The Alaska
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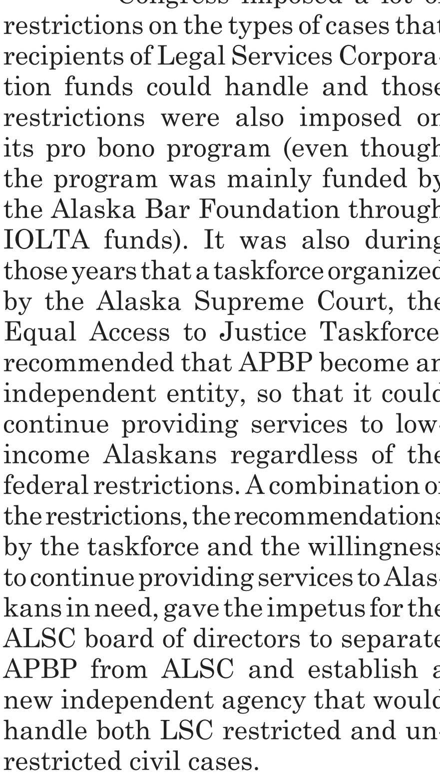
Dignitas, semper dignitas

Alaska Pro Bono Program will close at the end of the year

By Kara Nyquist and Erick Cordero

More Alaskans will be without pro bono attorneys in 2012 after the Alaska Pro Bono Program Inc. (APBP) closes its doors at the end of the year. Its "doors" have been a virtual office to the public since 2002 due to limited funding. Nonetheless, the program leveraged 650 volunteer hours last year through a combination of pro bono cases, limited legal representation, community clinics, and the Anchorage Early Resolution Project. The decline in the economy and the limited availability of other sources of revenue has left the Alaska Pro Bono Program with very limited income to operate a program.


Kara Nyquist

History of the Program:

In 1983, the concept of private attorneys providing free legal services to low-income Alaskans became formalized by the start of a joint project between the Alaska Bar Association and the Alaska Legal Services Corporation (ALSC): the Alaska Pro Bono Program or APBP as it became known.

APBP was housed in the Anchorage office of Alaska Legal Services Corporation and a full-time pro bono coordinator was hired to serve as the link between low-income Alaskans and members of the Alaska Bar Association willing to volunteer their time and make a difference. The first person in charge was, but was soon replaced by Seth Eames who worked on that position for almost 18 years. Seth set the foundations of the program and made it an award-winning project. In 1992, APBP was named the Rural Private Attorney Involvement Program of the Year by the national Legal Services Corporation. By then, attorneys were also getting recognized for their efforts at the annual Bar Convention. For almost two decades, APBP remained the only pro bono program in Alaska.

By the mid 90's, the US Congress imposed a lot of restrictions on the types of cases that recipients of Legal Services Corporation funds could handle and those restrictions were also imposed on its pro bono program (even though the program was mainly funded by the Alaska Bar Foundation through IOLTA funds). It was also during those years that a taskforce organized by the Alaska Supreme Court, the Equal Access to Justice Taskforce, recommended that APBP become an independent entity, so that it could continue providing services to low-income Alaskans regardless of the federal restrictions. A combination of the restrictions, the recommendations by the taskforce and the willingness to continue providing services to Alaskans in need, gave the impetus for the ALSC board of directors to separate APBP from ALSC and establish a new independent agency that would handle both LSC restricted and unrestricted civil cases.

At the time of the transition into an independent organization, Maria-Elena Walsh took the reins of the program and became the first Executive Director of the Alaska Pro Bono Program Inc. The new agency continued to be housed in Anchorage and it leased office space with the Disability Law Center of Alaska. It opened its doors in 2000. Cristina Borge joined the ranks of APBP as its Operations Manager and several members of the ALSC board also became board members of the new organization. Bryan P. Timbers, a retired attorney from Nome, would serve as APBP's President until his untimely death in 2007.

The agency received a lot of support from members of the private bar, the Alaska Bar Association, Alaska Legal Services Corporation and several other agencies. Many in-

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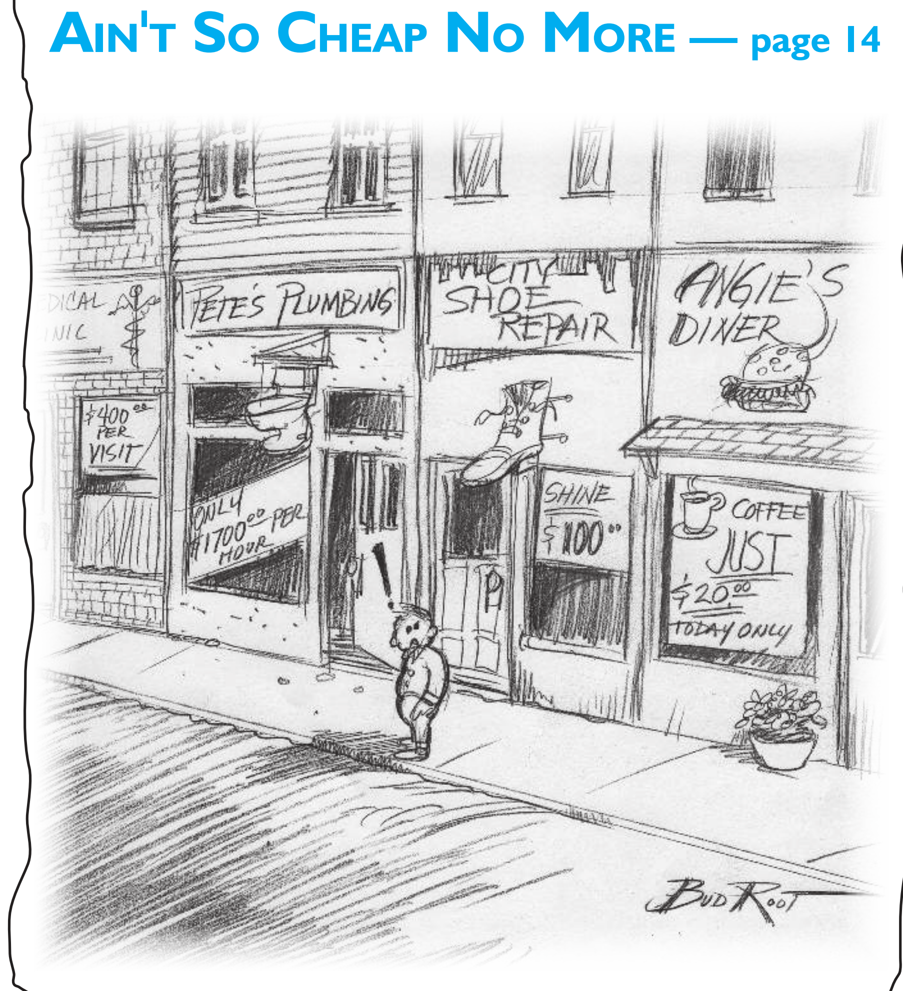

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Attorney General Burns resigns

Citing his desire to spend more time with his family and less on the road, John J. Burns resigned as attorney general Nov. 19. Gov. Sean Parnell accepted his letter of resignation "with reluctance" on Nov. 25.

"Attorney General Burns is a capable leader and a true public servant dedicated to the people of Alaska. I appreciate his efforts over the past year at the Department of Law where he has led with dedication, professionalism, integrity and a commitment to the best interests of Alaska. I wish him all the best in his future endeavors," said the governor.

In his letter to the governor, Burns said, "It is with a heavy heart that I tender my resignation as Attorney General. I have been privileged and honored to serve you and the State of Alaska during this past year. My resignation is based solely on personal reasons. Although I have come to realize that it is possible to live out of a suitcase, doing so is neither fair to family nor particularly conducive to one's health. Family and balance in one's life should always be one's first priority and everything else secondary."

"What I have come to realize during my tenure as attorney general is that Alaska faces many challenges, the most significant of which is ensuring the health of our future economic well being...Our ability as a state to meet all other challenges, whether in the area of public safety, education or social services is directly related to the health of Alaska's economy," Burns wrote.

"Unfortunately, one does not often realize the complexities of the issues facing Alaska nor recognize that there are no easy solutions until one is fully immersed both in the subject matter as well as in the decision and policy making process. This past year provided me that immersion as well as the realization that Alaska can never hope to achieve any meaningful or lasting solutions to these challenges unless we as Alaskans begin to believe in one another and are willing, individually and as communities, to make sacrifices today in order to ensure a better tomorrow. Lasting progress and success can come only through statesmanship (not brinksmanship) and in seeking solutions that are in the best interest of the state as a whole.

"I have very much come to appreciate and admire all of you and the fact that you all are totally committed to achieving the best interests of this great state," said Burns of the governor and other department commissioners.

"Without intending any disrespect to you or to my fellow commissioners, those within the state who I will miss most, however, are the men and women who comprise the Department of Law. I can state unequivocally that it has been a true privilege to have

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PRESIDENT'S COLUMN

The good news and the bad news

By Donald W. McClintock

To borrow an idea from George Orwell's *Animal Farm*, some agencies are more within Department of Administration's mission than others.

The Atwood Building manager sent notice in August that the Alaska Bar Association's 10 year office lease would not be renewed when it expires next year. Deborah O'Regan, Steve Van Goor, bar member Bob Evans and myself spent the last several months trying to better understand what lead to our fall from grace.

Last week, we were given our final word on the subject directly from Commissioner Hultburg. The Department of Administration assured us that our terminal state was not the result of others coveting our space (we gladly would have traded office space); they acknowledged our state instrumentality status under AS 08.08.010 and that we are qualified as tenants in the building under the bond covenants; they acknowledged we have been well behaved; and they were sympathetic, but not swayed, by the cost impact of the relocation on bar members, including on our 400 plus public attorneys.

Similarly, the need for a location downtown with building security given our many meetings with representatives from the court system, including judges, was categorized as more of a court system concern. In the end, the ABA was doomed because we were not sufficiently "executive branch" and did not meet the internal policy parameters that the department has outlined for the Atwood Building. Thus the ABA will soon follow on the heels of others cast from the Atwood Building, including, most recently KABATA, who also lacked sufficient executive status to merit a lease renewal. Occupy the Atwood, anyone?

"...the ABA will soon follow on the heels of others cast from the Atwood Building..."

The bad news is obvious; this will have an immediate impact on bar dues as our lease rates will undoubtedly rise, even if we trade down from our current class "A" offices to Class "B" space, especially if we stay downtown. The cost impact is approximately $30 per member. That also may understate the cost of the move and the cost of tenant improvements to build out the relocation offices.

The good news is the sympathy was genuine and the department has pledged a certain degree of flexibility to allow us time to find suitable new space, although the idea of an 8 year lease instead of a 10 year renewal was a little more than they had in mind. So the hunt for space is on.

On a more upbeat note, Sandra Day O'Connor has accepted an invitation from the Court & Bar to come to Alaska next September to promote her iCivics program. The event is part of the Alaska court system's continuing program to promote civics education in our schools. Justice O'Connor is not only a big promoter of iCivics; she is also an avid fly fisherwoman. So Alaska was a natural destination.

If you have not gone on line to try iCivics, you should do so; it will cost you about 30 minutes of time. Better yet, try it with your teenager and see if you arrive at the same decision (or if you even score better). There will be many opportunities for attorneys to volunteer and help with this effort, which provides a rewarding chance to spend time with students and other community organizations, so stay tuned.

On a related note, I am pleased to announce that retired judge Elaine Andrews (chairperson) and Barb Hood have rejuvenated the Fair & Impartial Courts Committee and are doing a great job moving the committee forward. Under our bylaws, the Committee is charged with recommending activities that the Bar can undertake to educate the public about and promote the concept of judicial independence. The Committee will prepare educational materials, organize a speaker's bureau and pull together other information to dispel factual inaccuracies about our judicial selection and retention process and about the courts in general. Given the attack on the judicial merit selection process in Alaska as well as other states, it is important that the public have accurate information about our process as they debate policy alternatives.

Bob Woodward, who graciously accepted our invitation to be the key note speaker at the 2012 May Convention, has sent his regrets. The ostensible reason was a new book contract. The news arrived when I was three quarters through Alicia Shepard's excellent biography *Woodward and Bernstein: Life in the Shadow of Watergate.* I quit reading the book, but for those of my age cohort, it was a pleasurable return to this slice of history and provides what may be an explanation of why Woodward would accept an invitation and then withdraw months later over a book contract.

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EDITOR'S COLUMN

On judges and footballs

By Gregory S. Fisher

Honoring Judge Fitzgerald and Alaska: By now we have all learned that legislation has been introduced to name the Seventh Avenue U.S. Courthouse in Anchorage in honor of Judge Fitzgerald. It is a small tribute to commemorate what he meant to Alaska. He does not stand alone. There are others who will undoubtedly be similarly honored, chief of which is Judge Von der Heydt. Not to deflect attention away from Judge Fitzgerald, but I believe it's appropriate to honor the process as well. In Senator Begich and Senator Murkowski we are fortunate to have two moderate, reasonable senators. They have worked patiently and diligently to represent Alaska. Lloyd Miller chaired the Courthouse Naming Committee, an unenviable task given the short time he was allotted and the passions at times raised by the project. Eric Croft spearheaded the resolution introduced at the Alaska Bar Convention in May. Each of them recognized a vision greater than their or our immediate needs; specifically, the significance of celebrating character, honor, and integrity as a benchmark for aspirational goals. It is a distinctly Roman tradition, and one too easily lost in the fracas of the Twitter era. We owe them our thanks.

Please Confirm our Judges: One may fairly question why there has to be a vote to confirm an Article III judge. The Article II standard is "advice and consent." One could (and historically many did) interpret the standard as not mandating an actual chambered vote of an entire constituent body such as the United States Senate. However, be that as it may, a vote is now firmly entrenched in our political and judicial process.

"Please Confirm our Judges: One may fairly question why there has to be a vote to confirm an Article III judge."

At the time that this comment is being submitted, we are still waiting for two federal judges to be confirmed. Justice Morgen Christen currently sits on the Alaska Supreme Court. She has been nominated to a seat on the Ninth Circuit. Judge Sharon Gleason is a Superior Court judge in Anchorage. She has been nominated to take Judge Sedwick's bench in district court. The nominations were submitted in the Spring. Judge Gleason was nominated in April 6, 2011 and Justice Christen was nominated in May 18, 2011. Hearings before the Senate Judiciary Committee occurred on September 8, 2011 and both were reported by voice vote to the Senate that same day.

Historically, congressional scrutiny of judicial nominees has been more intense with each successive level. That seems appropriate. It somehow seems right that a district court nominee should be subject to less searching inquiry than a court of appeals nominee. The stakes are different. And except for a few notable nominees, the process of examining background and aptitude would probably take a little time. No judicial nominee anywhere is underserving of praise or criticism. People are people. The fact remains, however, that both Justice Christen and Judge Gleason deserve to be confirmed.

The two month delay is not yet unreasonable by contemporary standards. However, in the not too distant past the entire process from nomination to assuming judicial office took a few weeks or a couple of months at most. Judge Plummer was nominated on August 28, 1961, confirmed on September 8, 1961, and received his commission on September 18, 1961. Judge Von der Heydt was nominated on September 9, 1966, confirmed on October 2, 1966, and received his commission on November 3, 1966. Judge Fitzgerald was nominated on December 2, 1974, confirmed on December 8, 1974, and was "home by Christmas" receiving his commission on December 20, 1974. Judge Holland was nominated on March 6, 1984, confirmed on March 26, 1984, and received his commission on July 16, 1984. Judge Kleinfeld was nominated to the district court on March 26, 1986, confirmed May 14, 1986, and received his commission the next day.

Judge Singleton was nominated on January 24, 1990, confirmed on May 11, 1990, and received his commission on May 14, 1990. Judge

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The Alaska BAR RAG

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Barbara Hood
Karen Schmidlkofer

Contributing Cartoonist
Bud Root

Design & Production:
Sue Bybee

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Details, Inc.
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(Monday & Tuesday)
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(Wed. - Friday: Annual Convention)
(Anchorage)

[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 (aka Interior Ministry). We sure as hell won't be responsible for your hurt feelings or misguided reliance on anything we publish].

Good news and bad news

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So in an effort to make lemonade from lemons, we are undertaking ideas to use the convention dinner: (1) to raise money for our non- profit pro bono agencies and (2) to institute dancing. The dancing will be later and will be free to the general bar (read younger attorneys not willing to dish out money for the convention dinner). Stay tuned for more details. I am told that the music will appeal to all age groups. Rolling Stones meets Jay Z? And do not worry, dancing is purely voluntary; and unlike pro bono work, does not have any aspirational goals.

Finally, with apologies to others whose worthy efforts I am not recognizing, I would like to commend Melanie Osborne of Stoel Rives and Leslie Need for their efforts to promote pro bono service and elevate the Bar's image in our community.

Melanie Osborne was a catalyst for the First Annual Elizabeth Peratrovich Legal Clinic held at the Alaska Federation of Natives Convention in October. Melanie is a co-chair of the Alaska Native Law Section and worked closely with Nikole Nelson and Erick Cordero of the Alaska Legal Services Corporation and ABA Pro Bono Director Krista Scully to plan and execute an event that served 81 Alaska Native clients from more than 28 communities through the service of 56 volunteers. The AFN board invited the planning team of Osborne, Nelson, Cordero and Scully to the December AFN board meeting where they were invited to continue the clinic in 2012, which will be held again in Anchorage.

Anchorage attorney Leslie Need will complete her term as President of the Young Lawyers Section of the Anchorage Bar Association. Through Leslie's commitment to public service and ability to rally others to do good work, the Alaska Bar and larger community of Alaska has benefited from projects that include MLK Day, speed mentoring, Bean's Café, Covenant House, partnerships with Institute of the North's Emerging Leaders, and networking socials among young lawyers. We will miss Leslie at the helm of the Anchorage position, but look forward to see what she accomplishes on a national level with her recent appointment to the American Bar Association's Young Lawyer Division's national public service project planning committee.

Attorney General Burns resigns

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shared this past year with them. Their work on behalf of the state is extraordinary -- they are all dedicated public servants. Serving as the managing partner of the state's largest law firm has been an incredible and unbelievably fulfilling experience." Burns wrote.

Burns has served as Alaska's attorney general since December 2010. His resignation is effective January 2, "so as to assure a smooth transition process with whoever succeeds me."

On judges and footballs

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Kleinfeld was nominated to the Ninth Circuit on May 23, 1991, confirmed on September 12, 1991, and received his commission on September 16, 1991. Judge Sedwick was nominated on July 2, 1992, confirmed on October 8, 1992, and received his commission the next day. Judge Burgess was nominated on July 28, 2005, confirmed on December 21, 2005, and received his commission on January 23, 2006.

The time between nomination and commission is misleading because most nominees are simply not in a position to immediately transition to the federal bench once they have been confirmed. However, the time between nomination and confirmation is relevant. The average length of time between nomination and confirmation used to be about two or three weeks. It now seems to be around four months. We should hope that, before this comment is published, Justice Christen and Judge Gleason will already be setting up their respective chambers in federal court.

Re-visiting Professor Brantlinger's Bread and Circus: With the possible exception of Bill Satterberg and two of my dogs, most people (dogs are people in our household) would begrudge me the label of "reasonable man." I was educated. I can read. I can reason. I obey my wife, pay my taxes, vote, worship after my own fashion, watch my weight (unsuccessfully), mow the lawn, volunteer time to the community, and try not to violate any zoning laws. But I'm a Husky (meaning a University of Washington Husky) and Saturdays between Labor Day and Thanksgiving mean Husky Football. That means I will be shouting myself hoarse at a television screen. When the Huskies pull off the improbable upset now and then, I am floating on air for the following week. When they fall down to bitter defeat, I feel the pain.

Many of us are similarly afflicted. Perhaps you are a Buckeye, Sooner, Gator, Sun Devil, Wildcat, Trojan, Bruin, Golden Bear, Cougar, or (shudder) a Duck. At a recent conference in Seattle I ran into a well-groomed, professional couple my age from Arizona. After exchanging pleasantries and talking about Arizona we departed with the customary greeting "Bear Down" (it's a University of Arizona thing). Our allegiances are truly and wonderfully insane.

College football is unique. For a large institution it is a shared institutional memory. On a campus the size of the University of Washington (or most other major universities) football games are a community event that generates shared joy, anxiety, and experiences. Game day is an event that unites old and young, students, alumni, faculty, administrators, the local citizens, and others. Husky Football has an added dimension in that for years it was the only game in Seattle. There were no professional teams. That is true of many college teams—Nebraska and Oklahoma come to mind. It's also true that regional distinctions can elevate the game's significance. As a young crew chief in the artillery thirty years ago, I learned that college football in the South animated entirely different passions. I quickly mastered the skill of calming the waters during Iron Bowl week when Alabama and Auburn met on "The Plains."

Our loyalties lead to what may seem as questionable choices at times. Washington is now in the process of tearing down the football cathedral that was Husky Stadium. A new $250 million facility will be built in its place. Sight lines will be improved and seats moved closer to the field. New football offices will be included along with a state of the art weight room and training facilities. We are not alone. If anything, Washington trails the pack in terms of money spent on football facilities. Are we and so many others misguided to be allocating resources to a game in an era of budget cuts, tuition hikes, and strained finances?

