

The Alaska BAR RAG

VOLUME 34, NO. 4
October - December, 2010

Dignitas, semper dignitas

Burns appointed AG; Sullivan moves to DNR

Gov. Sean Parnell appointed Fairbanks attorney John J. Burns to serve as Alaska's attorney general on Nov. 30.

The *Fairbanks Daily News Miner* immediately praised the appointment in an editorial, "Gov. Sean Parnell's appointment of John Burns of Fairbanks as the state's new attorney general is a solid choice. It's gratifying when a Fairbanks resident is tapped for a top state post, but geography alone isn't a factor upon which one should base an endorsement. Fortunately, Burns' qualifications go well beyond his nearly lifelong residency in this community," said the newspaper.

Burns, a partner in the law firm Borgeson & Burns, will succeed Attorney General Dan Sullivan, who was appointed as commissioner of the Department of Natural Resources as of Dec. 6.

"John Burns is an extraordinary attorney who is committed to Alaskans' interests," Gov. Parnell said. "With his legal experience, integrity, and understanding of legal issues at all levels, he will make an outstanding attorney general."

"As a lifelong Alaskan, I welcome the challenge and opportunity to serve this great state and Gov. Parnell's administration," Burns said. "This is a true honor and privilege. I look forward to focusing my energy and efforts with the Department of Law in addressing the many legal issues that the state will face while securing our economic future."

Growing up in Nome and Fairbanks, Burns received a bachelor's degree in history from the University of Alaska Fairbanks (UAF) and



John J. Burns

a juris doctorate from the University of Puget Sound School of Law. He has served as an adjunct faculty member at UAF, teaching graduate and undergraduate business law courses. Prior to establishing his law firm of with Cory Borgeson in 1999, Burns worked for Birch Horton Bittner & Cherot.

Burns is a member of the board of directors of Hospice of the Tanana Valley and serves on the Chancellor's Advisory Committee for UAF. He is served on the board of the Fairbanks Chamber of Commerce

also a participant in the Big Brothers Big Sisters organization. Burns is an avid sport fisherman and spent many seasons commercial fishing in Bristol Bay.

"In all this public service, he has never been known to grab headlines or even to be particularly

political. He is a calm, articulate person who does his homework," said the *News-Miner*. "Burns also has represented the *Daily News-Miner* in various legal matters. So it's with some firsthand knowledge that this newspaper can endorse his appointment."

THE QUEST FOR MILEAGE -- PAGE 20



Guidi, Washington join bench

Andrew Guidi and Pamela Washington were installed as judges in October and November in ceremonies in Anchorage. Guide was appointed to the Anchorage Superior Court and was joined by Chief Justice Walter Carpeneti, Superior Court Judge Sharon

Gleason, and friends and family at his swearing-in ceremony.

Washington, the first African-American women judge appointed in Alaska was sworn Nov. 5, joined by several judges and a large group of friends, family, and admirers.



Paula Washington is joined by colleagues after the ceremony. (L-R:) Anchorage Superior Court Judge Larry Card (Ret.), Court of Appeals Judge Joel Bolger, Justice Dana Fabe, Judge Washington, Anchorage Superior Court Judge Stephanie Joannides, and Anchorage District Court Judge Brian Clark.



Andrew Guidi was robed by his mother, Franca Guidi, during his October installation.

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Progress and hope for a happy 2011 from the bar president

By Jason Weiner

I would first like to wish all Bar members and their families a happy and healthy 2011. With elections behind us, continued work to expand Alaska's economy, and a projected budget surplus, we have a lot to be happy about as Alaskan attorneys. The Bar Association will continue to do all it can to serve its members effectively and efficiently.

First, as all of you most likely know, we have a new Attorney General, John Burns. I would personally like to congratulate Mr. Burns on the appointment. Having worked with Mr. Burns on several cases in the past, I believe he will do an excellent job for the State.

Which brings me to my first topic: Bar dues. As predicted, they went above \$600. The Board of Governors was very mindful of the fact that it was going beyond the \$600 a year barrier. We sat down and went through every possible item we could cut from the budget without eliminating essential services. We were ultimately able to cut \$82,701.

Was it possible to make additional cuts? Yes, it was. However, that would have jeopardized services that we felt are vital to the Bar Association's function, such as discipline and public outreach. Additional cuts were therefore felt to be unwise and ultimately would do more harm to Bar members than good.

I cannot deny that Alaska's bar dues are among the highest in the country. That has been true for some time, although we were able to improve our rankings back when we first cut bar dues to \$410 to quickly reduce our unappropriated capital account. It is not because the Bar Association pays a large amount in rent—we actually pay well below market value for Class A space. Alaska does not benefit from any of the economies of scale that other states do. We have a relatively small amount of members. We have to fly to many of our cities. We cover a diverse population with problems most other states do not have to address. Finally,

I am very proud of what a wonderful job the Bar Association has done in keeping costs down in spite of our challenges.

and most importantly, we are responsible for providing more services than any other state. I am very proud of what a wonderful job the Bar Association has done in keeping costs down in spite of our challenges.

As to the raise in bar dues, I share the observations of our treasurer, Peter Maassen, in that Bar members were able to enjoy the benefit of several years of reduced bar dues because of the large amount of unappropriated capital surplus we had accumulated over the years, but that this practice needed to end.

Surpluses grew because the Bar Association had done such a great job over the years cutting costs and coming in under budget. The legislature questioned why we had such a large unappropriated capital surplus, and so did the Board of Governors. After all, these were Bar member funds.

Therefore, we began a process that returned the money to the members as fast as we could (within reason). Now that the money has been returned to the members, we need to operate within a balanced budget and continue to keep our expenses as low as possible.

I have heard both praise and concern over the Bar Association's choice of John Yoo as our keynote speaker for the upcoming convention. I remain very pleased that Professor Yoo has agreed to come to Alaska as our

keynote speaker. A committee of judges and practitioners worked extensively to pick a speaker who would be both entertaining and provocative. Not only does

the selection of John Yoo as keynote satisfy both goals, he also has been extremely gracious and great to work with. The fact that Prof. Yoo's views



"The Bar Association will continue to do all it can to serve its members effectively and efficiently."

A trial program to modify security procedures for lawyers is taking place at the Anchorage courthouse, and we are hopeful that a successful outcome could mean changes in all courthouses.

and writings are controversial only makes me more excited to hear him speak. Whether I agree or disagree with John Yoo, I believe his presentation is especially relevant in these tumultuous times.

Krista Scully and I had the opportunity to visit several "off the railbelt" communities since my last article. From the south up, thank you to the Ketchikan Bar Association for a wonderful reception and for letting me join you in closing down the bar (I promise I did not embarrass anyone). Thank you to the Sitka Bar Association for a wonderful reception and taking the time to discuss

your community with us. Thank you to the lawyers of Nome for a great dinner and coming out in a snow storm to help the Bar Association learn more about your community. Finally, thank you

to the lawyers of Kotzebue for having dinner with Krista and me at Judge Roetmann's home and to Magistrate Brooke Alowa for allowing us to camp out in your office to discuss legal issues and the Kotzebue ghost. The Board of Governors values every opportunity to learn more about all our Alaska communities so we can meet the diverse needs of our State.

Finally, a report on the progress the Bar Association has made on some of the goals I set out in my first column.

I have met with (former) Attorney General Dan Sullivan regarding having the state pay bar dues for public members. While there are significant hurdles, it is not impossible. I will continue to pursue this matter with our new Attorney General.

I have also submitted my proposal for court-appointed attorneys in cases for which a constitutional right to counsel has not been established under Civil Rule 12(e) to the Alaska Supreme Court for their review and comment. We are hopeful that we will

have some input from the Court by the next Board meeting.

A trial program to modify security procedures for lawyers is taking place at the Anchorage courthouse, and we are hopeful that a successful outcome could mean changes in all courthouses.

Finally, a committee of the Board of Governors has been formed to evaluate and possibly develop a mentoring program for the Alaska Bar Association.

Thanks to the work of my fellow representatives on the Board of Governors, I believe progress has been made on every goal set out in my first article. Thank you again for letting me serve you, and don't be shy about letting me know your concerns. The Board of Governors and Alaska Bar Association want to do everything possible to serve Alaska bar members.

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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Details, Inc.
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Publication Dates Editorial Deadlines

January-March	Feb. 10
April - June	May 10
July - September	Aug. 10
October - December	Nov. 10

Board of Governors meeting dates

September 9 & 10, 2010
October 28 & 29, 2010

(July Bar Exam results & budget)

January 27 & 28, 2011

May 2 & 3, 2011

May 4 - 6, 2011

(Annual Convention - Fairbanks)

[Editor's Disclaimer: As with all Bar Rag articles, advertisements and letters, we do not vouch for, stand by, or support most of what we publish. Nor have we cleared any of this with either the FDA or the Department of Homeland Security (fka Interior Ministry). We sure as hell won't be responsible for your hurt feelings or misguided reliance on anything we publish].

EDITOR'S COLUMN

It's time

By Thomas Van Flein

It's been about 10 years now that I have been editing the *Bar Rag*. Aren't you people tired of me yet?

I think it's time someone else steps into this position and supervises the editing process of one of the most prestigious bar association publications in Alaska. I was "recruited" (some say blackmailed) by Peter Maassen to take over this job after he served a couple tours of duty. At the time Peter told me, "It's not a career. A lot of people get there and get consumed by the power, the money and the prestige, but you have to be willing to step aside when the time comes."

Looking around at the trappings of power, the tailored suits, the 19th floor corner office, and the staff that waits ex-

pectantly for me, I see what he meant. It's not easy giving up the free limo rides to and from the airport, the chartered jets, and the Cuban cigars.

If you would like to be the new editor, send an email to Deborah O'Regan. There is a vetting process, of course, but it's no worse than a colonoscopy. If you make it to the final round of three, there is an endurance test, a memory test, and a 5k biathlon. Assuming you get that far, and pass the security clearance and background check, you could get my office on the 19th floor.

Did I mention we have fresh organic fruit delivered every Tuesday? Mondays are "Mocha Madness" days with as many



"... it's time someone else steps into this position and supervises the editing process"

mochas as you can drink all morning.

I think these kinds of expenses are part of the reason the bar dues have to be raised, but in this job, the beautiful thing is, you never have to worry about the budget. That's the president's job. The *Bar Rag* editor is concerned only with spending the money. And just try getting rid of "Mocha Mondays." Whoever tries that will see a *Bar Rag* staff strike that will make French bus driv-

ers blush.

Many of you are wondering what I will do with all my free time if I am not the *Bar Rag* editor. I may just hang out in D.C. for awhile. You never know.

ALASKA BAR ASSOCIATION 2011 Budget

Budget Summary
Dues Rate \$620 Active, \$205 Inactive

REVENUE

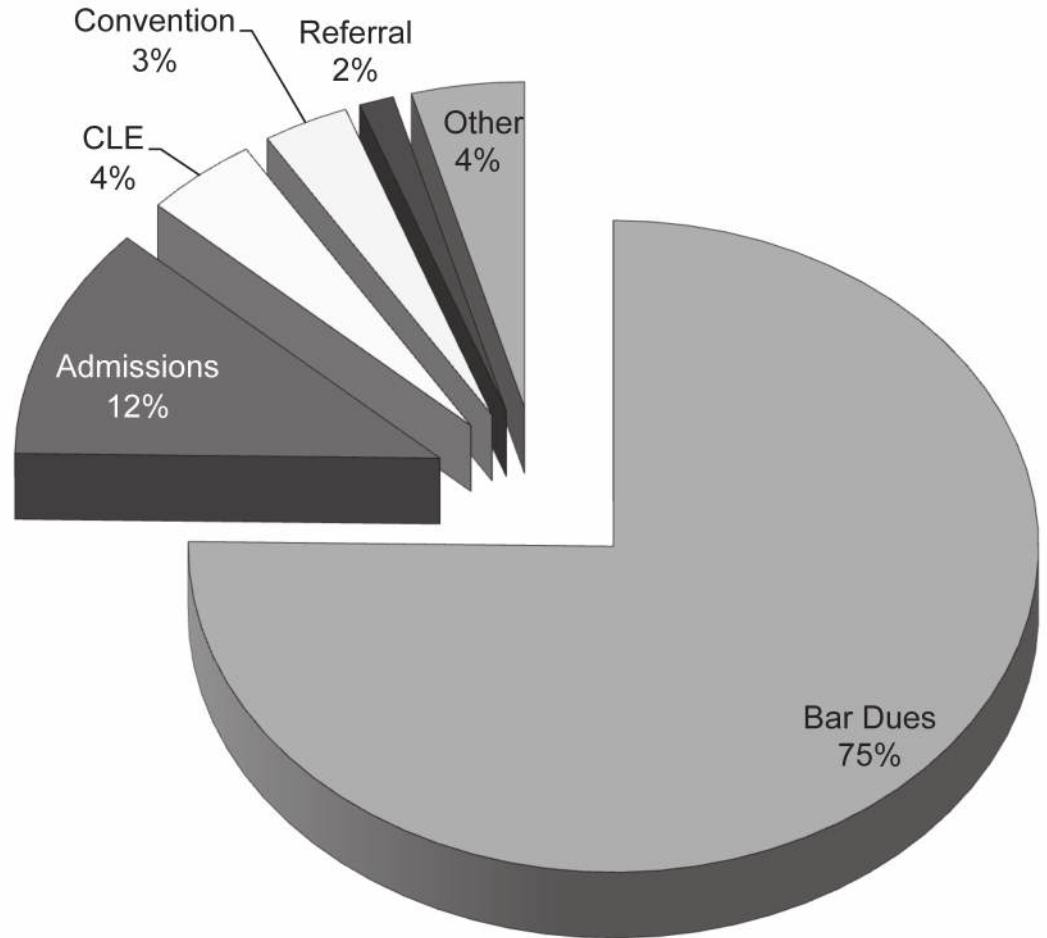
AdmissionFees-Bar Exams	88,400
AdmissionFees-MotionAdmit	45,000
AdmissionFees-Exam Soft	10,000
AdmissionFees-Rule 81s	161,650
CLE Seminars	113,439
Accreditation Fees.....	5,000
Lawyer Referral Fees.....	34,570
Alaska Bar Rag - Ads,Subs	8,158
Annual Convention.....	85,925
Substantive Law Sections	23,010
AccountingSvc Foundation	12,576
Membership Dues	1,952,500
Dues Installment Fees	11,124
Penalties on Late Dues	15,920
Labels & Copying.....	1,456
Investment Interest	62,176
Miscellaneous Income	500
SUBTOTAL REVENUE.....	2,631,405

