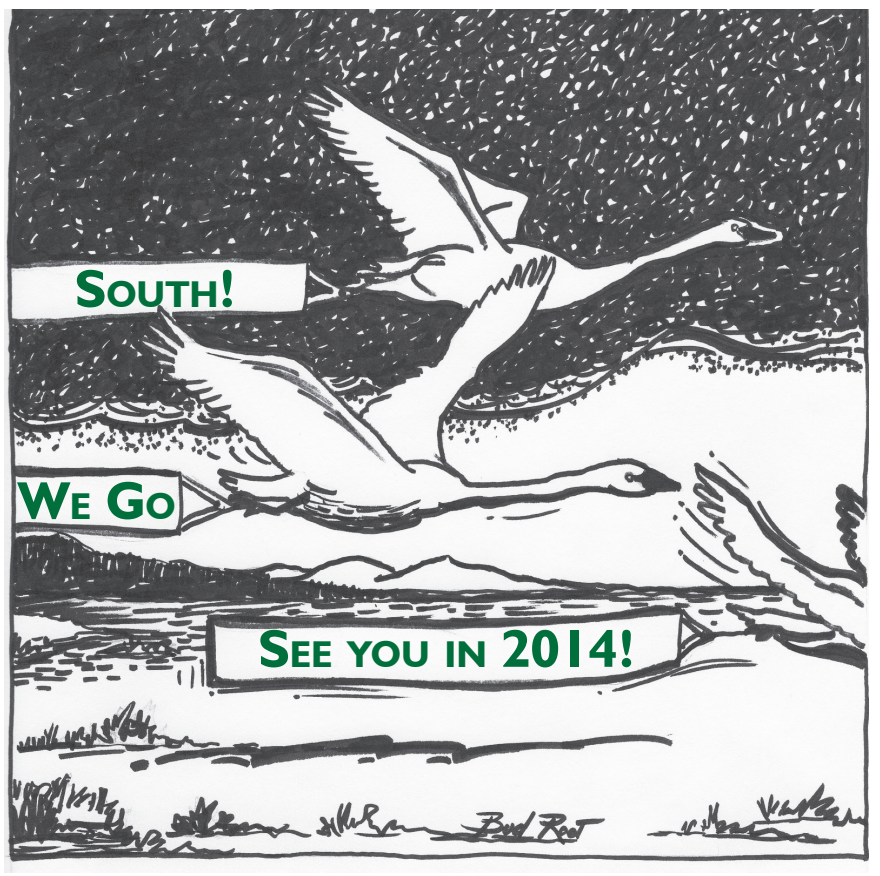
The Alaska
BAR RAG

Dignitas, semper dignitas

VOLUME 37, NO. 4 October - December, 2013

Another year passes



Proposed gun trust regulations make more hassle than offer protection

By Jeff Davis

On September 9, 2013, the Bureau of Alcohol Tobacco Firearms and Explosives (BATFE), prompted by the Obama Administration's clampdown on firearms, issued a notice of proposed rulemaking for new regulations regarding trusts and LLCs acquiring National Firearms Act (NFA) Title II firearms. Due to many Chief Law Enforcement Officers wholesale refusal to sign BATFE transfer forms regardless of the applicant, specialized "Gun Trusts" have recently grown in popularity. Currently, an individual who wishes to purchase a Title II firearm must fill out a BATFE Form 4 in duplicate, submit fingerprints and photographs, obtain the signature of the Chief Law Enforcement Officer (CLEO) in his area, and pay a $200 tax. When a Gun Trust or LLC purchases an NFA Title II firearm, there is no requirement to submit fingerprints, photographs or the signature of the CLEO. The Gun Trust has to also submit all trust documents to the BATFE which the BATFE keep on file. The $200 tax is due no matter who the purchaser might be. Under the proposed regulations, any "responsible person" of a trust or other entity will also have to submit fingerprints and photographs and obtain the signature of the CLEO.

Alaskan clients often have sizeable firearm collections so estate planners and probate lawyers should be aware of both Gun Trusts and these proposed regulations. According to the BATFE, the proposed regulations were prompted by a petition by the National Firearms Act Trade and Collector's Association (NFATCA), who coincidentally has publicly come out against the proposed regulations. The proposed regulations are open to public comment until December 9, 2013. Overall, the regulations are ineffectual and aim to fix a problem that does not exist.

The National Firearms Act was originally enacted in 1934 in the wake of gangland crime, such as the St. Valentine's Day Massacre, in order to regulate gangster weapons, especially

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Sailing the Pacific, the Blakelys take a meeting

By Laurence Blakely

Alaska attorneys Laurence and Mark Blakely departed Homer in May of 2012 on their sailing vessel Radiance, on a planned 2-year journey to circumnavigate the Pacific Ocean. This is a fourth installment of their travels.

We have spent the past couple of months exploring the cultures and contradictions of Vanuatu. We've visited a live volcano, sampled strong kava, befriended quadrilingual schoolchildren, been offered a traditional home in a small remote village, and even attended a conference. The University of the South Pacific's main campus is in Fiji, the regional heavyweight, but the USP law school is in Port Vila, the capital of Vanuatu. I dropped in to check out the campus and had a chat with the law librarian. As it happened, the 2013 South Pacific Law & Culture Conference was scheduled for the following week, so Mark and I decided to enjoy Port Vila for a few extra days so I could attend. This year's theme was "Law and Custom: Conflict and Compatibility."

Custom, called "kastom" in Vanuatu, or rules relating to traditional beliefs, is recognized in Vanuatu's constitution as a source of law. The advisory body on kastom is the Council of Chiefs, whose members are elected by the Vanuatu provinces. As a practical matter, outside the towns of Port Vila and Luganville, kastom governs day-to-day village life.

Most of the speakers at the conference were academics from New Zealand and Australia, but I found one USP student's presentation particularly interesting. Leana Williams, a typically shy and soft-spoken, young Ni-Vanuatu woman, was from Malekula, an island renown for its linguistic and cultural diversity, strong kastom, and cannibalistic history. Leana discussed kastom in the Vanuatu Constitution and examined particular instances of conflict between kastom and law. For instance, the Constitution contains a clause on gender equality, providing that individuals are free from discrimination based on gender. But on several islands in southern Vanuatu, kastom restricts land ownership to men. Leana explained that the Vanuatu Supreme Court confirmed that law trumps kastom in a recent case when it held that land ownership could not be restricted to men. At the end of Leana's presentation, an attendee from Fiji asked her about bride price. Leana didn't seem to understand why the Fijian was asking about bride price. She explained that, yes, bride price had to be paid when a man wanted to marry. The Council of Chiefs has set the maximum bride price at 80,000 vatu (equal to about $800). This was normal, reasonable, expected, and understood. But, Leana explained, an exception could be made in cases where a couple wanted to marry for love. If the groom couldn't afford the bride price, other arrangements could be made—he could pay in installments, for instance. (The Fijian who asked Leana the bride price question was a prosecutor who presented a very interesting paper on using custom as a source of law in sentencing in Fiji.)

Custom, called "kastom" in Vanuatu, or rules relating to traditional beliefs, is recognized in Vanuatu's constitution as a source of law.

Mark and (Laurence) Lolo Blakely at sea during their 850-mile passage to Tarawa in late October.

In fact, gender discrimination in Vanuatu is of course an issue. Leana didn't address the fact that membership on the Council of Chiefs—the recognized authority on kastom—is limited to men. But Roslyn Tor, an elder from Ambae attending the conference, asserts that traditionally, at least in Northern Vanuatu, kastom does not exclude women from leadership roles. She suggests that kastom is being used by certain people as an

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PRESIDENT'S COLUMN

2014 Convention preview: Guaranteed best use of your time

By Mike Moberly

In past columns I first encouraged everyone to identify and devote more energy to things special to them outside their practice, and then to focus on doing something for those around you.

Now, I'd like to encourage you all to do something for yourselves professionally: attend the Bar Convention in Anchorage, May 7-9, 2014. The Convention has something for everyone and has a long list of renowned presenters. Put it on your calendars now.

The Convention will kick off Wednesday with an ethics presentation by Todd Winegar - one of the America's highest rated CLE presenters - entitled "Trials of the Century." The presentation covers trial practice skills and strategies, and the issue of professionalism in trial and litigation generally, through the use of actual film footage, re-creations and verbatim trial transcripts.

Mr. Winegar's previous presentation here in October received glowing reviews – those who attended should encourage their colleagues to do the same. For the afternoon, there will be concurrent presentation sessions designed to offer something for everyone. The Bankruptcy and Immigration Law Sections will provide a session that is relevant to their respective areas of practice, yet appealing to the non-practicing attorney. The Anchorage Association of Women Lawyers will a session, and the final choice of concurrent session presentations is one by Rick Friedman, entitled "The Failure of Moral Courage Among Judges and Lawyers – How we have fallen from Grace," which will surely be thought provoking.

"The Convention has something for everyone and has a long list of renowned presenters. Put it on your calendars now."

As usual, there are the ever-informative presentations of the Alaska and U.S. Supreme Courts' years-in-review by Professor Levenson and Dean Chemerinsky. Attendees of the Reception and Banquet Dinner Thursday night will be further rewarded by a keynote Address by Dean Chemerinsky that he promises will be "very different" than his usual material. Since his past convention presentations consistently demonstrate a methodical, yet entrancing, analysis of Supreme Court decisions, one can only imagine what he has in store for us.

Bryan Garner, Distinguished Research Professor of Law at Southern Methodist University, and lecturer/author on English usage and style, will join us on Thursday to present his most popular seminar: "Advanced Legal Writing and Editing." Prof. Garner focuses on analytical and persuasive writing and the five major skills that good legal writers must develop (attend to find out what they are and how to improve them).