On the one hand, football generates revenues for all sports. I believe that is true at probably every major university. Without football, Title IX compliance would be impractical if not impossible. More than that, football keeps alumni coming back to campus, which itself generates scholarship and facility contributions. Game day for most major universities creates a favorable spill-over for the local economy. On the other hand, Professor Bloom was perhaps not too far off base when he wondered if academe had not created a spectacle for spectacle's sake. Most college graduates these days would not be able to recite one line from the Iliad or Beowulf, but they probably know their fight song. Today's college students may not be stirred to protest events in Afghanistan, but they'll riot if a favorite coach is fired for covering up serious abuse.

College football has taken a number of public relations hits over the past three or four years. The competitive pressure of producing a winning program has led to a range of escalating recruiting violations at USC and elsewhere. Ardent Alabama fans went so far as to poison the oak trees at Toomer's Corner (a location where Auburn fans celebrate victories). Student athletes whose efforts generate such large amounts of revenue are themselves scraping by each month, leading to events like those at Ohio State where players sold sports memorabilia. Recent events at Penn State are beyond description. The problems, however, are no different than those affecting other institutions. All in all, college football works. It builds character and discipline, generates revenue, provides opportunities, and unifies people. We should celebrate its traditions, and respect its student athletes and coaches. December is bowl season. I hope your team made a bowl. I hope they win—so long as they aren't playing the Huskies.

Alaska Bar Association 2012 CLE Calendar

Date	Time	Title	Location
1/13/12	8:30 a.m. - 11:45 a.m.	Video Replay: This Really Happened: Ethics Game Show	Atwood Building Room 602
1/20/12	8:30 a.m. - 11:45 a.m.	Video Replay: Excerpt from 2011 Convention: The Balance Between Security & Civil Liberties in War Time	Atwood Building Room 602
2/10/12	8:30 a.m. - 10:30 a.m.	Ever Wonder How the Court Really Decides Cases? An Open Discussion with the Alaska Court of Appeals	HCC
2/23/12	8:30 a.m. - 11:45 a.m.	Quicksand: Ethical Hazards for Solos, Small Firms and New Lawers	HCC
2/23/12	1:00 p.m. - 4:15 p.m.	Power Tools for Lawyers: Using Themes and Labels to Make Your Point	HCC
3/1/12	8:30 a.m. - 11:45 a.m.	Writing to Win with Steven Stark	Sheraton
3/1/12	1:00 p.m. - 4:15 p.m.	Speaking to Win with Stevem Stark	Sheraton
3/16/12	8:30 a.m. - 10:30 a.m.	Alaska Supreme Court: Who Can You Call & What Can You Talk About?	HCC
4/4/12	8:30 a.m. - 10:30 a.m.	An Open Discussion with 3rd Judicial District Judges	HCC
4/18/12	8:30 a.m. - 12:30 p.m.	Multi-Party Litigation	HCC

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FEDERAL PROBE

Some lessons and legacies of "Polar Pen"

By Cliff Groh

Now that the U.S. Attorney has announced a victorious end to the federal investigation into Alaska public corruption known as "POLAR PEN," let's take a preliminary look at what it has brought.

Let's start by noting that the official finish line was declared the same chilly October day in the same Anchorage federal building that former Speaker of the State House Pete Kott (R.-Eagle River) and ex-State Rep. Vic Kohring (R.-Wasilla) ended their cases by pleading guilty to bribery and conspiracy to commit bribery respectively. These dispositions meant that there would be no re-trials, just as I predicted in my June Bar Rag column. (Then again, I said in a blog post in April following the appellate reversals of the convictions of Kott and Kohring that the federal government would dismiss the cases against the former legislators. Although the defendants' lawyers did well to obtain plea agreements guaranteeing their clients no additional time in prison, congratulations are in order to U.S. Attorney Karen Loeffler and her office for getting Kott and Kohring to plead guilty to felonies given the handicaps that the passage of time had hung on the prosecution.)

The "POLAR PEN" probe affected behavior, laws, money, and lives.

The feds' blitz of search warrants of legislators' offices in August and September of 2006 shook up lawmakers and at least temporarily improved the ethical climate around the Capitol. Before those "raids," there were repeated instances of legislators running up substantial bills at the Baranof Lounge and then handing the tab to a lobbyist, said State Sen. Fred Dyson, a Republican lawmaker from Eagle River who served as a federal informant in the investigation. After the FBI came calling, the culture changed, at least for a while. "There were a couple of people desperately pale the first few months," Dyson told me. "They wouldn't even take a pack of cigarettes."

Spurred by the bad odor generated by the indictments of several legislators who had served the previous year, lawmakers stiffened ethics laws in 2007. Among other changes, the Comprehensive Ethics Reform Act added new requirements for lawmakers' disclosures of their finances and prohibited legislators from receiving compensation for lobbying or "for work associated with legislation action" except when the money for such "legislative action" comes as their official pay. The new law makes it a crime for public servants not to report bribery they know about, and also requires ethics training for legislators and lobbyists.

"The "POLAR PEN" probe affected behavior, laws, money, and lives."

Note that those first two items seemed primarily aimed at the activities of former State Sen. President Ben Stevens (R.-Anchorage), who—as discussed in a previous column—was never charged in the probe. (Cynics might observe that this is similar to how awareness of sexual harassment rose in the process of the Senate confirming Clarence Thomas to a lifetime appointment on the U.S. Supreme Court.) As to increased training on ethics, education could be helpful but might not be a panacea—more than half of the dozen "POLAR PEN" defendants hold advanced degrees, and five of those 12 earned law degrees.

The public corruption scandals also brought the State of Alaska a bushel of additional oil revenues. The charges brought against most of the "POLAR PEN" defendants—particularly in the first year after the FBI executed that wave of search warrants in the late summer of 2006—alleged corruption regarding the Legislature's consideration of the Petroleum Profits Tax (PPT) legislation that year. The revelations of bribery made the PPT bill look tainted in the eyes of many Alaskans.

That perceived taint appeared to make some lawmakers afraid of being seen as under the thumb of the oil lobby, and that fear seemed to provide the margin for the passage in 2007 of the Alaska's Clear and Equitable Share (ACES) bill. ACES imposed higher tax rates on oil production than PPT did, and those higher tax rates have translated into higher tax revenues even independent of the higher oil prices we have seen in some of the last four years. The Alaska Department of Revenue has calculated that in the first three full years ACES has been in effect, that law brought in more than $5 billion more so far than PPT would have. (ACES has also brought in more than $9 billion more than the petroleum tax regime in place before PPT, the Economic Limit Factor (ELF) modification legislation I advocated for in 1989 in my role then as Special Assistant to the Commissioner of Revenue).

Set aside money--"POLAR PEN" upended lives and careers. It wasn't just the 12 people charged, 10 of whom were convicted, with six of them being legislators. Just like this probe had major effects on those who were charged and didn't end up convicted—Ted Stevens losing his U.S. Senate seat the biggest among them—there were significant marks left by "POLAR PEN" on those who were never charged.

Once on a rocket ship that looked to end in the U.S. Senate or the Governor's office, Ben Stevens will never be elected to a public office in Alaska again. (Lest you think that I always follow the football blogger Gregg Easterbrook's mantra of "All Predictions Wrong or Your Money Back," I repeat here my standard statement that I will walk from downtown Anchorage to Girdwood if Alaska voters again put Ben Stevens in public office.)

Don Young spent years under federal criminal investigations that apparently looked into matters ranging from campaign contributions to golf clubs to an earmark that benefited a campaign contributor and also mysteriously underwent a change in language after it passed Congress. The Department of Justice's notification that it would not prosecute Alaska's sole Congressman came a year after the death of his wife of more than four decades.

Six Department of Justice attorneys were among a number of federal employees involved in the investigation and prosecution of "POLAR PEN" who came under official scrutiny themselves after the collapse of the Ted Stevens case in April of 2009. One of those prosecutors—Nicholas Marsh—killed himself last year after telling friends that he feared that the seemingly interminable investigations would leave him holding the bag for the decisions of others. I will have more to say about the probes of the probers after they end and result in some official release of information, something that Attorney General Eric Holder has suggested could happen soon.

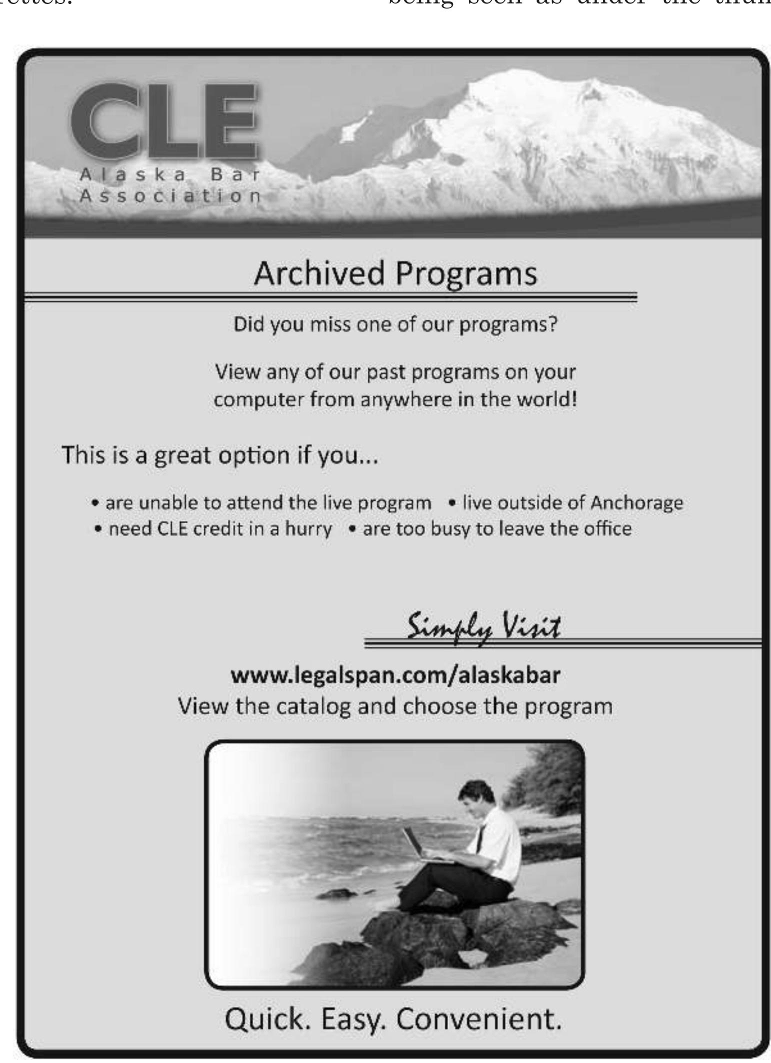
The well-publicized failures by government attorneys to disclose evidence to the defense that led to the overturning of the jury verdicts against Ted Stevens and the dismissal of the case against him gave substantial attention to prosecutors' discovery obligations. The Department of Justice issued memoranda in 2010 giving additional guidance on that subject to federal prosecutors, and Alaska is considering amendments to our own Rules of Professional Conduct regarding a prosecutor's post-conviction discovery of exculpatory evidence.

For all the impact of "POLAR PEN," however, there is some tendency to overplay the effects of these scandals on Sarah Palin and the proposed pipeline project to transport natural gas off the North Slope. This tendency appears in excerpts published from Crude Awakening, the new book by long-time Alaska journalists Amanda Coyne and Tony Hopfinger. Although the federal investigation gave Palin's gubernatorial campaign an additional talking point in the general election campaign, the available evidence strongly suggests that she would have been elected Governor in 2006 if the FBI had never set up a camera in Suite 604 of the Baranof Hotel. Recall that Palin won the Republican primary by more than 20 percentage points the week before the feds' searches of legislators' offices made the probe public; she won the general election two months later by more than seven percentage points.

Although this is harder to call, it does seem that even in the absence of the federal investigation Palin had a good chance of getting picked as the Republican nominee for Vice President in 2008 given her strong appeal to the socially conservative GOP base, her youthful energy, and her high in-state approval ratings. Similarly, the gasline appears to be stalled much more by economics than by any strategic move Sarah Palin was allowed to make by the extra power given to her by the public corruption scandals.

The biggest legacy of "POLAR PEN" is still to be determined, because it depends on how Alaskans will remember the public corruption scandals. Although the scope and causes of the federal foul-ups are still not completely clear—and will hopefully be illuminated by the on-going investigations—it is obvious that the Department of Justice erred in some of the ways it handled the cases arising from the federal investigation into Alaska public corruption. Those blunders blunted the effectiveness of the probes and left a muddled message, allowing some observers to characterize the federal moves to clean up the Last Frontier as more of a stain than a warning beacon. Alaskans' complicated feelings about "POLAR PEN" stand out most clearly regarding the Ted Stevens case, which has a lot more lessons than can be put in this edition of the column. Stay tuned.

Cliff Groh is a lifelong Alaskan who has worked as a prosecutor and represented some criminal defendants in his private practice. He is a lawyer and writer in Anchorage whose law practice focuses on the writing and revision of briefs and motions. Disclosures potentially relevant to his writings about the Alaska public corruption probe can be found at http://alaskacorruption.blogspot.com/2011/05/even-more-updated-biography-with-still.html on the Internet.



Writing to the Pope was a blessed experience

By Vivian Munson

First of all, I am not Catholic. I am a religious nut Pentecostal. My father was Catholic until he married my mother. She was a war bride from England, and a Methodist. In those days the Catholic Church required a written pledge from the parties that the children born of such a mixed marriage be raised Catholic. My mother refused to sign so Dad became a Methodist, and so did his parents.

Fast forward about fifty years to Anchorage, Alaska. The Millenium.

I had just had a book about King Island published for the second time. The first book was an illustrated history of Paul Tiulana--leader of the King Island people, respected elder, hunter, artist, dancer, and teacher of Eskimo material culture, traditions and values. The story and photographs in that first book, published by the CIRI Foundation, depicted events from the 1920's through the sixties. The community had a resident Catholic priest through those years. Both books featured beautiful photographs of the King Island people, taken in 1938 by a traveling geologist known as the Glacier Priest.

The second book, published ten years later by a major New York educational house, Grolier, told the same story, but was reformatted for sale to school libraries as part of a series of autobiographies. I added some new material, including a picture of John Paul II as he was greeted in Anchorage by King Island women who gave him a Pope parka made of white camouflage cotton lined with white rabbit fur and trimmed in wolverine. Paul's wife, Clara, was one of the skinsewers in the picture.

For some reason I wanted the book in the papal library. I really liked John Paul II. He seemed to travel everywhere, to care for the whole world. And I felt for the man because he had Parkinson's Disease. My mother had Parkinson's Disease for 35 years, half her life.

So I dropped by the Catholic Diocese and gave the book to a priest.

Promptly I received a call. Archbishop Hurley wanted me to come in and talk with him. Okay.

His first words were, "So you are the woman who wants to speak to the Pope." I did not know that about myself at the time, but it was true that I had something that I wanted to communicate. I told Archbishop Hurley about my mother. He said that I should write a letter and he would send it to Rome with the book. He knew someone who would know what to do with it.

How do you address the Pope in a letter? Your Holiness. What do you say? I wanted to say something to encourage him. I watched his Millenium address on TV, and I could see him struggling to maintain, just as my mother had struggled. I have seen the real benefit of mere words offered by one person to another suffering from the same frightening condition.

I wrote a one page letter about the book, referring to King Island as a part of Church history, in touch with Rome on several occasions. As an addendum, I wrote:

> *Please excuse me for presuming to mention your health. However, perhaps a few words in the following paragraph may be useful to you.*
>
> *My mother had Parkinson's disease for thirty-five years, until her death at the age of seventy. She was an inspiration to everyone who knew her because she never complained and she just kept going. Although she fell down once or twice a day, over about twenty years, she did not allow anyone to mention her illness. She would never use a wheelchair. She carried out her duties as a wonderful wife, mother, grandmother and friend right to the last. I cannot attribute her winning attitude to faith in God. It had more to do with her upbringing as an English country girl, I think. But she was certainly blessed by God. I often heard her singing quite happily even though her hands shook and her feet didn't work right. She found that she needed anti-depressants though, sometimes to counteract effects of the Parkinson's drugs.*

I delivered the letter and another copy of the book to the Archbishop. Then I forgot about the whole thing because I was busy, packing for a move, closing cases, and getting to know my almost new husband.

I will maintain my family's privacy here. Suffice it to say that one sad day a member of my family (not me) was diagnosed with cancer, advanced.

I went to the mattresses with prayer, nutrition, study of possible treatments. I read all the books I could find, and I found that books written by patients themselves provided better information than books written by doctors.

Finally the appointment was scheduled wherein the surgeon would announce whether he could do major surgery, or it was too late. Hours before this critical appointment, a strange little envelope came in the mail. It looked like junk mail.

Inside this most undistinguished packaging, a letter folded into quarters began, *From the Vatican, November 23, 2000.* Issued on stationery of the Secretariat of State, First Section, General Affairs, and signed by Monsignor Pedro Lopez Quintana, Assessor, it read:

> *The Holy Father was pleased to receive the letter which you and Lillian Tiulana sent to him, together with a copy of your book, The Wise Words of Paul Tiulana. He very much appreciates this thoughtful gesture.*
>
> *His Holiness assures you both of a remembrance In his prayers. Invoking upon you joy and peace in our Lord Jesus Christ, he cordially imparts his Apostolic Blessing.*

It is probably unnecessary to say that the surgery was possible and successful. The cancer has not returned. The whole family was blessed.

Even though I am not Catholic, I keep the letter nearby.

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To the rescue: Alaska courts join judicial trend against censorship

By Elizabeth Mclean

Stephanie Meyer's *Twilight*. Harper Lee's *To Kill a Mockingbird*. Khaled Hosseini's *Kite Runner*. Aldous Huxley's *Brave New World*.

What many would guess to be a best-seller list is actually a hit-list. The American Library Association reports these titles as being among the most popular books that groups around the country have attempted to ban from schools and libraries due to unsuitable content. In these cases, perhaps the adage should read "what's one man's treasure is another man's trash."

In deciding what is art, and what is obscene, some would put the decision in the hands of the government. Last year, the Alaska Senate tried to do just that, passing Bill 222. This censorship law broadly criminalized the operation or management of Web sites or listservs that contain sexually related content deemed "harmful to minors," even if the content is of the type adults have a First Amendment right to access. Operators who were found guilty of violating the law would have been required to register as sex offenders, serve jail time, and could possibly have lost their businesses.

In June, U.S. District Judge for the District of Alaska Ralph Beistline rejected Bill 222, declaring it unconstitutional in *American Booksellers Foundation for Free Expression v. Burns*. Judge Beistline ruled that the law was not narrowly tailored and would have a chilling effect on constitutionally protected speech. His opinion stated that there were no reasonable methods by which speakers on the internet could gauge the actual ages of those accessing their content, and could chill speech well beyond what would be necessary to protect minors. As he explained, "individuals who fear the possibility of a minor receiving speech intended for an adult may refrain from exercising their right to free speech at all – an unacceptable result."

John Mckay, an Anchorage attorney who worked on the case, spoke with Alaska Public Radio's Ellen Lockyer about the decision and said that even speech that is inappropriate for some groups is protected by the First Amendment.

> "The First Amendment protects unpopular speech, it protects speech that's not right for everyone. But particularly, as is the case here, to try and limit speech to what's appropriate for children really puts booksellers at risk if they can be held accountable for the contents of every book," Mckay said.

Jeffrey Mittman, Executive Director of the ACLU of Alaska, also lauded the decision and commented, "Alaskans value our freedoms. The court has ensured Alaskans' Internet communications will remain free from unreasonable government infringement."

The court emphasized that Alaska *does* have a compelling interest in protecting its children, and can further that interest using appropriate legislation. "Other jurisdictions have written statutes that survive constitutional muster, and the Alaska Legislature can follow suit if it so desires," Judge Beistline held.

The *American Booksellers* case is part of a larger trend of legislative censorship and judicial support for free speech. In June, the United States Supreme Court declared unconstitutional a California statute that would have criminalized the sale of violent video games to minors. In *Brown v. Entertainment Merchants Association*, the Supreme Court ratified the status of violent speech as protected speech under the First Amendment.

Of course, sex and violence in entertainment—and legislative fear of them—is nothing new. Violence has been a source of entertainment and expression for eons. The Romans cheered for their gladiators, the Greeks for their Olympians, the medieval gentry for their knights. The Brothers Grimm achieved renown by binding it into page form, and the superheroes of today were born amid the BAMs, CRACKs, and KAPOWs of yesterday's comic books. Today, we flock to screens to watch bullets fly and to arenas to watch bodies fall like timber. We try to out-sleuth other viewers watching the same grisly murder mystery mini-series, and over 12 million of us, at some point, have wielded a weapon of choice in a World of Warcraft duel. Sexual entertainment has evolved from the erotic poetry of the Ancients and the clandestine erotic literature of the Victorian era and from the Burlesque entertainment in the 1900s. We now see sexual content on television, hear it in the most popular songs, and read it within the best-selling books.

And for as long as sex and violence have entertained us, some have tried to censor them. In the 1950's and 60's songs we consider classics today were banned from radio play. Rosemary Clooney's *Mambo Italiano*, Cole Porter's *Love for Sale*, and even Van Morrison's *Brown Eyed Girl* were given the axe due to sexual themes. Literature containing sexual content and violence have also met opposition throughout history. A crusade against comic books occurred in the 1940's and 50's as many blamed them for fostering a preoccupation with violence. *The Color Purple* was labeled "smut" and banned by a Pennsylvania school district in 1992. The *Grapes of Wrath* was burned in 1939 (East Saint Louis Public Library, IL), and has been challenged by numerous school districts school districts. The censorship of sexual and violent content has evolved with the times, and now, it threatens electronic expression like that at issue in Alaska as well as speech made through video and computer games.