EXPENSE

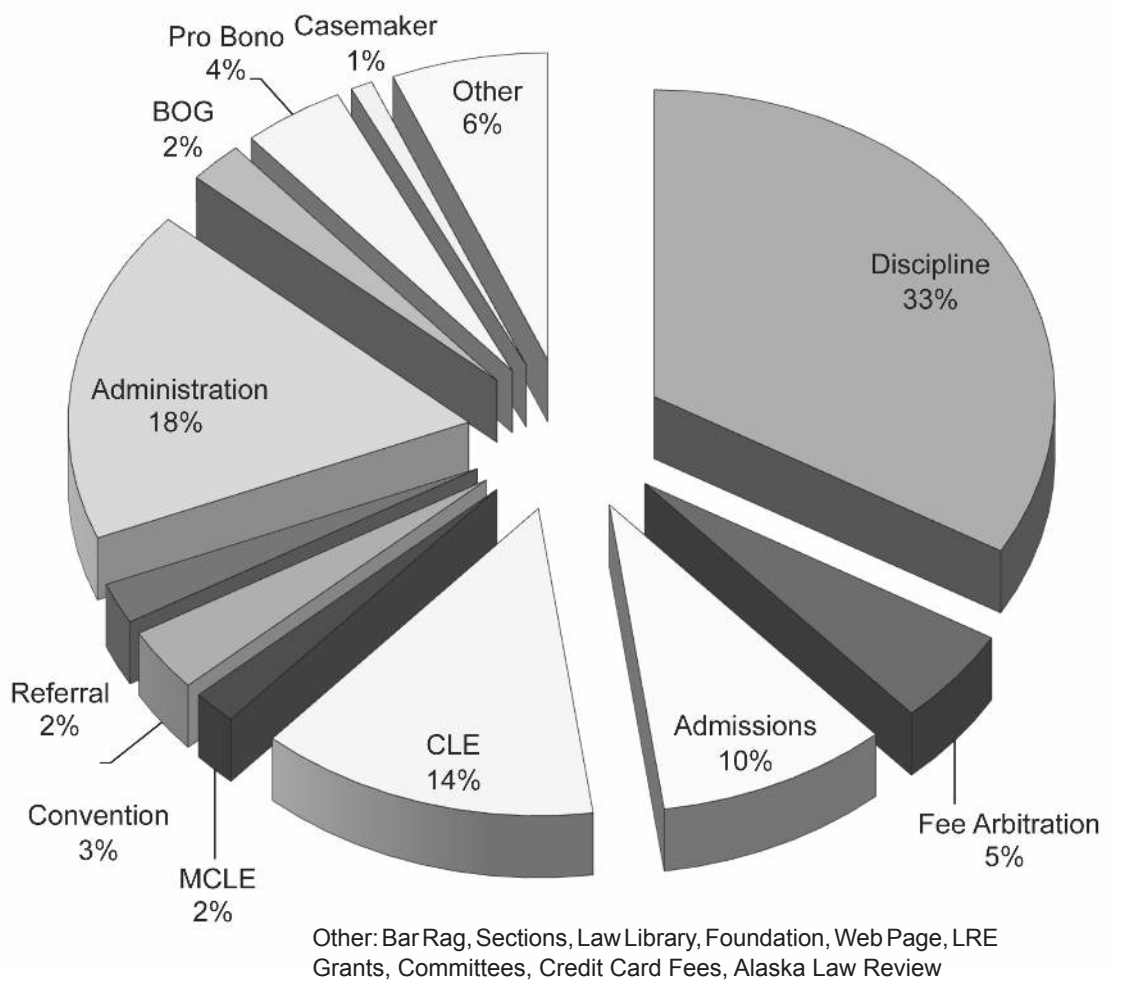
BOG Travel.....	39,891
Committee Travel.....	2,200
Staff Travel	33,454
New Lawyer Travel	3,000
CLE Seminars	93,439
Free Ethics Course.....	6,000
Alaska Bar Rag	42,809
Bar Exam	66,832
Other Direct Expenses.....	85,647
Annual Convention.....	85,925
Substantive Law Sections	57,849
AccountingSvc Foundation	12,576
Law Related Education Grants	5,000
Language Interpreter Grant.....	0
MLK Day	5,000
Casemaker	23,172
Committees.....	8,700
Duke/Alaska Law Review	22,500
Miscellaneous Litigation.....	10,000
Internet/Web Page.....	15,320
Lobbyist/BOG, Staff Travel	0
Credit Card Fees.....	31,187
Miscellaneous	5,200
Staff Salaries/Taxes/Benefits.....	1,602,915
Postage/Freight.....	24,870
Supplies.....	30,405
Telephone	1,262
Copying	9,964
Office Rent	129,071
Depreciation/Amortization.....	42,694
Leased Equipment.....	27,897
Equipment Maintenance.....	41,631
Property/GLA/WC Insurance	16,437
Programming/Database	39,684
Temp Support Staff.....	5,670
SUBTOTAL EXPENSE	2,628,200

NET GAIN/LOSS 3,205

2011 Revenue Budget



2011 Expense Budget



Fairbanks May 4th - 6th
2011 Alaska Bar Convention

The American Lawyer magazine's Christmas gift picks

"Doing more for less isn't just the mantra of corporate bean counters," says freelance legal writer Alan Cohen. "It's the modus operandi of technology vendors, too, whose latest offerings pack more bang per buck than ever before. From e-book readers to digital cameras to gaming hardware, acquiring state-of-the-art gear — and redistributing some of your economic recovery this holiday season — has never been easier."

Here's a quick look at the gadgets that made Cohen's list. (A link to his full detailed review is below.)

Apple TV. Barely larger than a hockey puck, this \$99 device packs a hefty punch that unleashes video to your HD television. It's able to stream movies and TV shows from Apple's iTunes Store, as well as titles from Netflix, online videos from YouTube, and any music and video from iTunes on your computer. With no storage capability, the device only streams content from other sources; it saves nothing. Video is sharp and smooth, with barely any wait before titles begin and no lag or stuttering during playback. The Netflix implementation is particularly well done, providing quick access to your queue, and again, playing titles without the hiccups long associated with streaming video.

E-book readers. The third time is the charm for the Amazon's Kindle — the best one yet — at \$139. Or \$189 for 3G connectivity. Go with the cheaper version. Given the ubiquity of Wi-Fi hotspots, it should suffice all

but the most hard-core impulse book buyer. Lawyers looking to read and mark up PDFs on a hand-held device should opt for an iPad (\$499 and up). While its bright, vivid screen is a bit too much of a good thing for reading books, new apps do an impressive job of letting you work with (and even annotate) all those court filings and memoranda you have as PDFs.

Next-generation iPods. Speaking of Apple, the company significantly revised three of its four iPod models this fall (only the iPod Classic remained unchanged). The big winner is the new iPod Touch. It adds some stellar features, including the "Retina" display of the iPhone 4, which packs four times as many pixels onto the screen as earlier iPod Touch models, making text — particularly in the new eBooks app — almost preternaturally sharp. Also new is the ability to shoot HD video, and Apple's new FaceTime feature, which enables video calls via Wi-Fi (as long as the person you're calling also has a new iPod Touch or an iPhone 4). Prices and memory capacities are the same as last generation: \$229 for 8 gigabytes, \$299 for 32 gigabytes, and \$399 for 64 gigabytes.

iPod Shuffle purists will be happy to see that Apple has ditched last year's redesign, which moved control buttons from the device to the headphones. The new Shuffle puts the buttons back, this time on a tiny not-quite-square chunk of aluminum that can be clipped onto clothing (it greatly resembles the fan-favorite Shuffle of

several years ago). Unfortunately, Apple decided to lose the 4-gigabyte capacity of last year's model, too, offering just a 2-gigabyte version — at a wallet-friendly \$49.

For digital camcorders, it's hard to go wrong with the simple but capable Mino HD from Cisco. It shoots 720p HD video (not "full" HD like Canon's T2i, but still plenty sharp) and has a welcome image stabilization feature, which reduces the blurring that can occur when you move the camera while filming. \$180 for the 4-gigabyte Mino (enough for one hour of video), and \$230 for the 8-gigabyte (two-hour) model.

We're a bit more hesitant to recommend the revamped iPod Nano, which has shrunk dramatically in size from last year's version, and now resembles a slightly larger Shuffle. While we love being able to clip on a vast library of music (16 gigabytes for \$179, 8 gigabytes for \$149), and agree that the FM radio and pedometer are cool features, we think the Nano's new Multi-Touch navigation is a bit awkward.

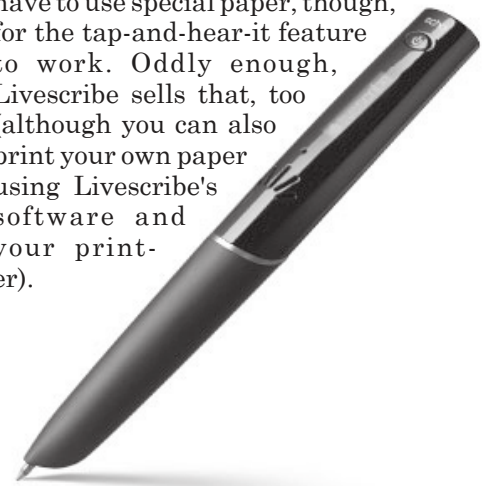
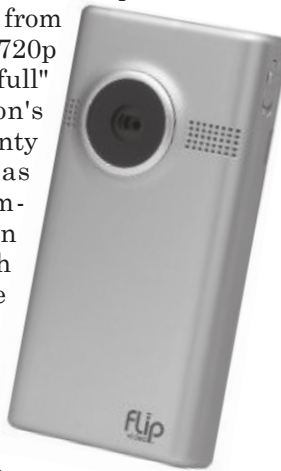
Earbud stocking stuffers. No matter which iPod you opt for — or even if you go for an entirely different portable media player — one thing you should do is avoid the stock earbuds. While we appreciate included accessories as much as the next gadget lover, it's like playing a violin with a spoon. Inexpensive alternatives from companies like Sony, Sennheiser Electronic, and V-moda, (generally in the \$25-\$35 range) can result in a noticeable quality bump, but if you're willing to spend more, the difference can be dramatic. A solid choice is the Ultimate Ears 700 (\$150), which produces rich, vibrant sound while feeling light and comfortable in your ears. Just be sure to experiment with the various silicon and foam ear cushions that are included. The tighter the seal, the better the results. If you're looking to add a microphone to your earbuds — no minor upgrade for mobile lawyers who want to use their phone as their music player — our pick is Etymotic Research's hf3 headset (\$179), which

also boasts striking sound reproduction without the annoying cord noise that has crippled other earphone-mic combos.

Digital cameras. Thumbs up, too, for Canon's latest addition to its "Rebel" line of digital SLR (single-lens reflex) cameras. The EOS Rebel T2i is a great choice for beginning photographers while boasting enough advanced features to keep a serious amateur snapping away. It offers a super-sharp 18-megapixel, full HD video (1080p at up to 30 frames per second), and a terrific new wide-screen display. \$900 with an 18-55 millimeter lens, or \$800 for the body only.


Echo Smartpen. Our vote for offbeat gadget of the season is the Echo Smartpen, from Livescribe (\$170 for the 4-gigabyte version; \$200 for 8 gigabytes). Resembling less a pen and more the world's most intimidating thermometer, the device records audio while you write. The hook is that it links writing and sound so that when you tap a note that you previously made, the audio that was concurrently recorded is played. That's great stuff for lawyers, who can take quick notes during a client interview or court proceeding, then go back later and, by tapping on the right spot, hear only the parts of the conversation that they need — no more fumbling through a voice recording. Because the pen remembers everything you write and record, both the words and audio (4 gigabytes holds some 400 minutes) can be uploaded to a computer. You do have to use special paper, though, for the tap-and-hear-it feature to work. Oddly enough, Livescribe sells that, too (although you can also print your own paper using Livescribe's software and your printer).

For Cohen's full tech-review, go to http://www.law.com/jsp/law-technologynews/PubArticleLTN.jsp?id=1202475650135&Old_Gadgets_Make_New_Gift_List_




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Happy Holidays from the staff at



NORTH COUNTRY PROCESS, INC.
274-2023

When should your client file for a modification of custody?

By Steven Pradell

Parents often meet with their family law lawyers expressing a desire to change an existing physical custody or a visitation schedule that has previously been ordered by the court. Often an attorney must hear all of the reasons for this request and advise their clients as to whether or not to file for a modification. This article explores the issue.

Alaska Statute 25.20.110 provides:

(a) An award of custody of a child or visitation with the child may be modified if the court determines that a change in circumstances requires the modification of the award and the modification is in the best interests of the child. . . .

The change in circumstances doctrine requires that the parent seeking modification of custody show that circumstances have changed significantly since the prior custody order was entered before a court will consider modifying custody. *See, e.g., Lee v. Cox*, 790 P.2d 1359, 1361 (Alaska 1990); *Garding v. Garding*, 767 P.2d 183, 184-85 (Alaska 1989). Once the movant meets that burden, he or she is entitled "to a hearing to consider whether, in light of such changed circumstances, it is in the child's best interest to alter the existing custodial arrangement." *Long v. Long*, 816 P.2d 145, 150 (Alaska 1991) (quoting *Lee*, 790 P.2d at 1361).

When a motion to modify seeks only a scheduling change or a similar insubstantial alteration to custody or visitation, the [superior] court may act without an evidentiary hearing assuming there are no factual conflicts that require resolution. Therefore, a court may escape the hearing requirement when it modifies a custody arrangement if that modification is sufficiently minor. *See Elliott v. Elliott*, 129 P.3d 449 (Alaska 2006).

Joint legal custody requires effective communication between the parties. Cooperation between parents is essential if joint custody is to be in the child's best interests. *Lone Wolf v. Lone Wolf*, 741 P.2d 1187, 1189 (Alaska 1987); *Ziman v. Ziman*, 837 P.2d 118 (Alaska 1992). Even "[t]he most ardent proponents of joint custody assume cooperation between parents and agreement about child rearing practices as basic requirements for joint custody." *McClain v. McClain*, 716 P.2d 381, 386 (Alaska 1986).

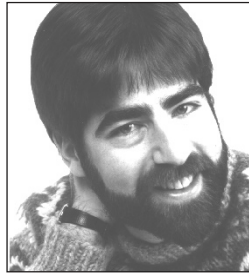
Once the Substantial Change of Circumstances is shown, the court determines the best interests of the child pursuant to the factors set forth in AS 25.24.150(c).

The standard of proof is lower for a change of visitation than of custody. In *Hermosillo v. Hermosillo*, 797 P.2d 1206, 1209 (Alaska 1990), the Court stated that the change in circumstances for modifying visitation need not rise to the level sufficient to warrant a change of custody.

How does an attorney respond to an inquiry as to what constitutes a substantial change of circumstances? Aside from approving or overruling lower court decisions in often fact specific circumstances, the Alaska Supreme Court has rarely defined precisely when this occurs. For example, an out of state move by a parent constitutes a substantial change of circumstances for purposes of custody modification as a matter

of law. *See House v. House* 779 P.2d 1204 (Alaska 1989). The Court has also held "[a]ctions by a custodial parent which substantially interfere with the noncustodial parent's visitation rights [are] sufficient to constitute a change [in circumstances]." These actions include "a detrimental and well established pattern of behavior on the part of [the custodial parent] to 'erode the bonds of love and affection between the [other parent] and the children.'" *See Kelley v. Joseph*, 46 P.3d 1014 (Alaska 2002).

There are some fact patterns that will most likely strike an attorney as clearly requiring the immediate filing of a pleading to change an existing order. However, more often you may be provided with facts that paint a



"Talking a client into engaging a lengthy, stressful and expensive custody battle when the facts may not warrant it can further polarize parties."

much murkier picture. In advising a client, it may be helpful to take a step back, put yourself in the shoes of the judge and ask yourself, "If I heard these facts, would I find that a substantial change has occurred?" Talking a client into engaging a lengthy, stressful and expensive custody battle when the facts may not warrant it can further polarize parties. The process of litigation can make it more difficult for parties to co-parent, which may be detrimental to the children. Filing for a modification

could backfire, because a judge may ultimately find in favor of awarding a more favorable custody arrangement to the other party. Sometimes, timing is everything. When to file may be the most important issue. Sending a client home with instructions as

Talking a client into engaging a lengthy, stressful and expensive custody battle when the facts may not warrant it can further polarize parties.

to how to continue documenting the problem and advising them to return if the situation changes is sometimes the best advice, although it may not be what the client wants to hear at that particular moment, nor the best way to meet your billable quota. But in the long run, clients will appreciate that your advice was honest and direct, and they will return later or refer others because your approach was best for them and their children, not necessarily for you.

© 2010 by Steven Pradell. Steve's book, *The Alaska Family Law Handbook*, 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.alaskan-lawyers.com.

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Yes Commissioner (with hats off to the BBC)

By Kenneth Kirk

Good morning, is he in? Good... Hello, Humphrey. It's Jim Hacker. Do you have a moment?

Certainly, Commissioner, I always have time for you. Settling in well at the new job?

Quite, quite. But I have an issue regarding my old campaign funds, and I'm wondering if I might trouble you for some legal advice.

Absolutely not, Commissioner! I can do no such thing.

I don't understand, Humphrey. You've been my lawyer for years. You served as the legal advisor to every one of my campaign organizations when I was in the legislature. Now you won't talk to me because I'm in the executive branch?

It's not that at all, Commissioner. I'm happy to help you. I just can't help you on this phone call.

But why not? I'll pay you for your time, of course.

That's not the problem at all, Commissioner. I'm happy to help, but I can see from my caller I.D. that you're calling from your new office. That's an executive branch phone. You can't call me about a legislative campaign matter, on an executive branch phone.