For those who are unfamiliar with Mr. Garner's works, you have been truly missing one of the most influential and inspirational teachers around, deemed "the leading authority on good legal writing." In addition to his teaching, Garner is editor in chief of *Black's Law Dictionary* and the author of many leading works on legal style, including two books co-written with Justice Antonin Scalia. His previous lectures at past Bar Conventions are the most highly-attended ever, and the registration fee for the *entire* Bar Convention is less than the usual attendance price of "Advanced Legal Writing and Editing" elsewhere. Don't miss this opportunity.

Friday has concurrent sessions on "The State of Genetic Science" and "Advanced Constructive Cross-Examination." Stanford Law Professor Hank Greely and Dr. Nita Farahany, Professor of Genome Sciences and Policy at Duke University, will present fascinating sessions that provide not only an overview of the state of genetic science and the law, but how genetic information is being used in court cases around the country. Meanwhile, Roger Dodd, one of the foremost and entertaining presenters on the subject, and co-author with Larry Pozner of *Cross-Examination: Science and Techniques* (the best-selling LexisNexis® book of all time), will present a new program: "Advanced Constructive Cross-Examination."

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EDITOR'S COLUMN

Names

By Gregory S. Fisher

Each person has a name. In probably every instance the occasion for naming was one of hope, promise, remembrance, perhaps a whispered prayer of thanks to a favored saint.

Each name is witness to its own legacy. There's something noble about the naming process. Maybe with the exception of Honey Boo Boo, the act or process of conveying a name calls upon our better nature. People blessed with children become inspired, even if only for that one moment in their lives, to reach for a fitting heritage. Then it's back to the fields.

Each culture or society has its own naming traditions. Across all cultures, however, five are common. It is normal to see children named after a deceased relative. If a child is born near a holiday, he or she might receive a name consistent with that particular holiday.

Children are often named for desirable characteristics reflecting wisdom, intelligence, strength, bravery, or some other favored attribute. We will find children named for a location that bears particular significance. And, of course, children are frequently named for a religious or historical figure.

In most cultures, people have both a first name and a surname. The manner by which the names are presented will vary. For example, in some Asian cultures the surname is presented first. The precise etymology of surname is, surprisingly, uncertain. Most believe that it derives from the Latin, . Others think it is a derivation from Norman French: "sur" namen or street name—the name by which you were known in public. For a long time, probably centuries, surnames were unnecessary. As a peasant from a long line of peasants, it comes as no surprise to me that peasants didn't need surnames. We scarcely needed first names. One mud-stained set of hands is as good as the next.

Once we entered the Roman Age, I would say 200 B.C.E., surnames became a method for classifying people by trades and geography. The Romans were just great at taxonomy.

In those cultures or societies that use surnames, three types seem to predominate. Most surnames reflect a trade, occupation, or business: Cooper, Miller, Fisher, Callier, Farrier, and so on. Your name was your fate. Who are you? Your name was not just your name, but a calling card of sorts. If you steal from me my good name, what have I left? Other surnames anchor one to a region or location. These could also tell us your trade or likely occupation. A Flemish surname (e.g., Vanden Bergh) would inform most that you were probably involved in the wool trade. Finally, in some cultures, surnames will reflect one's lineage.

The Editor says, "this is what serving as co-chair for two sections while also serving as the editor-in-chief of the *Bar Rag* has reduced me to before my coffee on Halloween."

Naming conventions are fascinating. In Northern European traditions, first sons were named for the family, second sons for the church, and third or subsequent sons for the King or nation. First sons were expected to inherit the family farm, trade, or business. Second sons were educated and then entered a monastery or seminary. Lacking land or inheritance, third sons drifted into the margins of the economy, perhaps entering government service or learning itinerant trades as tinkerers, soldiers, sailors, blacksmiths, or one of the other landless occupations one could assume without risk of exile. Daughters were named for bright, cheerful objects or events—flowers, sunrise, songbirds, spring or summer months, or something similarly sunny, warm, and happy.

Each culture had and has its own traditions. In some cultures, persons receive more than one name. A birth or child name will be used until one approaches adulthood. Then, one will assume one's real or true name. Secret names are not uncommon. In at least one culture, one's own family will not know one's secret name. It is provided by an elder or priest.

For most of recorded history, children were not formally named until they reached the age of cognition, generally somewhere between seven and twelve years old. To use one example, in the European tradition, a child would be received into the communion of the Church through confirmation. Late-naming may have reflected the sober reality of child mortality rates. It would probably be too painful to formally name a child knowing he or she may not survive more than a year or two. Better to wait. Nicknames could serve until then.

Each person has a name. Each name is a vision of something better. Each introduction exchanges those visions, even if we seldom know what they are.

The Alaska BAR RAG

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

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

Board of Governors meeting dates
January 23 & 24, 2014
(Thursday & Friday)
May 5 & 6, 2014
(Monday & Tuesday)
May 7 – 9, 2014
(Wed. - Friday: Annual Convention)
(Anchorage)

Letters to the Editor

"Dispatch from Huntsville" Harrowing Read

My deepest thanks to and respect for Susan Orlansky's Dispatch from Huntsville in which she chronicled the final chapter of her and Jeff Feldman's litigation of their client's Green Mile. Ms. Orlansky's writing was some of the finest I've read in some time – of any genre. Her unadorned, even understated, presentment of our criminal justice system's death penalty processes and one individual's life ... and death ... moved me as deeply as it disturbed me.

As a former Alaska prosecutor, it was important to my decision to accept an offer from the Anchorage District Attorney's Office that Alaska had no death penalty. Aside from the moral question of government-sanctioned homicide, I was and remain convinced this ultimate penalty is inequitably applied. So, Ms. Orlansky's article didn't need to persuade me. But I cannot help but believe that her extraordinary rendering might cause others who are on the fence to pause and consider. I hope she derives some solace in that.

— Val Van Brocklin

AJC shouldn't advertise

Defending election campaigning by the Judicial Council (*Bar Rag*, April-June 2013), Larry Cohn claims that the Council urges the public to retain a judge or not based upon apolitical criteria of ability, fairness, diligence, and temperament. Well and good, but he spent public money on an ad campaign on behalf of Judge Sen Tan that did not involve any of these. The issue in Tan's election was separation of powers. Tan has consistently ventured into territory reserved to the people or their elected representatives. The issue was inherently political, so government funded campaigning is not, at least in this country, permitted. Mr. Cohn neglected to state that he informed the Legislature in writing and verbally at the hearing on HB200 that he wouldn't do it again. He shouldn't have done it in the first place.

— Robert B. Flint

Cohn response to Flint letter

In the 2012 election, the Alaska Judicial Council unanimously voted to recommend Anchorage Superior Court Judge Sen Tan for retention. Judge Tan's retention was opposed by Alaska Family Action. Mr. Flint serves on the board of directors of that group. Despite Mr. Flint's description of the reasons he opposed Judge Tan's retention, most people understood that the campaign against Judge Tan was based on decisions that the judge had rendered in abortion-related cases many years ago, which were affirmed by the supreme court.

As it had in the past when there were campaigns against judges recommended for retention, the Council spent a small amount of money to respond. Contrary to Mr. Flint's assertion, the Council's advertising concerned Judge Tan's ability. The advertising reiterated Judge Tan's excellent ratings from those most familiar with his performance, including an unprecedented perfect rating from advocates for Alaska's abused and neglected children.

Mr. Flint claims that the Council should not have run advertising in response to the campaign against Judge Tan. Yet, for thirty-six years, the Council had run paid advertisements in response to campaigns against judges recommended for retention. These campaigns were often lodged at the last minute and were intended to deprive a judge of an opportunity to respond. The legislature, aware of the Council's responses to these campaigns, consistently provided the Council with advertising funding.

In 2012, the voters retained Judge Tan. Thereafter, some legislators noted their objection to the Council's use of advertising funding to respond to campaigns against judges. After listening to their concerns, I told legislators that the Council would no longer use its advertising funding to respond to campaigns against judges. I respect Mr. Flint's views, but a fuller description of the circumstances might help others decide whether or not the Council should have "done it in the first place."

—Larry Cohn,
Executive Director, Alaska Judicial Council

I remember Peter Page

A number of years ago, the Alaska Bar Association noticed that the number of attorneys who had practiced in the state before statehood were being diminished by death. They appointed a Bar History Committee who, among other things, began asking these old timers to write their memoirs while they were still able to do so. The idea was to collect, for the benefit of the late comers, these accounts of how law was practiced in the early days.

The *Alaska Bar Rag,* in the July - September 20I2 issue, beginning on page 4, published the memories of Peter Page. Peter Page was a district court judge in Sitka during the time I was a police officer there. He does not mention my name, but the set of circumstances he relates could only have been about me. I remember the circumstances only a little different from the way he does. I will quote for you the relevant section from Judge Page's recollections and then discuss the small areas where I recall it differently.