At issue in *Brown* was a California law restricting the sale of violent video games to anyone under age 18, likening violence to obscenity. Justice Scalia, the opinion's author, clarified that speech about violence is not a legal equivalent to obscenity. Scalia emphasized that the California statute was not the first to try and treat violence as obscenity, and the previous attempts to do so have failed to pass constitutional muster, citing both *United States v. Stevens*, 130 S.Ct. 1577 (2010) and Winters v. New York, 333 U. S. 507, 510 (1948).

The decisions cited by the majority in *Entertainment Merchants'* Association span from 1915 to 2010, demonstrating an enduring tradition by states and localities to censor unpopular content in newly emerging media. As pointed out by the Comic Book Legal Defense Fund (CBLDF) in its amicus brief, which was cited by Scalia in his opinion,

"California's bid to censor video games is the latest of a long history of moral panics that date back to the early nineteenth century. These recurring campaigns are typified by exaggerated claims of adverse effects of popular culture on youth based on pseudo-scientific assertions of harm that are little more than thinly-veiled moral or editorial preferences. Such censorship crusades have been mounted against dime novels, ragtime music, cinema, comic books, television, and now, video games." Brief of Amicus Curae for Respondent at 3-4, *Brown v. Entertainment Merchants Association*, 131 S. Ct. 2729, (2011) (No. 08-1448).

Judge Beistline's opinion in *American Booksellers* and the Supreme Court's opinion in *Entertainment Merchant's Association* are victories for First Amendment advocates, but are merely one campaign in a war against censorship. In the past decade, private individuals, retailers, and entertainment organizations have struggled to maintain their ability to own and disseminate certain content that some may consider objectionable.

In 2007, courts also rejected censorship efforts in Minnesota, declaring the "Minnesota Restricted Video Games Act" overbroad. The Entertainment Software Association had to reach out to allies to combat the statute which mirrored that at issue in *Entertainment Merchants Association*. The Act, which prohibited anyone under the age of 17 from purchasing or renting video games rated "M" (Mature) or "AO" (Adults Only), and imposed a $25 fine for violators, was eventually struck down as a violation of free speech.

And last year in Iowa, after pleading guilty in *U.S. v. Handley*, a U.S. Navy veteran was sent to prison for owning comics. In his vast collection of manga comics was a minority of sexually explicit material, none of which depicted actual persons. Christopher Handley was sentenced to 6 months in jail and 5 years probation not for engaging in any actions that were a danger to members of his community, but because of his tastes in entertainment. The 40-year-old introvert had spent his time working as a computer programmer and caring for his ailing mother, whom he lived with. His social interaction came primarily from his online gaming and his bible study. He posed no danger to his community, but was prosecuted for his enjoyment of illustrated cartoon entertainment.

Currently, an American citizen is facing criminal charges in Canada after attempting to cross the border with manga comics stored in electronic form on his laptop. Because some of the characters depicted appeared young, this man was charged with possession and importation of child pornography. If convicted, he will serve a minimum one year jail sentence and must register as a sex offender—although he never possessed any actual child pornography.

It seems a difficult balancing act, protecting minors from offensive content while protecting the First Amendment rights of adults and artists. State legislatures have demonstrated in their attempts at ac-

Continued on page 7

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Dale House 269-5044
David S. Houston 278-1015
Mike Lindeman 245-5580
Suzanne Lombardi 771-8300 (wk)
John E. McConnaughy 278-7088
Brant G. McGee 830-5518
Michael Sean McLaughlin 269-6250
Michael Stephan McLaughlin 793-2200
Greggory M. Olson 269-6037
John E. Reese 345-0625
Jean S. Sagan 263-5414
Moira Smith 276-4331

Palmer

Glen Price 746-5970

Fairbanks

Valerie Therrien 452-6195

Bethel

Megyn A. Greider 543-1143

Alaska Pro Bono Program will close at the end of the year

Continued from page 1

novative programs were established such as the flying pro bono program, a project involving private attorneys that would visit rural Alaska to teach legal clinics, and the Attorney of the Day project, which continued to get enhanced and expand during APBP's next major transition.

Unfortunately, financial limitations and an impending loss of revenue from several sources forced APBP to restructure in 2002. By then, Erick Cordero had replaced Cristina Borge as its Operations Manager and Loni Levy as its Executive Director. After several months of difficult decisions, a larger APBP board (this time there were representatives from other agencies including the Alaska Native Justice Center, RuralCAP, the US District Court, the Alaska Court System and the Alaska Department of Law, among others) decided to close the agency's doors, return most of the pro bono services to ALSC as an in-house pro bono program and contract with independent part-time consultants to only deal with cases restricted to ALSC by federal law. These cases included assisting incarcerated persons, undocumented non-citizens, class actions, certain types of public housing issues and others.

ALSC re-instated its former pro bono program and to avoid confusions named it the Volunteer Attorney Support program. Erick Cordero was hired to lead that project and he also continued consulting for APBP for a few years. On the APBP side, clients would only be able to contact APBP by phone, email or mail, as resources were limited and used to provide services instead of renting office space. For a brief time, Ashburn & Mason donated office space to APBP.

During the period of 2003 and 2004, Bill Cotton, former Executive Director of the Alaska Judicial Council, replaced Loni Levy as APBP's Executive Director. He was then replaced by Kara Nyquist who has remained as its Executive Director to date.

For several years, funding was unpredictable, but the agency's frugal approach at budgeting and contracting for services paved the way to seven more years of helping low-income Alaskans that no other agency would help. Kara Nyquist served as the Executive Director part time in addition to her private practice, and Erick Cordero worked part-time for the program in addition to his full-time position at the Alaska Legal Services Corporation. After the Alaska Court Rules were changed to allow limited representation in matters, the program in addition to placing case for full representation, began representing individuals in house in discreet matters such as emergency hearings and domestic violence protective order hearings.

In recent years, APBP partnered with the Alaska Bar Association to provide wills to all the recipients of homes through Habitat for Humanity. APBP also partnered with the Young Lawyers Section to provide Wills, Powers of Attorney, and Advanced Heath Directives to senior citizens.

The need for pro bono assistance continues to increase each year, while at the same time funding declines. In 2000, APBP received close to $200,000 from the IOLTA grant and in 2011 received $8,100. Pro bono is not free. While the services are offered to the clients at no costs, funding is needed to have staff to place cases and operate the program. Attorney volunteers receive training, support, cost-reimbursements and malpractice insurance among other benefits.

In 2010 APBP started the Early Resolution Project originally called the Lawyer in the Courtroom Program, with the help of Katherine Alteneder and a partnership with the Alaska Court System. This project will be taken over by Alaska Legal Services with APBP's remaining revenue with hopes of securing new funding to continue beyond 2012. The project provides volunteer attorney's each month to represent all the parties in a pro se calendar of family law cases, preselected for the calendar. The settlement rate of these cases has been 70%. This project has provided efficiency and cost savings to the Alaska Court System, and provided resolution to families.

Thank you to all the generous volunteers that helped people in crisis that would otherwise not had legal representation. Thank you for helping the individuals who did not have a voice or understand the legal system. Alaska Legal Services Corporation will continue to fight for access to justice with APBP coming full circle back to its roots -- in remembrance of the great work that APBP has done, ALSC's Volunteer Attorney Support will retake its name Alaska Pro Bono Program.

APBP's first board and staff in 2000. From left, Brian Timbers, Loni Levy, Greg Razo, Art Peterson, Maria-Elena Walsh, Vance Sanders & Cristina Borge. Photo by Erick Cordero.

From left, Sabrina Fernandez, Karen Ferguson, Diane Smith, Cam Leonard, Greg Razo, Karen Lambert and Lisa Rieger served on the board in 2008. Photo by Erick Cordero.

Bill Cotton served as executive director from 2003-2004. Here, at the 2004 Bar Convention in Fairbanks, he presented the pro bono awards, along with Chief Justice Dana Fabe. Photo by Erick Cordero.

Erick Cordero and Kara Nyquist, 2004.

Alaska courts join judicial trend against censorship

Continued from page 6

complishing the former that narrowly tailored legislation can only be the progeny of careful drafting in the text of a statute and an awareness of accessibility rights of all groups. When censorships attempts are overbroad in effect, they create unintended victims who rarely are aware of the resources available to help them combat the effects of the legislation.

The real victims of censorship

While these cases illustrate the myriad instances of injustice that accompany large-scale censorship, they also highlight the dangers of allowing the government to decide what constitutes art. A fundamental goal of the First Amendment is to prevent government from controlling what people can express and what expressions people can consume. See *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 253 (2002). But the history of censorship attempts suggests that moral panics will continue to drive unconstitutional legislation. It seems that no long-term lessons have been learned from the attempted regulation of dime novels, jazz music, cinema, cartoons, comic books, and now, video games. Censorship targets materials that some people find objectionable—but the American public is as diverse in its objections as it is in everything else. It is not the role of the government to do the objecting.

In theory, censorship legislation targets societal evil, but in practice, it cuts against ordinary people: comic book retailers and collectors, video game players, music appreciators, and adult who have a constitutional right to view adult material. What are these ordinary people to do when threatened with criminal charges and/or stigmatic labels just for buying the latest first-person-shooter game, or owning a comic book, or stocking adult-themed literature in a brick and mortar store?

Fortunately, there are resources for the accused in these cases. The Comic Book Legal Defense Fund is a non-profit organization that fights to protect the first amendment rights of comic book creators, sellers, purchasers, and organizations that make them available to the public such as libraries. It pursues its mission through education and response. To educate those most likely to encounter censorship attempts, the CBLDF has created a retailer resource guide on First Amendment protections entitled The Best Defense, and a Graphic Novels Best Practices Guide to help librarians when comics are challenged. The organization is constantly updating these guides to keep them current and ensure that retailers and librarians have access to the best information. In addition, the CBLDF is planning to create a resource guide for criminal defense attorneys on defending comic book-related claims.

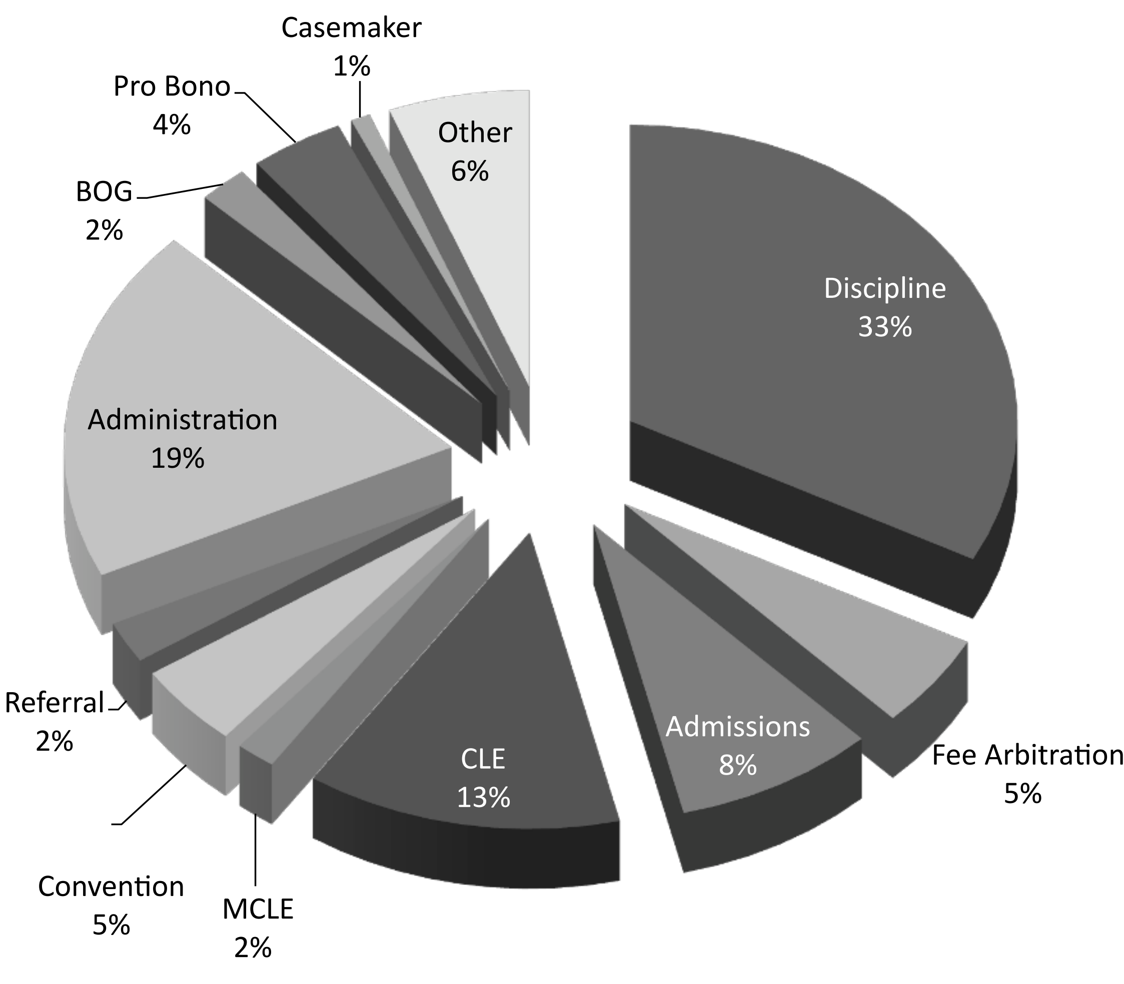
And while the CBLDF prefers a proactive approach in its attempts to protect the comic book industry and First Amendment rights generally, it is also a reactive organization, assisting numerous organizations and citizens in First Amendment cases across the country. The organization provides pro-bono legal counsel to everyday citizens facing obscenity charges for possessing or selling comics, to libraries facing censorship, to authors who want to exercise their rights to create parody and satire, and to countless other parties. The CBLDF is currently fundraising to cover all costs of the legal battle of the manga collector that was arrested at the U.S.-Canada border, and it just celebrated a victory after being involved with the overturned censorship laws in California and Alaska.

The author is an intern for the Comic Book Legal Defense Fund (www.cbldf.org).

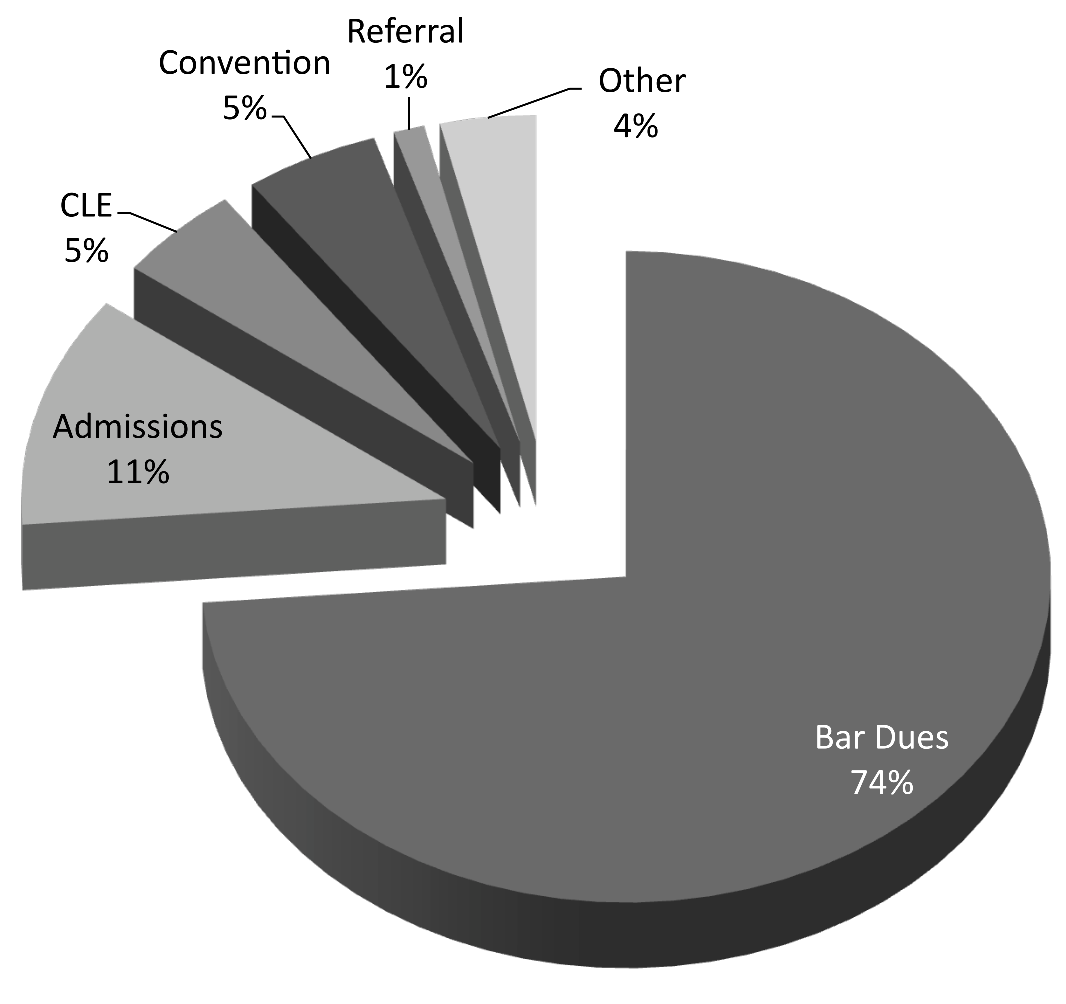
Board of Governors action items Oct. 28, 2011

- Voted to certify the July bar exam results and recommend the admission of 32 applicants.
- Voted to adopt the proposed 2012 budget, to include the Executive Director suggested cuts, except for the New Lawyer travel subsidy, and to set Bar dues at $660.
- Voted to approve three applicants for admission on reciprocity.
- Reviewed a request for a proposed bar rule amendment which would provide for provisional admission for military spouses. The Board asked the Executive Director to send a letter stating that they were sympathetic to the request, but were not taking any action at this time, and to keep them apprised.
- Voted to send the proposed amendments to Bar Rule 26 and 21 to the Supreme Court regarding confidentiality of information received by the Lawyers Assistance Committee and to adopt the Bylaw expanding the scope of the Lawyers Assistance Committee to include mental health, pending the approval of the Supreme Court on the rules.
- Heard over two hours of comments by Bar members on ARPC 3.8 regarding the special duties of a prosecutor. The Board voted to send the rule back to the ARPC Committee, with specific direction to review proposals in legislative format, and that the proposals and comments be received by the committee two weeks before its meeting. Bar President McClintock appointed John Novak and Karen Loeffler to the ARPC Committee.
- The Board was advised that President McClintock sent a letter to Dept. of Administration Commissioner Hultberg requesting her to reconsider the termination of the Bar's lease, and requesting an opportunity to meet with her to discuss this request.
- Voted to reimburse clients in two different Lawyers' Fund for Client Protection matters, in the amount of $1650 each; and to adopt the Committee's recommendation not to reimburse the client in a third matter.
- Heard a report from the Mentoring Subcommittee on the program and that the pilot project will start with the passing applicants from the July bar exam.
- Voted to approve the September 2011 meeting minutes as amended.

2012 Expense Budget



2012 Revenue Budget



ALASKA BAR ASSOCIATION
Budget Summary
Dues Rate $660 Active, $215 Inactive
2012 Budget

REVENUE	
AdmissionFees-Bar Exams	92,300
AdmissionFees-MotionAdmit	48,000
AdmissionFees-Exam Soft	10,000
AdmissionFees-Rule 81s	181,350
CLE Seminars	138,169
Accreditation Fees	3,750
Lawyer Referral Fees	34,050
Alaska Bar Rag - Ads,Subs	8,148
Annual Convention	148,093
Substantive Law Sections	22,685
ManagementSvc LawLibrary	0
AccountingSvc Foundation	15,457
Special Projects	0
Membership Dues	2,097,845
Dues Installment Fees	10,825
Penalties on Late Dues	15,250
Disc Fee & Cost Awards	0
Labels & Copying	1,414
Investment Interest	52,854
Miscellaneous Income	500
SUBTOTAL REVENUE	**2,880,691**
EXPENSE	
BOG Travel	42,789
Committee Travel	2,500
Staff Travel	41,137
New Lawyer Travel	3,000
CLE Seminars	108,029
Free Ethics Course	3,660
Alaska Bar Rag	44,467
Bar Exam	67,980
Other Direct Expenses	89,422
Annual Convention	125,131
Substantive Law Sections	54,427
ManagementSvc LawLibrary	0
AccountingSvc Foundation	15,457
Law Related Education Grants	5,000
Language Interpreter Grant	0
MLK Day	5,000
Casemaker	24,331
Committees	7,636
Duke/Alaska Law Review	22,500
Miscellaneous Litigation	0
Internet/Web Page	15,861
Lobbyist/BOG, Staff Travel	0
Credit Card Fees	36,607
Moving Expense	20,000
Miscellaneous	13,155
Staff Salaries	1,023,965
Staff Payroll Taxes	87,077
Staff Pension Plan	49,749
Staff Insurance	543,109
Postage/Freight	21,352
Supplies	28,581
Telephone	1,646
Copying	9,449
Office Rent	150,609
Depreciation/Amortization	50,083
Leased Equipment	28,456
Equipment Maintenance	36,938
Property/GLA/WC Insurance	13,613
Programming/Database	41,448
Temp Support Staff/Recruitment	11,670
SUBTOTAL EXPENSE	**2,845,835**
NET GAIN/LOSS	**34,857**

Interrogatories as an initial instrument for CINA discovery

By Daniel B. Lord

Discovery in Child in Need of Aid or CINA cases can be a frustrating experience. Timelines for adjudication may be disrupted because of the failure of a party to respond to compulsory disclosure. The result can be significant pretrial delays that reflect neither efficiency nor effectiveness of the proceedings, and that facilitates neither reunification nor the best interest of the child.