But it's a local call, there's no cost to the government.

That's hardly the point, Commissioner. According to the campaign finance laws, the government can't provide "anything of value" to your campaign. And that includes a phone call.

That's rather silly. Alright, forget it. I'll send you an email.

Don't send it from your office email account. That's something of value as well, Commissioner.

Oh for heaven's sakes, I'll call

you back on my personal cell phone.

Humphrey? Alright, I'm on my cell phone now. Can you hear me?

Loud and clear, Senator.

I'm not a State Senator anymore, Humphrey. What happened to Commissioner?

You're calling me on a legislative campaign matter. I just wanted to keep our roles clear. No disrespect intended, of course. Now what is the problem?

I just discovered a contribution violation from the last time I ran. Completely innocent, mind you. It turns out we had a donor named Fowlds. He made one contribution of \$500, the maximum allowed, then later donated another \$100 at a fundraiser, but nobody caught it because the treasurer misread his name as Foulds the second time. So we had an illegal campaign contribution of \$100.

You'll have to give it back to the donor, immediately.

That's a bit of a problem. After the campaign was over I held those funds for the next election, but then as soon as I was confirmed as a commissioner, I donated the remaining funds to my district political party. I don't have it, to give back.

Well, it's not too much of a problem. You can donate your own money to the campaign, then use it to refund the contribution.

Ah, thank you, Humphrey. I knew there had to be a simple, common-sense solution. I'll write out a check to the donor for \$100 and be done



"I just discovered a contribution violation from the last time I ran. Completely innocent, mind you."

with it.

Oh no, Senator. You can't do that. It has to go through a campaign account.

But there isn't any campaign account. We closed it.

You'll have to open another one.

For this one measly transaction?

Not just for that. You also have to pay my fee for this conversation.

Of course. Still, that's just two transactions.

And you have to file some paperwork with APOC. Your treasurer was a paid employee as I recall, so you'll presumably have to get her back on the payroll to deal with this.

Anything else, Humphrey?

I'm sure I'll think of something, Senator. I'll send you a memo. Do you still have your old P.O. Box from the campaign?

Don't tell me I have to open another post office box!

No, no. I'll send it to your home.

Good then. Although as I think about it, there might be another option to consider. Do I recall correctly that I can roll it over into a future campaign? Because you see, I've been thinking that if you-know-who doesn't run for Congress the next time around, I might want to go for that seat....

Senator! Hang up at once and call me back!

On a different phone?

It can be the same phone, just call me back right away.

Oh for heaven's....

.....

Alright, Humphrey, I'm calling

you back. But why did you have me do that?

So there would be a clear demarcation on your cell phone bill. You see, Jim, a congressional seat is a federal office. You have to comply with the FEC regulations, not APOC. They're completely different and largely incompatible.

It's Jim now, is it? So on this call, I take it, we can only discuss the possible congressional race?

That's the idea, yes. And again, no disrespect.

None taken. But are you now going to tell me I have to report this phone call to the FEC?

No, that's one of the differences between state and federal law. Alaska campaign finance laws, which apply to everything from the Governorship on down, consider even an email to be a "contribution". The federal laws are more generous, not as interested in small things. No, you don't have to report this call. But by cutting it off when we did, you don't have as much to report to APOC.

So can I roll over that excess donation to the congressional campaign?

Sorry, no. You'll have to refund it. Then, after you've filed the necessary paperwork to accept contributions, the donor can contribute that money back to your federal campaign.

This all seems terribly confusing. What's the point of all this complexity?

It's all in the name of honest and open government.

Really? All it seems to do, from what I can see, is make us all more dependent on the lawyers. We can hardly support a candidate without consulting legal counsel, am I right?

Yes, commissioner.

But Can She Type?

Annual Bar Historian's luncheon features early days of Anchorage Association of Women Lawyers

Nearly 100 people, including 30 Anchorage high school students, attended the annual Alaska Bar Association Historian's luncheon held October 21, 2010, at the Dena'ina Civic and Convention Center in Anchorage. This year's program was entitled "But Can She Type: Reflections on the Early Years of the Anchorage Association of Women Lawyers," and featured remarks by Judge Karen Hunt (Ret.), founding president of AAWL; Judge Elaine Andrews (Ret.), AAWL president from 1979-1980; and Linda O'Bannon, AAWL treasurer from 1979-1980. Judge Hunt shared her perspectives on the status of women in the legal profession when she arrived in Alaska in the early 1970's, and why she felt an association for women lawyers was needed. Judge Andrews spoke of the group's early efforts to encourage

the appointment of women to the bench, and the need for continued efforts to increase the number of women in the judiciary. Linda O'Bannon reflected on the ways AAWL supported women in the legal profession and the many ways in

which opportunities for women have changed in the last thirty years. Bar Historians chair Leroy Barker opened and closed the program and Jessica Carey Graham, current AAWL vice president, served as moderator.



Juliana D. "Jan" Wilson was recognized at the luncheon as one of the earliest women lawyers admitted to the Alaska Bar Association. She was admitted in 1951 and maintained a private practice with her husband in Anchorage for many years.



Students and teachers in attendance join presenters and members of the Bar Historians Committee at the close of the program. Seated in front are, L-R: Linda O'Bannon, Judge Karen Hunt, and Judge Elaine Andrews; standing just behind them are, L-R, Leroy Barker and Jessica Carey Graham.

Plan For Harmony

By Steven T. O'Hara

We all remember learning the following children's rhyme:

Sticks and stones
May break my bones
But words will never hurt me.

This sentiment also comes through in a story James Cagney tells in his autobiography, *Cagney By Cagney*. In the book the actor observes the following:

During the making of a picture directed by Charlie Vidor, I noticed him come into the studio one morning looking very low and disconsolate. I asked him what the matter was.

"Ah, Jimmy, everybody hurt me, everybody hurt me."

"How do you mean, hurt you?"

"They say things. I don't think they mean to hurt me, but they do. They say really cruel things, and it weighs on me the whole day."

"Do you want to get rid of that, Charlie? Well—just ask yourself one question and the hurt will disappear *that* fast. The question is this: just ask yourself, 'Who the hell do I think I am?' And you'll see the hurt will disappear."

"Ah, Jimmy, I can't do that."

"Why not?"

"Because I think I'm somebody."

And with that view, inevitably, comes insecurity and frustration and unhappiness.

James Cagney, *Cagney By Cagney* 179 (Pocketbook Edition published February 1977).

In the estate planning area, thinking you are somebody creates and perpetuates family problems. Consider the recommendation that clients have annual family meetings where full and fair disclosure of wealth and intent is put on the table for all to discuss.

Having an annual family meeting is an affirmative, bilateral act that over time might root out any greed or control issues or other problems within a family.

When the family meeting is full of individuals who each think they are somebody, the atmosphere may not remain calm and good natured, given the inevitable annoyances that occur when family members gather and speak.

Conversely, the atmosphere can be very different when the family meeting has individuals who realize that they each are no more important



In the estate planning area, thinking you are somebody creates and perpetuates family problems.

than others and may very well learn from what someone has to say.

Required reading and contemplation as the date for a family meeting approaches might include the above children's rhyme and James Cagney story.

Estate planning is not about guilt. The recommendation to have an annual family meeting on estate planning matters is just that, a recommendation. There is no law that says clients must have annual family meetings as part of their estate planning.

Estate planning consists of clients accepting and rejecting various ideas, including with respect to income tax planning, gift tax planning, generation skipping tax planning, and estate tax planning.

Clients often reject a tax planning idea because they figure their lives

Estate planning consists of clients accepting and rejecting various ideas, including with respect to income tax planning, gift tax planning, generation skipping tax planning, and estate tax planning.

are already complex enough. They have been advised of the potential advantages of the idea, but they cannot bring themselves to accept the added complexity. Estate planning attorneys are familiar with the look on a client's face that says, "Oh, no. Not another bank account to reconcile or minute book to maintain."

Regardless of whether clients reject the idea of annual family meetings where wealth and intent are discussed, the goal is for clients to plan for family harmony.

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Holmes Weddle & Barcott

is pleased to announce the following significant additions to its practice and firm, which will allow the firm to extend its services to the entire West Coast.

HWB-San Diego Office:

On November 1, 2010, Holmes Weddle & Barcott opened its San Diego office where Sterling Stires serves as managing shareholder. Mr. Stires has practiced maritime law since his admission to the Bar of California in 1998. He was President of the Propeller Club of the United States, Port of San Diego, for 2004 through 2006. He has advised the Board of Legal Specialization of the State Bar of California regarding establishment of Maritime Law as a certified legal specialty in California.

HWB-Portland Office:

On November 1, 2010, the Portland law firm of Babcock and Haynes joined forces with Holmes Weddle & Barcott to open the Oregon office of HWB. Robert Babcock manages the Portland office. He has represented West Coast stevedores, shipyards, marine contractors, and insurers at all levels of the administrative and judicial processes including the United States Supreme Court. Sandra Haynes served as the employer representative on the Oregon Workers' Compensation Board from 1993 through 2001 and has represented employers and insurers in Oregon and Washington workers' compensation proceedings at all levels for nearly 20 years.

HWB- Seattle and Anchorage Offices:

HWB has long been a leader in the Pacific Northwest representing various employers and insurers, maritime and construction interests, banking, workers' compensation, commercial and personal injury litigation and federal government relations, as well as employment law clients through its Seattle and Anchorage locations. These services will now be extended throughout the West Coast.

ATTORNEY DISCIPLINE

Written Private Admonition Issued for Conflict of Interest with Clients

An attorney accepted a written private admonition for entering into a transaction with his clients that created a conflict of interest and for failing to hold client property separate from his own. Attorney X agreed to represent clients in a custody dispute. In addition to a cash payment, Attorney X accepted title to his clients' older model pickup truck with Attorney X and the clients agreeing to an assigned value for the truck.

A writing signed by Attorney X and his clients describes both the vehicle and the terms of the transaction. However, Attorney X did not advise his client to seek independent legal advice on this transaction or give them a reasonable opportunity to do so. When Attorney X acquired a possessory and ownership interest in a vehicle he received his fee in advance for work still to be performed on an hourly basis under his written fee agreement. When the clients became unhappy with Attorney X and fired him, the fee he accepted via the truck had not been completely earned and therefore became unreasonable.

Attorney X failed to consider how any part of the truck's value might be returned if the clients decided to end the representation before the dollar value assigned to the truck was earned. Attorney X did not keep the property separate until there was an accounting and severance of the clients' interests in the vehicle which violated provisions of Rule 1.15 (Safekeeping Property).

Attorney X agreed that he violated Alaska Rules of Professional Conduct 1.8(a) and 1.15(a) and (c). Bar Counsel concluded that minor discipline was appropriate for several reasons. Attorney X acknowledged that he failed to consider how to refund an unearned fee when the 'fee' was a vehicle. He refunded the unearned fee (after fee arbitration). Although he took appropriate precautions to be fair to his clients when discussing whether to accept the truck toward payment of his fee, he failed to advise his clients in writing to seek independent legal advice on the transaction in violation of Rule 1.8(a) (Conflict of Interest). Attorney X has no record of prior discipline and this appeared to be an isolated instance of an ethical lapse. Also Attorney X's clients were not legally prejudiced.

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

Clark is reinstated

In the Supreme Court of the State of Alaska

In the Disciplinary Matter Involving:)

James F. Clark,)

ABA Membership # 6907025
ABA File # 2008D032

Supreme Court No. S-14048

Order of Reinstatement

Date of Order: 11/5/10



Before: Carpeneti, Chief Justice, Fabe, Winfree, Christen, and Stowers, Justices

On consideration of the 10/14/10 petition of James F. Clark for reinstatement to the practice of law, and the Alaska Bar Association's 10/14/10 non-opposition,

IT IS ORDERED:

James F. Clark is **REINSTATED** to the practice of law, effective immediately.

Entered by direction of the court.

Clerk of the Appellate Courts

Marilyn May
Marilyn May

cc: Supreme Court Justices

Distribution: Mail & Fax

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"Furs and Frontiers in the Far North," by John R. Bockstoce

Needed knowledge as we move forward

By Jean Bundy

There is a line in *Kiss me Kate* about going back to the original when life gets problematic. In Cole Porter's story, two actors burst into song with *Brush Up Your Shakespeare*, the bard reworked into puns that save the play. John Bockstoce's *Furs and Frontiers in the Far North* is about Alaska's early beginnings with a cast of Russians, British and eventually Americans who explored and exploited while trying to get a piece of the Native's pie, their aquatic and forested creatures who apparently were happy to morph into top hats and parasols. Like most Alaskans I've read books about the Russians who came with their samovars and sold us Alaska, on a day that banks close. Enter World War II which gave us a tunnel to access yachts. We strung a lot of wires in the Cold War to keep tabs on the Russians, some irony in that. Who knew an outmoded missile site would make a ski park using equipment paid for with bonuses from an oil discovery. Seriously, ships lost at sea, trade items smuggled, not to mention scurvy and prostitution, shaped Alaska's history, needed knowledge as we move forward.

My essay about Uncle Ted's funeral (this summer's Bar Rag, reprinted from *Senior Voice*) recapped our family's involvement with the late senator, including his funeral. Son Elliott returned to Manhattan but daughter-in-law Kristin, another political fire horse, became Lisa Murkowski's communications director for the *fill-it-in/write-it-in* campaign. While I watched Kristin fly around, weekly refueling with Dave and me at Bear Tooth, I immersed myself in *Furs and Frontiers...* finding comfort in quality reportage about pre-statehood Alaska.

I first telephoned John Bockstoce in 1997 about one of his early books, *Whales, Ice, and Men*, when doing my undergraduate thesis. Some of you may remember my whaling collage on the brochure for the '98 bar convention. *Whales, Ice...* features photographs of New Bedford where whaling vessels were outfitted. Maps help imagine being stuck in an icy Arctic winter, awaiting spring and a fresh migration of mammals. In '97, I spent a week drawing artifacts at New Bedford's Whaling Museum. Bockstoce served there as curator of ethnology, 1974-1986, and told me the newly remodeled facility is worth a return visit.

After high school Dr Bockstoce volunteered for the Grenfell Medical Mission in Labrador, "and fell in love with the North." At Yale he discovered anthropology but Oxford took him to Cape Nome where he realized "how important whaling was to the native cultures..." [He also] "began to see that the fur trade was an equal

or greater change in the region." Whether in an Umiak or on his boat the *Belvedere*, he has navigated waterways around Alaska experiencing bygone explorations, thus enlivening his writing. John has written books on personal seafaring, but *Furs and Frontier...* is a survey that takes the reader exploring and trading through the Bering Strait, Westward across Siberia's Chukchi Peninsula, returning to North America along the Mackenzie and Yukon Rivers.

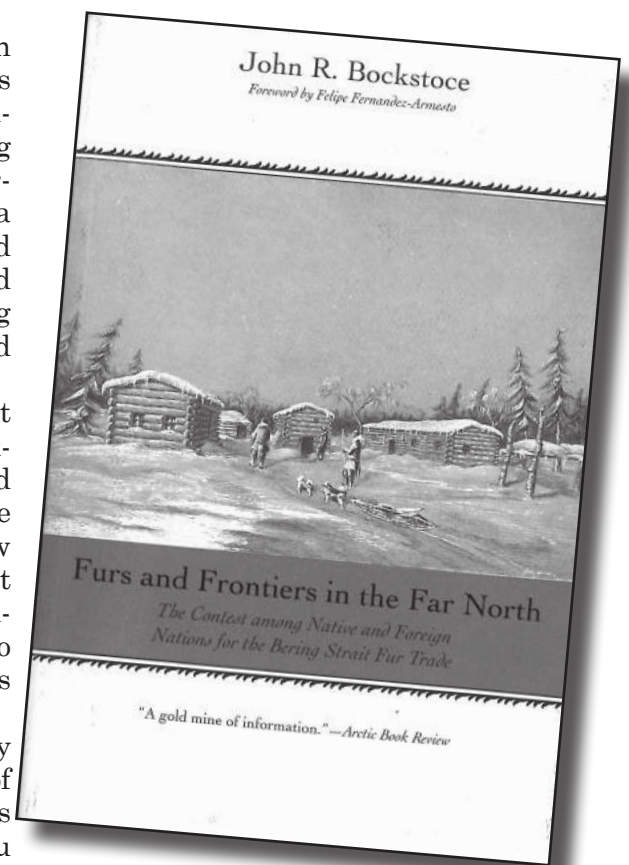
Bockstoce begins with medieval Czarist Russia where pelts were the medium of exchange. An insatiable appetite for furs and constant frustration when paying Native middlemen led to settlements in what is now Alaska. John snares us with details about species that were killed ingeniously. Torsion-spring traps, resembling something Leonardo might have drawn, were used to kill wolves and foxes.