> *(Judge Page said,) [w]hile I was serving as judge, I taught a course in criminal law fashioned after the course I had taken at the University of Virginia, using the same materials. The Chief of Police required all of his officers to attend the class. Both state troopers and an aspiring law student who later became my wife also attended. All did a credible job on the examination - except one city police officer who froze and handed in a blank examination book. He had been a good student so I told him to go home and relax and return the next evening to take the exam. He did. I told him that his exam would receive high marks in any law school.*
>
> *After I left Sitka this officer was disabled by terrible gunshot wounds received while answering a domestic violence call, to the extent that he could no longer serve as a policeman. When he recovered he called me*

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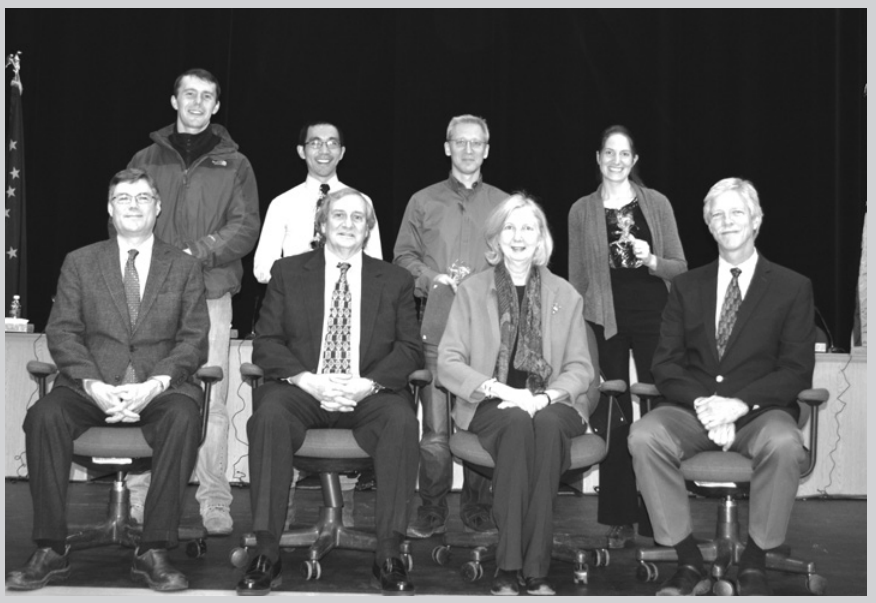

The court with Barrow volunteer attorneys: L-R Justice Joel Bolger, Daniel Dolle-Molle, Jonathan Fork, Justice Daniel Winfree, Robert Campbell, Chief Justice Dana Fabe, Teresa Buelow, and Justice Peter Maassen.

The court with the case attorneys: L-R Justice Joel Bolger, Justice Daniel Winfree, Seth Beausang, Assistant Attorney General, Chief Justice Dana Fabe, Brad D. DeNoble, and Justice Peter Maassen.

Photos by Margaret Newman

Court visits Barrow High

The Alaska Supreme Court heard oral argument at Barrow High School in Nelson Kanuk, et. al., v. State of Alaska, Department of Natural Resources (Supreme Court No. S-14776) before an audience of high school students as part of the Supreme Court LIVE educational program. Supreme Court LIVE brings Supreme Court oral arguments in actual cases to student audiences at Alaskan high schools. Designed to help students better understand the justice system, this unique learning opportunity debuted in 2010. This was only the second time in the court's history and the first time in over 30 years, that it heard argument in Barrow, Alaska's northernmost and predominately Inupiaq community. Volunteer attorneys from the Alaska Bar Association and staff from the court system worked with Barrow High school students to help them understand the appellate process and the case, using case summaries and information from the court's website: http://courts.alaska.gov/outreach-scl2013-barrow.htm. The program included question-and-answer sessions with the attorneys arguing the cases, and with members of the Supreme Court. Gavel Alaska live streamed the arguments.

Former Alaskan wins ADR award

The Ninth Circuit ADR Committee recently announced the recipients of awards recognizing individual and institutional achievements in the field of alternative dispute resolution.

Susie Boring-Headlee, ADR coordinator for the United States District Court for the District of Idaho, was selected to receive the Robert F. Peckham Award for ADR Excellence, while the University of the Pacific, McGeorge School of Law, was chosen for the Ninth Circuit ADR Education Award.

Ms. Boring-Headlee, who has served as the ADR coordinator in the District of Idaho for the past four years, was recognized for promoting use of ADR in both the state and federal courts. She has served as a presenter and panelist at ADR workshops for judges; arranged for training of mediators in conjunction with the Northwest Institute of Dispute Resolution at the University of Idaho, College of Law; organized "settlement week" programs at the district court; and collaborated with information technology staff to streamline collection and management of ADR deadlines and other activities using the court's electronic case filing system.

Since 2012, Ms. Boring-Headlee has served on the Federal Judicial Center's ADR Study Group, which is conducting an analysis of the costs, benefits, and effectiveness of ADR programs in the federal district courts. The study group will provide guidance to the national committees in determining best practices and future funding of court ADR programs.

Letters to the Editor

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and asked if I would recommend him to law school. I did and he is now a practicing attorney in Ketchikan.

Of the officers who took the course several became chiefs of police in various Alaska cities.

Judge Page was one of the few judges I held in high esteem during the time I was a police officer. Most attorneys graduated from law school with a strong bias against the police. Judge Page's common sense and even handedness won him respect from all sides of the criminal justice system.

I do remember the class in criminal law he taught while at Sitka. I would like to think I recall his statement that my exam paper would have received high grades in a law school. (The more I think about it, the more sure I am that I do remember it, whether it happened or not!) Where my recollection differs from the Judge's however, is about why I failed to complete the exam. As he said, all the law enforcement in the town were taking the course and were present for the exam. As I recall, I was absent because of a police call that pulled me away. I was sergeant at the time, the highest ranking city police officer below the chief. I fully expected to have failed the course because of missing the final exam. It was with great relief that I heard him say I could take the test at a later time. The more I think about it, the more sure I am that he made the remark about the exam score, (I think!).

After taking Judge Page's criminal law class and before the injury that ended my police career, I served as chief of police in Petersburg, Alaska. After that, 1 returned to the Sitka police department as captain. On January 10, 1974, I was shot while trying to apprehend a suspect who had already slain two people. It was after that injury I went to law school. Many years later, fonner judge Page joined with me on contract dispute case when I was practicing in Ketchikan and he was practicing in Juneau. There is one other minor error in Judge Page's story. As near as I can tell, he wrote the Alaska Bar Rag article in 2008. I had retired from the practice of law by that time, having retired because of illness in 2006.

I am proud to have known Judge Page and especially proud to be mentioned, how-be-it anonymously, in his memoirs. When 1 went to Alaska in 1967, the state was only few years old and I was privileged to know many of the great people who guided the territory into statehood including Judge Peter Page.

I would be very pleased if you see fit to publish this as a Letter to the Editor in the *Alaska Bar Rag*.

— R.W. "Dick" Shaffer

Alternative Dispute Resolution in the District of Idaho

By Susie Headlee,
ADR / Pro Bono Coordinator

I was recently asked by Paul Eaglin if I would consider writing an article for the *Bar Rag* about Alternative Dispute Resolution in the District of Idaho. As some of you might recall, I worked for many years for Ninth Circuit Judge Andrew J. Kleinfeld assisting him with case management and administrative duties in the mid-90s. During my time in Alaska, I was made an honorary member of the Tanana Valley Bar Association -- I believe I was the only non-attorney inducted into the local bar association. I recall fondly the camaraderie of the local attorneys, the fun stories that circulated from and about practitioners, and *Christmas in July* was always a favorite of mine!

I am delighted to write an article for the *Bar Rag* because it not only allows me an opportunity to discuss dispute resolution in Idaho, but it also provides an avenue to discuss the important role of the Ninth Circuit ADR Committee, and of course, I am able to reacquaint with my Alaska friends. The ADR Act of 1998 requires that all Courts offer a meaningful form of Alternative Dispute Resolution, of which the District of Idaho offers several options. For the purposes of this article, I will only discuss the most often selected forms used in our district – judicially-supervised settlement conferences with U.S. Magistrate Judges; mediation conducted by third-party mediators called neutrals; and a program called Voluntary Case Management Conferences (VCMC).

In the District of Idaho, ADR is used as an important case management tool ensuring that each case involved in ADR receives individual attention and that ADR progresses appropriately at a pace determined by the parties and the judge to whom the case is assigned. When parties agree to utilize ADR, they take a critical first step towards successfully resolving their disputes. By utilizing an ADR process, we are hopeful that the parties are more likely to resolve cases sooner rather than later, narrow the issues earlier in the process, and in so doing, minimize fees and litigation costs that might accrue through protracted litigation or trial.

Of course, not all cases are appropriate for ADR; therefore, one of my duties as the ADR Coordinator is to assist the attorneys and pro se litigants in helping determine when and if ADR is appropriate, and which form of ADR to utilize. As I mentioned above settlement conferences with U.S. Magistrate Judges and mediation with neutrals are the most widely-selected forms of ADR used in Idaho. In 2012-2013, the number of cases settled by U.S. Magistrate Judges was 25 out of 48 cases for a 52% settlement rate; and cases settled by third-party neutral mediators was 36 out of 50 cases, including one arbitration, for a 72% settlement rate. It is noteworthy to mention that 75% of the cases that settled were *before it was necessary for a decision to be rendered on dispositive motions.*

The author is the ADR/Pro Bono Coordinator for the District of Idaho

Bar People

Lane Powell was recognized as one of the nation's "Best Law Firms" by U.S. News and Best Lawyers in its 2014 "Best Law Firms" survey. The firm was ranked in 14 practices areas nationally and more than 50 practice areas in Alaska, Portland and Seattle.

The Firm received national rankings in the following practice areas: Banking and Finance, Banking and Finance Litigation, Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization, Bankruptcy Litigation, Commercial Litigation, Construction, Corporate, Employment (Management), ERISA Litigation, Intellectual Property Litigation, Labor (Management), Mass Tort Litigation / Class Action Defense, Patent Litigation and Tax.