In an effort to reduce discovery-related delays, the Alaska Supreme Court in 2006 amended CINA Rule 8. The amendment sets forth a "more expanded rule" on discovery. Susanne DiPietro, *Evaluating the Court Process for Alaska's Children in Need of Aid* 1, 88 (2006). A requirements added to the rule is that the parties provide initial disclosures early in the proceedings; specifically, the parties are to provide one another disclosures within 45 days of the date a petition for adjudication, which initiates a CINA proceeding, is served. *See* Alaska CINA R. 8 ("for tribes, the date of order granting intervention").

Unfortunately, while initial disclosure is required it is not invariably the practice in CINA cases.

The problem of failing to provide initial disclosure can rest with any party in a CINA proceeding. It may be the fault of the parents, *see* CINA R. 8(c)(2), (4)-(5), or that of the guardian ad litem. *See* CINA R. 8(c)(6). When it comes to discovery generally, however, the problem of not providing full disclosure does appear to rest in many cases with the State of Alaska Department of Health and Social Services (the "Department"), specifically its Office of Children's Services ("OCSD"). *See* Pietro, *op cit.*, at 73 (reporting reports of survey where "lack of discovery from OCS" is cited by judges and practitioners as common reason for continuances in CINA cases, a perception "supported by the case file data"). See also CINA R. 8(c)(1) ("Department shall make available *all* information pertaining to the child prepared by or in the possession of the Department") (emphasis added).

So what are the parents to do in a CINA proceeding where something short of full disclosure by OCS is evident or even suspected?

Attorneys for the parents can simply request, informally or formally, disclosures from OCS. But OCS may not be immediately responsive, and any non-responsiveness should be a matter of concern given the "accelerated timeline" for CINA cases. Pietro, *op cit.*, at 8, 16. The parents can also file a motion to compel, in accordance with Alaska Rule of Civil Procedure 37, invoking court involvement and a possible hearing on the motion, and further fueling the adversarial nature of the proceedings.

A failure to provide full, initial disclosure or respond promptly to a request for discovery may be symptomatic, however, of other, more underlying deficiencies in OCS' handling of a case, -- and a simple request for full initial disclosure or motion to compel will not necessarily bring those deficiencies to light.

Another approach is more targeted, and this is to engage in epistolary discovery by the parents submitting written interrogatories for OCS to answer. *Cf.* State of Maine, *Representing Parents in Child Protection Cases: A Basic Handbook for Lawyers* (1999) 1, 9 (concluding that because parents' lawyers have "complete" access to a "voluminous" child's file with state Department of Human Services, interrogatories are "uncommon" in child protective cases in Maine). Written interrogatories are simple and inexpensive, and utilized to obtain admissible facts in evidentiary form. *See* Buelle Doelle, *Discovery -- Written Interrogatories*, 4 Am.Jur. Trials 1, at §2 (2008). Under the expanded rule, submitting interrogatories is available to any party in a CINA proceeding. *See* CINA R. 8(b) (discovery and disclosure governed by Civil Rules 26-37, with limited exceptions); Alaska Civ. R. 33 (interrogatories to parties). *Cf.* Ann M. Haralambie, *The Role of the Child's Attorney in Protecting the Child throughout the Litigation Process,* 71 N. Dak. L.Rev. 939, 960 (1995) (a child's attorney "can subpoena records, request production of expert resumes, and propound interrogatories to the agency and parent . . .").

Among the many purposes for engaging in such epistolary discovery is to assess the merits of a claim. *See* Doelle, *op cit.* at §3. One "claim" intrinsic in a CINA case is that OCS is undertaking "reasonable efforts" by providing, in a "timely" fashion, "family support services." AS 47.10.086(a)(1)-(3) (describing reasonable efforts). OCS is to not only to "identify" and "actively offer" such services, but also "document" them. *Id.*

For parents, then, a focus in the propounding of interrogatories might be whether OCS followed acceptable procedures in identifying, actively offering and documenting family support services. Under the authority of AS 47.05.10 ("Duties of department") and AS 47.05.60 ("Purposes and policy relating to children"), OCS promulgated its Child Protective Services (CPS) Manual. The CPS Manual "includes policies, procedures and guidelines for service delivery of the programs and support activities," *see* State of Alaska Department of Health and Social Services, CPS Manual (issued March 31, 1989, superseded July 1, 1999), sec. 1.8, p. 25, and "provides both the general and specific framework within which services shall be provided." *Op cit.*, subsec.6.7.1, p. 609.

Correspondingly, OCS workers are required to follow the "policies, procedures and guidelines," as set forth in the manual. *See* CPS Manual (issued March 31, 1989, superseded January 1, 2002), sec. 67.1 ("the policies and procedures delineated in the manual shall be followed by all field staff").

Admissions of OCS of a deviation from its accepted procedures in developing a case should be seen as significant. Case plan development is tied to "reasonable efforts." *See* AS 47.10.086(a)(3). "Reasonable efforts" is the touchstone, for it is required by OCS before a child is either returned to its parents, or before there is placement of a child outside the home, -- either action affecting the parent's fundamental right to parent.

Recognizing such a connection -- between a child protective agency following its own policies and procedures and their actions affecting the parents' fundamental right -- one state supreme court went so far as to affirm that a child protective agency's rules and procedures "must be followed strictly and failure to follow those rules and procedures must result in a reversal of action taken when a parent's rights are terminated." *MB v. Laramie County Dep't of Family Servs.*, 933 P.2d 1126, 1130 (Wyo. 1997).

According to the CPS Manual, the case plan "should" be completed no later than 60 days "after opening a case" and "must" be completed no later than 60 days from the time the child is removed from the home. CPS Manual, subsec. 2.9.2, p. 128. Parents might want to submit interrogatories on the case plan after the 45 days has passed for receipt of initial disclosures, but before 60 days after initiation of the CINA proceeding, since under Civil Rule 33 a party has 30 days to serve its answers after the interrogatories have been served to the party. Alaska Civ. R. 33(b)(3). The interrogatories might reflect the following line of inquiry in regards to development of the case plan:

1. Whether the required family assessment was conducted by OCS, and if so, whether the "family strengths/protective capacities" were identified (*see* CPS Manual, para. 2.9.2.c and subpara. 2.9.2.e.2)
2. Whether the parent's plan of action (as part of the case plan) included the "identified concerns," why each concern is a risk to the child, and whether the concerns were "prioritized in order from the highest to lowest risk." (*see* CPS Manual, subpara. 2.9.2.e.3)
3. Whether the parent's plan of action included "all the issues that need to be addressed before the child can be returned" (*see* CPS Manual, para. 2.9.2.j)

A similar line of inquiry in the first set of written interrogatories might be whether the "family support services" were identified in the case plan and offered the parents. *See* AS 47.10.086(a)(1)-(2); *see also* CPS Manual, at 128 ("services to the family are derived from the case plan"). Such services are defined under AS 47.10.990(11) as including "counseling, [alcohol and] substance abuse treatment, mental health services, assistance to address domestic violence, visitation with family members, parenting classes, in-home services, temporary child care services, and transportation." The parents might request that OCS describe the family support services actively offered to the parents, -- including how, when and where it actively offered the services, -- and to describe services that OCS referred the parent to, -- including how and when it made the referrals.

Another important topic for a propounding of interrogatories pertains to visitation. *See* AS 47.10.990(11) (family support services may include "visitation" with the child's parents). Alaska Statutes 47.10.080(p) provides, "When determining what constitutes reasonable visitation with a family member, the department shall consider the nature and quality of the relationship that existed between the child and the family member before the child was committed to the custody of the department." Moreover, in accordance with subparagraph 2.9.2.e.3, page 127f of the CPS Manual, visitation with a child by each parent "need[s] to be addressed" in the child's action plan.

Thus, the following additional line of inquiry might be propounded in a first set of interrogatories:

1. Whether there is a plan of visitations for the parents with the child, and whether the plan indicates the frequency, manner and duration in which the visitations are to occur, and any restrictions placed on the visitations.
2. Whether OCS, in developing the visitation plan, considered the nature and quality of the relationship between the child and the parents before the child was committed to the custody of OCS in this matter.
3. What risks to the well-being and safety of the child prevents the parents from having either increased visitations, unsupervised visitations, or a trial home visit.

Still another line of inquiry is in regards to whether the grievance procedure has been explained to the parents. AS 47.10.095(b) provides, "The department shall prepare and distribute to each parent of a child who is under the jurisdiction of the department a written copy of the grievance procedure developed under (a) of this section." *See* AS 47.10.095(a) ("grievance procedure for a parent to file a complaint"); *see also* 7 AAC 54.210-.240 (providing procedures designed to resolve complaints about OCS officials). Being provided a copy of the procedure is critical, as it describes one of only two ways for parents to resolve formally a conflict with OCS supervisors and workers. *Cf. Smith v. Stafford*, 189 P.3d 1065, 1071 n.15 (noting that comprehensive procedures under AAC 54.210-.240, and court review provisions under CINA R. 19.1 regarding visitation and placement, are two remedies available to parents in conflict with OCS officials).

An interrogatory might be propounded, then, on when and where a copy of the grievance procedure was distributed to the parents, so they may file a complaint against an OCS supervisor or worker -- if the mishandling of the case becomes evident.

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ECLECTIC BLUES

Return to Florida's Bubbafest bikefest

By Dan Branch

I knew we would have to wear pink. That's Bubba's signature color. But the pirate getup surprised me. It was Saturday in early November. In a Key Largo hotel my wife and I stood in the provisioning line for those joining the moving bicycle circus known as Bubbafest. "Here," the kind lady said while smiling. "Stow these things away until Tuesday night when they will form your uniform for the storming of Key West."

We wore parrot hats in Key West the last time I rode with he Bubbonians. Then I and a fellow member of the Alaska Bar were forced to pull feathered bird helmets onto our heads to gain entrance a Key West dining spot. Both being basically ball cap and fleece kind of guys, wearing those funny hats on Duval Street was a stretch but at least there was no violence.

Looking around the provisioning room I saw poor fodder for a pirate army. Pot-bellied guys in golf shirts and their generally trimmer middle aged wives wouldn't set the tourists flying in fear. Relaxing, we sought the right pace for the Bubbafest Florida Keys bike tour. Small quantities of beer helped, along with a chance to watch manatees and a strong sunset behind them. Afterwards, we shared part of a pig barbecued whole with Cuban trimmings. The next morning we joined 180 bikers riding downwind to Knight Key.

Strong northwesterly winds pushed a series of rain squalls down the keys to soak us as we rode. This was warm rain, not the cold punishment we left behind in Juneau, so we didn't seek shelter. Other riders did. We passed them taking cover where they could--drinking cafe con leche at small Cuban cafes or eating jerked meat at a screaming yellow Jamaican place. The sky cleared in Marathon so we split a cafe latte there and dried out in the sun.

After that Bubbafest became a series of sunsets and sunrises with bike rides or kayak trips mixed in between. We joined a group of noisy kayak paddlers in Marathon following the mangrove choked edge of Boot Key, driving herons, pelicans, and large white egrets from shelter with their laughter. After this brief taste of nature, our leader guided us to a drinking establishment known for its conch fritters and cheap beer. On the way. the wait staff of another bar tried to entice us in by performing the macarena. We moved on, chasing pelican sentries from a series of wooden pilings.

Not wanting to paddle while intoxicated, we skipped the bar and took the scenic route back to our campground.

"That night Bubba filled the eating area with oversized inflated flamingos, some wearing sunglasses."

The biking gear is hung out to dry in the Florida campsite.

The next day, suited up in pirate tee shirt and bandana, we rode 43 miles to another campground near Key West and boarded a tourist trolley filled with Bubbonians while Bubba passed out toy swords and eye patches. Arrgh. No more will be said about that evening. We spent two more days in Key West, most on bicycles or in kayaks. We almost got stuck in a mangrove swamp but nothing more need be said about that, either.

The temperature rose as did a headwind as we started back up the keys. By now, Susan and I were both heavily committed to finding the best key lime pie in Florida. At Big Pine Key we back-tracked 3 miles to a shopping mall on the promise of a delicious slice of it. It proved worth the extra travel. After that we gave up the pie search and rode back to Knight's Key, crossing the Seven Mile bridge in a nasty headwind.

That night Bubba filled the eating area with oversized inflated flamingos, some wearing sunglasses. We ate well with beer and margaritas to be drunk from pink Bubbafest cups. At this, day 5 of the bike ride, it all made sense. While waiting for dinner Susan swam in the ocean while I sketched cormorants drying their wings on nearby rocks. A white heron landed in the shallows, stalked and caught a fish, and then hopped up on the deck five feet from me. It then struck a series of 30 second poses--a live drawing model willing to volunteer its time.

The last day was a 53-mile slog into the wind. We ran out of water and had to refill our bottles and stomachs at Burger King. I sipped on something called an Icee and felt like I had a crossed over into a dark land where people deep fried their cheesecakes and drank watery beer. We had to get out of there and did, riding the balance of the distance back to Key Largo with little conversation.

Somehow we had worked our way to the front of Bubba's pack of riders by the time we reached our hotel. Bubbonians trickled in all afternoon and into the evening. That night we ate well at a Cuban restaurant and then had dessert at a Dairy Queen.

The next morning we mixed with a dozen Bubbonians partaking of the hotel's complementary breakfast but we never saw Bubba again. (One man, now dressed in a golf shirt, asked me which button on the juice machine he had to push to obtain orange juice. Turns out he was pretty much blind. I was about to ask him how he had safely ridden over 200 miles on a bicycle when I remembered all the tandem bikes we saw on the ride. He must have ridden shotgun on one of them.)

That day Susan and I took one more bike ride--a 15-mile loop through the alligator-infested Everglades. Every quarter mile or so we would pass a moderate sized gator that would watch us with an unconvincing disinterest. I thought of them a few days later when shoveling 15 inches of snow off the driveway at home so we could get our luggage into the house.

The snowy egret makes an appearance.

A Florida sunset on the Bubbafest trail.

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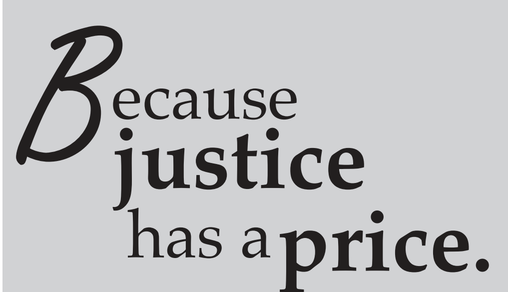

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Historical Bar

A 60-year legal career begins

By Antonia M.S. Gore

Mike Stepovich was not intended for the Bar. His father wanted to stake his oldest son to a mining engineering degree at the Colorado School of Mines so that he could take over the family operations at Fairbanks Creek. It was the conversation Mike had with his father after graduating from Gonzaga University that determined the legal career. "When I told him I didn't want to be a mining engineer he asked me what I planned to do instead. Off the top of my head I told him that I wanted to be a lawyer. He shook his head and told me I was on my own." So it was that Stepovich booked a steerage passage to the Lower 48 and headed to South Bend, Indiana and law school at the University of Notre Dame.

Mike had talked to Father Mulcaire, a Holy Cross priest who was his economics professor at the University of Portland. Mulcaire had been Vice-President at Notre Dame and was slated to take over the helm at the university but had over-celebrated at an Irish football win at the University of Southern California and been sent to Oregon to teach instead. Father Mulcaire recommended Notre Dame and said he would see what he could do about getting his former student into the Law School. Stepovich figures he "made a few 'phone calls." "His parting words to me were: 'Now, don't embarrass me. And don't waste your parents' money." Stepovich's mother had advanced a little money toward his law school ambition. Mike flew from Portland, Oregon to South Bend, Indiana.

It was wartime and Notre Dame offered a full time two year graduate law program that included classes during the summer. The professors were practicing lawyers. Stepovich enrolled in the Law School and signed up to work on campus to pay his tuition. The proctor at his residence hall was a young priest named Theodore Hesburgh and they became friends. Mike, nicknamed "Yukon Kid", was elected President of the law school. It was a demanding and rewarding time.

Sports – especially hand ball – played a big part in his life on campus. An athletic young man, Stepovich became the Notre Dame Hand Ball Champion. It was at this time that Frank Leahy was the coach of the ND football team. He would lead Notre Dame to three National Championships. It was the great coach's belief that hand ball provided excellent conditioning for his athletes, so he signed Stepovich up to play with members of the football squad. The law student played hand ball with Coach Leahy as well.

Just as his second year at Notre Dame was ending, Stepovich was called before the military enlistment board. He received a six month deferment for an injured knee and was able to complete his law degree. Once he got his graduate degree Stepovich was automatically admitted to the Indiana State Bar, a wartime policy. Now a lawyer, he immediately enlisted in the Navy and was sent to the Great Lakes Naval Station in Illinois. There he served in the Legal Office and worked on the team that drew up a draft will that was made available to all Navy personnel.

Stepovich was then sent to the Legal Office at Fleet City in Shoemaker, California where he served until the end of the war. While at Fleet City he was called upon to defend a Warrant Officer in the Marines who was charged with maltreatment and mistreatment of prisoners in the Marine Brig. Mike was the only Navy attorney in the case. Civilian lawyers from San Francisco were hired to defend the others charged.

The Warrant Officer on trial was fifth or sixth in the line of command at the Marine Brig that incarcerated those marines who had failed to appear for duty after receiving orders for service in the Pacific. The commanding officers at the Marine Brig were newly returned from active duty in the Pacific and condoned rough treatment of these prisoners. There were instances of forced all-night marching, dunking of heads in toilet bowls, and forced non-stop cigarette smoking.

Parents of the marine prisoners sent letters to their members of Congress complaining of this treatment and, after an investigation, charges were brought against those in charge of the Fleet City Marine Brig. It took three months to try the case. At the end of the trial the Commanding Officer, a Major, was found guilty and sentenced to five years imprisonment at Portsmouth. The Warrant Officer defended by Stepovich was the only one found not guilty. He received a written reprimand in his record and was able to continue his navy career.

Mike Stepovich, upon his receipt of an honorary Doctor of Law degree at the University of Alaska Fairbanks in 2009.

After completing his military service, Mike turned his sights on Alaska and his future. He made plans to take the Alaska Bar examination and to get married. Matilda Baricevic and he had met at a music recital in Portland, Oregon when he was seven and she was four, but they had not kept in touch. Now he was in Saratoga, California playing the occasional game of golf while auditing law classes at Santa Clara University in preparation for the bar exam. Mike had struck a deal with the dean of the law school to sit in on the law classes and pay for it with the GI Bill. Matilda was attending a conference in San Francisco. From Portland Mike's mother organized a dinner date for the two of them. They became engaged a short time later, all the time conducting a long-distance romance.

June 1947 found Stepovich back in Fairbanks, living at the Nordale Hotel and sitting for the Alaska bar exam. There were only three of them taking part in the three-day assessment, all young men. The first two days of the exam consisted of written tests overseen by lawyers at work in Fairbanks. Julian Hurley was in the chair one of the days. On the third day Judge Harry Pratt conducted an oral examination. Pratt was the Federal Judge and the Territorial Judge in Fairbanks and was appointed for life. His father had been a practicing attorney in Fairbanks and had been a lawyer for Mike's father.

Mike heard three months later while he was in Portland, Oregon preparing for his wedding that he had been admitted to the Alaska Bar. His marriage to Matilda Baricevic took place on November 27, 1947 at the Catholic Cathedral in Portland. In December, after a short honeymoon stateside, they moved to Fairbanks and took up residence at Fourth and Cushman in a family owned building. There was a liquor store on one side and a shoe store on the other. Mike started to work with the partnership of E.B. Collins and Chuck Clasby. Collins had also served as a lawyer to Mike's father.

In October 1948 the Stepoviches had their first child, a daughter, and Mike determined that now he had more responsibility, he had best be "out on my own." Six lawyers were in business in Fairbanks at the time: E.B. Collins, Chuck Clasby, Judge Clegg, Julian Hurley, Maurice Johnson, and Warren Taylor, Jr. "There were only six or seven lawyers in town and four were over 70. If you couldn't make it here, you couldn't make it anywhere."

Julian Hurley was the best trial lawyer in Fairbanks at the time and he wanted Stepovich to become a partner in a practice with him. The new father declined the offer and set up his own office with Matilda sitting in as secretary for the first three months. Once Stepovich had established his practice Hurley many times called him in on big cases and often recommended him to potential clients. Mike's was a general practice and he took all kinds of cases. Things went well and in two years' time he became the Fairbanks City Attorney. He was also the attorney to the Catholic Bishop in Fairbanks and the attorney to Saint Joseph's Hospital.

Thus started a 60-year legal career in Fairbanks and a 60-year membership in the Alaska Bar Association.