Bartering with beads didn't change the way Natives lived as much as eventual exchanges of guns and alcohol for sexual favors. Outbreaks of smallpox and depletion of walrus and caribou populations impacted or wiped out aboriginal communities. By the time the American whaling fleets wintered in the Beaufort Sea, Natives had grown to rely on western goods for survival—copper kettles to overalls. The British "ruled the waves" and wanted their share of Russian-America's largesse, sending expeditions across what is now Canada while continuing to navigate the Pacific. When Sir John Franklin's expedition went missing, the British Admiralty launched an armada.

Dr. Bockstoce gives us the competition and poaching that ensued between the Russian-America Company and the Hudson Bay Company as they pushed into Native space, attempting to control fur routes. Warring tribes would temporarily cease fire and enter into complex systems of barter at trade fairs, venues for commerce and revelry that stretched across the Bering Strait. Some nervous traders wore armor of overlapping bone and hide.

...Each trader always went through the motions of being offended at the offers of the other. My grandfather... would act insulted at an offer of three caribou... for one wolverine skin... They might haggle for days (Bockstoce, 158-159)

The Crimean War weakened the bank accounts of England and Russia, enter Washington with dollars. Listen-up shopaholics, you are experiencing history when you buy at the 6th Ave Nordstorm. The Russian-America Company became the Alaska Commercial Company which sold their apparel lines to our "Bloomies of the North."



Furs and Frontiers... is an academic book that can be read on the beach. I found fascinating the whalers' off-the-record transactions outside the contractual agreements with their New England companies. Imagine a hundred whaling ships anchored in the Beaufort Sea, or crunched by ice and becoming salvage. Then there's Bering who had such a guilt trip when he disappointed the Russian Admiralty who insisted he hadn't proven Eastern Asia was separated from America. Agitated, Vitus stormed off on another exploration. Try visualizing writing a grammatically correct letter while your entrails are hanging out, move over *Band of Brothers*. An example of the occasional attack of remorse occurred when Frederick Barker's whaleship was wrecked.

...I will never catch another walrus, for these poor people along the coast having nothing else to live u on...they knew that the whaling ships are doing this, they still were ready to share all they had with us... (Bockstoce 316)

Give *Furs and Frontiers in the Far North* this holiday season, no Fox News here. Pour yourself some grog and read John Bockstoce's book yourself—you'll better navigate the shenanigans of the present Alaska.

Jean Bundy, AIC/USA, is a painter/writer living in Anchorage 38144@alaska.net

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Court and criminal justice agencies host first statewide joint conference

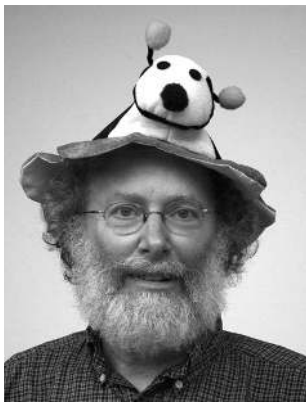
Over 500 judges, attorneys and other professionals involved in the state's criminal justice and child welfare systems made history on October 6, 2010, at the Dena'ina Civic and Convention Center in Anchorage. The first Joint Bench-Bar Alaska Criminal Law Conference was the largest gathering of legal professionals in the state's history, bringing judges of the Alaska Court System together with attorneys from the Department of Law, Office of Public Advocacy and Public Defender Agency. The conference also represented the first time that both prosecutors and defense attorneys have joined with judges for a day of mutual learning opportunities as part of their annual fall conferences. Workshops featured presentations by Professor Edward Imwinkelried, a renowned evidence expert, and "Evidence Cranium," a

competition between teams that each included representatives from the prosecution, defense, and judiciary. Chief Justice Walter L. Carpeneti conceived of the joint conference as a way to share limited educational resources and avoid the inevitable court delays that separate fall conferences have caused in the past. But he admits that the main reason he has encouraged the court and agencies to come together is "to learn from each other" on topics of mutual concern in an environment of collegiality and mutual respect. Attorney General Dan Sullivan and Rachael Petro, Deputy Commissioner of Administration, echoed these goals in their welcoming remarks to the conference. Chief Justice Carpeneti commended fellow conference organizers Rick Svobodny, DOL Criminal Division Chief; Public Advocate Rachel Levitt and Public



Anchorage District Attorney Adrienne Bachman works on team spirit points.

Defender Quinlan Steiner for their efforts to create what he hopes is a new tradition. Relationships with colleagues—even those on the opposite side—have enriched his life, he told the crowd, "and I hope they can enrich yours as well."



Judge Eric Smith



Judge Joel Bolger



Judge Anna Moran, Judge David Stewart (Ret.), and Judge Phillip Volland

"Gravity and decorum were the orders of the day.."



AK Criminal Law Conference Photo.JPG: Attorney General Dan Sullivan, Chief Justice Walter Carpeneti, Public Advocate Rachel Levitt and Public Defender Quinlan Steiner after opening remarks on the first day of the Alaska Criminal Law Conference.



L-R: Judge Patrick Hanley, Justice Morgan Christen, Chief Justice Walter Carpeneti, and two helpers.



Winning Team: The Evidence Cranium winning team is congratulated by Chief Justice Carpeneti, L-R: Palmer District Court Judge John Wolfe; Kelley Ard; Chief Justice Carpeneti; Heather Nobrega; and Jim Cannon, Fairbanks Public Defender's Office.



Jack McKenna, Monica Elkinton, and Don Kitchen.



Lisa Kelly.



L-R: Jenna Gruenstein, Paul Clark, Justice Warren Matthews (Ret.), Rex Butler, and Danica Swanson.

"..along with judicial dignity."

ECLECTIC BLUES

Glimpses from an Internet journal

By Dan Branch

For years I've composed poems and little essays in my head while walking through the woods with Aki, a toy poodle Bischon Frise mix. This fall I started writing them down.

October 13**Ground going to rest**

The dog and I follow Fish Creek Trail from tidewater until it moves away from the creek. It is between storms with only a light rain falling. Our last visit was for fish in summer when salmon battled for spawning space while eagles waited for them to die. September's heavy rains flushed the creek clean of salmon. The trout and dollies left with them.

Today we walk over ground going to rest. The once green understory has faded like a sun ruined tapestry, a brocade dress left to rot in the rain. There is peace and beauty in this forest with its dying fiddleheads; a place to appreciate the shapes of newly free limbs and branches, rushing water and spruce bark.

October 24**A Break in the Weather**

October is wet and dark except on a day like this when the sun breaks free. To take advantage I walk among the Dredge Lakes. Before our last storm, the cottonwoods lining each lake hung with fading yellow leaves. It would have been nice to see sun light illuminating fall color but the storm's high wind and rain stripped all trees bare, leaving the simple beauty of alder bark and more views of the glacier.

October 27, 2010**Wild Urban Lands**

Japanese gardeners struggle to bring some wilderness to urban land. They create worlds with sculptured trees, grass and gravel; bringing peace to those blessed to have tea on their garden's edge.

Alaskans can feed directly from natural beauty. Our self-landscaping ground has no need of gardeners. Storm run off carves out great gravel rivers in miniature on the wild lands between Juneau and the ice fields. Spruce and Hemlock space themselves in a pleasing manner after outstretching the fast growing alder. We make our own paths through the resulting old growth.

October 30, 2010

Beach grass stiffens in October as the softness of summer goes into the roots. The blades crumble away leaving their stalks to catch the low angled sun of fall. Over the grass we see a line of spruce along Eagle River, then Lynn Canal and winter settling on the Chilkat Mountains beyond. The ravens grumble but we do not.

October 31, 2010**Returning to Normal Time**

Calm grey water is what we see this morning from the Outer Point Beach. There is wind but it is kept too high by the cliffs to disturb the sea except for random focused gusts that dapple the surface with dark ripples like the wakes of bait fish. Far down the beach a bald eagle complains but I am most interested in a single alder leaf tumbling with beauty to the water.

Swedes call this "normal time" -- a season for finding beauty in small things like stiffening beach grass and tumbling leaves.

November 2

Rain isn't welcome after November 1st.

November 6, 2010**Red Jacket**

Five seals move into the Eagle River today on an autumn tide that floods the meadow trail. Are they curious or hungry? Did they catch the scent of late run silver salmon? As I scan the river for signs of fish

one seal swims toward me until I shift. Then he dives. Did he wonder who left that red jacket hanging on a denim tree?

November 10, 2010

Last night snow covered the mountain trails near Juneau. By the time of my morning walk there is only enough winter to form a thin skin over the muskeg and dimple most of the ponds. One remains clear to mirror the wall of mountains beyond. If I had started at first light with younger legs, I might be up there instead of here, an empiricist in Plato's cave.

November 15**Heron**

Yesterday a heron flew above the tidelands near Shaman Island. I thought of the elephant in a room of blind men. One hearing the heron on a dark night will imagine a goose with no musical talent. Watching it motionless in shallow water --- patient hunter. Seeing the heron fly across our horizon yesterday I felt strength and the presence of God on its back.

November 20

Aki and I were still in the woods when we heard the whale song --- not the exhaling sound you usually hear but actual song --- like a musical moan forced through pipe. The beach was lit with the intense yellow light of late afternoon when we broke out of the old growth and heard it again. Then we saw the whales moving close to Shaman Island; breath spray and black, wet backs made more dramatic by the sun.

November 24

Last night's snow brought fresh beauty to the beach at False Outer Point.

A small raft of mergansers moved along with us as we made for the point. The last tide marked the lower boundary of snow on the rocks with straight lines --- a sign of the windless night.

Around the point gulls complained constantly just off shore. Three eagles joined the chorus and then a loon added its hopeless song. The snow was changing to rain. We moved into the woods where songbirds added their simple music. Taking a less used trail Aki found where a group of tightly packed small mammals had charged across the trail (a herd of migrating squirrels?) --packing a 14-inch-wide path in the snow.

November 27

Last night's flood tide receded from the wetlands to leave a thin layer of sea ice over dead grass and mud. Where it forms a clear cover over grass the new ice shatters with each step of my dog, but feels elastic when walked on over mud.

A convergence of small events left a clean set of tracks in frozen glacier silt; the product of one gull walking through the skim of the retreating autumn tide, a night cold enough to make ice and then later the decorating frost, and leaving the wild scent that draws Aki away from the softening tableau.

December 4

Thanks to icy roads and a downtown rain storm that kept most inside, only wild things have walked this trail since the last snowfall. Here is the "V" shaped tracks of a snowshoe hare and there the fresh cut tracks of a struggling deer. Several times Aki stops to sniff the path of a trotting wolf.

The early winter snows now bury fallen leaves, leaving a forest of earth tones. Only a handful of startling red high bush cranberries hang on, their color growing through crowns of snow.

We reach the river where nine young sea lions are looking for trouble. Lacking the stealth skills of seals, they splash underwater when I approach the river bank then heave themselves several feet out of the water to get a better view of Aki. Haven't they ever seen a poodle in fleece?



Aki finds a mysterious-looking sea urchin on the beach, but Dad knows it's really a dog toy.



In summer, Aki and Dan go ocean-paddling during their "walks."

Midnight at the Supreme Court: John Marshall's deathly hallo's

By Peter Aschenbrenner

I am searching for the Annals of Congress.

'That's funny,' I say to myself. 'I thought I knew every warp and wrinkle in the stacks of the Supreme Court library, but here's a door marked "nine and three-quarters".'

The master of the house answers.

'You're up late,' I gasp.

Chief Justice Marshall studies me.

'You do realize it's the middle of the night, don't you?'

'What's the time in Alaska?' I reply.

The Chief tries to meet me halfway.

'How about dessert? Will that convince you I'm not a ghost?'

I look around.

'These apartments have a lot of charm.'

'Out there, they've been removing the asbestos,' the Chief waves me inside, "but the workers have overlooked my home-away-from-home."

'You've got quite a comfy little set-up.'

'Desserts and other indulgences. My favorite means of diverting my guests.'

'And sports memorabilia, as well.'

The Chief twirls a signed basketball. "The Washington Wizards," he explains, "is my team."

'Goes with Bananas Marshall,' I study the ingredients in store. "I hope I'm not intruding."

The Chief makes the introductions.

"Stephan Pleasonton?" I express my surprise. "Aren't you the one," I ask, "who saved the Journals of the federal convention after the Battle of Bladensburg?"

"He's very modest," Marshall fires up his sauce pan.

"Let me put it this way," Pleasonton begins. "Are you familiar with Emanuel Leutze's *Washington Crossing the Delaware*?"

"Ah, reminiscence!" Marshall sighs. "Dawnlight bathes Washington in larger-than-life pose. The General is taking the Continental Army east, our target the Germans camped at Trenton. Christmas day, seventeen seventy-six."

"Were you there?" I rack my brain.

"Dad was," Marshall clarifies the point. "Thomas Marshall to you. The General elevated me to the rank of captain-lieutenant and posted me to the Virginia Fifteenth. From there, to Brandywine. I skipped Trenton and Princeton. Hence Tom's recollections."

"What a man!" Pleasonton sighs, opening his netbook and dialing up the Metropolitan Museum's collection. "I am referring to jut-jawed Lt. James Monroe hoisting the Continental battle colors behind Gen. Washington."

"Yes, yes," Marshall platters his sugary concoction. "America's leading military President, and aside from General Washington, the only President who rallied our troops while they ran from the battlefield."

"Monroe – Secretary of State and War – called on the militia to make a stand at Bladensburg in 1814 and

fight alongside Commodore Barney's men," I read the blurb over Pleasonton's shoulder.

"Is Washington Burning?," Pleasonton replies. "Snappy name for a website."

"The Navy held the line, as I understand it. With the cannons they salvaged from their gunboats."

"But our citizen-soldiers," Marshall pours rum-and-fizz, "melted away, anointing the champs de bataille with their invisible charms."

"Speaking of reminiscence," I ask the Chief Justice, "where were you on the night of August 24, 1814?"

"Nestled into my old Virginny home, Ninth and Marshall in Richmond. The Supreme Court," the Chief informs me, "does not sit in August, Professor."

"Monroe was everywhere," Pleasonton continues. "He restored order in the capital while the British advanced up the Baltimore Pike. It was Monroe who gave the orders to move the federal papers out of town. They were stored in the attic at the Department of State."

"Pleasonton planned ahead," Marshall adds. "He had already ordered the canvas sacks and hired the ox carts."

"Boy, this is good," I clean my dish.

"Excellence in culinary performance," Stephan licks his platter clean, "precedes mastery of the judicial arts."

"You're both welcome," Marshall receives our compliments. "Go on, young man."

"We saved everything," Stephan warms to his narrative. "The Constitution, the Declaration of Independence, the Articles of Confederation, and, of course, the secret Journals of the federal convention."

"No loss if they had burned," Marshall sniffs. "Jackson's Journals, that is."

"We didn't peek inside," Pleasonton assures me. "Just threw 'em in the sack and down the road to Georgetown they went. So their secrets were safe with us."

"About the Journals, Mr. Chief Justice," I turn back to Marshall. "You just said –"

"Yes, yes, lawyers cited us to the Journals. 'The words in the constitution are broad enough to include the case, yet they are to be construed according to the intent of the framers.' *Sturges v. Crowninshield*, 17 U.S. 122, 132 (1819)."

"Right on!" Stephan clatters away.

"Is that quote from your opinion?" I gasp.

"It being the habit of the day to publish counsel's briefs," the Chief shoots me a frosty look, "with the opinion of the court."

"David Daggett held an appointment from a school of law," Stephan Wiki's away, "founded two years before the *Sturges* decision was rendered."