The Firm received metropolitan first-tier rankings in the following practice areas: Antitrust Litigation, Appellate, Banking and Finance, Banking and Finance Litigation, Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization, Bankruptcy Litigation, Business Organizations (including LLCs and Partnerships), Commercial Litigation, Construction, Corporate, Employment and Labor (Management), Eminent Domain and Condemnation, Employee Benefits (ERISA), ERISA Litigation, Financial Services Regulation, Intellectual Property Litigation, Mass Torts Litigation / Class Action Defense, Real Estate, Tax, Tax Litigation, Trusts and Estates and White Collar Criminal Defense.

The law firm of Manley & Brautigam, P.C. announces that five of its lawyers have been selected for inclusion in the 2014 edition of The Best Lawyers in America. Manley & Brautigam, P.C. lawyers selected were: **Robert Manley**, Anchorage Tax Law Lawyer of the Year and also in the practice areas of Trusts & Estates; **Peter Brautigam**, Anchorage Trusts and Estates Lawyer of the Year and Tax Law; **Jane Sauer**, Corporate Law; **Charles Schuetze**. Corporate Law and Tax Law; and **Steve Mahoney**, Natural Resource Law, Non-Profit/Charities Law, Oil & Gas Law, Energy Law, Tax Law and Litigation & Controversy-Tax Law.

Darrel Gardner, President of the Alaska Chapter of the Federal Bar Association, has been appointed to the Federal Bar Association's national membership committee.

Gardner

Gardner was also awarded a national 2013 Chapter Activity Presidential Achievement Award in recognition of "accomplished chapter activities in the areas of administration, membership outreach, and programming." The award was presented at the FBA convention in Puerto Rico in September.

Also, although he could not be personally present in San Juan to accept his award, Lloyd Miller was inducted as a Life Fellow of the Foundation of the Federal Bar Association. The Foundation was established in 1954 as the charitable arm of the FBA. The Foundation's mission is to promote and support legal research and education; advance the science of jurisprudence; facilitate the administration of justice; and, foster improvements in the practice of Federal law. Other recent inductees include U.S. Supreme Court Justices Clarence Thomas and Elena Kagan.

Gregory S. Fisher has been appointed by the Judges of the Ninth Circuit to serve a three year term as an Appellate Lawyer Representative to the Ninth Circuit Judicial Conference. Mr. Fisher was also recently appointed to the Federal Bar Association's Appellate Law Committee as a representative from the Ninth Circuit.

Rebecca Lindemann has joined Richmond & Quinn as an associate. She earned her undergraduate degree from Whitman College in 2003 and her law degree from the University of Oregon School of Law in 2007, where she received the Order of the Coif and served on the Moot Court Board.

Lindemann

Ms. Lindemann joined Richmond & Quinn in 2013. Prior to returning to her hometown of Anchorage, Ms. Lindemann was an associate with Schwabe, Williamson & Wyatt's Portland office where she specialized in business and product liability litigation.

Ms. Lindemann is a member of the bar in Alaska, Oregon, and Montana.

Brena, Bell & Clarkson, P.C. was named Client Choice - Construction Law Firm of the Year in Alaska for 2013. The award was given to the firm due to Kevin G. Clarkson's work representing Cordova Electric Association in a $24 million dollar construction dispute with the general contractor for the Association's hydro-electric project at Humpback Creek."

Allison Mendel, owner of Mendel & Associates, Inc., was among 10 recognized by the YWCA-Alaska and BP in the 24th annual Women of Achievement Awards. Mendel "has practiced law in Alaska for over 30 years and is a leading community activist for the LGBT community where she spearheaded the campaign against the DOMA amendment," said the organization, which presented the 2013 awards in early December.

United States Magistrate Judge John D. Roberts to retire

After serving on the bench since 1977, U.S. Magistrate Judge John D. Roberts is retiring. Judge Roberts began work in the U.S. Attorney's Office in 1974. He was appointed to his position in 1977. It is believed that he is one of the longest tenured Magistrate Judges in the Ninth Circuit, if not the nation. A retirement party was held at the Dena'ina Center on December 9, 2013 to celebrate Judge Roberts' long career of dedicated public service. A future issue of the *Alaska Bar Rag* will include an interview with Judge Roberts along with other submissions to commemorate his career. This brief notice is intended to mark the occasion of his retirement until a more fitting tribute can be published.

Danielle Ryman receives Alaska Attorney General's Pro Bono Service Award

Danielle Ryman
Photo courtesy of Perkins Coie

Danielle M. Ryman, a partner in Perkins Coie's Labor & Employment practice, has received the Third Annual Alaska Attorney General's Award for Pro Bono service. The award was presented on Tuesday, October 1, 2013 at the Anchorage Assembly Chambers in conjunction with the opening ceremony for domestic violence awareness month.

Long dedicated to actively supporting pro bono issues in the state of Alaska, Ryman has offered time and services to those in need of legal assistance who do not have the financial resources to secure counsel. Leah Medway, Perkins Coie's Pro Bono Counsel, said, "Danielle is a true champion for those less fortunate and in dire need of legal help. The firm, and those she helps, are tremendously grateful for all she does in aiding our pro bono efforts. This is a well-deserved honor."

"Danielle has steadfastly and often courageously stepped into the arena of pro bono service for domestic violence victims simply because she felt that it was the right thing to do," said Krista Scully, Pro Bono Director of the Alaska State Bar Association. "The state bar association's documentary short film series that Danielle spearheaded highlights the needs of Alaska's equal access to justice issues, much of which is devoted to victims of domestic violence and sexual assault."

In 2013, the Alaska Bar Association also awarded Perkins Coie its Lifetime Achievement Award noting: "…Perkins Coie has been generous in both time and money to ensure that the critical legal needs of the less fortunate are met. They are a true guiding force when it comes to Access to Justice and pro bono issues. …Perkins Coie has been a leader in action of how to bridge the justice gap. …spear-heading Alaska's Civil Gideon movement, representing a local domestic violence shelter, assisting yet another low-income tenant. Lawyers pitching in to do research for a pro bono attorney needing assistance, making the case to Alaska's congressional delegation for funding and innovative efforts to encourage other practitioners to take a pro bono case."

Ryman focuses on defense and representation of employers, as well as counsel and advice on issues affecting today's workplace. She defends employers in state and federal court, and before the EEOC, Alaska State Commission on Human Rights, Anchorage Equal Rights Commission, and Department of Labor. She also represents employers with traditional labor matters, such as negotiations of collective bargaining agreements, union grievances and arbitrations, and unfair labor practice claims.

Perkins Coie's devotion to pro bono efforts is not limited to its efforts in Alaska. Throughout the firm's 16 domestic offices, Perkins Coie has a high level of commitment to pro bono legal work and has devoted more than 210,000 hours to pro bono service in the past five years.

Perkins Coie's Anchorage office opened in 1977 and was the first major law firm from the lower 48 states to establish an office in that city. Our lawyers regularly provide services to Alaska's leading businesses and our clients range from the Fortune 50 to local companies and Alaska Native corporations. We maintain a broad-based Energy, Environmental and Natural Resources practice that focuses on traditional and renewable energy, hard rock and coal mining, oil and gas, timber, heavy construction, and related industries. Our Labor & Employment practice represents leading Alaska Native corporations and national companies doing business in Alaska and is routinely sought out to provide representation on the most sensitive and high-profile employment matters in the state. Our Construction practice represents public and private owners, general contractors, subcontractors, suppliers, architects, engineers and consultants. Our Government Contracts practice is focused on Alaska Native corporations and other federal contractors and encompasses all aspects of federal government contracts, including Section 8(a) contracting and construction contracts with the Army Corps of Engineers and other agencies. Our Litigation practice includes general commercial litigation, environmental and natural resources litigation, contract disputes, defense of business tort and consumer protection claims, product liability defense, and aviation litigation. We have been ranked by Chambers USA in the first band for law firms in Alaska for labor law and environmental law for the past six consecutive years.

October 25, 2013

Whereas **Bob Groseclose** and **Barbara Schuhmann** have been longtime residents of the State of Alaska and members of the Alaska Bar;

Whereas Bob Groseclose and Barbara Schuhmann have demonstrated outstanding dedication to public service in the State of Alaska and to the Alaska Bar;

Whereas Bob Groseclose and Barbara Schuhmann have honorably represented the Tanana Valley Bar Association by practicing law in an honorable and ethical manner;

IT IS HEREBY RESOLVED that the Tanana Valley Bar Association joins the Boy Scouts of America in honoring Bob Groseclose and Barbara Schuhmann as outstanding members of the Fairbanks community.

Tanana Valley Bar Association

FEDERAL PROBE

Justice Department shakes up the trial team and errs on the timing

By Cliff Groh

In the first half of 2008, attempts to avoid an indictment and trial of U.S. Sen. Ted Stevens failed. As noted previously, Ted Stevens rejected an offer of no jail time from the Department of Justice to plead guilty to a single felony count of making false statements on his annual Congressional disclosure form. He no doubt knew that even without going to prison, a guilty plea to a felony would bring disgrace and result in his exit from the Senate, either at the hands of the voters or by his fellow Senators.

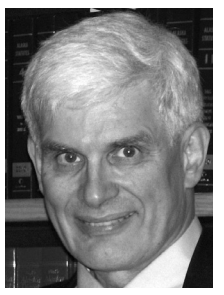
The defense also asked that the Justice Department exercise its discretion to abstain from indicting Stevens—perhaps while referring the matter to the Senate Ethics Committee—based on a general characterization of the prosecution's case as weak and bereft of a corruption allegation. Defense counsel also made an argument that the Senator's long and proud record of public service would make him a sympathetic defendant to a jury. This exchange went nowhere, even though in the last seven days before the indictment there remained an interest at the Justice Department's highest levels in having the parties somehow reach an agreement.