--The author is Mike Stepovich's daughter

Judge Henry C. Keene: In Memoriam

1919 - 2011

The Alaska Court System is sad to learn of the passing of Judge Henry C. Keene (Ret.) of Ketchikan, who served on the Ketchikan District Court from 1968-1982 and on the Wrangell Superior Court from 1982-1985. He died on October 5, 2011, at the age of 91. Judge Keene was born in Cambridge, Massachusetts, and raised near Washington, D.C. He graduated from the U.S. Coast Guard Academy in December 1941, immediately after Pearl Harbor, and served on ships throughout World War II. After the war, his Coast Guard career took him to Korea and the Philippines before eventually bringing him to Alaska, where he commanded the Ketchikan Coast Guard Base from 1963-1965. Although he intended to stay in Ketchikan for only a few years, the community would remain his family's home for the rest of his life, and he would embrace it fully.

Judge Keene is remembered by First District Presiding Judge Trevor Stephens of Ketchikan as "an officer, a gentleman, and community activist and supporter in the truest and best sense of these words." Judge Keene was an ardent supporter of youth sports for decades, serving as President of both Little League and Babe Ruth Baseball. He served on the Ketchikan General Hospital board for many years and is remembered for working tirelessly to raise funds on behalf of the First City Council on Cancer. He was an active member of the Rotary 2000 Club and also served over the years on the boards of the museum, the community college, and the Chamber of Commerce. In 2001, the Chamber of Commerce named him "Citizen of the Year" for "unparalleled" community service. Judge Keene was "far more to this community than a retired judge," according to Judge Stephens, "he was one heck of a guy who knew everybody in town and who was respected and beloved by this community."

Chief Justice Walter Carpeneti of the Alaska Supreme Court, who appeared before Judge Keene as a young attorney in Juneau, says "(t)he example he set has left its mark on scores of young attorneys, and the lessons that he taught…will continue to ensure that our courts meet the highest standards of competence, fairness, and professionalism for decades to come."

Judge Keene's decades of public service--as a member of the judiciary, a leader in the Coast Guard, and as an enthusiastic supporter of his community--were great gifts to the people of Alaska. We appreciate his many contributions and extend our deepest sympathy to his family and friends.

-- Alaska Court System

James Fitzgerald: In Memoriam

All in a day's work

By Eric Croft

Fitzgerald Clerk 1993-94 and Chief Clerk Wrangler, pro tempore.

As promised, below is the second installment of Clerk stories about Judge Fitzgerald. Although Fitz was from Oregon, originally, this batch of stories seems to capture the particularly Alaskan character of the man; the bear-like strength Mary describes, the ski afternoons Mark describes and the original approach to unusual problems described by Sharon. Lest we should conclude that Fitz was all fun, Sharon describes his mammoth capacity for hard work. All these scream "Alaska". His love of life and deep sense of family come out in these stories as well. I am frankly not sure what Doug's story says about Fitz, but it is such a classic, that I had been saving it for the final piece in this installment. Any wayward clerks out there that I have not yet tracked down can email me at ericcroft2@gmail.com. Any errors below are more likely to be a transcription error of mine than the fault of the individual authors.

Here is wishing that you all have a Fitz day soon; work hard then go skiing in the afternoon, kiss and appreciate your bride or groom, stop a friend and tell him a long story in the snow. Enjoy it. See you next time.

A day at the office

By Sharon Hartmann

Sharon Hartmann is a private attorney in Los Angeles. She clerked from 1980-81.

All in a day's work

Judge Fitzgerald liked to try cases. To that end, he often required his law clerks to calendar multiple cases for 9 a.m. on Monday morning. This made me very nervous when 2 p.m. on Friday afternoon arrived and there were still two cases set to proceed. However, when I asked the judge whether we should continue one, he'd say, "No. One will settle over the weekend." Sure enough, one usually did. Sometimes both did, which made the judge unhappy. However, on one memorable Monday morning, two cases reported ready.

Judge Fitzgerald decided to try them both at once – the trial to the court in the morning and the jury trial in the afternoon. All was going well, until a TRO application was filed at mid-day Wednesday. At the afternoon break, I described for him the contents of the papers, and he said, "I can't decide this on the basis of the affidavits. Call counsel and tell them that we will start the preliminary injunction hearing at 6 p.m. today." He took evidence for three hours, and instructed counsel to return the following morning for his decision. At 7:30 a.m., he convened court and began reading his lengthy, written decision into the record. At 9:00 a.m., he resumed the slightly delayed trial to the court. The afternoon jury trial continued right on schedule.

All three matters were concluded successfully, and he enjoyed the whole thing.

Depose the Judge

On one occasion, because of the illness of a court reporter, we were having trouble getting transcripts of proceedings out to counsel in a timely manner. An attorney in Seattle needed a record of an important decision that Judge Fitzgerald had made in a trial in Alaska for use in a related case between the same parties in Seattle. Opposing counsel would not stipulate, and our transcript was not forthcoming. Time was of the essence. I described the problem to Judge Fitzgerald. After making certain that everything possible had been done to get the transcript, he said, "I remember this ruling. Tell counsel in Seattle that if necessary, they can come up here and depose me." I still remember the attorney's laughter when I reported this. Opposing counsel stipulated.

The Alaska bear, Maine lobster and Massachusetts owl

By Mary Heen

Mary Heen is a Professor of Law at the University of Richmond in Virginia. She clerked from 1978-79.

Although unyielding regarding important principles and standards, Judge Fitzgerald was always warm-hearted and exuberant in his dealings with his clerks. We, along with our spouses and significant others, enjoyed some spectacular feasts and ski weekends at Alyeska with Fitz and Karen and their big-hearted, spirited family. Both on and off the slopes, we admired the Fitzgerald family physical courage, strength, and energy.

The strength part was impressed on my husband Ole and me a few years later during a visit Fitz made to the cottage we were building on Nantucket. He came to the rescue of hungry dinner guests at one of our early less successful culinary efforts. Our neighbors, two professors from Sweden, years later still exclaimed about the wonderful judge who could crack the half-inch thick claws of a giant-sized 15 lb. lobster open with his bare hands. We had been attempting unsuccessfully to smash them open with a hammer. Fitz also helped us solve a difficult engineering problem by lifting an immovably heavy chimney owl up on one shoulder and simply carrying it more than twenty feet up ladders and then up a precarious scaffolding to place it miraculously on top of the chimney. Twenty-five years later, it's still standing there; I could see it from where I wrote these words the summer of his retirement. As for the exuberant part, we remember his shouting over wind and waves that we needed to test the limits of our creaky wooden sailboat by sailing it more aggressively--even if we all ended up being "dumped" in the sea. In the last few years, that same boat dumped our teenage son on a regular basis when he learned to sail; I'm convinced that having heard us tell the story helped make him better sailor!

Three Fitz stories (or Fitz in 3D)

By Mark Rindner

Mark Rindner is a Superior Court Judge in Anchorage and a long-suffering 49er fan. He clerked from 1979-80.

Love and Marriage

My favorite memory of Fitz is the fact that he married me and Chris. We used vows that Fitz had used on similar occasions. Like Fitz the words weren't fancy but they got the job done.

Later, over the next 30 years, whenever I saw him, Fitz would invariably ask "How's your bride." Never your "wife" but always your "bride." It continually reminded me of the day we married.

Occasionally, in the midst of his storytelling, Fitz would also dispense advice about the secret of a happy and long marriage. Much of it had to do with the importance of tolerating home redecoration and remodeling, a subject that Fitz seemed to know a lot about.

Fun with Fitz

Fitz was a powerful skier. In the spring, when the days had become longer but the snow was still on the ground, he would shut down his chambers around noon. We'd drive down to his house in Girdwood and change into our ski clothes and then drive to Turnagain Pass. Fitz would barrel up the mountain leaving his much younger clerks in his wake and we'd ski the powerline and the meadows the rest of the afternoon. My favorite photo of Fritz, taken by my co-clerk Sharon Hartmann, was taken during such an outing. It hangs in my chambers and reminds me of Fritz every day.

"That's the one, he done it."

The Fitz trial story I remember best is one when he was an Assistant United States Attorney in Territorial Anchorage. The defense counsel was the great Wendall Kay. The victim was coming to town on a plane that was late in landing. The Marshals rushed the witness to court and Fitz immediately put him on the stand with no chance for preparation. Fitz asked him to identify the perpetrator. Much to his chagrin the witness, after looking around the courtroom, picked out one of the Marshals. He told us that in closing Wendall Kay told the jurors that if the witness had had more time he probably would have identified juror number three. But Fitz also said he won the case having been able to rehabilitate the witness with a little careful leading.

"Make it Sexy, Tiger"

By Douglas Serdahely

Doug Serdahely served as a Superior Court Judge and is now a Partner at Patton Boggs in Anchorage. He clerked from 1972-73.

Following Chief Justice Boney's tragic death in August of 1972, I had the privilege of clerking part-time for newly appointed Alaska Supreme Court Justice James Fitzgerald in the latter half of 1972 and first half of 1973. During the winter of 1973, Fitz asked me to draft a speech for him to present to the Anchorage military base on "Law Day", May 1, 1973. When I asked him if he wanted a noncontroversial speech or something more provocative or "sexy," Fitz said, "Yeah Tiger. Give me something sexy". So I drafted a speech for him that compared the potential war crimes liability of General Westmoreland (for the Mi Lai massacre of civilians by American troops in the Vietnam War) with the war crimes liability of Japanese General Yamashita (for the deaths of American soldiers during the "Bataan Death March" in WWII. They hanged Yamashita for his crimes.) After I gave the draft speech to Fitz, he called the Adjutant General at the base to discuss his intended speech. Shortly thereafter, Fitz visited me in my office and said, "Tiger. The Adjutant General dropped the phone when I told him about my proposed speech. You'll have to draft me another speech."

So, I then drafted Fitz a somewhat less controversial speech on the scenario of the crooked territorial Nome judge, Noyes, and how in 1898, during the height of the Alaska Gold Rush, Noyes illegally declared the gold mine interests of Laplanders in the Nome area invalid because the Laplanders were aliens, and then had his henchmen jump these valuable claims. Years later, the Ninth Circuit sent US Marshals to Nome to arrest and bring Noyes back to San Francisco, where he was prosecuted, tried and convicted for his crimes. The gold mines were eventually returned to the Laplanders, but apparently, they had been depleted by that time. I drafted this speech from a chapter on the Noyes saga in Judge Wickersham's wonderful book, "Tales, Trails and Trials of the Old Yukon." Fitz later commented that the speech was a smashing success with the military. Apparently, the military liked hearing about the illegal actions of federal judge.

THE KIRK FILES

Pardon me boy, can I get a receipt?

By Kenneth Kirk

Oh good, a shoe-shine booth. I'm ahead of schedule, just time enough to get the wingtips polished. Yeah, I'll take a standard shine. I can't believe you only charge $1 for this. How do you make any money?

Sir, you're misreading the sign. There's no decimal, that's $100, not $1.

$100 for a shoe shine? That's nuts! How can you justify charging a hundred bucks to shine a couple of shoes?

It's not a couple of shoes, that's for one shoe. The other shoe would be another hundred.

That's ridiculous! How can you possibly justify that kind of price?

Sir, I have to have a certification to be able to shine shoes on a city street. To get that, I had to go to shoe school for three years. I know everything about shoes. I know how they're put together, and what part of the animal hide the leather is cut from. I've even taken classes in orthopedics and the history of footwear.

But I don't need all that. I just wanted a lousy shoe shine. Forget it, I'll go to someone else.

You can't. It's illegal for someone who isn't licensed, to shine shoes for pay.

I'll get some polish and shine my own shoes then.

Apparently you haven't bought polish in a store recently. They all have labels, requiring they be applied only by a licensed shine technician. There's a serious fine for applying it yourself.

Where did they get the idea someone needs that much schooling to shine shoes?

It was pushed through by the local branch of the National Association of Footwear Professionals, sir. I believe they got the idea from the lawyers.

"Where did they get the idea someone needs that much schooling to shine shoes?"

Just water to drink, thanks. Can you believe there's a guy out front who wants two hundred bucks to shine a pair of shoes? Unbelievable.

I'll get your water in just a sec. Here's a menu. And I'll need your credit card.

Wait, you haven't even taken my order yet. How can you need the credit card already?

It's for my tip.

But I don't even know how much the order is going to be, so how can I calculate the tip? For that matter, I don't know how good the service is going to be. Isn't this a bit premature?

Honey, the way it works here, is that I take your card, and I charge $500 against it. Then when the meal is done, we figure out the actual tip, and refund you whatever is left.

Based on 15% of the tab?

That's the minimum. Then we add an additional, agreed amount for good service. But don't worry, that has to be agreed on by both you and me.

What if we don't agree?

Then it gets submitted for binding arbitration.

Who is the arbitrator?

The head waitress. But she's very fair.

This is a terrible system! The only reason I'm not walking out right now, is that I'm really hungry and there doesn't seem to be another restaurant in the area.

Yes, putting any other restaurant within ten miles would violate the zoning laws. We got the idea from the lawyers. Now will that be Visa, MasterCard, or American Express?

Oh good, you're here. I've been trying to get a plumber all morning. It's the downstairs toilet, it's backed up into the tub.

Looks pretty bad, bub. I can fix it though. This should take about a half an hour, so that will be $850.

Whoa! I knew plumbers were expensive, but that's worse than I've ever seen. How can you possibly justify $850 for a half hour job?

Listen, buddy, I had to go to school for seven years to do this work. I gotta crap-load, if you'll pardon the expression, of student loan debt to pay off. I have to bill a lot on each job to pay for all that.

Seven years to become a plumber? How much can you possibly learn about plumbing in seven years?

Only the last few years had anything to do with plumbing. Before I could get into plumbing school, I had to have a college degree.

They made you waste four years of college, to go to plumbing school?

It wasn't wasted at all. I majored in Oriental philosophy. Believe me, it helps when I'm hunched over a steaming pile of feces. Plus I minored in French, which is useful with our local Francophone population.

We don't have a local Francophone population! And I don't believe for one minute you needed that much Oriental philosophy to be able to plumb a toilet. Why did you really need to have a college degree before going to plumbing school?

Al right, the truth is, the licensing board started requiring it because they wanted to improve the image of plumbers. This way we can appear erudite in our conversations with the customers, while we're doing the work.

But don't most of the customers prefer to leave the room while you're working?

Yeah, that is a bit of a problem. But hey, the licensing board insisted on these requirements.

But it's ridiculous. Who's on the licensing board, anyway?

They're all licensed plumbers. It's a requirement in order to be on the licensing board.

So you have to take four years of completely unrelated, and probably useless classes in order to become a plumber? Where on earth did your licensing board get such a stupid idea? Wait, don't tell me….

I believe they got the idea from the lawyers.

So Doc, is it the same thing I had last year?

Sure is. Here's the prescription, don't forget to finish all of the pills even if it clears up. And here's my bill.

Four hundred dollars? But you only saw me for five minutes! You didn't even do any labs. You just gave me a prescription and you charge $400?

I charged you $400 because I spent eight years in college and med school, followed by a year slaving away for 60 hours a week as an intern, and then three years of residency. With that much schooling, you have to expect to pay some serious money.

All right, Doc. I get it. And I'm pretty sure I know where it came from. Did you guys get the idea from the lawyers?

Haw! Don't be ridiculous. Where do you think the lawyers got the idea?

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Attorney Discipline

Court suspends Anchorage lawyer

The Alaska Supreme Court suspended Anchorage attorney Geoffrey J. McGrath from the practice of law for three years for violations that included failing to communicate with clients, charging an unreasonable fee, and failing to distribute settlement funds promptly. The suspension is effective from September 15, 2011.

Mr. McGrath represented a client on a workers' compensation claim against the client's employer. After Mr. McGrath moved out of state, he failed to provide competent representation by missing a hearing, not communicating with his client, and not being prepared for a hearing that he attended. He charged an unreasonable fee and failed to comply timely with a board order to refund a portion of his fees by a specific date.

In a second matter, Mr. McGrath represented a personal injury client for damages sustained in an automobile accident. Mr. McGrath settled the claim without final authority from his client. He negotiated the settlement check and deposited the funds in his account without notice to his client and without obtaining his client's signature on the release of claims that the insurer sent with the settlement check.

Mr. McGrath failed to pay medical claims promptly as his client had earlier instructed. Mr. McGrath had earlier advanced his client $2,000 in financial assistance in anticipation of being reimbursed from the settlement proceeds which created a conflict.

Mr. McGrath acted negligently when he failed to protect his clients' interests by not providing competent representation and not maintaining good communication. He knowingly ignored his client's directives to pay medical providers, ignored an order to reimburse fees, and knowingly failed to account promptly to his clients for client money. During the relevant time period, Mr. McGrath was going through personal or emotional problems of a nature that served to mitigate the misconduct. The multiple offenses and his indifference to making prompt restitution were considered as aggravating factors.

The court ordered that prior to applying for reinstatement,

Mr. McGrath must complete six hours of continuing legal education in legal ethics and 12 hours of CLE in law office management. He must also obtain training in setting up and handling client funds and client trust accounts. He must provide a detailed plan acceptable to Bar Counsel regarding his law practice financial procedures and allow for mandatory quarterly auditing and reporting for two years following readmission. Although no claims are pending, Mr. McGrath must make full restitution of any amounts deemed owed to clients following fee arbitration or lawyers' fund for client protection proceedings.

Juneau lawyer John Rice suspended for trust account misconduct, obstruction of bar investigation

The Alaska Supreme Court on August 26, 2011 suspended Juneau lawyer John M. Rice for four years. In a written opinion, In re Rice, 260 P.3d 1020 (Alaska 2011), the court adopted findings and sanction recommendations from a disciplinary hearing committee and the Disciplinary Board of the Bar Association. The court held that Rice violated Alaska Rule of Professional Conduct 1.15 by failing to safeguard and account for client funds, and violated Alaska Bar Rule 15(a)(4) by willfully obstructing the Bar's investigation into his trust account practices.

The case began when the Bar received notices from Rice's bank that he had written three checks to himself that overdrew his client trust account. He responded inadequately or not at all to Bar requests for trust account records, to specific discovery requests, and to a disciplinary subpoena.

The Bar filed public charges and convened a disciplinary hearing committee. Rice produced computer printouts of trust records for the hearing. After analyzing these, the Bar asked the committee to close formal proceedings and find misconduct. Rice failed to comply with hearing committee orders to file post-hearing briefs, and did not respond to the committee's invitation to request further hearing. The committee issued a decision finding that he knowingly misappropriated client funds by removing them from trust before they were invoiced or earned, that he negligently failed to keep adequate trust account records, that his trust account was regularly short of funds, that he comingled client money with his own, and that he willfully obstructed the Bar's investigation. The committee concluded that he should be suspended.

Rice appealed to the Disciplinary Board on the ground that the hearing committee's sanction finding was too harsh. During Board proceedings he raised the argument that the hearing committee denied him due process because he did not have a chance to submit all of his trust account records and to finish his testimony. The Board recessed its proceedings and allowed Rice to submit any missing records, and to testify at a Board hearing three months later. He submitted more records and testified at the second hearing. The Board then adopted the committee's misconduct and sanction findings.

Rice appealed to the Supreme Court, asserting among other things that both the hearing committee and the Board denied him due process. After briefing and oral argument, the court adopted the findings of the hearing committee and the Board.

Rice's suspension became effective September 25, 2011. Under the Supreme Court order, one year of his suspension may be stayed on the condition that he inform his past clients of his suspension and urge them to contact the Bar if they believe their trust funds were not properly handled. Otherwise, he will be eligible in 2015 to file an application to resume active practice. A hearing committee, the Board of Governors, and the Supreme Court would then hold proceedings to evaluate his character and fitness to resume practice.

Public documents are available for inspection at the Bar Association office in Anchorage.

Supreme Court places lawyer on interim suspension after Kenai car accident

The Alaska Supreme Court on August 15, 2011 issued an order placing Anchorage lawyer Henry E. Graper, III on interim suspension. The order followed Graper's conviction for third degree assault, driving under the influence, and leaving the scene of an accident in Sterling. The conviction was part of a plea bargain in which the Kenai superior court dismissed two other counts of assault and three counts of failure to render aid to an injured person. (All three passengers in the other car were injured.) On June 9, 2011 the superior court sentenced Graper to five years and two months in jail (with thirteen months to actually serve) and five years of probation. He reported to Wildwood Correctional Center in Kenai, and was later released on electronic ankle monitoring. Because third degree assault is a felony, under Bar Rule 26 the Supreme Court issued the interim suspension order pending the outcome of disciplinary proceedings under Bar Rule 22.

In the Supreme Court of the State of Alaska

In Disciplinary Matter Involving)
) Supreme Court No. **S-1450**
)
Bruce F. Stanford,) **Order**
)
______________________________) Date of Order: **11/16/11**

ABA File No. **2001D208**
ABA Membership No. **8606031**

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

On consideration of the Order Withholding Judgment and related documents entered in *State of Idaho v. Bruce Stanford, Defendant,* CR-2011-0000774 in the First Judicial District, State of Idaho, County of Kootenai:

IT IS ORDERED:

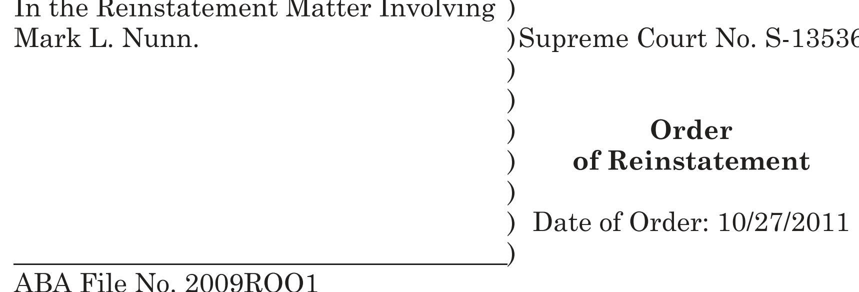
1. Respondent Bruce F. Stanford is placed on interim suspension from practice of law effective immediately.
2. Disciplinary proceedings against Bruce F. Stanford shall proceed as provided in Bar Rule 26(g).
3. The Bar Association shall provide the notices required by Bar Rule 28.
4. Bruce F. Stanford shall provide the notices required by Bar Rule 28(a) and comply with all other provisions of Bar Rule 28.