"Harvard," snorts the Chief. "The court's opinion, 'Marshall, C.J.', if I may cite to myself," the Chief continues, "makes application of constitutional text turn on plain meaning."

"Plain to Marshall," I have to agree.

"I was not in Philadelphia," Marshall declares. "I would rather have a rule that makes sense to me, not one opined by some patriot at the convention and regurgitated by some lawyer who learned constitutional law at his mother's knee."

"But wouldn't that mean Professor Daggett – I mean he must have – ?"

"Maybe he had access to the Journals?" Marshall finishes my question for me. "So what?"

"Congress ordered them published in 1818," Stephan explains. "So if attorney Daggett had stopped by the Secretary's office, that's Secretary of State J. Q. Adams, during the winter of 1818-1819 and prized them from Secretary's hands, Daggett could have poured over the Journals to his heart's content."

"And cited them to your court?" I ask.

"A waste of time," Marshall sneers. "Surely you've heard of Washington's Paradox."

"It's now called," Pleasonton cues the Chief, "Russell's paradox."

"Bertrand Russell's name's on Washington's paradox?" the Chief Justice gasps his alarm.

"The one I like is Pandora's," Pleasonton turns to me. "Follow the instructions in the box, you lift the lid and voilà! You should not have opened the box."

"Washington fell into the paradox in 1796 when he turned the Journals over to the State Department before he had permission from Congress," Marshall ruminates. "But then Admiral Co'burn bailed him out."

"The same Cockburn," I stumble the pronunciation, "whose portrait formerly hung in the National Portrait Gallery in London?"

"I take it," Marshall assumes, "too many American tourists recognized the burning of Washington, which Co'burn's portraitist added as backdrop to the proud admiral's full-length features."

"Masterful, Mr. M," Pleasonton chirps. "The British burn the Capitol, the White House and the State Department. Congress seeks to preserve our priceless heritage and publishes the secret Journals of the convention! Now everyone can cite them."

"Not really," Marshall counters Pleasonton. "It was the intent of the framers that their intent not control application of constitutional text. If Washington couldn't figure that out – that's what the Washington-Russell-Epimenides-St. Paul Paradox is all about – at least he could honor the pledge he gave the convention on September 17th."

"I'll bet that Jefferson's got a paradox named after him," Stephan blurts.

"Of course, he does," Marshall offers seconds of his house specialty. "Ever heard of the fallacy of the rejected proposition?"

"I'll Wiki it," Stephan clatters away.

"Is that," I ask, "like the fallacy of the excluded middle? In which case Jefferson's opinion on the bank bill (1791) would certainly qualify."

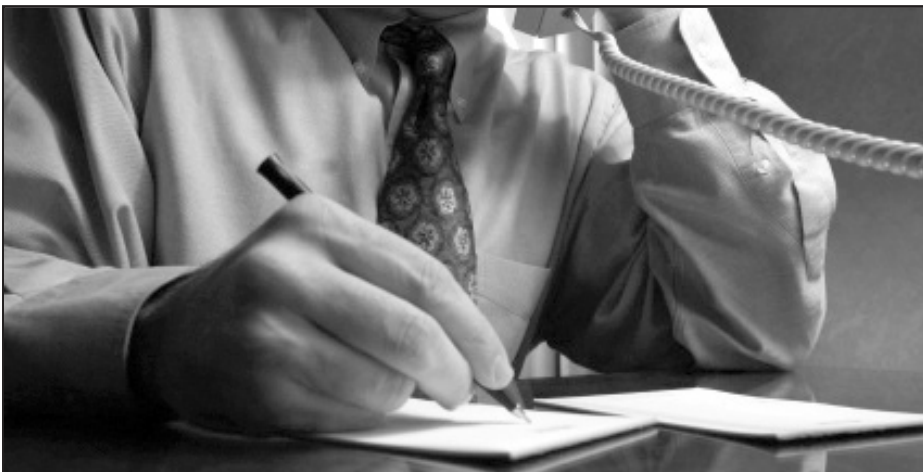
"Here it is," Stephan reads from his screen. "Take a proposition that was rejected in the convention, turn it inside out, and voilà!"

"An elaboration of constitutional text is thereby supplied," Marshall scoops from a tub of crushed nuts. "As if I needed any help in that department."

"Jefferson reasoned from this morsel: the federal government can't issue corporate charters," Stephan declares. "But did you ever cite to the journals? Let me start a new search," he adds.

"Don't bother," Marshall waves

Continued on page 13



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Visiting professor speaks on racial fairness and diversity



Here, Prof. Gould joins Prof. Deb Periman of the UAA Justice Center and past and present leaders of the court system's Fairness and Access Initiatives Committees at the close of his November 19 presentation, L-R: Justice Robert Eastaugh (Ret.), past chair, Alaska Supreme Court's Fairness and Access Implementation Committee; Prof. Gould; Justice Dana Fabe, chair, Alaska Supreme Court's Fairness, Diversity and Equality Committee; Prof. Periman; and Justice Daniel Winfree, chair, Alaska Supreme Court's Access to Civil Justice Committee.

A national and international scholar on issues related to access to justice presented free two lectures in Anchorage November 18-19, 2010. Prof. Jon Gould of George Mason University in Virginia spoke on the topic "Studying Racial Fairness in the Civil Justice System" on Thursday, November 18, to an audience of over 100 students and community members at the University of Alaska Anchorage. On Friday, November 19, he spoke on the topic "Diversifying State Courts" before members of the legal community and public in the Alaska Court System's Snowden Training Center. Prof. Gould is the director of the Center for Justice, Law and Society at George Mason University in Fairfax, Virginia, and is also the director of The Spangenberg Project on Access to Justice. A lawyer and social scientist, he combines empirical research with policy advocacy to advance the administration of justice. He serves on the board of the American Judicature Society and on the editorial boards of *Law and Society Review* and *Justice System Journal*. During the 2006-2007 term, he was a U.S. Supreme Court Fellow. Prof. Gould's Anchorage lectures were sponsored by the Justice Center, University of Alaska Anchorage; the Alaska Bar Association, and the Alaska Supreme Court's Fairness and Access Initiatives Committees.

Midnight at the Supreme Court: John Marshall's deathly hallo's

Continued from page 12

him off. "I can do this from memory. 'An examination of the proceedings of the convention which formed the constitution of the United States, will show that the prohibition which is now supposed to operate on the law of Missouri, was carried by a majority of one vote. Journal of the Convention, 302'."

"Wow, Chief! *That's Craig v. State of Missouri*, 29 U.S. 410, 422 (1830)."

"Senator Thomas Hart Benton argued for the state," Marshall sighs, "appearing while not appearing. And he got what he deserved," Marshall adds.

"So your court was never wrong."

"What is that machine called, Stephan?"

"It's a netbook. You can search on any word in all the decisions that the Supreme Court has ever made."

"Can you search on *Marbury v. Madison*?" I ask.

"That's 3,514 hits," Stephan exclaims, "in all of American case-law."

"Is that more than," Marshall studies his nails, "Ronald Coase?"

"Whoever he is," Stephan bangs away. "*He's* only got 97 hits."

"Not that this title would disturb my innate modesty," the Chief Justice adds, "but I must be the most cited judge in the history of —"

"The universe, Chief. I could prove *that* to your satisfaction if I also had subscriptions to *Eastlaw* and *Oceanalaw*, as well as —"

"So you don't expect any Supreme Court decisions," I stay Stephan's further progress, "to cite the secret oracles of the constitution, Mr. Chief Justice. Even if Congress published the Journals in 1819, 'the sense of that body could never be regarded as the oracular guide in expounding the Constitution.' Just like James Madison said."

"Never tell me the odds!" Marshall picks up his broom and takes his stance. "Fire one."

"It cited the opinions of the framers of the constitution," Stephan

reads. "It contained extracts from the journals of the convention ...'"

"*Pollock v. Farmers' Loan & Trust Co.*, 157 U.S. 429, 636 (1895)," I read the citation.

"Chef Justice Fuller fell into the trap of lauding an attorney who cited the court to the convention's intent. Pooh," the Chief snorts. "Fire two."

"*The Legal Tender Cases*," I read over Stephan's shoulder. "79 U.S. 457, 585 (1870). The Chief Justice Chase cites to the papers of James Madison, published in 1840."

"And Justice Clifford cites to the 1819 Journal and Elliot's Debates. At 606," Stephan adds.

"Both in dissent?" Marshall sneers. "That doesn't count. That's not the court speaking paradox."

"So," Stephan continues, "it's got to be a justice speaking for the court, relying on the Journals for the 'sense of that body,' right?"

"What have you got, son? Fastball, slider, a roundhouse curve? They are mere marshmallows to Marshall, C.J. Fire away!"

"The publication of the journals of the Federal Convention in 1819," Stephan reads the text, "and of the debates reported by Mr. Madison in 1840, and the mass of private correspondence of the early statesmen before and since, enable us to approach the discussion of the aims of those who made the Constitution, with some insight and confidence."

"Whoa," I read the citation. "*Dred Scott v. Sandford*, 60 U.S. 393, 510-512 (1856) concurring opinion of Justice Campbell."

"That's no longer good law on any point," the Chief Justice considers his options. "And the citation was in a concurring opinion, and Campbell only alludes to the journals in the most general terms. Aschenbrenner, back me up."

"March 23, 1796," I signal Stephan.

"5 Annals of Congress 701," he responds. "Congressman William Vans Murray (F-Md.) seeks to draw out James Madison in debate on the House floor. 'If the Convention spoke mysterious phrases,' Murray addresses Madison, "and the gentle-

man helped to utter them, will not the gentleman aid the expounding of the mystery? If the gentleman was the Pythia in the temple, ought he not to explain the ambiguous language of the oracle?"

"Which Madison declined to do," the Chief Justice declares, "despite being taunted by his Federalist adversary. Turn the screen my way, Stephan."

"April 6, 1796. 5 Annals 776," I continue, while Stephan brings up the next page. "But, after all, whatever veneration might be entertained for the body of men who formed our Constitution, the sense of that body could never be regarded as the oracular guide in expounding the Constitution."

"Ha!" Marshall crows. "Bravo for Jimmy!"

"Unh," Stephan interrupts. "I'm not following, Chief."

"Murray asked Madison if he were the 'Pythia in the temple,' and Madison did not deny it. Instead, Madison rejected the notion that the convention collectively could be considered an oracle. But as for a single voice — That Madison does not deny."

"Being James Madison," I muse. "Where does that leave us, Chief?"

"Yes, please extricate us," I add my voice to Stephan's. "Justice Field, in the *Legal Tender Cases*, 79 U.S. 457, 655 stated: 'I am aware of the rule that the opinions and intentions of individual members of the Convention, as expressed in its debates and

proceedings, are not to control the construction of the plain language of the Constitution or narrow down the powers which that instrument confers. Members, it is said, who did not participate in the debate may have entertained different views from those expressed.'"

"Madison," Stephan teases out the puzzle, "left open the possibility that the court might cite to his *Notes*, being a treasure-house of views expressed by individual delegates. However, not less than 30 years later, Justice Field says that it's a rule that 'the opinions and intentions of individual members of the Convention, as expressed in its debates and proceedings, are *not* controlling ...'."

"Paradox, my boy," Marshall withdraws tubs of ice-creams from the ice-chest.

"Jefferson has one," Stephan cries out.

"And Washington has *his*," I add.

"But what do you know of Marshall's paradox?" the Chief asks us.

"Tell us please!" Stephan exclaims.

"You've never heard the disconsolate voice, 'Whenever John Marshall offers to converse with me, I never accept premises of his choosing?'"

Stephan and I look at each other.

"Jefferson speaks of Marshall's iron logic!"

"Do justice to my desserts, lads. And don't forget the marshmallows."

May the Spirit of the
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AAWL luncheon features Color of Justice program

The November 1, 2010, luncheon of the Anchorage Association of Women Lawyers explored ways the legal community can support the Color of Justice program. Color of Justice is a national effort to foster diversity in the legal profession and judiciary through law-related education. In Alaska, the program has expanded to two locations—Sitka and Anchorage—and offers challenging workshops and hands-on experience for students interested in legal careers. Sponsored by the National Association of Women Judges with co-sponsors that include the Alaska Court System, the Alaska Bar Association, and Pacific Northwest law schools, the program has reached over 1000 Alaskan young people since its inception here in 2003. Justice Dana Fabe, NAWJ president for 2009-2010 and long-time supporter of Color of Justice, offered luncheon remarks. Justice Fabe, Justice Morgan Christen, and COJ Coordinator Barbara Hood answered questions from the audience about concrete steps members of the legal community can take to support the program. These include encouraging youth to attend; informing friends, family, colleagues and clients; helping participants arrange travel as needed; volunteering as mentors and mock trial coaches; and offering other ideas and support. The law firm of Perkins Coie LLP generously covered the costs of the AAWL luncheon, which was attended by over 50 people. AAWL President Christine Williams, an attorney at Perkins Coie, moderated the program.



Here, participants meet at the end of the program with Jina Malone, a 5th grader from the Mat-Su Valley who attended the luncheon. L-R: Justice Dana Fabe, Christine Williams, Jina, Justice Morgan Christen, and Judge Beverly Cutler (Ret.).

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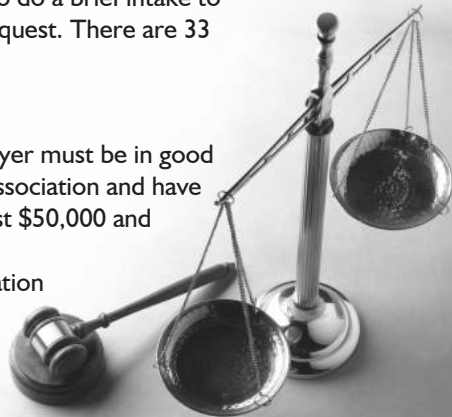
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Contact the Alaska Bar Association at 272-7469 or info@alaskabar.org to receive an application.



Bar People

Ken Lougee, formerly of Fairbanks (formerly of the law firm formerly known as Hughes, Thorsness, Gantz, Powell and Brundin) relocated to Salt Lake City. Since leaving Alaska, he has earned an MA in History from the University of Utah. He taught History at Salt Lake Community College. He was admitted to the Utah Bar in 2005 and since that time has worked for the plaintiff's personal injury firm of Siegfried and Jensen. You might find his picture on television or on the back of the Salt Lake City phone book.

Alaska Railroad legal staff to change

Effective January 1, **William R. Hupprich** will be promoted as the Alaska Railroad Corporation (ARRC) vice president & general counsel. He will succeed Phyllis C. Johnson, who is retiring December 31 after 24 1/2 years of service at the railroad.

Andrew F. Behrend, formerly in private practice, has joined the General Counsel's Office of the ARRC, effective December 6. Mr. Behrend comes to the railroad from the Anchorage Office of Stoel Rives LLP.

Platt gets chosen

Best Lawyers, the oldest and most respected peer review publication in the legal profession, has named **Janet D. Platt** as the "Anchorage *Best Lawyers* Family Lawyer of the Year" for 2011. After more than a quarter of a century in publication, *Best Lawyers* is designating "Lawyers of the Year" in high-profile legal specialties in large legal communities. Only a single lawyer in each specialty in each community is being honored as the "Lawyer of the Year." *Best Lawyers* compiles its lists of outstanding attorneys by conducting exhaustive peer-review surveys in which thousands of leading lawyers confidentially evaluate their professional peers.

Ms. Platt was awarded a Bachelor of Arts from the University of California, Berkeley. Ms. Platt earned a Juris Doctor from King Hall School of Law, University of California, Davis.

Ms. Platt serves on the national Board of Governors of the American Academy of Matrimonial Lawyers (AAML). Ms. Platt has appeared as a lecturer for the Alaska Bar Association, University of Alaska and the AAML.

Ms. Platt maintains a trial and appellate practice, focusing on complex property and related family law issues. Ms. Platt has been a sole practitioner since 1989.

The Alaska
**BAR
RAG**

SUBMITTING A PHOTO FOR THE ALASKA BAR RAG?

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Bar People

Robert L. Manley of Manley and Brautigam P.C. has been named as the "Anchorage Best Lawyers Trusts and Estates Lawyer of the Year" for 2011. Best Lawyers is the oldest and most respected peer-review publication in the legal profession.