After meeting with defense counsel on July 22, 2008, Deputy Attorney General Mark Filip—the Department's No. 2 official—relayed the arguments of the Senator's lawyers to Attorney General Michael Mukasey. According to Filip's interview with the Justice Department's Office of Professional Responsibility ("OPR"), Mukasey told Filip to "make sure that we're playing it straight down the middle under the Department's policies" in order to avoid allegations that the Justice Department was acting politically. Filip then met with Associate Attorney General Matthew Friedrich—the head of the Justice Department's Criminal Division—and asked him to "look [at a potential plea] hard" and stated that if Stevens was to be indicted, "the timing on it has to be in a principled way." This was a clear reference to the fact that Ted Stevens was on the ballot on November 4, 2008, as he sought his seventh full term in the U.S. Senate. As noted in the last installment of this column, Friedrich decided that under all the circumstances the appropriate course was to indict Stevens immediately.

Brenda Morris takes first chair over significant objection

As the indictment approached, the Criminal Division's management turned its attention to the composition of the trial team. The prosecution's trial team for the three previous trials arising out of the Polar Pen federal investigation into Alaska public corruption had been composed of some combination of four attorneys who by late July of 2008 had worked on Polar Pen for at least two years. Those four lawyers were Washington, D.C.-based Public Integrity Section Trial Attorneys Nicholas Marsh and Edward Sullivan and Alaska-based Assistant U.S. Attorneys Joseph Bottini and James Goeke.

The effective leader of the Polar Pen team was Marsh, an intense man in his mid-30s who had served as first chair in two of those trials. After playing a lead role in the grand jury's investigation of Ted Stevens and serving as the Justice Department's acknowledged master of the facts in the case, Marsh was set up to be the lead prosecutor in the first federal trial of a sitting U.S. Senator in 25 years.



Higher-ups at the Justice Department, however, became concerned in the last month before the indictment that the trial team lacked sufficient gravitas to go up against Washington, D.C. legend Brendan Sullivan and the other lawyers at the famed law firm of Williams & Connolly in such a high-profile case. The feeling was particularly strong that Marsh was too inexperienced to handle the first chair, and Brenda Morris ended up as lead prosecutor in the trial.

Morris, Principal Deputy Chief of the Public Integrity Section, was substantially more experienced than Marsh, as she had started as a prosecutor around the time Marsh had entered high school. By July of 2008, Morris had spent more than 20 years as a prosecutor. She had started in the late 1980s as an Assistant District Attorney in Manhattan under the legendary D.A. Robert Morgenthau, widely seen as the inspiration for the gruff top prosecutor in TV's Law & Order. As a state prosecutor, she racked up more than 40 trial victories. As a federal prosecutor, she conducted trials involving white collar crime from Florida to Arizona. After 12 years as a Trial Attorney in the Public Integrity Section, she rose to management positions in the Section—to Deputy Chief for Litigation in 2004 and to Principal Deputy Chief in 2006. In management, she supervised investigations ranging from the Jack Abramoff corruption scandal to probes into thefts of millions of dollars meant for the Iraqi reconstruction. Morris also taught at Georgetown University and in exotic locations such as Romania, Nepal, and Bangladesh.

All this comes from her resume, but the things that people most often discussed about Morris didn't show up on any resume. If there was ever a movie made about the Ted Stevens case, Brenda Morris is the one main player producers would think the most about casting as herself. She is a small woman with a big voice, a flashy personality, and a strong reputation as the life of many parties. A Legal Times article in 2009 noted that the feisty Morris "was admired among former colleagues as one of the best prosecutors" in the Public Integrity Section and was "known for her high energy and snap one-liners at trial."

A feisty woman who displays her aggressiveness to good effect, Morris collected a lot of friends, some of them higher up on the Justice Department food chain. One of those friends was reportedly Rita Glavin, the Principal Deputy to Associate Attorney General Matthew Friedrich, who pushed for Morris to be selected as lead prosecutor in the Ted Stevens case. Glavin told OPR that Morris was a former Manhattan-based Assistant District Attorney who would have "no fear walking into that courtroom."

Besides her confidence, some saw another advantage for Morris when walking into a courtroom in her native Washington, D.C.: She was an African-American in a city where the Justice Department hoped to hold the trial and juries are traditionally made up of a majority of blacks. In making Morris the lead lawyer, Criminal Division management aimed "to add a more magnetic courtroom presence to the team" in the words of the Washington Post in 2009. Putting Morris on the prosecution's trial team, said her hometown newspaper, was intended "to put Stevens on the hot seat and to build rapport with the jury."

Morris had helped supervise the Polar Pen investigation, but she had never played a role in any of the trials growing out of that probe. Morris herself told the special counsel Henry Schuelke that she had declined Friedrich's request three times to join the team before finally relenting. Her immediate superior—Public Integrity Section Chief William Welch—opposed her selection to the Stevens trial team. A higher-up with more than 55 years of prosecution experience —Deputy Associate Attorney General John Keeney—expressed reservations about Morris coming into the case, telling OPR that he did not see her as a "detail person." (The consulting firm Booz Allen Hamilton—most famous recently as the one-time employer of fugitive leaker Edward Snowden—does not see that assessment as a problem, naming Brenda Morris in January of 2013 as the company's Deputy General Counsel.)

Marsh believed that the defense would try to "drag it out as long as they could" and that issues based on the U.S. Constitution's Speech or Debate Clause would aid this predicted strategy of defense delay.

Despite the misgivings of others, Friedrich—strongly supported by his principal deputy Glavin—arranged for Welch to advise the trial team of the choice of Morris on July 28, 2008, the day before the announcement of the indictment. The new lineup left Morris as the first chair, Bottini as No. 2, Marsh as No.3, and Goeke and Sullivan without roles in court.

While making Morris the lead prosecutor was good for jury appeal, the decision to bring her in at the last minute was bad for the trial team's morale, bad for the prosecution's efforts to make the most substantive points on cross-examination, and bad for the Justice Department's providing of discovery to the defense. Having Morris become first chair hours before announcement of the indictment was, as one former federal prosecutor said, like having her get on a moving train at night.

As to morale, the trial team was deeply angered. Both Marsh and Sullivan contemplated leaving the trial team, with Marsh going so far as to talk openly about quitting his job. Both of these attorneys stayed, partly out of a sense of professionalism. Marsh's close friend Joshua Waxman also said that Marsh's decision to remain at the Justice Department also reflected a realization that the bad economy in the summer of 2008 meant that there really weren't very many places for Marsh to go.

As to the prosecution's performance at the trial, the better-informed Marsh would likely have been able to make points on the cross-examination of the defendant that would have been more applauded by law professors but perhaps less appreciated by actual jurors than the offerings of the attention-getting Morris.

As to discovery, the legion of problems that the Justice Department had with discovery in the Ted Stevens case may have included the need to bring Morris up to speed. Those efforts to tutor Morris on the facts appeared to take time away from the actual rounding up of materials to provide to the defense.

Prosecution misses the ball on the defense's strategy

Exacerbating the prosecution's problems with the last-minute shakeup was another serious miscalculation within the Justice Department. To the extent that the prosecutors actually working on the case thought about it, there was a universal belief that any trial would follow the indictment by a substantial period, perhaps the nine to 12 months common in such a document-heavy white-collar crime case. Marsh believed that the defense would try to "drag it out as long as they could" and that issues based on the U.S. Constitution's Speech or Debate Clause would aid this predicted strategy of defense delay. That provision effectively immunizes a Member of Congress from being questioned about his or her legislative acts. Marsh knew in July of 2008 that the reliance of U.S. Representative William Jefferson (D.-La.) on Speech or Debate Clause arguments had caused his public-corruption case to be delayed in an interlocutory appeal for more than a year past indictment, and Marsh told OPR that he expected the Stevens case to play out the same way.

Upon joining the trial team, Morris told Marsh and Sullivan that "the Front Office"—understood to mean Friedrich and Glavin—had directed that the prosecution not object to any defense request for a speedy or expedited trial. To the complete surprise of the line prosecutors, that is just what the lawyers for Ted Stevens did. At the arraignment on July 31, 2008, Brendan Sullivan asked for a trial in October so that his client could clear his name before the election on November 4. Morris proposed September 22, the date the trial actually started.

Next: The big defense team at Williams & Connolly

Cliff Groh is an Anchorage lawyer and writer who has worked as both a prosecutor and a criminal defense attorney. He has blogged about the "POLAR PEN" federal probe into Alaska public corruption for years at www.alaskacorruption.blogspot.com, which in its entry for May 14, 2012 features an expanded and updated list of disclosures. Groh's analysis regarding the Ted Stevens case has appeared in media as diverse as C-SPAN, the Los Angeles Times, Alaska Dispatch, the Anchorage Daily News, and the Anchorage Press. The lifelong Alaskan covered the five-week Ted Stevens trial in person in Washington, D.C. in the fall of 2008. He welcomes your bouquets, brickbats, tips, and questions at cliff.groh@gmail.com.

THE KIRK FILES

Full legal jacket

By Kenneth Kirk

Monday

Hi, mom and dad. I am writing this out in long hand (that means with a pencil on paper) because my iPhone broke and we are out in the field where I can't get it repaired. When we get back to base I will type all of this up and email it to you. Or maybe scan it if you can read my writing.

I am still in the 'undisclosed location'. I don't know why they don't let us just say where we are, since they keep talking about it on CNN. Also the Shavetail (that's the Second Looey in charge of our platoon) keeps tweeting about it anyway.

Anyways this time when they sent us out to the forward base they also sent this JAG lawyer along. Looks like he's never been in the field before. This should be interesting.