5, Bruce F. Stanford shall not practice law until reinstated by order of this court.

6. The clerk of the appellate courts shall send notice of this suspension to the clerks of the trial courts.

Entered at the direction of the court.
In Disciplinary Matter Involving Bruce F. Stanford
Supreme Court No. 5-14507
Order of 11/16/11
Clerk of the Appellate Courts
/s/ Marilyn May

In the Supreme Court of the State of Alaska


In the Reinstatement Matter Involving)
Mark L. Nunn.)Supreme Court No. S-13536
)
)
) **Order**
) **of Reinstatement**
)
) Date of Order: 10/27/2011
______________________________)

ABA File No. 2009ROO1

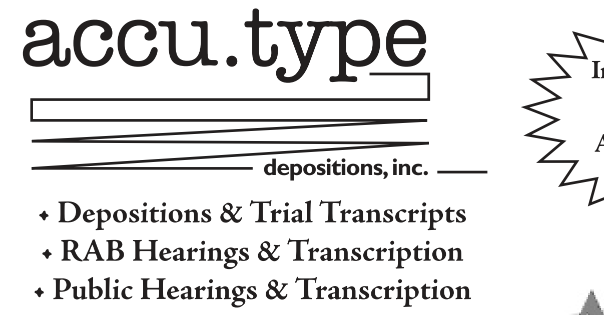
Before: Carpeneti, Chief Justice, Fabe, Winfree, Christen and Stowers, Justices

On consideration of the 5/26/2009 petition of Mark L. Nunn for reinstatement to the practice oflaw, and the 9/8/2011Disciplinary Board of the Alaska Bar Association's fmdings, and the10/20/2011certification of payment of the fee arbitration award,

IT IS ORDERED:

Mark L. Nunn is REINSTATED to the practice of law, effective immediately. Entered at the direction of the court.

Clerk of the Appellate Courts
/s/Beth C. Adams, Chief Deputy Clerk



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TALES FROM THE INTERIOR

Who is the Alpha Male?

By William Satterberg

For years, I have been surrounded by women. My office has always been predominantly female. Although there are now two other men who occupy the premises, still, the ratio is 3:1, in favor of the fairer sex. The two other men normally stay hidden behind wisely closed doors.

On the home front, it is even worse. In addition to my wife, Brenda, I have two daughters and two pets. Until just recently, both pets were also female, consisting of a motherly Golden Retriever, Lucy, and a neurotic cat, Mocha.

To say that my masculine domain has been challenged would be an understatement. For years, I have struggled to exist in an environment where I am constantly fighting for space at the bathroom sink, kicking over bottles of various hair and body potions in the shower, while wondering what use there could be for the various items of female clothing strewn around my daughters' rooms.

But, that is not all. The tenor of the family home regularly changes. I think it has something to do with the moon or the stars. Whatever the cause, when the collective Satterberg female moods do change, I wisely seek refuge while the family resolves its differences. Invariably, the ladies arrive at the conclusion that I am the root cause of all issues.

I do not mean to be sexist in my observations. Certainly not, for I know the heavy price I could pay if so inclined. Still, there is a fundamental difference between the male and the female sex. On balance, perhaps, I am somewhat deserving of the sexist label. After all, my Dad was clearly a chauvinist. In fact, Dad wore the title proudly. Archie Bunker was his idol.

One of the stories which Brenda tells is about a Thanksgiving holiday. After Mom passed away, Dad became a traditional houseguest. After dinner, Brenda requested my assistance to clear the table. I was conflicted. Should I watch a critical fourth down football play with Dad or do chores? The answer was obvious. As I obediently arose from the couch to assist, Dad instructed me to sit and watch the game. But, Dad could not leave it at that, adding "Billy, come back to the couch. After dinner, our job is to lay on the couch and to watch football or nap. Their job is to clean up."

"The tenor of the family home regularly changes. I think it has something to do with the moon or the stars."

Dad's life expectancy became extremely short at that point in time. Fortunately, Brenda was merciful in the end. It was I who paid the price. A "Sins of the Father" type of thing. Undoubtedly Mom was having her own spiritual input from afar, cheering Brenda onward.

Recently, when I reached the age of 60, I decided that it was once again time to begin to try to establish my masculinity. I reasoned that the chances were better, since my two daughters were now grown. In addition, Lucy was getting dodgy and Mocha was also with Mom.

I intended to assert my manhood in a new way. Fortunately, I was assisted by the arrival approximately three years previously of my young grandson, Jacob. Like myself, Jacob was into feeling his oats, although perhaps in a much more primordial way. Still, I figured that my odds of success were increased, especially with an additional ally.

Two years after Jacob's arrival, I had announced that the young child needed a puppy. After all, every boy needs a puppy. Snakes, snails and puppy dog tails. It was time to do the classic transition from the old dog to the new dog. So, against Brenda's better advice, I found a cuddly Golden Retriever male, who we named "Teddy" in honor of a former Alaska senator. Unfortunately, that was where all similarities stopped.

Shortly after Teddy's arrival, when I was out of town, Brenda had Teddy neutered. The warning was ominous. When I fully appreciated the deeper symbolism, I shuddered.

One day, I pulled aside both Jacob, by then a precocious two year old, and Teddy, who had yet to learn how to lift his leg even after seven months. Seeing no women around, I told them that I was the "Alpha Male." Jacob looked at me for a second and then yelled back with total childlike self-confidence, "I am the Alpha Male!"

Teddy promptly piddled on the carpet.

As I was cleaning up puppy piddle, I gently contradicted Jacob, firmly stressing that "I" was the Alpha Male. Once again, Jacob screamed an even louder denial.

And, as if on cue, Teddy copiously piddled again.

The increasingly macho exchange went on for several minutes before I finally gave up, having run out of paper towels. If the little tyke really wanted to be the Alpha Male that badly, he could have the job. I always had age on my side. Besides, Jacob still could not figure out how to pee correctly on a tree. But, neither could Teddy. As such, I figured that, as long as Jacob was in diapers, I still had some persuasive power over him, since I did not do diapers, and wet ones could be quite uncomfortable. Time was on my side.

It was when I was heading to Wal-Mart to buy more carpet cleaner and towels that I realized that Teddy was also having adjustment problems. Having been raised and mentored only by Lucy, Teddy had been long overdue in learning how to lift his leg. In fact, at over seven months of age, Teddy still tinkled like a girl dog. This was extremely embarrassing for me. Hopefully, Teddy had not learned that technique from myself, which was something I tried to hide. Rather, as the only male role model, I was doing my best to teach territoriality to Teddy, using trees and any other available vertical supports. After all, there is a proper way for a boy dog to tinkle. In addition, tinkle training had grown into my primary responsibility, having been ordered by the family ladies to teach both Jacob and Teddy the rights of boy and dog hood, respectively.

Whereas Jacob had finally developed into a relatively good student, with allegedly a better aim than myself, Teddy obviously had a long ways to go. To date, Teddy still has not learned the trick. Hopefully, by the time this article reaches print, Teddy will have matured into a dog. On the other hand, Brenda's surreptitious surgery may have had an unexpected impact, removing any desire on Teddy's part to participate in the ordinary male dog rites.

For years, when I found myself subjected to the family females' ire, I would retreat to a room in our home known as the "tack room." The hideout had been used for years before as a room where the prior owner's horse tack was kept, thus earning its name. After purchase, it became my "mini man cave," where I kept my boys toys and risqué Snap-On Tool calendars.

Last summer, I decided it was time to expand. After all, with a young grandson and a young male Golden Retriever, there were many excuses to have a larger lair.

I enlisted the services of a carpenter. Together, we engineered and built a respectable shop which was completed in just six weeks. It became the primary man cave, with the tack room reserved only for emergency back up in times of extreme personal crisis.

Jacob loves the man cave. The boy regularly asks if we can go to the man cave. After all, during the cold winter months, it is a great place for adventure. Where I have my big boys toys in the building, Jacob has his red tricycle, soccer net, and his regularly used "time out" chair. To us, the man cave is special. In the man cave, the rules are different. Jacob can climb on big equipment and play with my tools without his mother scolding him. This is because "wimmen" are not allowed in the man cave without special invitation. And, at tinkle time, Jacob just needs to step outside where there are plenty of trees.

Recently, Jacob and I watched the movie "Little Rascals," which centers on the love of Alfalfa and Darla, to the disdain of the Little Rascal's wimmen-haters club. To some degree, my man cave replicates the Little Rascals'clubhouse, although I reluctantly do remember that the ultimate outcome of Little Rascals was that wimmen finally did join the club.

Until the wimmen join our Club, however, Jacob can come to the man cave whenever he wants. He can also bring his mother or grandmother with him – provided he gives them permission. Recently, the perceptive child did innocently ask me whether or not Lucy was banned from the man cave because Lucy was a girl. I explained that, because Lucy was a dog, she was automatically exempt from the "no wimmen" rule. Unfortunately, I did not expect Jacob to violate our sacred oath of secrecy and tattle to his mother about our inviolate rules. I was immediately chastised. In no uncertain terms, I was told that I was not going to be introducing the young boy to such chauvinistic nonsense. In response, I promptly sulked off to the tack room to pout while Jacob happily dined on heavily sugared cupcakes with the wimmen.

Several years ago, a book was published entitled "Men are from Mars, Women are from Venus," which sets forth operating rules for male vs. female. In one chapter, the book also discusses the importance of man caves. In retrospect, the advice in the book probably saved me from even worse retribution. I commend the book highly. I am fortunate in that the ladies of my house currently respect my man cave, but I now recognize that, if I ever want to enjoy peace at home, I had better not be so outspoken in the future about my opinions. Dad's Archie Bunker days and Thanksgiving naps on the couch clearly are ancient history.

And, finally, although the verdict as to whom will end up being the Satterberg Alpha Male is still uncertain, there is no question as to whom is the Alpha Female. After all, as the learned Chinese proverb says, "Happy wife makes happy life."

The 9th Annual Bar Historians Luncheon took place on October 13, 2011, at the Dena'ina Civic and Convention Center in Anchorage. Entitled "Ted Stevens' Law Practice in Alaska," this year's luncheon program featured remarks by veteran Alaska newsman and historian Michael Carey; Senior U.S. District Court Judge H. Russel Holland; and author, lawyer, small business man, and former Anchorage mayor Jack Roderick. Carey, an avid researcher of Alaskan legal history, spoke about Stevens' years in Fairbanks during the early 1950's, when he served as in the U.S. Attorney's office. Holland spoke of the time that he and Stevens were law partners during the 1960's. Roderick concluded the program with stories about the brief period that he and Stevens practiced law together before Stevens was appointed to the Senate in 1968, and with a personal perspective on the long-time friendship between the Stevens and Roderick families. Gathered at the end of the luncheon are, L-R: Marilyn May, Chair, Bar Historians Committee; Michael Carey; Jack Roderick; and Judge H. Russel Holland.

A new legal clinic is born to provide Native access

By Melanie Baca Osborne

When the Alaska Native Law Section and Alaska Native Justice Center met on a crisp day in February to discuss ways the Bar could partner with the community, we reflected on what we wanted to accomplish. A number of thoughts developed: provide outreach and training in rural communities, help strengthen tribal courts, develop an electronic library on Native Law resources, even succession planning to ensure the brain trust on tribal issues is maintained as our Section's "more experienced" lawyers retire (yes, Dave Case, we are referring to you). Ultimately, a public service project emerged with the mission to "provide more access to justice for Alaska Native individuals with legal needs."

To put our plan into action we sought involvement by other community stakeholders who have long provided services to Alaska Natives. Alaska Legal Service Corporation, the Native American Rights Fund and the Alaska Federation of Natives joined the discussion. Through remarkable efforts by our Section, the Alaska Bar and ALSC staff, volunteer attorneys provided free legal services at the AFN Convention in October.

The First Annual Elizabeth Peratrovich Legal Clinic was an adaption of the model used by the Bar for MLK Day. We knew attorneys would address a wide assortment of common legal problems, such as family law, home/tenant issues and consumer protection. Incorporating the experience of ALSC and our Section's lawyers, we also anticipated advising clients on issues such as tribal enrollment, Native allotments, ICWA placements, and estate planning. By having clients pre-register for meetings, we were able to pair these more specific needs with attorneys from the Alaska Native Law and Estate Law Sections.

Our mission was to provide "more access," and through the support of the Alaska Federation of Natives we secured a forum for reaching people statewide at the annual AFN Convention. The Clinic was a tremendous success. In two 1/2-day sessions, volunteer attorneys provided pro bono legal services to 81 individuals from at least 28 different Alaskan communities. Legal issues that could not be resolved through in-person sessions received follow up through ALSC's in-house staff attorneys or its Volunteer Attorney Support pro bono program.

Many lawyers know how personally fulfilling pro bono work can be, but the energy in the air at the Clinic was visible and unanticipated. It went beyond the satisfaction of helping fulfill unmet needs or gaining hands on experience – common benefits to attorneys providing pro bono work. Volunteers were energized to work on unique and interesting legal issues, and the collaborative essence of the AFN Convention carried into the Clinic room.

Now more than ever it is important for attorneys to supplement and support public interest service providers through pro bono activities. Planning is already underway for the 2nd Annual Elizabeth Peratrovich Legal Clinic at AFN in October 2012. I also cannot help but reflect on our February brainstorming session and wonder what public service mission is next for our Section.

The author is co-chair of the Alaska Native Law Section

Magistrates from across the state made a surprise presentation to the Alaska Supreme Court at the annual Magistrate's Conference for the Alaska Court System held October 3-7, 2011, in Anchorage. A colorful home-made quilt featuring T-Shirt designs from each of the state's 42 court locations was presented to the justices on the first day of the conference. Mag. Tracy Blais of Delta Junction spearheaded the effort and collected the T-shirts from her fellow magistrates. Plans are underway to display the quilt publicly at major courthouses. Here, several justices admire the quilt in the Snowden Training Center, L-R: Justice Dana Fabe, Mag. Blais, Mag. Dacko Alexander from Ft. Yukon, Justice Craig Stowers, and Justice Morgan Christen.

First Annual Elizabeth Peratrovich Legal Clinic

Thank you!

The 1st Annual Elizabeth Peratrovich Legal Clinic at this year's AFN Convention was a success!

- 81 Alaskans served from 28 communities
- 280 cumulative volunteer hours
- 56 volunteers
- $22,420 of donated volunteer services

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Susan Bailar
JoAnne Baker
Ilona Bessenyey
Babette Brewster
Molly Brown
Brennan Cain
Erick Cordero
Anita Daniel
Jeff Davis
Jim Davis Jr.
Erin Dougherty
Sam Fortier
Shannon Eddy
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SPONSORS

The clinic was sponsored by the Alaska Bar Association's Alaska Native Law Section, Alaska Federation of Natives, Alaska Legal Services Corporation, and the Alaska Native Justice Center.

Volunteers for equal access to justice are needed year round; learn more about volunteering opportunities at www.alaskabar.org.

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Holiday Reading Book Review: Alaskan revisits Joe Hill

Reviewed by Gregory S. Fisher

Pie in the Sky: How Joe Hill's lawyers lost his case, got him shot, and were disbarred, by Kenneth Lougee (Universe 2011) (ISBN 978-1-4620-2992-1) ($14.95 available from publisher 1-800-288-4677)

Mr. Lougee has produced a remarkably timely book (by accident or intent) that touches upon several themes as relevant now as they were a century ago when a Utah firing squad chambered rounds and shot Joe Hill dead.

Joe Hill was an American labor hero (or dangerously violent activist) who was convicted of murder by a Utah jury and executed in 1915. The crime occurred during the course of a grocery store robbery by two men wearing red bandanas. The owner John Morrison and his son Arling were killed. Another son, Merlin, witnessed the shooting in hiding. One shot was fired from Morrison's .38 revolver. Within two hours Hill appeared at a doctor's home with a gunshot wound in his chest. As he was being treated the doctor noticed that Hill had a gun in a shoulder harness. The doctor drove Hill home after bandaging his wound. En route, Hill inexplicably threw away his weapon. When asked how he'd been shot. Hill said nothing more than he'd been shot by an unknown man at an unknown place during a fight over an unknown woman. Authorities initially thought the crime had been one of revenge because nothing had been stolen from the store and Morrison was a former police officer. Eventually, however, they investigated men who had been shot around that time. They found a red bandana in Hill's room. Around twelve witnesses said that Hill resembled one of the robbers. Merlin, however, initially responded "that's not him," before later changing his mind.

Was he guilty? Or was Joe Hill's execution the result of an anti-labor conspiracy, xenophobia (Hill was Swedish), woefully deficient trial counsel, an inexperienced yet arrogant appellate counsel more concerned with his own publicity than his client's fate, or an imperfect but nevertheless reasonably efficient justice system?

Mr. Lougee sensibly avoids answering these questions (although the book's title betrays his own theory), deferring instead to the reader's judgment. Rather than staking out an absolute position on Joe Hill's guilt or innocence, Mr. Lougee explores litigation dynamics—juries, jury selection, trial skill, and the various pressures (perceived or actual) that affect the administration of justice. An Alaskan lawyer living in Utah, Mr. Lougee liberally salts his account with Alaskan references, including memories of Judge Kleinfeld and Rick Friedman. We come to appreciate that truth is less what happened or what may have happened, and more what the crude machine of trial process manufactures.

The raw facts of the case seem damning enough. Mr. Lougee, however, points to a wide range of trial and appellate errors that could have affected the outcome. Trial counsel bungled voir dire, failing to develop pertinent information that resulted in an unsympathetic jury foreman being seated. Witness identification was shaky. Joe Hill had notable scars, but witnesses at the scene never commented on those when describing the murderers. Witnesses offered different testimony at trial than at the preliminary hearing. They were never cross-examined on the discrepancies. Hill's lawyers introduced inadmissible evidence, specifically that a sheriff deputy asked Hill where he'd been shot and volunteered to investigate and clear him of the murder charge, yet Hill refused to disclose any details. Appellate counsel presented jury arguments to the panel, and appeared oblivious to the favorable standard of review governing the court's analysis. Subsequent commutation proceedings squandered any chance at saving Hill's life when counsel adopted a needlessly belligerent and uncooperative attitude.

Perhaps the errors were material—perhaps not. For a generation or more conventional wisdom ascribed Joe Hill's fate to Copper Barons working in concert with leaders of the Mormon Church who were protective of business and commercial interests. Hill was a labor organizer. With an ear and eye sensitive to these issues, Mr. Lougee challenges the read to confront a more nuanced interpretation of the conflicts, personalities, experiences, and prejudices that led Joe Hill before the firing squad.

Along the way, Mr. Lougee briefly addresses the history of the labor movement, the Mormon Church, Free Masons, phrenology, the Commerce Clause in the Lochner era, law and policy, and the evolution of received rights. In Joe Hill's time state prosecutors were free to comment on an accused's failure to take the stand. The time between conviction and execution was typically months (at most).

All in all it's an intriguing account. The sparks stirred from the ashes are all too familiar to Americans entering the 2012 election cycle: Is the labor movement relevant? Is it possible to preserve judicial independence where significant social and community pressure affects the court? What is the nature of deliberative compromise? Is the death penalty ever just? How do commercial interests affect judicial philosophy? What place may an American Everyman find in a world governed by corporate, financial, and industrial powers? What is it about the cult of personality that grips our national dialogue?

In the song's refrain, Joe Hill never died. Martyrs (true or self-selected) never do. Hill's refusal to identify his lover, presumably a married woman, may be seen as either an attempt to protect her honor or a self-serving effort to create and preserve his own legacy. It worked. Joe Hill became our own form of myth—a peculiar blend of Wat Tyler, John Brown, and Billy the Kid. Mr. Lougee's narrative is worth an afternoon of your holiday reading to reach your own conclusions.

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Will drafting

By Steven T. O'Hara

Is there such a thing as a simple Will? Most would agree there is, although I prefer the term "basic Will." For purposes of this article, I submit that all Wills are complex in the following sense: Our clients' lives are complex, and their Wills reflect their lives.

A Will is about relationships. The relationships reflected in a Will include not only the relationships between client and beneficiaries but also the relationship between client and attorney. If the attorney-client relationship is deficient because the attorney or client or both will not invest the time necessary for proper Will drafting, then the Will may be deficient.

If you want to experience the satisfaction of Will drafting, restrict this part of your practice to clients who are willing to invest the necessary time to the process and then reserve sufficient time for the work.

Will drafting might be simple where you do all the exhausting work necessary to complete a Will for a client and then the next client who calls requesting a Will has the same facts and objectives. For me, this event has never occurred.

A major complexity in connection with Will drafting is determining the facts about the client's assets and liabilities. Clients will naturally resist this part of the process because they are very busy with other matters and believe that a Will is a standard document that does not need to be tailored to particular circumstances. We all hear the question/comment: "Don't you just have a form for that?"