Robert Manley

Best Lawyers compiles its lists of outstanding attorneys by conducting exhaustive peer-review surveys in which thousands of leading lawyers confidentially evaluate their professional peers. The current, 17th edition of *The Best Lawyers in America* (2011) is based on more than 3.1 million detailed evaluations of lawyers by other lawyers.

The lawyers being honored as "Lawyers of the Year" have received particularly high ratings in our surveys by earning a high level of respect among their peers for their abilities, professionalism, and integrity.

In Memoriam

Elizabeth Page "Pat" Kennedy, 72

After a career in education and counseling, she entered the practice of law. She served three terms on the Alaska Bar Association Board of Governors, and was president of the board in 1991-92.

She was born on July 9, 1938 in Pittsburgh. In 1960, she graduated from Sarah Lawrence College with a Bachelor of Arts degree. She received her Master of Arts in teaching from Wesleyan University in 1963. She furthered her education at Ohio State University and in 1976 received her J.D. from the University of Washington.

Pat moved to Alaska in 1969 and worked as a schoolteacher and counselor in Kodiak before relocating to Anchorage to accept the position of dean of students at Alaska Methodist University. At the time of her passing, she was retired from the Alaska Attorney General's office, a board member of Chugach Electric, and an active member and officer of Soroptimist International and Rotary clubs.

Throughout her adult life, Pat Kennedy was a strong advocate for human rights and fought against domestic violence and child abuse. "She was a believer in organ donation and giving your all to help those in need," said her family and volunteered for Hospice, Providence and the Lions Club.

"Pat was a loving mother to hundreds of foster children, two adopted daughters, four grandchildren and one great-grandchild," her family wrote. "She was fondly known throughout the Alaska legal and bluegrass communities. Her home and heart were always open to anyone in need."

She is survived by her brother and sister-in-law, Thomas Harper and Karla Jean Kennedy; nieces, Jamie Burchfield and Ashley Kennedy; daughters and sons-in-law, Rebecka Page and David Grabowski, and Shannon L. and Kevin Wright; four grandchildren, Stefan Grabowski, Amber, Miranda and Kamela Wright; one great-grandchild, Luke Poe; many aunts, uncles, and cousins in the Lower 48; and many foster children throughout Alaska. She was preceded in death by her parents, Jane Harper and Joseph Walker Kennedy II; and brother, Joseph Walker Kennedy III.

A celebration of life was held at Russian Jack Springs Park in October; her cremains will be scattered in Kodiak. In lieu of flowers, the family suggested donations to the Abused Women's Aid in Crisis.



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Historical Bar



The storied career of territorial lawyer George Grigsby

Ask any of the Alaska lawyers and judges who were in practice during Alaska's territorial days about other lawyers they knew back then and the response will almost certainly include some anecdotes about George B. Grigsby, and probably an opinion about his personality and his character. People who knew Grigsby did not always admire him but it seems no one ever forgot him, and he remains a unique figure in the history of Alaska's bar.

Part One: Nome 1901 – 1916

Grigsby came to Alaska in 1901 at age 27 with his father Col. Melvin Grigsby, a lawyer who had been appointed U.S. District Attorney in Nome. George did not have a law degree but he had studied law and practiced briefly in the Midwest and Colorado. A few months after they arrived, the Colonel named his son Assistant U.S. Attorney and turned the office over to him and then left Nome for the winter.

That winter was a tough one for George Grigsby. According to a June 12, 1903 article in the Nome News, the federal grand jury, which was appointed to investigate criminal charges and review the conduct of local officials in Nome during 1902, issued a report accusing Grigsby and the U.S. Marshall of failing to perform their duties in prosecuting a defendant accused of killing a police officer. The report went so far as to claim that Grigsby and the Marshall had aided and abetted the crime by shielding the defendant during the investigation and trial, and compared them to previous certain federal officials who had protected offenders in exchange for pecuniary or political benefits. Fewer than a majority of the grand jurors signed onto the report, which was submitted to U.S. District Court Judge Alfred S. Moore, but the court endorsed it and refused to accept a report the dissenters tried to file.

The grand jury also condemned Col. Grigsby for abandoning his position for the entire winter and leaving

it in charge of an "incompetent assistant." An article in the New York Times for June 28, 1903, reported that Judge Moore overruled George Grigsby's objections to the grand jury report and appointed another lawyer, John L. McGinn, to serve as U.S. District Attorney until Col. Grigsby returned or his successor was appointed.

The court could not rid itself of Grigsby so easily. After McGinn took possession of the U.S. Attorney's office, Grigsby opened his own U.S. Attorney's office in the back of the Board of Trade bar and called his own grand jury there. When the judge ordered the U.S. Attorney to "come forward" in the courtroom, both Grigsby and McGinn approached the bench, and the court accepted true bills from them both.

Grigsby's clash with Judge Moore was predictable. The judge was irritated by the young Grigsby's informality, lack of discipline and practical jokes.

One of his jokes was aimed directly at the judge. According to a story told by Anchorage Superior Court Judge Harold Butcher (now deceased), who knew him well, Grigsby dared a Nome lawyer to call Judge Moore, to his face, a "redheaded sonovabitch." After much badgering by Grigsby, the lawyer finally took the dare – sort of. He told the judge that, although some people at the bar called the judge a redheaded sonovabitch, "I of course defend you."

After the report of the 1902 grand jury was issued, Col. Grigsby returned to Nome intending to resume his position. By then, Nome residents were demanding his resignation, however, and eventually he was forced to comply. George Grigsby, however, survived his brushes with Judge Moore and the grand jury. Grigsby served as Assistant U.S. Attorney in Nome until 1908, when he was appointed U.S. Attorney. He married and had four children, and he became a leader in the community.

In 1910, Grigsby went into private practice and also served as Nome's city attorney. In 1914, he was elected

mayor. He also sought the Democratic nomination as Nome's favorite son for Alaska's sole non-voting seat in the United States Congress.

Grigsby lost the 1914 nomination to James Wickersham, and subsequently continued losing to him election after election during Grigsby's remaining years in Nome. The races were hard-fought and the candidates often met head to head at public meetings, which were held in coastal communities they had to reach by traveling together on the mail boats.

By the mid-1900s, the gold rush had ended and Nome's population had fallen from its high point of over 12,000 to about 1,000. It was time for Grigsby to find more fertile fields. In 1916, he moved to Juneau, which was enjoying renewed prosperity from the operations of two new gold mines. More importantly, Juneau had been established as the seat of the territorial legislature created by the Organic Act of 1913 and as such had become the political center of the state.

Part Two: Southeast Alaska and a Detour to Congress 1917 – 1940

Grigsby opened his own law office when he arrived in Juneau. A year later he was appointed the first Attorney General for the Alaska Territory for a one-year term (1917-1918). He also became involved in his friend Charles Sulzer's 1917 race against incumbent James Wickersham for Alaska's non-voting delegate to the House of Representatives, the seat Grigsby himself had often tried to wrest away from Wickersham.

The Sulzer-Wickersham race was tumultuous and the result so close that a recount was required. The canvassing board appointed by Congress for this purpose found that Wickersham had won by 31 votes. Attorney General Grigsby, however, invalidated some votes from remote communities that had been returned on makeshift ballots, then successfully appealed the board's decision to the U.S. District Court in Juneau. Sulzer obtained the certificate of election but Wickersham

took his challenge to the Congress. The House of Representatives, after long hearings, finally declared that Wickersham had been legally elected. By then, however, the Congressional term had expired.

In 1919, Sulzer again ran against

Wickersham and again the vote was so close a recount was required. This time the canvassing board found that Sulzer had won. Wickersham

again contested the board's decision, this time on the ground that soldiers at various army forts had voted illegally.

Sulzer died unexpectedly before he could take office. When the governor called a special election to replace him, Grigsby ran and won. Wickersham declined to run in the special election, contending he had already won in the regular election.

With Wickersham's election challenge pending, both men headed for Washington. When the call came in the House of Representatives for Alaska's delegate to arise, Wickersham and Grigsby both rose. The question of which of them should be seated was then assigned to a committee. The committee gave both men ninety days to obtain and present evidence in support of their positions. After holding extensive hearings, the committee finally decided to seat Wickersham. This time the decision was announced only three days before the end of the term.

Grigsby and Wickersham both collected a delegate's salary and expenses while awaiting a decision from the committee. Grigsby spent much of his free time during this period at the card table, and developed a reputation as an avid though penurious poker player.

By now, Wickersham had had enough. He retired from public office and returned to Juneau to practice law and continue writing his works on Alaska. Grigsby also moved on, this time to the newest boomtown, Ketchikan, which had a thriving fishing industry, much of it using the fish traps so hated by Alaskans of the

Grigsby served as Assistant U.S. Attorney in Nome until 1908, when he was appointed U.S. Attorney.

People who knew Grigsby did not always admire him but it seems no one ever forgot him, and he remains a unique figure in the history of Alaska's bar.



The Anchorage bar gathered on Nov. 31, 1954, to celebrate Christmas and the birthday of president George Grigsby, then 80 years old. The event was captured in these two photos in the joint Bar-Court archives. Grigsby took the lectern to share some thoughts, with Judge Harold Butcher seated to his left.



Among those celebrating the event (standing in the back row) were Ed Arnell, Harold Butcher, George Grigsby, J. Gerald Williams, Buell Nesbett, Paul Robison (far right). Photos courtesy of the Alaska Court-Bar Joint Historical Archives.

Historical Bar



The storied career of territorial lawyer George Grigsby



Members of the Anchorage bar at one of their regular informal gatherings at the Lido Gardens, 4th and B Streets, sometime in the late 1940's or early 1950's. Pictured: around the table are Harold J. Butcher, John E. Manders, Warren O. Cuddy, Edward L. Arnell, Raymond Plummer, Stanley McCutcheon, Anthony J. Dimond, George B. Grigsby, J. Gerald Williams, Edward V. Davis, Simon Hellenthal, J.L. McCarrey, Jr. and 2 unidentified men.

time. Back in his element, Grigsby soon gained a reputation as a brilliant, witty and unpredictable trial lawyer, in both civil and criminal cases, often defending clients against charges of fish trap piracy. But his heavy drinking during this period began to take its toll on him and to tarnish his reputation as a lawyer.

In the 1930s, Grigsby returned to Juneau. The effects of his heavy drinking now were widely recognized by his colleagues. In an interview by Anchorage attorney and writer Pam Cravez, attorney John Hellenthal recalled that he and other lawyers practicing in Juneau at the time tried to protect Grigsby from himself. When he showed up in court drunk, other lawyers would put him to sleep in the cloakroom and cover for him in the courtroom. If they found him drunk on the streets at night, they would see that he got home safely. Though now he was in his mid-60s, Grigsby was finding that Juneau had grown too tame for him. It was time to find another boomtown more suited to his style.

Part Three: Anchorage 1940s - 1950s

George Grigsby moved to Anchorage in 1941, just as the town of 4,000 was about to mushroom in size and importance. The city's population tripled during the 1940s, when it became a base for America's military activities during World War II and was connected to the Lower 48 by the Alcan Highway in 1942.

In Anchorage, Grigsby's physical

strength declined with age but his reputation as a lawyer rebounded. Grigsby's nearly 40 years of legal experience and personal involvement in the affairs of several far-flung Alaska communities during periods when they were at the center of the territory's development, attracted the attention and admiration of the dozen or so lawyers in the city at the time, most of whom were young and new to the state. His courtroom performance during this period burnished his reputation as the state's best trial lawyer. Younger lawyers were awed by his wit and creativity, and his seemingly facile ability to spot and make the right argument to persuade judge or jury of his position, often with the barest of legal research to support it.

Like many Anchorage lawyers at the time, Grigsby and his partner Carl Drager were in court almost constantly, usually for domestic relations or criminal matters. Well-known criminal defense attorney Roger Cremona stated before his death that he came to know Grigsby well during his years of practice in Anchorage and considered him the smartest lawyer in the state. Superior Court Judge Harold Butcher (dec.) recalled being told before he first saw Grigsby in trial that he was about to see the territory's greatest trial lawyer in action. Judge Butcher, who was himself considered highly principled, stated that he never doubted his first impression of Grigsby's extraordinary legal talent, regardless of his unorthodox methods and disdain for deep research.

Grigsby's popularity with the younger generation of lawyers was based on more than just admiration for his skill and experience. A number of lawyers who began their careers during the 1940s and 50s recounted that Grigsby was always available to advise them on thorny courtroom problems, and they remained grateful for his counsel years later.

The late Ralph Moody, who became a long-standing judge in the Anchorage Superior Court, ran into such difficulty during his first year of private practice. Moody's client had indicated that he intended to offer perjured testimony in his criminal trial. He had even threatened to testify that Moody had not adequately defended him unless Moody falsely tried to discredit a prosecution witness. Grigsby advised Moody just to take his client's story on the stand without comment and predicted as a result that the jury would just come in a little quicker with a guilty verdict. In the end, the defendant accepted Moody's advice not to testify and was convicted, but Moody never forgot the reassurance he had received from Grigsby.

The late Wendell Kay was a vociferous admirer of Grigsby's skills, even though Grigsby was in his mid-70s when Kay entered private practice in Anchorage in 1948. In his first cases involving Grigsby, they represented adverse parties. Kay found himself humiliated more than once in the competition but he learned from seeing Grigsby perform

and was inspired by it. Eventually, he worked for Grigsby and learned even more from him while in his second chair. Kay saw that Grigsby, despite his age, held the attention and respect of everyone in the courtroom, and that by his wit and eloquence he was appealing to both judge and jury. Grigsby had everything, Kay said; he was "a star."

Grigsby's gregarious personality and wit also made him a welcome and active participant socially in the small, collegial bar of the time. As lawyers attracted to practice in a frontier community, they were drawn to Grigsby for his reputation as a maverick in the courtroom. Grigsby was more than happy to share his experiences during regular informal gatherings of the local bar. He was so popular among the Anchorage lawyers that they called him the "president" of their association, even before the Anchorage Bar Association was formally organized.

Anchorage attorney Cliff Groh, now deceased, told author Pamela Cravez in an interview that when he first arrived in Anchorage in 1952, almost all of the local lawyers met informally on a regular basis, usually on Saturdays at the Lido Bar and Café, aka the Lido Gardens. ("The History of the Anchorage Bar Association from the Lido Bar to Good Deeds," Bar Rag, Jan.-Feb. & March-April, 2002). These gatherings were presided over by Grigsby, and the drinking that started there might continue afterward over the poker table in Grigsby's office. Grigsby could be a tyrant, Groh said, and he would exclude anyone he didn't like. "You sort of had to bring him a bottle of whiskey and set it on

the table to cloak you with respectability."

At this point his life, however, the heavy drinking that had taken such a toll on Grigsby in Juneau was behind him. Judge Butcher became a close friend of Grigsby during

this period and the two lunched together almost every day. Butcher reported that by this time Grigsby was unable to drink anything but beer, and that he consumed no more than four to six bottles a day, the "same as a couple of good stiff drinks."

When the Anchorage bar formally organized in 1957, Buell Nesbitt as vice-president was put in charge of the organization's business and political activities, which increased in importance as Alaska moved closer to statehood. Grigsby was elected president in a ceremonial capacity, however, and even after he no longer held that office, local lawyers continued their established tradition of celebrating his birthday each year in conjunction with its annual Christmas party in recognition of his importance to them as lawyers and to their association with each other. In 1959, Grigsby finally left Alaska for Santa Rosa, California, where he died in 1962.

**P. Cravez, Seizing the Frontier: Alaska's Territorial Lawyers [Alaska Historical Comm., 1984, AHC Studies in History No. 122], at 105. This publication, which is available at Anchorage's Z.J. Loussac Library, provided the primary source material for this article.*

A number of lawyers who began their careers during the 1940s and 50s recounted that Grigsby was always available to advise them on thorny courtroom problems, and they remained grateful for his counsel years later.