Tuesday

We had a firefight last night and lost a guy. Today the JAG dragged us up early to take statements from everyone who'd been on duty. Then we spent the whole day in a sensitivity training, apparently because there might be some guys in the platoon who are light on their feet. Although I don't know of any. I doubt they'd be here if they were.

Later we went on patrol, but then we got called back halfway there because the JAG and the Shavetail couldn't figure out whether we were authorized to go into that village. Then after they spent half an hour on the phone to HQ, they said we were authorized to go into the village, but we couldn't take the path we were going down because part of it was out of our jurisdiction, whatever that means. Anyway we had to take the same path we usually take, and one of the guys got hurt pretty bad by an IED that went off, so we never got to the village.

Wednesday

So today we got hit by a surprise attack. But we managed to get the upper hand, and then they cut and ran, and we got in the Hummers and chased them for miles. Finally we had them right where we wanted them, out in an open area where they had no cover, and we were getting ready to open up a can of you-know-what on 'em. Then all of a sudden that JAG guy shows up with the Shavetail, yelling and waving his arms at us, and says that we can't shoot because they are over the border. The enemy were so close they realized what was being said, and started laughing at us. Some of the guys were pretty sore.

"Anyways this time when they sent us out to the forward base they also sent this JAG lawyer along. Looks like he's never been in the field before. This should be interesting.

Thursday

Last night some of those same guys who we chased yesterday, came back into the area. Sergeant Lechner--he's only 24 but he's a buck sarge already--he and some of his squad were on night patrol and had them in their sites. Then the Shavetail insisted on running it by the JAG to see if they could shoot. He said he wasn't sure because they hadn't actually done anything illegal yet. Lechner asked him whether them shooting at us yesterday oughtn't to be enough, and then there was some argument about 'hot pursuit' and whether they were absolutely sure it was the same guys, and if so how it was they could tell, and in the meantime the bad guys managed to set up and shoot off a mortar round that blew up one of our ammo dumps. Then the Shavetail said Lechner's boys could shoot now, but by that time the enemy had already hightailed it out of there. Sgt. Lechner was really mad and he cussed out the JAG to his face. Shavetail was going to bust Lechner back down to corporal, until the JAG told him how much paperwork was involved so he just gave him a warning.

Friday

Nothing much happening today or yesterday, except paperwork. The JAG convinced the Shavetail that he needs to make sure he can't be accused of discrimination in who he sends out on patrols and makes do things like KP or latrine duty. So we all had to write down a bunch of stuff about our race, ethnicity, religious beliefs and stuff. Also our sexual preference. One guy wrote down "I like girls who like beer" from that country song, and then we all had to stand there for half an hour while the JAG lectured us on taking this seriously.

In the meantime, we aren't sending out any patrols because they haven't figured out how to balance them yet, so we have no idea what's going on around us. We can kind of see a little bit of movement out there, shadows and stuff like that, but without anybody going to patrol we don't know whether that's enemy or just people from the village. Kinda makes us all jumpy.

Sgt. Lechner and one of the other squad leaders went to the Shavetail and complained about no patrols going out. Shavetail went and talked to the JAG and he said that until they could balance out all the patrols so there was no possibility of discrimination, he must not send anyone out. I'm not sure why it's taking them so long, probably Gomez has them confused because he's half Asian and half Hispanic and also Baptist.

Saturday

Early this morning we got hit really hard from all sides. We actually got pretty lucky, we could have been overrun completely but there were some Apaches in the air a mile away that still had fuel and ammo, and they diverted over and helped us out. We lost six guys KIA though, and a bunch more wounded, and it went on for hours.

Funny thing though, just as things were winding down and the enemy was pulling out of here and retreating, there was one last casualty. That JAG officer had been in the latrine the whole fight. Right at the end one of the enemy threw a grenade that landed in the latrine and blew him up. Turns out it was one of our type of grenades, but that's not unusual since the enemy manage to steal one once in a while. Anyway Sgt. Lechner insists he saw the grenade fly in from outside the perimeter, bounce a couple of times and go right into the latrine.

So now we are all getting sent back to base for something called "depositions". I'll email this as soon as I get there. Can't wait to get a shower. Tell everybody hi for me and I'll see them soon.

New Lawyer Liaison

Every two years the Board of Governors selects a New Lawyer Liaison. The New Lawyer Liaison (NLL) has the pleasure of sitting with the Board as a non-voting member. It has been my honor to serve as the NLL since May of 2012. The Board will soon select the next NLL in January for a term to begin in May of 2014.

Serving as the NLL gives a new lawyer the opportunity to sit with kind, caring, intelligent, and capable attorneys and to participate in the policy decisions of your Bar Association. It is an excellent opportunity to learn about the Bar Association from the inside out. The NLL serves as a representative of all lawyers who have been admitted to the Alaska Bar for 5 or fewer years. The Board looks to the representative to convey the perspective of this peer group and input is considered as part of discussions regarding policies of the Bar.

When the Board of Governors created the NLL position, it recognized the value of diversity of opinion and the importance of having the voice of a newer lawyer at the table. In turn, it is valuable for the NLL to represent the diversity of newer lawyers. The position of the President of the Board of Governors traditionally rotates between Southcentral Alaska, Interior Alaska, and Southeast Alaska. It is desirable for the NLL position to similarly rotate around the state. For this reason, the Board and I encourage state-wide new lawyers to apply for the 2014-2016 term. All qualified candidates from all parts of the state will be considered.

In order to qualify as a NLL, candidates must have been admitted to the Alaska Bar for less than 5 years at the beginning of the term, must be in good standing with the Bar, and must be available to attend the Board of Governors meetings (quarterly) for two years. The Board will consider applicants and select a new NLL at the January Board of Governors meeting. The deadline for applications is January 10, 2014. New lawyers who have already indicated interest need not re-apply. Applications should include a letter of interest and resume to Deborah O'Regan at oregan@alaskabar.org.

Leslie Need
New Lawyer Liaison
Board of Governors

Questions? Email leslien@lbblawyers.com

The Chief

By Kenneth Atkinson

This is a memoir of a DUI trial in which I defended Ben in 1977. The memoir begins with an identification of the Chief, which he liked to be called, Ben, and the town of Seldovia. This memoir relates several incidents, in Ben's words, that Ben told to me when he first telephoned me to hire me as his attorney.

The Chief of Police, the only policeman in Seldovia, drove up to the cannery where Ben was superintendent. Seldovia, accessible only by air and boat, is a town of about 400 residents south and west of Homer, Alaska. The main occupations in town were commercial fishing, logging, and the crab cannery.

The Chief, a big and tall man, enjoyed being the law in a small town. He carried his revolver conspicuously in a belt holster. He swaggered a lot. He came to Ben's office and sat down. He did not waste time getting to the point of his visit. "Ben, that Filipino kid you've got working here is giving marijuana to the school kids. The parents don't like it. They want him out of town. If you fire him, he will have to get out of here."

Ben was silent for a time while he thought about what the Chief had said. Ramos, the Filipino kid, was a good worker, always cheerful, and had never been in any trouble at work around the cannery. On the other hand, Ben knew that the Chief was an ardent member of a local fundamentalist, nondenominational bible church in Seldovia. The church's members were active and vocal in the schools and local government of Seldovia. They exerted an influence in town. Ben had opposed a raw fish tax proposal some time ago. Part of the proceeds of the proposed tax were earmarked for an increase in the Chief's salary. Ben had also opposed a dock-fee ordinance that he believed discriminated against the cannery and favored many of the church group members. Ben had also been in a dispute with the Chief over the interpretation of the local garbage-removal ordinance. The Chief had the concession for garbage removal. He had interpreted the ordinance to the financial disadvantage of the cannery.

If Ben fired Ramos, he could assuage the bad feelings engendered by those past incidents. It would be easy to find a replacement for Ramos at the cannery. People were always hounding Ben for jobs there. Why not sacrifice Ramos for the good will it would create for the cannery in town? Instead, Ben said, "Why don't you file criminal charges against Ramos, if he's doing what you say he is?" "The Chief replied, "I can't prove it in court. The parents of the pupils are complaining and want something done." Ben old the Chief, "I can't fire a good worker just because you want me to fire him." The Chief did not say anything. By the look on his face, Ben knew that he was annoyed by what Ben had said. The Chief left Ben's office without saying good bye.

Several months after the Ramos incident, a junior class student at the high school came to the cannery to see Ben. The student told Ben that some junior class members had collected $400 for a class dance. The pupils had turned the money over to the school principal. When the principal, who was a member of the fundamentalist church, found out the money had been collected for a dance, he refused to disburse the money. Members of the church believed that dancing, drinking, and card playing were sins. Because of the actions of the principal, the students were trying to collect again for a dance. Ben, whose 13 year old daughter had been killed in an automobile accident four years before, wrote a personal check for $400 to the junior high school class. That night, the Chief arrested Ben for drunk driving.

Ben telephoned me at my office in Anchorage about three weeks after he was arrested, when he realized that the Chief wouldn't drop the charges. I explained to Ben that I had not done criminal work for many years and that hiring a lawyer in Homer would be cheaper for him than having me or any other lawyer in Anchorage. Ben said, "But I want you to defend me." He then went on to tell me about his dealings with the Chief over the Filipino worker, the raw fish tax, and the garbage-removal incident. Ben also mentioned the check he had given the day of his arrest to the junior class. Ben told me that when he was arrested, the Chief had punched him and pushed him down and handcuffed his hands behind his back. Then the Chief had said to Ben, "I'll teach you to interfere in church affairs."

I took Ben's story with a grain of salt, but I was intrigued by what appeared to be persecution of Ben by the Chief as retaliation for Ben's prior disputes with the Chief. I was especially intrigued by the remark about interfering in church affairs and the story of the check to the junior class for its Spring dance. I told Ben I would think about the matter and call him back.