A client's request to sign a "form Will" is a request for a legal document in a vacuum. It is like calling a tailor and asking for a suit without providing any details. Just as the tailor needs measurements, so we must take measurements in order to fit the right Will provisions to the client.

Clients may tolerate a fitting for a suit. They may barely tolerate a fitting for a Will. A good bedside manner, so to speak, is an essential part of Will drafting in order to obtain the needed information.

The measurements to be taken include not only property and tax considerations, but also non-financial considerations. For example, the single most important issue in Will drafting may be the client's question: "Who will raise my child?" Here the question of guardianship can be as complex as the client's life.

For our part, we lawyers are sometimes tempted to try to fit our clients into forms, especially for cost considerations. Cost is an important factor. Not every measurement of the client can or should be taken. Nevertheless, we must ignore the apparent security a form suggests and recognize it merely as a starting point.

In Will drafting, one of the first things I focus on is the ultimate taker clause. This clause deals with the following issue: In the unlikely event all of the client's intended beneficiaries predecease him, where does the client want his property to go? For the ultimate taker clause, perhaps the client wants heirs-at-law determined as if the client died intestate a resident of his last domicile in the USA at the time for each distribution under the clause. Cf. AS 13.12.101, AS 13.12.707(b)(2), and AS 13.12.711. Or perhaps the client wants to name one or more charities. But what if one or more of the named charities is no longer in existence when the ultimate taker clause would be applicable? So the client may need to identify an ultimate, ultimate taker by providing that the fiduciary shall then select, at the time the ultimate taker clause would be applicable, one or more charitable organizations then in existence.

"The relationships reflected in a Will include not only the relationships between client and beneficiaries but also the relationship between client and attorney."

After the ultimate taker clause is discussed, I then return to the expected sequence of events and probe further. For example, suppose the client intends to have three primary beneficiaries, Trevor, Eric, and Spencer. In my mind I consider a matrix as follows:

	Trevor	Eric	Spencer
Trevor			
Eric			
Spencer			

I then seek to determine the client's intent under every possible scenario represented by the columns and rows of the matrix. For example, where Trevor and Eric intersect in the matrix the possible scenarios include the following: (1) both Trevor and Eric survive the client, (2) only Trevor survives but Eric leaves one or more surviving descendants, (3) only Trevor survives and Eric leaves no surviving descendant, (4) only Eric survives but Trevor leaves one or more surviving descendants, (5) only Eric survives and Trevor leaves no surviving descendant, (6) neither survives but both leave one or more surviving descendants, and (7) neither survives and neither leaves any surviving descendant.

The above is what I consider a first level matrix. When the third primary beneficiary, Spencer, is added into the equation the matrix may grow exponentially.

These matrices are in my mind by force of habit. They are a tool to discipline thinking and help with due diligence. I do not dare to bore the client about matrices. With what I hope is a good bedside manner, I probe and retreat and probe and retreat over as many discussions as is necessary until I have the client's intent under every possible scenario. The goal is to not drive the client away or crazy in the process of drafting a Will that has, so to speak, no leaks and will hold water.

In other words, the arithmetic of Will drafting is that all the information needs to add up to a whole, with no incompletions.

Besides matrices, another tool to keep in mind in discussions with clients about Wills is to presume, systematically, that each named beneficiary will not survive the client's death or the other event giving rise to the transfer of property. These tools also apply in discussions about the ultimate taker clause.

Drafting a Will does not take a particular level of intelligence. To the contrary, I believe Will drafting takes more hard work, measured by time and disciplined thinking, than intelligence.

Wills do not necessarily have complicated provisions. To be clear, the time invested in proper Will drafting may lead to relatively basic provisions, such as the following:

> As of my death, but after providing for the gifts made under Article IV (including pursuant to any Memorandum) and after providing for the payment of estate taxes, if any, and any other charges, the Trustee shall distribute the balance of trust principal as follows: to such of my children Trevor, Eric, and Spencer as survive me, in equal shares, provided that if such a child does not survive me but has one or more descendants who survive me, such descendant(s) shall receive, *per* stirpes, the share such child would have received had he survived me; or in default of such children and descendants, as provided in paragraph I of this Article [the ultimate taker clause].

Remember to advise the client to identify all children in the document because otherwise a child who is left out of the estate plan may argue the omission was not intentional. Cf. AS 13.12.302. If the client wants to treat all children the same, consider the following for additional simplicity:

> As of my death . . . the Trustee shall distribute the balance of trust principal to my descendants who survive me, *per* stirpes, or if none, as provided in paragraph I of this Article [the ultimate taker clause].

The above provisions illustrate a Revocable Living Trust that is designed as a Will substitute. See AS 13.12.511. For purposes of this Article, a "Will" includes such a Revocable Living Trust.

We can never let our guard down in budgeting time for Will drafting and due diligence because as soon as we think that all Wills are standard the client will want something asymmetric, such as the following:

> As of my death . . . the Trustee shall distribute the balance of trust principal as follows:
>
> 1. One-half (50%) to such of my children Trevor and Eric as survive me, in equal shares, provided that if such a child does not survive me but has one or more descendants who survive me, such descendant(s) shall receive, *per* stirpes, the share such child would have received had he survived me; or in default of such children and descendants, to my descendants who survive me, *per* stirpes, or if none, as provided in paragraph I of this Article [the ultimate taker clause]; and
>
> 2. One-half (50%) to my child Spencer if he survives me, or if he does not survive me, to his descendants who survive me, per stirpes, or if none, to my descendants who survive me, per stirpes, or if none, as provided in paragraph I of this Article [the ultimate taker clause].

After a provision like one of the above, the document may have hold back language for trusts for Trevor, Eric or Spencer or all. *See* O'Hara, *Gifts In Trust May Be More Valuable, The Alaska Bar Rag* (July Sept. 2008). *Cf.* O'Hara, *One Pot Trust vs. Multiple Trusts*, *The Alaska Bar Rag* (July Aug. 1991).

I recommend clients consider including in the document a definition of "*per* stirpes." *See* O'Hara, *Per Stirpes, The Alaska Bar Rag* (Jan. Feb. 1991). *Cf.* AS 13.12.709(c) and AS 13.12.701.

As discussed, the Will needs to address the possibility of substitution of beneficiaries. For example, if a child were to die before the client, the Will provides for one or more substituted beneficiaries. If one or more of the substituted beneficiaries also predeceases the client, the Will continues with one or more additional substituted beneficiaries, ending with the ultimate taker clause. Therefore, to avoid possible confusion with Alaska's statute that deals with substitution of beneficiaries, AS 13.12.603, I recommend clients consider including the following provision:

> No anti-lapse statute shall apply to any disposition of property under this instrument (including pursuant to any Memorandum); and the interest of any beneficiary who does not survive me and the date on which his or her interest in such property becomes indefeasibly vested shall fail without substitution, except as provided in this instrument.

The provisions contained or referenced in this article are for illustration purposes only and must not be used without being tailored to the applicable law and circumstances of the client. For a copy of the articles cited above, please call Karen Burgess at Bankston Gronning O'Hara, P.C. (907 276 1711).

It takes logic and due diligence to identify the information needed to draft a Will and then tailor a document to the client's facts and objectives. With a client committed to the process and sufficient time reserved, Will drafting is intellectually stimulating although exhausting work. Indeed, I believe that if I am not exhausted immediately after the Will signing, I may not have done my job. In other words, if the Will turns out to be basic after being tailored to the client's facts and objectives, that is great! But I still would not describe the document as simple.

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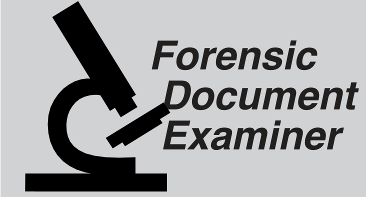

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Alexander Hamilton and Albert Einstein drop 'The Big One' on James Madison

By Peter Aschenbrenner

"I'm sure glad this isn't happening at Montpelier," Jimmy wipes his brow.

"Monticello always offers a comfortable retreat, if I may also," Martha 'Patsy' Jefferson Randolph gestures, "commend to your comfort, Mrs. Madison, our magnificent parlor. Enjoy the view of the Blue Ridge Mountains."

"You didn't invite John Marshall did you?" Dolley asks. "I know how these miscarriages of hospitality – " and here she gives me a stern look – "amuse Alaskans."

"I would have staged this in the Supreme Court chambers," the former governor explains, "and threatened to haunt the premises if my request were denied."

"You're much too young to compete with the likes of us," Jimmy sighs. "Let's get started. Professor?"

"James Madison," I nod fourth-President-wards, "suffered two significant defeats in his life."

"August 24, 1814 was one. And I was there." Dolley Madison ticks off 'Is Washington Burning?' "as if the date weren't singed in collective memory."

"You want me to rethread February 2, 1791, the other worst day of my life," Madison clears his throat. "I had a great argument. America didn't need a national bank. Especially one that would sell its stock to Congressmen."

"That's my cue. Stockjobbers," The Master of Monticello appears. "Since I order claret by the barrel, I have the pleasure of decanting and, thereby, aspirating my esters." He tugs at the velvet cord of the dumbwaiter he invented. "En haut!"

"Now as to Hamilton's bank, this was the end of the first Congress. He, of course, swept everyone off their feet with his Report on Public Credit," Madison continues. "And the Continental Congress chartered a bank in 1781."

"A precedent!" Jefferson calls out. "You don't mind if I fence à la Hamlet, Act Five, do you?"

"So I said," Madison ignores him, " 'if the power to establish a national bank were not in the Constitution, the exercise of it involves the guilt of usurpation, and establishes a precedent of interpretation leveling all the barriers which limit the powers of the general government and protect those of the state governments.' "

" 'A touch,' Jefferson exaggerates the mortal wound on behalf his presidential guest. " 'A touch, I do confess.' "

"And then I figured," Madison confesses, "why not throw the Tenth Amendment into the debate?"

"It takes a smart lawyer to base an argument on a constitutional amendment not yet ratified," Jefferson opens the second bottle of 'Cuvée TJ' Bordeaux. "It takes an even smarter one to get his own amendment thrashed, and thrashed for good, on its maiden essay."

"I'm sure," Dolley signals *pace pace*, "my husband can play his role without further dramatics. Even from a presidential host," she sniffs. "After all, if I seek presidential enterprise –"

" 'Gertrude'," Jefferson interrupts Madame Madison, " 'do not drink!' and now," he adds, "I will bow myself into a state of repose."

"Of course," the former governor of Alaska points out, "you had already, by that stage in your speech, reminded everyone of your assurances at the Richmond ratifying convention. That was June, 1788. 'State responsibilities exercised at the time of ratification could never be fulfilled by federal action. Without text-based authority.' Or words to that effect."

"John Marshall made the same concession and Luther Martin read that passage back to the Chief Justice at oral argument in *McCulloch*. Thirty-one years after Richmond," Madison sighs. "Ah, the convention. I remember it well. There we were, side by side, Madison and Marshall, anti-federalists to the left of us, anti-federalists to the right of us. Into the valley of death – "

"Allow me," I refer to the Annals of Congress. "In 1791 you 'read sundry passages from the debates of the Pennsylvania, Virginia and North-Carolina conventions, shewing the grounds on which the Constitution had been vindicated by its principal advocates," – 'that's us,' Madison sighs, " 'charged on it by its opponents.' "

"But he said, and here I refer to Secretary of the Treasury Hamilton," Dolley declares, "it's all in the 'nature of government.' 'Powers contained in a constitution ought to advance the public good. This rule does not depend on the particular form of a government, or on the particular demarcation of the boundaries of its powers, but on the nature and object of government itself.' "

"Oho!" Jefferson sings out. "I've got a great metaphor. Here's Hamilton and Madison and their new constitution."

"Daddy and were I living in Paris at the time," Patsy explains.

"And it's like," Jefferson continues, "the constitution is a new car. Brand spanking new. And Madison, here, is writing up the owner's manual with the manufacturer's warranties. All the paperwork for the new owner. But – "

"Hamilton," Madison picks up the thread, "takes me out for a test drive. He pushes the car to speeds I never thought possible. He drives it through running water and over three school buses parked end to end."

" 'Alexander!' " Our Alaskan governor imitates Madison's horror at the bank bill. " 'The constitution was never designed to deliver such performance! You may tempt danger itself! How you would satisfy the customer's transportation needs!' "

" 'Mark the reasoning on which the validity of the [bank] bill depends'," Madison ignores Gov. Palin's provocation, "as I prefer to do my own quotes. 'To borrow money is made the *end* and a bank *implied* as the *means*. If implications thus remote and thus multiplied can be linked together, a chain may be formed that will reach every object of legislation, every object within the compass of political economy.' "

"Couldn't you see where this was going?" I blurt. "If Congress passed," and here I supply the gesture universally understood to freight the subjunctive, "the bank bill, you would thereby concede Congress a free hand with crisis and opportunity. Rendering Hamilton's 'nature of government' reasoning triumphant!"

The assembly takes this in.

Patsy picks up the thread.

"Daddy wrote a constitutional amendment to give Congress the power to govern the Louisiana Territory. And it never even got out of committee."

"Five different versions," Jefferson tenders a generous pour all-round. "I was the first and only president to honor the Tenth."

"I can't believe I threw the Tenth into the heat of battle," Madison sighs. "To quote myself: 'The power exercised by the [bank] bill was condemned,' I said, 'by the explanatory amendments proposed by Congress themselves to the Constitution.' "

" 'Every new Legislative opinion'," Jefferson exults, "and these are your words, thirty-seven years on, 'might make, a new Constitution.' I got the Louisiana Territory and the Lewis and Clark expedition to my credit. And without any amendment!"

"And I tried to fight the British without a national bank!"

"I guess I'm not just that doctrinaire!" sniffs our host.

"It gets worse," Madison sighs. "We assured the delegates in Richmond, 'This is the government you're getting. If we want more powers we'll come back and ask for more.' I promised them a Tenth – okay we numbered it the Twelfth at the time – to stop the Industrial Revolution. Let's say the constitution lacked the treaty-making power. 'The defect could only have been lamented or supplied by an amendment of the Constitution.' That's what I said."

"That's the end of 'nature of government' reasoning," I wheel my Alaskan push-cart behind Madison. "If the Tenth only worked as you thought it would," I mumble, "as Virginians do not listen when Alaskans are talking."

" 'No power,' " Madison continues, " 'not enumerated could be inferred from the general nature of government.' "

"The federal government has no authority whatsoever to deal with the future because states *can* deal with the future. *Could, might, perhaps*," Dolley recites. She signals for a refill. "Illegal use of modals, that's what the referees are signaling."

" 'The Twelfth,' you said, 'excludes'," I read from Elliot's Debates, " 'every source of power not within the constitution itself.' "

"The choice was clear," Madison concludes. "Either Hamilton's 'nature of government' – 450 cubic inches of raw power, four on the floor, and fuzzy dice – or a rickety horse-and-buggy with a red lantern suspended on the rear axle. The Madisonian Anti-Future-Mobile. Who'd you think won?"

"Madison shouldn't have brought up the topic at all," I ask Jefferson. "Right?"

" 'Go, go to your fancy party'," Jefferson answers. "If I can channel Jerry Seinfeld's Uncle Leo. 'Go ahead Hamilton,' I would have said. 'Laugh it up. "Nature of government" reasoning isn't prohibited now; but it will be as soon as Virginia ratifies the Twelfth; okay, the Tenth Amendment.' That's what you should have said."

"But I insisted that a vote for the bank bill was a vote to trash the Tenth. I rendered the Tenth 'dead on arrival'."

"So that explains why Jefferson has written," I add, 'We need amendments to the constitution to make it keep pace with the advance of the age in science and experience.' "

"This is my husband's last concession," Dolley intervenes. "And then we're on to the crudités. Jefferson wrote my husband, and this is September 6, 1789," she footnotes, " 'don't bother thinking that the constitution – or anything – will last more than nineteen years.' Or words to that effect."

"A 'Jefferson generation,' " our host smiles.

"So any majority only has the use of the earth (and everything it offers) for the interval consigned to them."

"Usufruct," Jefferson quotes himself. "Fresh vegetables, anyone?" he platters the opening course.

"Well, that certainly wraps things up," Governor Palin declares. "Just one question, if I may," she turns to our fourth President. "Did you really think that Albert Einstein was asking for a constitutional amendment when he suggested a nuclear weapons program to President Roosevelt?"

"This offends you," Madison asks, "because you're not in favor of nuclear disarmament?"

"It offends me because Alaska would not have the chance to exploit that 'source of power'."

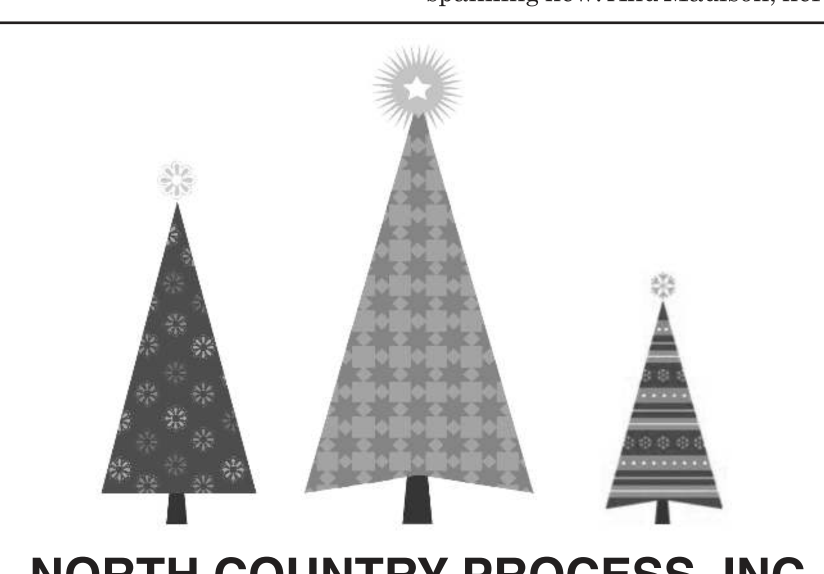
"Roosevelt proceeds as did Jefferson in 1803," I scroll through the options. "He proposes a constitutional amendment – in secret of course – to authorize federal development of fission-based weapons."

"But the states reject the amendment and each of our forty-eight states builds its own weapons," the governor picks up the thread.

"Whoa!" I point out. "Alaska and Hawai'i, as territories, would be losers in that arms race!"

"Each would be obliged," Dolley Madison purrs, "to rely on its own – how do I put this? – force of nature. Anything to suggest for Alaska, Governor Palin?"

"An unstoppable force?" Dolley's dialogue partner studies her nails. "I'm sure something will come to mind."



Lessons from handball

By David Graham

It seems to me that the games we play sometimes teach us lessons that can be important to the rest of our life. Handball, for example, is a game I love to play that has a number of parallels with litigation. In case you're not familiar, handball (at least the four-walled version) is similar to racquetball, except you use your hands instead of a racquet to hit the ball. It's played in a closed court with a ceiling, and all the surfaces may be used during play.

Some of the similarities with litigation include the following: The game is essentially a fight between the parties. The nitty-gritty of the battle takes place in the court(room), and that's where the outcome is determined. In handball, just like litigation, one can improve their game by thinking ahead to anticipate the angles and how they will affect the outcome; in the end, however, the decision, especially with equally skilled players, is often dependant on which way the ball bounces and how the referee makes the call. Just like litigation.

Handball has its own set of rules of procedure that control the way the game is played. There are judges, or referees, empowered to make decisions governing sometimes complicated circumstances, many of which must be interpreted in connection with the particular set of facts and involve the exercise of judgment. There are even procedures for the appeal of the referee's decisions. At some of the higher level tournaments, especially for the more important games, formally trained and certified referees officiate. These referees are trained in the finer intricacies of the interpretation and application of the rules.

Recently, while getting ready to play in a tournament in Kauai (I know, you must all be feeling sorry for me already) I was playing a 'friendly' game of doubles. Doubles is played with four players on the court at the same time. My partner in this particular game was a very good and experienced player who was carrying me along quite well, and we were progressing nicely towards chalking up a win.

Our opponents that day were also good players, and one of them was one of those well-trained and experienced referee, a fellow who is also a very good and experienced handball player from Seattle. This guy goes to (and often wins) more tournaments than anyone else I know. He's even been to some of the handball tournaments that are held up here in Alaska. He is also one of less than a half dozen people who are certified as a level 5 referee, the highest level in handball. And he's is serious about his job of educating the rest of us about the rules and helping the rest of us with understanding the proper interpretation thereof.

A quick primer on the handball Rules may be necessary to follow the discussion below. If you want to read the full text of the rules, go to http://www.handball.org/rules.html. Rule 4.6 G says that any touching of the ball by a player other than the one making a return, before it touches the floor the second time, is a point or out against the offending player. The Rule contains an exception when the ball hits the opposing player before it hits the front wall, but there are no listed exceptions after the ball comes off the front wall. Thus, if you get hit by the ball that you or your partner just played before it is hit by someone else or hits the ground twice, even if you can't see it coming or can't get out of the way, you lose the rally. Therefore, even though there is not a rule that specifically says so, the level 5 referee and common sense tells us that a player therefore has the right to try get out of the way of the ball to avoid being hit.

Rule 4.7 provides that a 'dead ball hinder' occurs if the defensive player makes a reasonable effort to but is unable to move (or move fast enough) to get out of the way of the offensive player (the shooter) so that she can make her shot. That means a player has to give the shooter room to make her shot at the ball the way she wants to hit it, including room for any follow-thru after hitting the ball. If the shooter perceives her opponent to be in the way of taking her shot or the follow-thru swing, she can (but is not required to) hold up for her own or the other player's safety, immediately call a hinder, and not play the ball. "A hinder call stops the play and usually voids any situation that follows, such as the ball hitting a player who stopped playing because of the call." If a dead ball hinder occurs, the rally is replayed.