Young Lawyers Section makes national headlines

By Siobahn Briley

Elizabeth Apostola is the President of the Anchorage Bar Association's Young Lawyers Section. Under Elizabeth's guidance, the Anchorage YLS has blossomed into a vibrant community service and mentoring institution. Its schedule for 2010



Eric Goldwarg hammers home the idea of good work at the Habitat for Humanity build project undertaken by the section.

included several events each month. For instance, in February, the YLS held a "Welcome Social" for new attorneys, raised money to support stray dogs, provided volunteers to assist at a local homeless shelter, and supported new graduates taking the Alaska bar exam by providing snacks and an after-party.

The section also sponsors a 5K run every year in May, "Race Judicata," the proceeds of which benefit local youth. It also coordinates a Mock Trial competition, the winner of which attends the National Mock Trial Competition. And there is an annual Christmas Party, which benefits Covenant House Alaska, an organization serving homeless youth.

Speed Mentoring

In addition to its regularly scheduled programs, volunteer efforts, and meetings, the YLS will sponsor a "speed mentoring" program this year. The program is modeled on speed dating and is designed to connect new lawyers with more seasoned attorneys who can provide both career guidance and more general mentoring. Like speed dating, each young lawyer will have two-to-three minutes with each mentor to ask questions and determine whether there is a "fit." Following the "speed" aspect, all the participants sit down to dinner together and talk informally. The connection of a mentor with a mentee occurs organically—no formal matches are made; if people connect, they remain in contact.

The speed-mentoring event is scheduled for November 20 and is co-sponsored by the University of Alaska Pre-Law Society (there are no law schools in Alaska). Elizabeth created the program to provide opportunities for Alaska's young lawyers to receive guidance and to give more seasoned attorneys a way to contribute to the growth of the next generation of lawyers.

Attorney of the Day

Also new on the calendar this year, the YLS is implementing an "Attorney of the Day" program to work with the local battered women's shelter. Elizabeth teamed up with Krista Scully, Pro Bono Director of the Alaska Bar Association, to create this program. They were inspired by the ABA's Voices Against Violence, a campaign to raise awareness about domestic violence, which launched toward the end of 2008. Elizabeth and Krista created "Awareness Kits" providing much-needed legal resources for victims of domestic violence. They distributed more than seventy-five of these kits at their launch event, which featured several speakers. In addition to Elizabeth, the speakers were Walter Carpenetti, Chief Judge of the Alaska Supreme Court; Sidney Billingslea, President of the Alaska Bar Association Board of Governors; and Sean Parnell, Governor of Alaska. Following the event, Elizabeth and Krista mailed kits to remote Alaskan villages and schools—areas whose residents have very limited

options for seeking help outside their communities. The kits contained the ABA's Voices Against Violence DVD, the Alaska Women's Legal Rights Handbook, contact information for providers of pro bono legal services throughout Alaska, and other information about domestic violence.

See related story, page 22



Leslie Need (L) receives award for Voices Against Violence Project from Kelly-Ann Clarke (R), 2009-2010 chair YLD of the ABA.

The YLS received the ABA's Award of Achievement for its division size for this outreach and information. Elizabeth, inspired by the success of the outreach, wanted to keep the momentum going and build on it, primarily by encouraging young attorneys to contribute pro bono hours to helping victims of domestic violence. Specifically, she wanted to

create opportunities for new attorneys that would require only a short-term commitment up front, so young lawyers would not feel overwhelmed. She contacted Alaska Legal Services and brainstormed with the attorneys there to come up with a program that could accomplish these goals.

Teaming with Alaska Legal Services

Together, Elizabeth and Krista came up with this plan: Each month, Alaska Legal Services will provide an "Attorney of the Day" who will meet with up to five victims of domestic violence in need of legal help. The applicants for help will be pre-screened to ensure that an Attorney of the Day is qualified to provide the initial information they need. The Attorney of the Day is loaned to Legal Services for a day, during which he or she meets with the pre-screened applicants and gathers information, such as the factual background of the victim's situation and the legal posture, if any, of the case. After the Attorney of the Day gathers the necessary information, he or she provides "brief service" to the applicant. Brief service may include a one-time consultation, or the drafting of one or more legal documents the applicant needs to file. After this, the Attorney of the Day drafts a brief memorandum describing the factual background and what services, if any, were provided to the client. With this memorandum, the Attorney of the Day turns the case over to Legal Services, which provides ongoing assistance to the client.

The attorneys can continue handling these cases, however, if they determine after the brief service that they would like to continue to be involved. If an Attorney of the Day chooses to continue his or her involvement in a case, he or she is assigned a supervisor from Legal Services who guides the attorney through every aspect of representing the client. Elizabeth hopes that the experiences young lawyers have with their brief service commitment will spark their interest and give rise to a desire, for at least some of them, to represent a client for an entire case. Elizabeth is clear that Attorneys of the Day are not expected to take on cases for the long haul, but this option is available, should any of them so choose.

The program also aims to involve law clerks, at some point in the future. Because clerks cannot give legal advice, their role would be to gather information from clients and to provide pro bono research assistance to Legal Services for extensive briefing or larger discrete issues. Of course, Alaska's judges will clear the clerks'



YLS also has a softball team Motion to Strike's member Alex Christopher spots the foul ball while Lars Johnson waits to bat.

participation in the program for conflicts and ethical issues.

The program will begin next month. All brief services will occur at the offices of Alaska Legal Services, which generously offered to provide the space to the Attorneys of the Day for all of their work on the program. Elizabeth created the Attorney of the Day program as a special project to allow young lawyers in Alaska to contribute to their communities in the form of pro bono work without being required to take on the commitment of an entire case.

Looking Ahead

Looking ahead, Elizabeth is spearheading the drafting and revising of the Alaska Bar Association Disaster Legal Services Plan and will, of course, seek the assistance of the New Lawyers Section of the Alaska Bar Association and the Young Lawyers Section of the Anchorage Bar Association. She also plans to implement another dedicated project for 2011—Serving Our Seniors—which she envisions will provide legal services to senior citizens in much the same way the Attorney of the Day program will provide services to victims of domestic violence.

Along with Elizabeth, the YLS Board consists of Leslie Need, Vice-President; Meghan Kelly, Secretary; and Leila Kimbrell, Treasurer. Leslie is Elizabeth's right-hand person. She organizes all the social events and is President-Elect for 2011. Leila was awarded the YLS Distinguished Service Award in 2010 because of her continuing commitment and contributions to the section over the years. In addition to overseeing the YLS's budget, she organizes the section's annual clothing drive.

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May 4th-6th

Fairbanks

2011 Alaska Bar Convention



Steve T. Wax,
U.S. Federal
Public Defender for
the District of Oregon



Jeff Feldman,
Feldman, Orlansky & Sanders



**Professor
John C. Yoo*,**
University of
California, Berkeley

Friday, May 6, 8:30 a.m. - Noon

The Balance Between Security and Civil Liberties in Wartime

John Yoo served in the Bush Justice Department and authored the legal opinion providing the constitutional basis for waterboarding. He is one of the most controversial figures in contemporary American law.

Steve Wax has defended prisoners held at Guantanamo, challenging the legal procedures applied to enemy combatants based on Professor Yoo's work. He wrote the ABA Silver Gavel Award winning book *Kafka Comes to America* on his work in Guantanamo and the war on terror.

This program will be moderated by Jeff Feldman, and will put the views advanced by Professor Yoo and Mr. Wax on trial through an interactive program of cross-examination and Socratic dialog. Please join us in what we expect to be an electric discussion of the most pressing constitutional issues of our time.

*Professor John Yoo will also be the keynote speaker at the banquet on Thursday, May 5th at the Carlson Center at 7:00 p.m. He will speak on "The Presidency during time of crisis, with a focus on our greatest Presidents (Washington, Lincoln, and FDR) and their relationship with the Constitution."

In search of the elusive butterfly above

By William Satterberg

When I was a young Assistant Attorney General with the State of Alaska in 1978, I began traveling on Alaska Airlines. At first, I was very excited about flying on the state dime. After all, it not only gave fun rides on jets, but I also profited from generous per diem. For even greater returns, I kept a sleeping bag at Bruce Botelho's house in Juneau. I could sleep on Bruce's floor and thereby have even more per diem for better things, such as the Red Dog Saloon. At the time, the rides and the per diem provided more than enough incentive to travel. Moreover, I was single at the time, and actively in search of companionship in any locale.

After a period of time, Alaska Airlines rewarded me with an unexpected bonus. The token of appreciation was a small gold ingot. I was being gifted because I had accumulated a certain number of Alaska Airlines miles. I was promised that I could collect more gold ingots the more that I flew. Most folks would have been happy. But, I was immediately ethically conflicted.

Because I had received a gift as a state employee, I promptly transmitted the treasure to my boss, Deputy Attorney General Wil Condon, in Juneau. I also sent a cover memo indicating that I was surrendering the gratuity to the State of Alaska to help support the State's financial crisis. I mentioned in passing that I did not believe that I could ethically accept such a gift from the airline.

I heard nothing for several months. I did not consider the silence to be unusual. I was used to the work-

ings of state bureaucracy. Then, one day, my precious little ingot was returned. The State of Alaska had finally made a decision. I could keep the ingot. The decision maker was never identified. Still, I figured that they had more ingots to hoard than I. By then, other state employees had likely also received their own little gold ingots and did not want to part with them, either. In fact, Wil must have had a drawer full of the little baubles. After all, Wil flew much more than I, at least at that point in my life.

Given the State's blessings, I planned to open a specialty shop. Unfortunately, my goals were soon frustrated. The reward program was ill fated, and I only received one other gold ingot. Both of them rest to this day in my safe deposit box, since they have actually recently become worth something.

Instead, Alaska Airlines initiated a mileage plan. At the time, it was a progressive move. A loyal Alaska Airlines customer, I immediately signed up for the plan, receiving a mileage number just over the 250,000th applicant. I have had that number to this very day. I have it memorized, along with my draft card number.

As the years passed, I would



"... it has become clear that the human being delights in being able to look down on somebody while aspiring to be better than somebody else."

I will forever remain an Alaska Airlines mileage addict. The decision is sensible, since I have very little mileage on other airlines.

religiously monitor my account to ensure that all of my travel was fully documented. In time, my mileage bank grew from the zero level to a respectable amount.

Where I am an Alaska Airlines mileage addict, a good friend of mine, Mead Treadwell, is wed to the Delta Airlines mileage program. That obviously will change now that Mead has become Alaska's Lt. Governor. Like it or not, Mead will start gathering Alaska Airlines miles. Fortunately, the miles are transferable. As

such, Mead can also still use his Delta Airlines number should he desire to increase his status even further with that airline. However, such a tactic would not be very patriotic for an elected official, even if Alaska Airlines does call Seattle its home base.

As far as myself, I will forever remain an Alaska Airlines mileage addict. The decision is sensible, since I have very little mileage on other airlines. (Reportedly, I may have one free ticket

waiting for me somewhere in the Delta Airlines system. I also have some old mileage with Lufthansa Airlines, but I will never be able to use that for anything remarkable except maybe for a hotel room, a beer and a pretzel in Bavaria.)

Originally, Alaska Airlines just had a simple mileage program. The more miles a flier earned, the more swell rewards they received. There were no status levels within the mileage program. Rather, the entire program was predicated upon the accumulation of mileage to redeem flights. Ultimately, the program expanded. Members could obtain mileage from other sources such as hotels, store purchases, credit cards (remember the flight attendants who parade up and down the aisles on every flight hawking applications?), and, lately, even from cut flower sales. With time, the Alaska Airlines mileage program morphed even more as other airlines allowed miles to be shared.

Having lured people into the siren of mileage awards, Alaska Airlines next instituted its elitist MVP level for frequent travelers. MVP stood for Most Valuable Passenger. Early on, I was selected as an MVP. For once, I was respected! MVP was based upon flying a certain number of miles per year which, as first set out, was at a modest 15,000 mile level. Still, it was an honor, for I had finally obtained a status level. I was better than those other passengers, who were simply collecting mileage. With my MVP membership, I also received a special plastic card. I could now compete with other MVPs for prestigious First Class upgrades not available to regular passengers.

Just about the time that I thought MVP was a regular occurrence,

Alaska Airlines announced a new, higher frequent flyer level. The new level was MVP Gold. MVP Golds were the crème de la crème. MVP Golds had even more privileges.

I immediately swore that I would achieve MVP Gold level. Where MVP passengers had certain early boarding privileges, and the ability to obtain a few nice benefits, MVP Gold passengers walked on air. Not only could MVP Golds bump lowly MVPs and regular commoners from First Class, but MVP Golds had higher baggage limits. MVP Golds also received a once yearly free lunch, along with a gift. Often, this gift would be a genuine porcelain coffee cup. Sometimes, it would be a bag of coffee. Sometimes, it would be a box of embossed chocolate cookies. But, regardless, there was always a gift, and a gift to which only MVP Golds were worthy.

I remember attending the very first MVP Gold free lunch. There were only about 10 of us at the Fairbanks function which convened in a small meeting room at the Princess Hotel. The meal was actually quite good. The personal management attention was also refreshing. During the lunch, we voiced our concerns and praises with respect to the airline. Our hosts listened attentively, and assured us that we were "the special ones." Our comments were most valued and would maybe even possibly be acted upon someday.

The following year, attendance at the lunch flew upward, and with time grew, exponentially. In short order, the elite ones soon packed the entire Westmark banquet room. Clearly, MVP Gold status was becoming common. I was no longer "one of the special ones," but just one of the hungry ones.


In response, in late 2009, Alaska Airlines announced that it would soon be creating a new mileage level. The details had yet to be formalized, but the program was definitely coming. As always, rumors ran rampant. Seasoned traveler's panic set in. At first, the airline was not specific, except to state that it wanted to "recognize" those who flew even more

than the special "MVP Gold" members. We were told that the award would soon be revealed to the public. Many of us would probably qualify.

In point of fact, at one lunch, Alaska Airlines

went out of its way to introduce its special "Million Milers." For years, I did not even know that such a super-secret club existed. I remember how ashamed I felt when I learned that my sister-in-law, Linda, had beaten me to the exclusive secret Million Miler level. After all, I thought that I was a far more ardent traveler than Linda. To add to the insult, I was now being shown up by my wife's sister, a life insurance salesperson, to boot.

It was then that I vowed to reach One Million Miles before I died. I also would overlook the likelihood that, when I finally achieved Million Miler status, Linda likely would be a "Two Million Miler," if such a category even existed.



Vox audita perit, litera scripta manet*

*The spoken word vanishes; the written word remains.

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In search of the elusive butterfly above

Continued from page 20

Eventually, Alaska Airlines announced to the masses at the last MVP Gold lunch that it now had created even higher categories known as the "Two Million Miler" and the "Three Million Miler" levels. Compared to the bulk of the MVP Golds, and even the One Million Milers, those folks were to be worshipped like gods!

I hung my head at the news. Clearly, I was once again unworthy. I recognized that, unless I somehow became a lifelong state bureaucrat, I would never reach the Two or Three Million Miler levels. Instead, I would have to be content and accept the fact that I would, at best, always be a Million Miler, provided I even made that lofty status. I mused. At life's end, my tombstone would humbly read "Here lies Bill Satterberg, MVP. Only a Million Miler."

There was a ray of light in the tunnel. It was a consolation prize of sorts for the truly ambitious. In early 2010, Alaska Airlines finally revealed that it had established the new, improved "MVP Gold/75" award, which had been hinted at in late 2009. The MVP Gold/75 was in reply to the clamoring of various MVP Golds who complained that they were no longer getting the elitist service that they so richly deserved as an MVP Gold because there were simply now too many MVP Golds in the system, not to mention MVPs.

With the MVP Gold/75 award, additional benefits emerged. Such bonuses included even more rapid upgrades to First Class status, better luggage service, four Board Room passes, and free drinks in coach. (No, free drinks in coach were already for MVP Gold regular customers.) Still, I wondered if there might be something more. And, there was.

I learned that I could also nominate a friend for ordinary MVP status. My list of friends soon doubled to four. Other perks were also to come. For myself, I was hopeful that we would get a free DVD player in coach class. Or even two. And, maybe, if we proved trustworthy in coach class, we could someday take our digiplayers home to finish the movies. But, in retrospect, why should an MVP Gold/75 ever be relegated to coach class, to ride with "the Great Unwashed," let alone fret over perks in coach?