I was familiar with the town of Seldovia. At that time, in 1977, I owned a picturesque house there in partnership with Joe Young and Gary King. We rented this house to Ben. My married daughter lived in the town. I liked to visit there. I was marginally aware of factional feuds in town, as they were more obvious there than in larger communities.

Although I did not know all the details of the tale Ben told me, it seemed unlikely that Ben could have fabricated all of the disputes with the Chief that he told me about in that first telephone call. I was impressed with Ben's refusal to fire the Filipino worker at the Chief's request and with his donation to the junior class.

In the first telephone call, I hadn't asked Ben much about his drinking and driving on the night he was arrested. I called him and asked about that. He said he had consumed a couple of beers at one of the two bars in Seldovia. He left the bar at about 11:30 p.m. and got into his parked car, which he had trouble starting. He backed his car into the street. The car stalled again. Ben got it started and drove the one half mile distance to his house. There he was arrested by the Chief as he got out of his car. The scuffle with the Chief then took place, after which, Ben, with his wrists handcuffed behind his back, was taken to the school building where the Chief wanted to administer a balance test to Ben. The Chief asked the school principal and another man, both members of the Chief's church, to witness the balance test. The school principal had the school videotape recorder ready to record the test. Ben refused to submit to the test. The Chief chartered a light plane and flew Ben to Homer so that a breathalyzer test could be given to him. Ben refused to take the test in Homer. He was then flown back to Seldovia and jailed overnight and was released by the local magistrate the next day after pleading not guilty to the charge.

I asked Ben if he had asked for a jury trial. He said no mention was made of a jury. I told him I would write to the magistrate to get a copy of the charges and the Chief's report before I let Ben know if I would take his case.

The Chief's report on Ben's arrest stated that the Chief had observed Ben leaving a bar in Seldovia about 11:30 p.m. on May 14, and walking to his parked car. The report stated that Ben backed his car out of the bar parking lot without headlights on. The car stalled several times in the street. Two other cars passed Ben's stalled car. Ben then drove to his home without headlights on. The Chief's report stated that Ben's car weaved from side to side on the road and didn't stop even after the Chief turned on the red light of his police vehicle. Ben's car was going about ten miles per

hour. Ben turned into the area in front of his home and stopped. The Chief drove up and said he saw Ben stagger out of his car and smelled the strong odor of alcohol as he approached Ben.

The Chief arrested Ben and drove him to the police office. After they both got in the office, the Chief found he had left his pen in his car. He said he left Ben in the office while he went to his car for the pen. Ben left the office and started walking home. The Chief ran after him and grabbed Ben's arm, but Ben "spun" away momentarily. The Chief's report stated, "When taken by the arm, Ben turned to spin away and continue on home. It became necessary to take Ben down and place on the handcuffs. Ben was resisting vigorously and refused to walk. By spreading his legs and grabbing the steps with his hands, he was able to keep me from getting him into the office and jail." The report went on to say that the Chief loaded Ben into the back of the Chief's car, after which he called the school principal and the other man, whom I will call Harold, although this is not his name, for assistance. Ben was driven to the school, where he refused to take the balance test. Ben was then flown to Homer for a Breathalyzer test, which he also refused to take. Then he was flown back to Seldovia and lodged in jail. End of report.

I called Ben after I read the Chief's report. I asked Ben about what the report described as Ben's trouble starting and getting his car to go. Ben told me the car had been giving him trouble starting. It spit, coughed, and would quit several times while the engine warmed up, Ben said.

I asked Ben why he didn't turn his headlights on. He said it wasn't dark and the other cars didn't have their lights on either. I asked about the weaving from side to side. He responded promptly that he was trying to avoid hitting the numerous potholes in the road, potholes which were obvious to everyone in Seldovia.

I told Ben what the Chief's report said about the necessity of using

Continued on page 9

Diversity in our community: Stories affecting our lives

The Anchorage Association of Women Lawyers, in cooperation with the Alaska Supreme Court's Fairness, Diversity & Equality Committee and the Alaska Bar Association held a luncheon on October 17th, the theme of which was "Diversity in Our Community: Stories Affecting Our Lives". Over 150 attorneys and community members attended at the Downtown Marriott. The event was underwritten by Perkins Coie.

Christine V. Williams, Perkins Coie, and Immediate Past President of the Anchorage Association of Women Lawyers, introduced the Moderator, Sheri D. Buretta, Chairman of Chugach Alaska Corporation. Other panel members included Chief Justice Dana Fabe of the Alaska Supreme Court, Sophie Minich, President and CEO of Cook Inlet Region, Inc., Walt Monegan, President and CEO of the Alaska Native Justice Center, and Presiding Superior Court Judge, Sen Tan.

This is the third year this event has been held and many guests stayed long after the event ended to visit and talk more about the accomplishments of our speakers.

Photos by
Mara Rabinowitz

Sheri Buretta, Chugach Alaska Corporation; Anchorage Superior Court Judge Sen Tan; Christine Williams, Perkins Coie LLP; Walt Monegan, Alaska Native Justice Center; Chief Justice Dana Fabe; and Sophie Minich, Cook Inlet Region, Inc.

Chief Justice Fabe and Nikole Nelson, Alaska Legal Services.

The Chief

Continued from page 8

handcuffs and force to subdue Ben to keep him from escaping. Ben said that wasn't the way it happened. Ben said the Chief dragged him out of his car after Ben stopped in front of his house. The Chief punched him and then held him down while he handcuffed Ben's hands behind his back and remarked about how that would teach Ben to interfere in church affairs.

Ben told me he had only two or three beers at the bar over a three hour period. He had gone there because he was lonely. Ben was divorced and lived alone. I believed Ben's version of the events on the night of his arrest by the Chief, but I was worried that a jury might not be as easily persuaded as I was, assuming we could even get a jury that wasn't loaded with fellow members of the Chief's church. I told Ben I would take his case after I made sure Ben hadn't waived his right to a jury trial.

Seldovia had no courthouse, resident judge, or prosecuting attorney. Trial was held on September 22 in the school gymnasium. A judge and prosecuting attorney flew from Homer. I flew from Anchorage the previous day. Thirty four prospective jurors were on the panel. We needed six for the trial jury. I hoped the judge would allow me wide latitude in questioning prospective jurors about their affiliation with the Chief's church, their dealings with the Chief, their views on drinking, and their dealings with the cannery of which Ben was superintendent. The cannery was a major employer in the small town and was also a seafood buyer from the commercial fishermen who lived there. Past disputes over employment or seafood prices could bias a juror against Ben.

The judge did allow me to probe prospective jurors for bias against Ben, the cannery, drinking, about church affiliations, and friendships with the Chief. Because most people will not admit prejudice or bias in the abstract, they must be questioned about their views on particular subjects, the closeness of their associations with witnesses at trial, and situations in the past that could have caused resentment or grudges against the defendant, or other witnesses from which bias might be inferred. There were about four fellow members of the Chief's church on the jury panel. The Chief was a board member of his Church and attended church or board meetings at least three times a week. His four fellow members on the jury panel acknowledged knowing the Chief and acknowledged believing that drinking was a sin but would not agree that they could not be fair and impartial jurors despite those acknowledgments. They seemed determined to be selected for the jury so that they could vindicate some personal view of morality and uphold the Chief's arrest of Ben. I challenged the four for cause for bias and was successful. The judge was convinced that those jurors were biased and could not be fair and impartial jurors under the circumstances. One person on the panel had been fired by Ben at the cannery. I was able to get that person excused for cause. All told, sixteen people were excluded from serving on the jury. Some were challenged by the prosecuting attorney, a young man with, obviously, no knowledge of Seldovia, who was trying the case by textbook rules. It took us two and one half hours to select the jury. My daughter sat in the bleachers and watched the trial.

In my opening statement to the jury, I outlined the incidents over which Ben and the Chief had clashed in the past: the Filipino cannery worker, the raw fish tax, the dock fee, the dispute over garbage-removal fees, and Ben's donation to the junior class dance fund. I also referred to the problem Ben had starting his car, his driving to avoid the potholes, and his version of the force used to arrest him and what the Chief had said to him about interfering in church affairs. The jury was attentive but noncommittal. There were three women and three men on the jury, including one married couple. Two of the men were commercial fishermen. One worked at the timber mill. One of the women was a clerk in the local grocery store, one worked in the cannery, and one was the wife of a commercial fisherman. None had disclosed any affiliation with the Chief's church or any facts from which bias against Ben or drinking might be inferred. I believed we had an impartial jury which would, as most juries, be conscientious in evaluating and deciding the case upon the evidence admitted in court. It was obvious from my opening statement to the jury that we intended to prove that the Chief was persecuting Ben over a minor driving incident involving minimal drinking.

On the witness stand, the Chief gave the impression that he was annoyed by the trial proceedings, that they were a transparent ploy by a clearly guilty man to escape punishment. The Chief acknowledged his devotion to his church and admitted that he viewed drinking as a sin. The Chief denied telling Ben at the time of his arrest that this would teach Ben not to interfere in church affairs. The Chief didn't deny the incident involving the Filipino cannery worker, although he gave a somewhat different, but not directly contradictory, version of it. The Chief admitted on cross examination that Ben was the only person the Chief had arrested for drunk driving in the three years he had been Chief. In a town populated by hard living commercial fishermen and loggers, this would seem unusual to the jury. Someone had told me that the Chief had flunked out of the Alaska State Trooper Academy for being a little too quick to use force and brandish a gun. I asked the Chief about this but he denied it. His answer did establish that he had tried and failed to become a State Trooper, something which I believed would affect the jury.

