the same level of love, commitment, and mutual economic and emotional support, as between married couples, and would choose to get married if they were not prohibited by law from doing so. Although limiting benefits to ‘spouses,’ and thereby excluding all same-sex domestic partners, does technically reduce costs, such a restriction fails to advance the expressed governmental goal of limiting benefits to those in ‘truly close relationships’ with and ‘closely connected’ to the employee.”⁵

The opinion was characteristic of those written by Justice Eastaugh: it was grounded in precedent and the law, not lofty rhetoric. It was clearly organized and clearly written, so that non-lawyers also could appreciate its reasoning. Anyone reading the opinion, whether they agreed or disagreed, would see that it was carefully reasoned. But at the same time, it showed great compassion and decency to those who have long been discriminated against based on their sexual orientation.

Another area where Justice Eastaugh’s judicial courage is evident is in his opinions striking down aspects of Alaska law regulating sex offenders. In *Doe v. State, Department of Public Safety*,⁶ he wrote for the Court in holding



Justice Eastaugh’s colleagues on the Alaska Supreme Court sing his praises (each with nicknames on the back of their jerseys): L-R, standing: Justice Morgan “Rookie” Christen, Chief Justice Walter “Chief Bud” Carpeneti, and Justice Daniel “Dan the Man” Winfree. Seated is Justice Dana “Trailblazer” Fabe, who accompanied the group on the ukulele. Justice Robert L. “Eagle Eye” Eastaugh retired Nov. 2.

that it violated due process to apply Alaska’s sex offender registration statute where the conviction had been set aside. More recently, in *Doe v. State*,⁷ he authored the majority opinion in holding that it is an impermissible ex post facto law to apply the sex offender registration statute to a person who was convicted and sentenced prior to the adoption of the law. He reasoned, for a 4-1 Court, that the law is so clearly punitive that its retroactive application is unconstitutional.

The beneficiary of the ruling was deservedly to be condemned: he had molested his three daughters. Yet, the point of judicial review is not to do what is popular. It would have been easy for the Alaska Supreme Court to follow the United States Supreme Court and avoid a controversial result.⁸ Yet, that would not be true to the Alaska tradition of giving independent meaning to the Alaska Constitution. Nor would it be consistent with reality: the sex offender registration statute is clearly and justifiably punitive. But, as Justice Eastaugh writing for the Court explained, this made it an ex post facto law.

Obviously, these are just a few examples, albeit among the more controversial, of the hundreds of opinions Justice Eastaugh wrote. They are typical, though, in their superb judicial craftsmanship and they are important precisely because of his willingness to do the unpopular. At his last retention election, there was opposition, including for being in the majority (though not writing the opinion) in a case invalidating requirements for parental consent for unmarried minors’ abortions.⁹ It is a testament to his reputation and to the wisdom of Alaska’s voters that he still was overwhelmingly retained on the Court.

I do not praise him because I always agree with him. I disagree, for example, with his opinion of the Court finding that the expanded role of the jury in criminal cases does not apply retroactively.¹⁰ I am skeptical whether the *Daubert* standard is the best for determining the admissibility of scientific evidence, the result of an opinion authored by Justice Eastaugh that has a huge practical effect in trials in Alaska.¹¹

I praise Robert Eastaugh because he was a superb justice, truly a model of everything that a judge should be. If I were an attorney practicing in Alaska, I would be thrilled that he was on the bench. I would know that I would always be treated decently and with respect. I would know that my client’s case would be evaluated by a judge committed to applying the law in the fairest possible way, unaffected by public sentiments or other irrelevant considerations.

When historians look back at the Alaska Supreme Court, they will see that Justice Eastaugh, in the hundreds of opinions he wrote and the thousands of decisions that he participated in, made an enormous difference in the development of the law. He also exemplified the best in what a judge should be in his decency, his humanity, his brilliance, and his courage.

For almost 20 years, I have come to Alaska each year to talk about the United States Supreme Court. For almost 10 years, I have spoken about the Alaska decisions concerning constitutional law and thus have read hundreds of opinions each year. I have come to the conclusion that no court in the country has better or more impressive justices and appellate judges than Alaska. I also know to a certainty that there is no better judge on any court than Robert Eastaugh.

Footnotes

¹122 P.3d 781 (Alaska 2005).

²Alaska Constitution, Article I, §25.

³122 P.3d at 786.

⁴Id. at 793.

⁵Id. at 791.

⁶92 P.3d 398 (Alaska 2004).

⁷189 P.3d 999 (Alaska 2008).

⁸Smith v. Doe, 584 U.S. 84 (2004) (upholding the Alaska law as not violating the ex post facto clause of the United States Constitution).

⁹State of Alaska v. Planned Parenthood of Alaska, 171 P.3d 577 (Alaska 2007).

¹⁰State v. Smart, 202 P.3d 1130 (Alaska 2009) (limiting the retroactivity of Supreme Court decisions giving the jury a greater role in sentencing).

¹¹State v. Coon., 874 P.2d 386 (Alaska 1999) (adopting *Daubert* standard).

Justice Dana Fabe elected president of NAWJ

Alaska Supreme Court Justice Dana Fabe has been elected President of The National Association of Women Judges (NAWJ), the nation's leading voice for women jurists. Justice Fabe has been an active member of NAWJ since 1988. In that time, she has served as District Director for the states of Washington, Oregon, Montana, Idaho, Alaska and Hawaii; on the Executive Committee as Projects Committee Chair, and President-Elect. She becomes the 30th President of the Association.

Justice Fabe was appointed to the Alaska Supreme Court in January, 1996 and is the first woman to serve on

the state's high court. She was elected by her colleagues to serve two terms as Chief Justice, from 2000-2003 and again from 2006-2009. Prior to her appointment to the Alaska Supreme Court, she served as a Superior Court Judge in Anchorage, handling a complex civil litigation caseload on the trial bench. She was Deputy Presiding Judge in charge of the Civil Division and served as Training Judge for rural magistrates. Justice Fabe co-chairs the Alaska Supreme Court's Fairness and Access Committee and chairs the Alaska Supreme Court's Civil Rules Committee. She is also actively

involved in the court's community outreach activities, including Color of Justice and Law Day. Justice Fabe serves as a member of the American Judicature Society's Advisory Council and currently chairs its Ethics Advisory Committee.

Born in Cincinnati, Ohio, Justice Fabe received her bachelor's degree from Cornell University and her J.D. from Northeastern University School of Law. In 1976, she moved to Alaska to clerk for the Alaska Supreme Court. She served as a staff attorney for the Alaska Public Defender Agency from 1977-81, and in 1981, she was appointed by Alaska's governor to be Chief Public Defender for Alaska. She served in that capacity until her appointment to the bench.

Justice Fabe said, "Throughout its history, NAWJ has been steadfast in its mission of service—service to vulnerable populations, to each other, to our profession, to our communities, and, ultimately, to our nation as a whole. I have benefited personally and professionally from NAWJ's vision and commitment, and I've seen so many others benefit as well. This organization has given much to me, and I'm delighted to have the opportunity to give back."

NAWJ is dedicated to preserving judicial independence, ensuring equal justice and access to the courts for women, minorities and other historically disfavored groups, providing judicial education on cutting-edge issues, and increasing the numbers



Justice Dana Fabe

and advancement of women judges at all levels to more accurately reflect their full participation in a democratic society. Its members include federal, state, tribal, military and administrative law judges at both the appellate and trial levels from every state in the nation.

Justice Fabe's one-year term of office as NAWJ President began on October 18, 2009. For more on the National Association of Women Judges, visit the organization's website at www.nawj.org.

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