I rose to the challenge, I was determined once again to be special. I flew incessantly and, in October, 2010, I reached MVP Gold/75 status. Although I still do not know all that such an accomplishment brings to me, Alaska Airlines did deposit a bunch of miles to my account as a gift. Perhaps the company was trying to bribe me again. If so, I did not quibble.

I also learned that I no longer had to wait until three days before the flight to upgrade. This status now allows me to sit as an early boarder in the First Class section pretending to read a magazine and drink from my plastic glass of warm water while

other, less worthy fliers pass by me in the "walk of shame," while I pretend not to notice them. After all, it is undeniably a class-conscious thing. It is never good to acknowledge the commoners. Let them eat pretzels, I say!

Not that there are many more frills given out in First Class these days, either. The main thing is that the premium passengers do not have to pay for meals like they do in the back. The downside is that airport crash statistics have demonstrated that the tail section of the aircraft is usually safest. So, there are trade-offs involved.

There also is usually a free bag of pretzels to go with the free drinks. But, the coach passengers also get pretzels. In fact, come to think about it, the only benefits to First Class at this time are the occasional meal, a larger seat, and, of course, the free drinks. Admittedly, the pretzels are nice, but there used to be real cashews or salted peanuts for First Class. Now, the snack is in a plastic bag that cannot be torn open by a cage-fighter on steroids. Alaska Airlines claims that this change is because some passengers are allergic to nuts. If so, why, then, does the company let little yappy dogs and yowly cats on board? (Unless it is because most Westerners won't eat dogs or cats.) Don't animal allergies count?

Another collateral benefit is that there usually is no waiting for the First Class restroom unless the coach passengers or pilots are using it, which is common. True, there is a special toilet, and the biffy water actually does look a deeper blue upon close inspection.

There is the mid-flight comedy show. On almost every flight, First Class passengers get to watch their normally friendly flight attendants puff up like strip club bouncers every time a pilot exits the cockpit to tinkle.

There really is nothing else to be gained by flying in First Class.

The airline now has even removed the traditional carpeted bulkhead that used to make First Class passengers feel special. Instead, the bulkhead has been replaced by a flimsy curtain, which lets those disrespectful passengers in the 6th row stuff their baggage under the First Class seats, clearly an affront to esteemed First Class status—even if the 6th row is normally reserved for the MVPs, MVP Golds, MVP Gold/75's, Million Milers, Two Million Milers, and Three Million Milers who did not make the front-cabin cut.

Still, on balance, mileage programs are really not all bad. On a social level, mileage programs satisfy a primordial urge. Human beings are born to seek various levels of superiority. My wise old Dad used to tell me that, "Billy, everybody has got to feel better than somebody." In retrospect, Dad's comments made sense. I have learned that, for whatever social reason, human beings actually desire to have vertical separation between perceived classes. Whether that verti-

So you think you're a Mileage Hotshot?

According to the history of Santa Claus found on the all-knowing Internet, it might be a simple matter to calculate just how many years it would take for Santa Claus to achieve One Million Miler status as an airline frequent flyer: 40 years.



That would be assuming that Santa flew once annually, generally the circumference around the entire world (25,000 miles), to visit all the children inhabiting thereupon. (For the math-impaired: 1 million divided by 25,000 miles per year = 40 years)

No matter how one calculates his mileage, Santa is to Bill Satterberg as Cheetah is to Slug.

The American version of the Santa Claus figure received its inspiration and its name from the Dutch legend of Sinter Klaas, brought by settlers to New York in the 17th century. As early as 1773 (237 years ago x 25,000 miles around the earth annually = 5.9 million miles flown), the name appeared in the American press as "St. A Claus."

But it was the popular author Washington Irving who gave Americans their first detailed information about the Dutch version of Saint Nicholas. In his History of New York, published in 1809 (201 years ago x 25,000 miles annually = 5 million miles on Santa's frequent-flyer account) under the pseudonym Diedrich Knickerbocker, Irving described the arrival of the saint on horseback each Eve of Saint Nicholas.

This Dutch-American Saint Nick achieved his fully Americanized form in 1823 (187 years ago x 25,000 miles per year = 4.6 million miles for Santa) in the poem, "A Visit From Saint Nicholas," more commonly known as The Night Before Christmas by writer Clement Clarke Moore. Moore included such details as the names of the reindeer; Santa Claus's laughs, winks, and nods; and the method by which Saint Nicholas, referred to as an elf, returns up the chimney. So much for Santa's history, inferring that he has accumulated a minimum of 4.6 million miles.

Now granted, the first airplane flight by the Wright Brothers did not occur until 1903 (107 years ago), so Santa could not have accumulated miles before that time. That would mean that he (and his reindeer) would have amassed 2.67 million miles by 2010, which still makes Satterberg--and his sister--look like earth-bound wannabes.

Geophysicists would be quick to point out Santa's mileage using the aforementioned assumptions significantly understates the actual miles accrued on Santa's Frequent Flyer accounts. The formula fails to acknowledge actual take-offs and landings required to deliver packages to children in the northern and southern hemispheres; the altitudes at which Santa's sleigh travels; the air route dictated by weather and logistical factors; and the presumably proprietary routing system and thus unknown data on actual annual circumnavigations on Christmas Eve.

Technical factors notwithstanding, Satterberg's got some miles to go to catch Santa.

I rose to the challenge, I was determined once again to be special. I flew incessantly and, in October, 2010, I reached MVP Gold/75 status.

On a social level, mileage programs satisfy a primordial urge. Human beings are born to seek various levels of superiority.

cal separation is based upon income, race, religion, physical condition, looks or some other subjective criteria, it has become clear that the human being delights in being able to look down on somebody while aspiring to be better than somebody else.

Fortunately, there has now been a solution and our airlines have led the way in successfully addressing this societal challenge. So, too, have bookstores, Denny's restaurants, hotels, and virtually every other business in the capitalistic world. All one needs to do is join an incentive program, and then work their way up the rewards system to obtain different levels of status, to include free coffees, free

lunches, and free whatever.

Once the designated levels of status are obtained, not only does the participant get to enjoy various returns for their achievements, but they can also smugly look down upon those who have not done as well.

The good thing about this status climb is that it does away with many of the classic areas of discrimination which are far less socially acceptable. The bad thing is that Congress may one day make a person's rewards from an incentive program subject to Title VII types of scrutiny or, worse yet, taxable as income. After all, why should anybody ever feel better than anybody else?

BREAKING THE CYCLE:

Raising community voices against domestic violence

The New Lawyers Section of the Alaska Bar Association, in conjunction with the Young Lawyers Section of the Anchorage Bar Association, and Alaska's legal services providers, were moved by the need to educate lawyers and others in the community of all ages about domestic violence as it affects teenagers in our community. Alaska is notorious for its high domestic violence and sexual assault rates and to us, these statistics, among others, were intolerable. We were thrilled to receive the ABA sub-grant to move forward with our project and immediately started work.

We responded to the ABA's call to action by designing "awareness" kits to send out into the community. The kit included numerous resources on the affect of domestic violence on Alaskans. It also contained contact information for Alaska legal service agencies that offer assistance to those in need, as well as the DVD created by the ABA Young Lawyers Division and a survey to determine the effectiveness of our kits in making their way through the community.

Thanks to incredible community support and a great group of volunteers, the launch event, which took

place in October during Domestic Violence Awareness Month, was a spectacular success. We had notable speakers including, Gov. Sean Parnell, Chief Justice Walter Carpenetti and Alaska Bar Association President Sidney Billingsley, as well as a wealth of attendees who represented judges, lawyers and community leaders from throughout Alaska. We had a great turn-out and distributed over 75 "awareness" kits for attendees to take to their offices, appropriate local businesses and across Alaska.

It has been incredible to learn where our kits have ended up. They were taken to local teenage homeless shelters, juvenile detention centers and to a variety of law offices, to name a few. Following our launch event, we also had a mail-out campaign sending 25 additional "awareness" kits to attorneys in remote villages and throughout school districts in Alaska to specifically target some of the teenage audiences and reach those that were unable to attend the launch event held in Anchorage.

There were many purposes behind the kits, but first and foremost to raise awareness about this important issue. We believe

our launch event was the catalyst which spurred Gov. Parnell into putting the issue of domestic violence at the forefront of his agenda.

In the weeks following our launch event, Gov. Parnell presented a 10-year plan to eradicate domestic violence from our community--including an extensive public awareness campaign, providing a more meaningful law enforcement presence in some of the remote villages, toughening guidelines for prosecutors in sexual assault cases, increasing pro bono assistance available to victims, and increasing funding to shelters who provide assistance to victims.

Additionally, we encouraged young attorneys to volunteer and to provide pro bono services in conjunction with existing coordinators.

As a follow up to our project, we are currently working towards creating a monthly legal clinic focusing on domestic violence to provide assistance to those victims who need legal guidance in navigat-

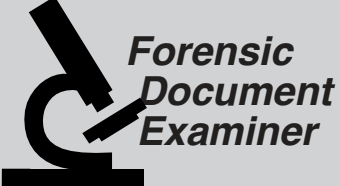
ing the court system. We are in the process of following up on surveys and tracking our awareness kits throughout Alaska to determine their effectiveness in educating victims of their rights and the resources available to them and in encouraging pro bono volunteerism throughout Alaska.

Our final report will provide the final numbers and statistics on the budget and the outcome of our project.

— Alaska New Lawyers Section - Mid-Project Report



The Governor announces a safe communities and family program in Juneau during October.



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Alaska Bar Association 2011 CLE Calendar			
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Date	Time	Title	Location
January 25, 2011	8:30 a.m. - 12:15 p.m.	Hot Topics in Copyrights, Trademarks and Trade Secrets for Corporate and other In-House Counsel	Hotel Captain Cook
January 26, 2011	8:30 a.m. - 12:45 p.m.	Small Office Toolbox: The Management Skills they Never Taught You in Law School	Hotel Captain Cook
January 26, 2011	2:00 – 3:00 p.m.	Immigration Series: Padilla vs. Kentucky - Part 1	Webinar/Online
February 2, 2011	2:00 – 3:00 p.m.	Immigration Series: Padilla vs. Kentucky - Part 2	Webinar/Online
February 9, 2011	2:00 – 3:00 p.m.	Immigration Series: Padilla vs. Kentucky - Part 3	Webinar/Online
February 23, 2011	2:30 – 3:30 p.m.	Bridge the Gap Series - Part 1	Webinar/Online
March 2, 2011	2:30 – 3:30 p.m.	Bridge the Gap Series - Part 2	Webinar/Online
March 9, 2011	2:30 – 3:30 p.m.	Bridge the Gap Series - Part 3	Webinar/Online

All programs subject to change without notice.
Go to www.alaskabar.org for more CLE info.

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Nominate someone for Board of Governors awards

The **Judge Nora Guinn** Award will be presented to an individual Alaskan who has made an extraordinary or sustained effort to assist Alaska's rural residents, especially its Native population, overcome language and cultural barriers to obtaining justice through the legal system. Selection and presentation is designated to the Historians Committee.



Nora Guinn

The **Distinguished Service** award honors an attorney for outstanding service to the membership of the Alaska Bar Association.

The **Professionalism** award recognizes an attorney who exemplifies the attributes of the true professional, whose conduct is always consistent with the highest standards of practice, and who displays appropriate courtesy and respect for clients and fellow attorneys. The Professional-

ism award has traditionally been presented to an attorney in the judicial district where the convention is being held.

The **Layperson Service Award** honors a public committee or Board member for distinguished service to the membership of the Alaska Bar Association.

The **Robert K. Hickerson Public Service Award** recognizes lifetime achievement for outstanding dedication and service in the State of Alaska in the provision of pro bono legal services and/or legal services to low income and/or indigent persons.

Please submit nomination by March 1, 2011 to The Alaska Bar Association

Call for nominations for the 2011 Jay Rabinowitz Public Service Award



MARK REGAN
2003 Recipient



ART PETERSON
2004 Recipient

Photo courtesy of the Juneau Empire.



JUDGE THOMAS B. STEWART
2005 Recipient



LANIE FLEISCHER
2006 Recipient



BRUCE BOTELHO
2007 Recipient



JUDGE SEABORN J. BUCKALEW, JR.
2008 Recipient



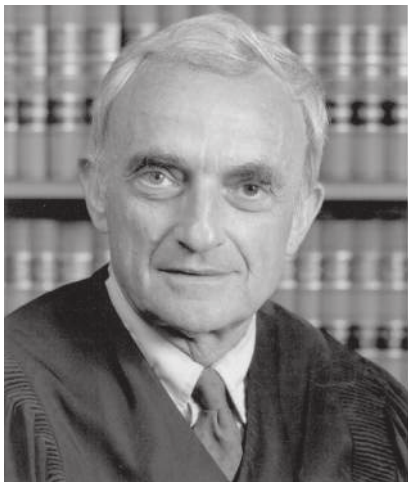
ANDY HARRINGTON
2009 Recipient



BARBARA J. HOOD
2010 Recipient

The Board of Trustees of the Alaska Bar Foundation is accepting nominations for the 2011 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, 2011. The award will be presented at the 2011 Annual Convention of the Alaska Bar Association.



Jay Rabinowitz



ALASKA BAR FOUNDATION



Track your life

If you find yourself among those who must recall or recount for time spent, you might have noticed the increasing sophistication of software and other technologies for the task. The TRAKR series of software is an example.

Proximiti has released Work-TRAKR, an application that collects communications event records to create a personal communications log. It can be installed on smartphones -- Blackberry, Windows Mobile, or Palm smartphone -- and over 250 office phone systems, personal computers, and laptops.

It can log events from phone calls, e-mails, use of PC programs, website usage, and scheduled meetings in Outlook, to create detailed user time sheets that keep track of billable hours.

WorkTRAKR integrates with several legal time-and-billing programs, such as Tabs3, Time Matters, Time Slips, Abacus, Practice Matters, and PCLaw, enabling single-click billing from user devices.

Proximiti is also the developer of CellTRAKR, which tracks mobile users, including use of texting, location, and device security, whether the user is on a corporate plan or is reimbursed by the company for mobile phone usage.

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Stacey Marz, director of the court system's Family Law Self-Help Center, greets inmates before the opening session.



Justice Fabe distributes the conference bags.



Anchorage attorneys and judges welcomed inmates at the registration table, L-R: Nancy Meade, Justice Dana Fabe, Mary Hughes, Margi Mock.

Prisoners at Hiland Mountain get help with re-entry

Members of the National Association of Women Judges in Alaska hosted the 5th annual "Success Inside and Out" conference on October 9, 2010, at Hiland Mountain Correctional Center near Anchorage. Justice Dana Fabe of the Alaska Supreme Court founded the conference in 2006 to bring professional women together to help inmates prepare for the transition to life outside prison. Since the program began, over 50 professionals from the community have offered their time and expertise to present workshops on a range of issues, ranging from employment and

housing to child custody and personal wellness. Inspirational keynote addresses are offered throughout the day, along with a popular luncheon fashion show. One-hundred inmates scheduled for release within one year participated in this year's conference. Co-sponsors include the Alaska Court System, the Alaska Native Justice Center, Hiland Mountain Correctional Center, and the YWCA. For more information, please contact coordinator Brenda Aiken, baiken@courts.state.ak.us or 264-8266.

Photos by Barbara Hood



Department of Corrections officials, L-R: Hiland Mountain Superintendent Dean Marshall, Commissioner of Corrections Joe Schmidt, Sandra Schmidt, and Deputy Commissioner of Corrections Carmen Gutierrez.



Anchorage School Superintendent Carol Comeau shows her passport during the "Passport to Success" roundtables, where inmates were able to individually meet with community leaders to discuss key issues such as transportation, housing, and employment. Comeau has been a strong supporter of the SIO program, presenting workshops each year.



Women inmates prepare to model "what not to wear to a job interview" during the popular luncheon fashion show. With them is Ellen Arvold, owner of Second Run clothing store in Anchorage, who has coordinated and supplied the fashions for the annual event since its inception.



Margi Mock, R, an assistant public defender in Anchorage, moderated a panel that featured four women who have successfully navigated the transition from Hiland back to their communities. Margi holds her favorite sign, which she brings to SIO each year: a well-dressed female skeleton with the message "still waiting for someone to rescue me."