Finally, Rule 4.8 provides that if a hinder occurs because the defensive player is either 1) able to but does not move sufficiently to allow his opponent her shot, 2) moves into a position so as to interfere with the shooter taking her shot, or 3) moves across the shooter's line of vision just before she strikes the ball, it's an "avoidable hinder". If an avoidable hinder occurs, it costs the offending player the rally.

Of course, just as in litigation, conflicts can arise in the interpretation of the rules. One example I will discuss is where a defensive player moves to get out of the way of a ball that he perceives might hit him, but that movement clearly interferes with the shooter's taking her shot. Another is where a defensive player does not move to get out of the way and is hit by the ball after the shooter takes a safety holdup.

In our game that day, both of those situations occurred. The first occurred when one of our opponents ended up sprawled out on the floor after he dove for and successfully retrieved my partner's well-hit ball in the front court. However, his shot came right back at him after hitting the front wall. If he had stayed down, my partner would have had a perfect set-up to score a point because the opponent was still on the floor and would not have been in a good position to return the next shot. Instead of staying put to allow my partner to make the point, however, our opponent jumped up after he made his shot and got back into a playing position. But in doing so he clearly interfered with my partner's ability to take his shot.

Since my partner couldn't hit the ball because of the hinder, he argued that we should be awarded the point because the opponent's movement violated Rule 4.8. My partner pointed out that a referee would likely have perceived that the ball would have passed over the top of his body had he stayed down, and the opponent's getting up was really just to improve his position for an upcoming shot. On the other hand, our opponent on the floor certainly could have thought that there was a reasonable possibility that the ball would hit him if he remained where he was. The level 5 referee (who of course had an interest in the outcome) pointed out that the right to get out of the way of the ball was absolute, and not having a referee for that particular game, the rally was replayed.

David Graham (l) with handball partner Rich Curtner.

The second came about when I was in a position behind the level 5 opponent, who was the shooter at the time. The ball had just been hit by my partner and after hitting the front wall, it came across the court in my direction. I'm up against the right side wall just behind the shooter, who is in position to hit the ball. I anticipated that the ball could hit me just before hitting the ground for the second time, but my opponent was close enough in front of me that I couldn't get a good enough look at the path of the ball to see its exact path. If I moved out of my position against the wall to get out of the path of the ball, I was pretty sure it would have caused a hinder. And, my opponent could certainly have viewed my movement as an avoidable rather than a dead ball hinder, as I would have been moving into a position that would interfere with the shooter taking his shot. But there was also a danger that if he did miss the ball and it struck me before hitting the ground the second time, I would lose the point under Rule 4.6.

Since he wasn't the type of player that often missed the ball, I felt it was very likely that his taking the shot would prevent the ball from hitting me, and I stayed put to give him his shot. At the last moment, however, he decided to call a safety hold up. Apparently he felt I was close enough behind him that I might have interfered with his swing. As a result, the ball hit me on my big toe before hitting the ground.

My partner thought the point should be replayed. He pointed out, in the same manner as some attorneys might argue about a point of procedure, that since the shooter had taken a safety hold-up before the ball had hit my toe, this stopped the play at a point before the ball hit me and voided the situation that followed. The level 5 referee took the position that our team should lose the point, and in part because of his qualifications, he prevailed. The fact was that I had not "stopped playing because of the [hinder] call" since it all happened so fast and I was simply standing still to try to keep out of his way.

But the result of these calls didn't sit well with my partner, and started me thinking about the finer points of the ethics of playing handball. In my contemplations, perhaps I'll learn something about the finer points of ethics in litigation, too. If not, at least I might receive some insight about when to appeal.

New at the Law Library:

American Indian Law Collection on HeinOnline

With more than 700 unique titles and 350,000 pages dedicated to American Indian Law, this collection includes an expansive archive of treaties, federal statutes and regulations, federal case law, tribal codes, constitutions, and jurisprudence. This library also features rare compilations edited by Felix S. Cohen that have never before been accessible online. The collection is available on public law library computers statewide.

Alaska-specific material includes legislative history materials for Alaska Native Claims Settlement Act amendments; constitutions, by-laws, and corporate charters of scores of native villages and other tribal entities; decisions, statutes, and regulations; and much more. As with all other material on Hein, the collection is searchable and image-based, so it looks just like the print source material. Come visit your local law library to check out this newest addition to HeinOnline.

Coming soon: Anchorage Law Library Remodel

The Anchorage Law Library is getting a face lift, and work is scheduled to begin in early 2012. We expect the library to remain open throughout all phases of the remodel, but we will have to pack up and move our collection while each area of the library is under construction. The availability of print resources may be somewhat limited during the project. Stay tuned for more information as things develop!

Bar People

Bar People: if you have changed firms or relocated to another city, and would like this information listed in the Bar Rag, send an email to oregan@alaskabar.org or info@alaskabar.org.

Gayle Horetski has retired from her position as Assistant Attorney General with the Commercial & Fair Business section in Juneau.....**Karen Bendler** retired as a magistrate with the Alaska Court System in Kotzebue.....**Laura Bottger** has left the Dept. of Law and has joined the court system as the new Court Rules Attorney.....**Pamela Basler is** now the Executive Director of the Anchorage Equal Rights Commission. She succeeded Barbara Jones who is now the Municipal Ombudsman.

Chris Christensen, former Deputy Administrative Director, with the Alaska Court System, is now with the University of Alaska.....**Sarah Felix** has retired from the Attorney General's Office and relocated in Oregon.....**Dan Fitzgerald** is now with the North Slope Borough, in the Anchorage office..... **Elizabeth Fleming**, formerly with Barokas Martin & Tomlinson, is now with the District Attorney's Office in Kodiak.

Ken Ford, formerly with the Municipality of Anchorage, has relocated to Montana.....**Jessica Graham**, formerly with Alutiiq Corp., is now Deputy General Counsel for GCI....**Pamela Keeler**, formerly with Alutiiq Corp., is now with Bankston Gronning, O'Hara.....**Suzanne Lombardi**, formerly with Nelson, Flint & Lombardi, has opened the office of Lombardi Law, LLC.....**Paul Malin** has retired from the Public Defender Agency, and is now with the Law Office of Christine Schleuss.....**Amy MacKenzie**, formerly with Perkins Coie, is now with BP Exploration (Alaska) Inc.....**Lindsay Van Gorkom**, formerly with the Alaska Court System, is now with the P.D. in Anchorage.....**Ron West** has relocated to Arizona.

Gregory Fisher, a partner with Davis Wright Tremaine LLP in its Anchorage office, has been appointed to the Board of Directors for the Ninth Judicial Circuit Historical Society. Mr. Fisher was admitted to the Alaska Bar in 1991 and the Arizona Bar in 2002. He is a former lawyer representative from the District of Alaska to the Ninth Circuit Judicial Conference, and previously served as the President of the Alaska Chapter of the Federal Bar Association. Mr. Fisher is a former law clerk for the Honorable Barry G. Silverman, United States Court of Appeals Ninth Circuit, and before that for the Honorable John W. Sedwick, United States District Court Alaska. Mr. Fisher is a frequent lecturer on law and procedure, and has authored several articles in national and regional journals, including an article commemorating Alaska's 50th Anniversary published in *The Federal Lawyer* and an upcoming article celebrating Arizona's Centennial that will be published in *The Arizona Attorney.*

Loren P. Hildebrandt has accepted a new associate position at the Law Office of Hozubin & Moberly, 310 K St., Ste 405, Anchorage 99501. His new telephone number is 907-2766-5297. He also is the New Lawyer Liaison on the Alaska Bar Board of Governors.

Ken Lougee formerly of Fairbanks has written a book on the trial and trial errors in the Joe Hill case. Joe Hill was a labor songwriter, executed by the State of Utah in 1915. The book entitled "Pie in the Sky:How Joe Hill's Lawyers Lost His Case, Got Him Shot and Were Disbarred" is available on line at Amazon or Barnes and Noble.

The book should be of interest to the Alaska Bar as it contain vignettes of Judge Kleinfeld, Judge Beistline, Rick Friedman, Edger Paul Boyko, RaeJean Bonham, and Frank Turley. Mr. Lougee only regrets that he was not able to reference the late, great Don Logan.

Stoel Rives Anchorage attorneys named to the Best Lawyers in America Directory

Stoel Rives LLP, a U.S. law firm, today announced that Joseph J. Perkins, Jr. and James E. Torgerson of the firm's Anchorage office have been selected by their peers for inclusion in the 2012 edition of The Best Lawyers in America® (Copyright 2010 by Woodward/White, Inc. of Aiken, S.C.). Recognized by both the legal profession and the general public as a leading guide to legal excellence in the United States, The Best Lawyers in America selects attorneys based on a comprehensive survey in which thousands of the top lawyers in the U.S. confidentially evaluate their professional peers.

Joe Perkins, a partner in the firm's Environment, Land Use and Natural Resources group, received recognition in the Mining Law, Natural Resources Law and Oil & Gas Law categories. Joe focuses his practice on the representation of mining companies, oil and gas companies, Native corporations and financial institutions in connection with mining and oil and gas transactions, properties and projects. He also has been retained as an expert witness in cases involving complex questions of mining law, oil and gas law and professional responsibility.

Jim Torgerson is a partner in the firm's Litigation group and the managing partner of the firm's Anchorage office. Jim was ranked in the Commercial Litigation, Litigation-Environmental and Professional Malpractice categories. Jim has litigated a wide variety of disputes, including defending clients against claims of alleged business torts, contractual breaches, improper employment actions and professional negligence. Before joining Stoel Rives, Jim was managing shareholder of Heller Ehrman LLP's Anchorage office (10 years), chief of the civil division (four years) and chief of the criminal division (two years) in the United States Attorney's Office for the District of Alaska, and a Special Assistant Attorney General for the State of Alaska in Washington, D.C.

Jim Torgerson

Geraghty named Best

Best Lawyers, a peer-review publication in the legal profession, has named Michael C. Geraghty as the "Anchorage Best Lawyers Construction Law Lawyer of the Year" for 2012.

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 lawyers confidentially evaluate their professional peers. The current, 18th edition of The Best Lawyers in America (2012) is based on more than 3.9 million detailed evaluations of lawyers by other lawyers.

The lawyers being honored as "Lawyers of the Year" have received particularly high ratings by earning a high level of respect among their peers for their abilities, professionalism, and integrity. Geraghty is with the DeLisio Moran Geraghty & Zobel, PC law firm.

Michael C. Geraghty

Perkins Coie opens Taiwan office

Perkins Coie has opened a new office in Taipei, Taiwan, to expand Perkins Coie's Asia practice and to better serve its Taiwan-based clients, particularly in patent litigation and other intellectual property matters. The office is located in the Taipei 101 Tower.

The Taipei office marks Perkins Coie's third office in Asia. The firm's other Asia offices, in Beijing and Shanghai, represent Chinese and multinational companies in intellectual property matters in the areas of technology and life sciences, corporate finance and securities, international business and personal planning.

Perkins Coie also announced it has been listed in the 2011-2012 U.S. News – Best Lawyers "Best Law Firms" with first-tier rankings in 18 practice areas nationally and 106 practice areas in 10 different major metropolitan markets including Alaska, Chicago, Colorado, Idaho, Madison, Phoenix, Portland, San Francisco, Seattle and Washington, D.C.

National first-tier ranked practices include Biotechnology Law, Commercial Litigation, Copyright Law, Corporate Law, Employment Law – Management, Energy Law, Equipment Finance Law, Litigation – Antitrust, Litigation – Construction, Litigation – Intellectual Property, Litigation – Regulatory Enforcement (SEC, Telecom, Energy), Litigation – Tax, Mass Tort Litigation / Class Actions – Defendants, Patent Law, Securities / Capital Markets Law, Technology Law, Timber Law and Venture Capital Law.

Perkins Coie was also named the U.S. News – Best Lawyers "Law Firm of the Year" in Venture Capital Law. The firm is among the top 20 firms with the most first-tier metropolitan rankings and has the most first-tier rankings in Seattle, where the firm is headquartered, with 42 practices.

Bar People

Bailey receives pro bono service award

By Monica Jenicek

Bailey's Award Called Long Overdue

State of Alaska Attorney General John J. Burns presented the second annual Attorney General's Award for Pro Bono Service to attorney Allen Bailey for his dedication to providing volunteer legal representation to victims of domestic violence.

Burns presented the award on October 3 at an Anchorage Museum event sponsored by Abused Women's Aid in Crisis, proclaiming October as Domestic Violence Awareness Month in Alaska. Burns encouraged "all Alaskans to stand together against domestic violence in our state, offer support and understanding to survivors, take action to end the cycle of domestic violence, and Choose Respect."

Bailey has been a member of the Alaska Bar since 1974. Burns noted that Bailey "is a passionate and committed advocate for victims of domestic violence, and this is reflected in his work as a reporter, former municipal prosecutor and family attorney."

He has taken on countless domestic violence pro bono cases through the Alaska Network on Domestic Violence and Sexual Abuse since its inception in 1980 by either personally representing a victim in a case or mentoring another attorney.

His service goes beyond legal representation. Bailey has been vocal in demanding increased resources and legal access for victims of domestic violence.

He joined the Alaska Women's Aid in Crisis board in 2006. He served as president-elect for the 2008-09 term and is president for the 2010-11 term.

Starting in 2007 he has been the liaison for the Family Law Section to the American Bar Association's Commission on Domestic Violence. He served on the Section's Nominating Committee, acted as the book editor on the Publications Development Board, and has written many articles on domestic violence issues.

Since 2008 Bailey has chaired the American Bar Association's Family Law Section's Custody Committee; he also currently serves on the Section's Domestic Violence Committee. In September, he was elected to the American Bar Association's Family Law Council representing Region 6, which includes Alaska, Hawaii, Washington, Oregon, California and Nevada.

Bailey (l) receives award.

Bailey is also a strong advocate for training a new generation of lawyers in domestic violence issues. He is a frequent contributor to the national listserv for domestic violence attorneys, sharing his extensive knowledge and expertise with attorneys across the country. He has also served as an observer to Uniform Law Commission committees on domestic violence issues, and he has been a trainer and attendee at every single Alaska Network on Domestic Violence and Sexual Abuse continuing legal education program.

Burns said Bailey "is thorough, calm, and understated, yet there is no missing his passion. His contributions and impact go far beyond the life-saving work he provides to his clients. This is a long overdue award."

Burns noted that Alaska attorneys donated the equivalent of $826,000 in free legal services to victims across the state in 2011. "This is important because we've learned that one of the few concrete things our legal system can do for any given victim of domestic violence that actually reduces the likelihood of future victimization is to provide access to civil legal services," he said. Some of these legal services come from the public sector, through non-profit organizations like Alaska Legal Services Corporation, which last year served nearly 500 families experiencing domestic violence. Other legal services come from private attorneys, like Bailey, whose pro bono work directly impacts their bottom line.

Burns accepts award for "Choose Respect" campaign

At the October 3 luncheon, Suzie Pearson, Executive Director of AWAIC also presented the State of Alaska with an award recognizing Gov. Sean Parnell's "Choose Respect" public education campaign, aimed at publicizing the Governor's initiative to end the epidemic of sexual assault and domestic violence in Alaska. The "Choose Respect" campaign, through print, media, and other advocacy, calls on all Alaskans to model respect for one another; to choose to speak out against attitudes and behaviors that degrade and demean. In accepting AWAIC's award on behalf of the Governor, Burns said, "What is both ironic and prophetic is that those two simple words – a verb and a noun – 'Choose Respect' - summarize what the battle against domestic violence and sexual assault is all about. By not choosing respect, perpetrators and abusers dehumanize and demean others."

Burns passed out colorful wristbands with the words "Choose Respect" written in English and in other languages commonly spoken in Alaska – Yupik, Inupiaq, Spanish, Tagalog, Korean and Russian. He encouraged the luncheon-goers to wear the wristbands, but more importantly, "to live the words through your actions and share the message with others."

Other activities and events recognizing October as Domestic Violence Awareness Month were held statewide, in Dillingham, Ketchikan, Kodiak, Fairbanks, Sitka, Barrow, Kenai, Bethel, Juneau, Cordova, Valdez, Glenallen, and Kotzebue.

Seven Davis Wright Tremaine lawyers selected as 2011 Alaska super lawyers

Seven lawyers from the Anchorage, Alaska office of Davis Wright Tremaine LLP have been selected by their peers for inclusion in the 2011 edition of Alaska Super Lawyers. The Super Lawyers list, published by Thomson Reuters Legal, is identified through an extensive research and survey process, starting with peer nominations. Only five percent of the lawyers in Alaska are named to this list.

In addition to being named to the Super Lawyers list, special recognition was attributed to David W. Oesting, a partner and litigator, who was named to the state's "Top 10" list. For a complete listing of Davis Wright's Alaska lawyers named to the 2011 Super Lawyers list, see below.

Jon S. Dawson – Business/Corporate

Gregory S. Fisher – Employment & Labor

James H. Juliussen – Employment & Labor

Barbara Simpson Kraft – Business/Corporate

David W. Oesting – Business Litigation

Joseph L. Reece – Business/Corporate

Robert K. Stewart, Jr. – Employment & Labor

Gleason confirmed

Congratulations to Judge Sharon Gleason on her confirmation by the Senate to serve on the U.S. District Court for the District of Alaska on an 87-8 vote Nov. 15.

Judge Gleason was nominated to serve as a U.S. District Court Judge for the District of Alaska, filling a vacancy that arose when Judge John Sedwick accepted the role of Senior Judge on the District Court. She is the first Alaskan woman to serve on the federal bench.

AAWL Luncheon Panel: Over 100 members of the Anchorage legal community braved unseasonably cold temperatures to attend the November 2nd luncheon of the Anchorage Association of Women Lawyers at the Egan Center. The luncheon was presented in cooperation with the Alaska Supreme Court's Fairness, Diversity & Equality Committee and the Alaska Bar Association and featured a panel discussion on the theme "Diversity: Relevant or Outdated? Good Business or Good Will?" Christine Williams, AAWL President, introduced the program, and Justice Dana Fabe offered introductory remarks. Panelists included: Judge Elaine Andrew (Ret.), Anchorage Superior Court; Theresa Cropper, Chief Diversity Officer, Chicago, Perkins Coie LLP; Claire Fitzpatrick, Chief Financial Officer, BP; Eric Fjelstad, Anchorage Office Managing Partner, Perkins Coie LLP; and Denali Kemppel, Executive Vice President & General Counsel, Arctic Slope Regional Corporation. Suzanne Cherot of the law firm of Birch, Horton, Bittner & Cherot served as moderator. The event was underwritten by the law firm of Perkins Coie LLP as part of its ongoing national commitment to fostering diversity in the legal profession. This marks the second year that AAWL has sponsored a luncheon on the topic of diversity, and the second year that Perkins Coie has underwritten the event.

Anchorage District Court Judge Pamela Washington returned to her alma mater, Clark Middle School in Anchorage, to celebrate Constitution Day with over 300 middle school students. Constitution Day—September 17—is the anniversary of the signing of the U.S. Constitution, and was established by Congress as a day to teach about the constitution in the schools. Judge Washington was invited to return to Clark to speak about her life in the law, first as a lawyer and now as a judge. She was also encouraged to share the most important influences in her life, and how they helped her achieve her goals. Following her remarks, students from the Clark legal studies class asked her questions, and she was presented with a key to the school by Clark Principal Cessilye Williams. Here at the close of the event are, L-R, Clark Principal Cessilye Williams, Judge Washington, and Clark Social Studies Teacher Lakhita (Nikki) Banks.

Nominate someone for Bar awards

The Board of Governors is soliciting nominations for its **Robert K. Hickerson Public Service Award and the Judge Nora Guinn Award.** These awards recognize a 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 send your letter stating your nomination and why this person should receive the award.

Judge Nora Guinn

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

The nomination form can be found on the Alaska Bar's website at www.alaskabar.org. Nominations should include a detailed description of the nominee's contributions to Alaska Natives and other Bush community residents.

Please submit nominations by March 1, 2012 to Alaska Bar Association

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

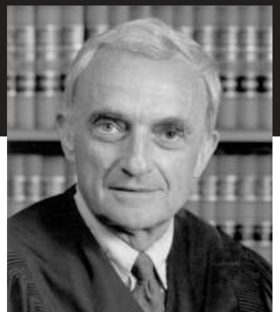
The Board of Governors also presents several other awards and welcomes nominations.

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 Professionalism 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.

Call for nominations for the 2012 Jay Rabinowitz Public Service Award



Jay Rabinowitz

JUDGE MARY E. GREENE
2011 Recipient

BARBARA J. HOOD
2010 Recipient

ANDY HARRINGTON
2009 Recipient

JUDGE SEABORN J. BUCKALEW, JR.
2008 Recipient

BRUCE BOTELHO
2007 Recipient

LANIE FLEISCHER
2006 Recipient

JUDGE THOMAS B. STEWART
2005 Recipient

ART PETERSON
2004 Recipient

MARK REGAN
2003 Recipient

The Board of Trustees of the Alaska Bar Foundation is accepting nominations for the 2012 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, 2012. The award will be presented at the 2012 Annual Convention of the Alaska Bar Association.

Alaska Bar Foundation

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