Harold, one of the men the Chief had called to assist him the night of Ben's arrest, was called as a witness by the prosecution to testify about Ben's drunken condition and Ben's refusal to take the balance test that night. Harold was very nervous on the witness stand. I questioned him about his church affiliation, his friendship with the Chief, and the intended use of school video equipment to record Ben's condition that night at the school. He answered evasively and gave garbled replies. Harold was on the witness stand about a half hour. He left the stand visibly relieved. I knew Harold from dealing with him for electrical services to the house we owned there. Harold ran the Seldovia branch of Homer Electric Association. Harold knew I was an Anchorage lawyer. Harold also knew Gary King, one of my other partners in the Seldovia home.

Ben made a good witness for himself. He was the only witness we called. He testified calmly and clearly about his past disputes with the Chief and the events of the night of his arrest. He had the cancelled check for $400, which he had given to the junior class the day of his arrest. The check was admitted into evidence and was passed around to the members of the jury and taken with them during their deliberation. The jury was attentive during the evidence and during the instructions on the law, which the judge read to them after the closing arguments of the attorneys.

The jury began deliberation at 6:00 p.m. the day of trial. Except for a brief lunch break, they had been in the gymnasium since 9:00 that morning. As soon as the jury started deliberating, I left the gymnasium and changed out of my suit into casual clothes. Then I walked along the main street of Seldovia from where I was staying to the center of town. Along the way, Harold, the nervous witness, drove by in his pickup truck. His wife was with him. He stopped his truck and said hello to me. I stopped and said hello. He called me Gary, not my name, but the name of one of the two other men with whom I owned the house in Seldovia. I said, "I'm not Gary, I'm Ken," and I took off the cap I was wearing. He then said, "You're a lawyer, aren't you? How come you weren't up at the big court action today?" I said, "Jesus, I was there, I cross examined you for half an hour." Then Harold got very flustered and replied, "I was so nervous, I couldn't see who was questioning

me. I just wanted to get out of there." So much for my ego and the indelible impression I thought I had made on all those present in the gymnasium that day.

At 7:00 p.m., after deliberating an hour , the jury returned a verdict of "not guilty." We had a celebration at Ben's house with my daughter, her husband, her husband's parents, Ben, and I. Ben had five live king crab, which we cooked in sea water over an open fire. We had a salad, garlic bread, beer, and wine. We rehashed the trial and gave thanks for the jury system and the judge who allowed it to work. None of us drove that night.

State, tribal judges share techniques

In October, the state court judges invited tribal court judges from around the state to join them for a half-day training session on working with self-represented litigants in the courtroom. The judges spent the time learning together and from each other about techniques for communicating clearly with litigants who are representing themselves in court.

Justice Craig Stowers; Tribal Judge David Voluck, Sitka Tribe of Alaska; Justice Daniel Winfree; Justice Peter Maassen; Tribal Judge Peter Esquiro, Sitka Tribe of Alaska; Justice Joel Bolger; and Chief Justice Dana Fabe.

Photos by Mara Rabinowitz

James Akerelkrea, Tribal Judge, Scammon Bay, and Fairbanks Superior Court Judge Paul Lyle.

David Voluck, Tribal Judge, Sitka Tribe of Alaska, and Anchorage Superior Court Judge Mark Rindner.

Seven point two million ice cream sewards

By Peter Aschenbrenner

"Allow me," Secretary of State William Henry Seward presents his credentials, "to click off a smart Verbeugung."

"We're glad to see you made it," Jimmy and Dolley lead our greetings. "And Baron de Stoeckl – ?"

"The accredited representative of Czar Alexander II accompanies Mrs. Seward," the Secretary waives the pomp. "But the story is really convoluted."

"Our time," Alaska's First Apothecary, he of gubernatorial whites, insists, "is your time."

"The year was 1867," the Baron bows, salutes the ladies, and commences. "A year the Boston Red Sox did not win the World Series."

"Quite so," Jimmy rocks on his heels. "It's a fact."

"So I was stuck for a plot. You know, for my play cycle."

"Great Ministers," Governor Palin consults the available leatherbounds, "of Foreign Affairs."

"Which leads his narrative, and naturally so, to the Ross Ice Shelf," Mme. Seward adds.

"All our woe may be laid," the Secretary blurts, "at the feet of Euclid the Geometer."

"He was only two years old," I gasp, "when Aristotle the Peripatetic died."

"That explains a lot," Governor P. adds.

"Euclid asserted, without empirical investigation, that two parallel lines cannot meet," Mrs. Seward declares. "It is the foundation of his deductive reasoning."

"We have prohibit the teaching of Attic Greek in our public schools," Governor Egan chimes in. "What else do people want from us?"

"The point came up in the negotiations," Seward continues. "I asked, 'where do these lines meet?' We were drinking at the time."

"I tendered assurances," the Baron assures us. "In the northwards direction."

"I assumed we were merely speaking of Wrangell Island. Or perhaps Barter Island. You know, where Roald Amundsen completed his Northwest Passage."

"I can see that spherical trigonometry," Jimmy shuffles his feet, "has always been a longstanding thorn in Alaska's twisted history."

"We all know about the arbitrational fraud of 1906," Governor Egan reminds the assembly. "By which misdeed Alaska lost its Lisière in the Southeast. It is the only piece of sovereign United States territory ever to be bargained away. And to a people so enthralled with violence that their idea of sport is clubbing baby seals!"

"But the Ross Ice Shelf?" I ask.

"More champagne was laid on," the Baron continues.

"The Night They Invented Alaska," Governor P. hums the theme from *Gigi n' Lowe*.

"But the sticking point, of course, was the Sandwich Islands," Mme. Seward points out.

"They professed to be a kingdom," I put in. "At the time."

"And the archipelago blocked Alaska's embrace of Antarctica," Governor E sets up another round of sodas, "or as we like to call it, our Ant'alaska."

"We are the only republic in the world," I consult a nearby globe, "with dual boundaries that parallel each other to the ends of the earth. Excepting, of course, the Grand Republic of the Colorado River."

"If the world were flat," Governor P points out, "we wouldn't have this problem. I mean, it's hard to know where Alaska ends. Or begins. Why, an argument could be made that our President was born in Alaska!"

"Honolulu itself," Secretary Seward points out, "practically lies in southern Kodiak County."

"Who can we blame?" Governor E. asks. "Or, in the alternative, whom?"

"You rang?" a gaunt figure in choir-boy silk enters. "Doesn't anyone recognize Roger B," he adds. "As in Taneytown?"

"The *Dredscottsboro* case," I exclaim.

"Do the quote," Governor P. urges me on.

"'There is certainly no power given by the Constitution to the Federal Government to establish or maintain colonies bordering on the United States or at a distance, to be ruled and governed at its own pleasure … .' 60 U.S. 393, 446 (1857)," I add the citation.

"Any questions?" Taney raises his hands, palms up. "I mean, how do you like your colony system? You are Alaskans. There must be opinion on this point."

The assembly falls silent.

"Would you buy a used colony from this man?" Taney points to the Baron. "Come back here, you faux-Russian in echt-Austrian clothing."

"I thought this would come back to haunt Alaskans," the Baron confesses. "You would discover that the One Hundred and Forty-First and One Hundred and Eightieth Degrees of Longitude are not parallel, as Euclid decreed, but indeed meet, in the sense that you can see one from the other, given a near-antipodean perspective."

"And you mocked me!" the Governor crows. "Me and Tina were right!"

"So we really do own the Sandwich Islands!" Governor E cries out. "We could move the legislature to Waikiki Beach! And the Supreme Court could dance their rhymes to *Happy Feet*."

"So *you* do have colonies," The Taney gloats. "Since everything in *The Dred* case is now turned inside out."

"But that means you owe them. You know," Dolley reasons. "Schools, highways, bridges."

"Wasn't that your objection?" I ask the Chief Justice. "The cost of maintaining colonies?"

"Thanks for asking, Professor," The Taney responds. "People call me an inveterate racist, which is true. But I also pointed out that the Articles of Confederation did not confer power to establish colonies. And Madison said that the Philadelphia constitution gave the federal government even less power in that regard."

"If I may," the Russian Ambassador speaks up, "as I have volume 60 here. At page 447 you wrote that in 'the Federalist No. 38, written by Mr. Madison, he speaks of the acquisition of the Northwestern Territory by the confederated States ... as an exercise of power not warranted by the Articles of Confederation, and dangerous to the liberties of the people. And he urges the adoption of the Constitution as a security and safeguard against such an exercise of power'."

"But Maryland has much to answer for," Governor P. counters. "After all, its ratification of our first constitution – "

"The Constitution of the Year Four," I ahem the citation.

"Was conditional. Maryland's statute (authorizing ratification, February 2, 1781) threatened the already-ratifying states that Maryland did 'not relinquish, or intend to relinquish, any right or interest she hath with the other United or Confederated States to the back country …'."

"That's a dilemma right there," Governor Egan polishes his glassware. "Without Maryland's ratification, there would be no Articles of Confederation. But thanks to Maryland's ratification, a national patrimony is conjured into existence – billions of acres of 'back country' including half and whole continents of ice – over which the federal government has no constitutional authority."

"That's really what I had in mind," the Chief dusts the chevrons on his sleeve. "The Free State started it all."

"It is the apotheosis of sectionalism," Secretary declares. "The will of one state exacts its due from forty-nine others."

"My native state's conditional ratification was a defiance thrown into the teeth of all others." Taney, C.J. bows low. "I just had no idea there would be so many others."

"And who'd have guessed that history would be such an expensive mistress?" The soda-master signals his wares, shimmering on the countertop. "And who's picking up the tab?" our gubernatorial druggist asks the assembly.

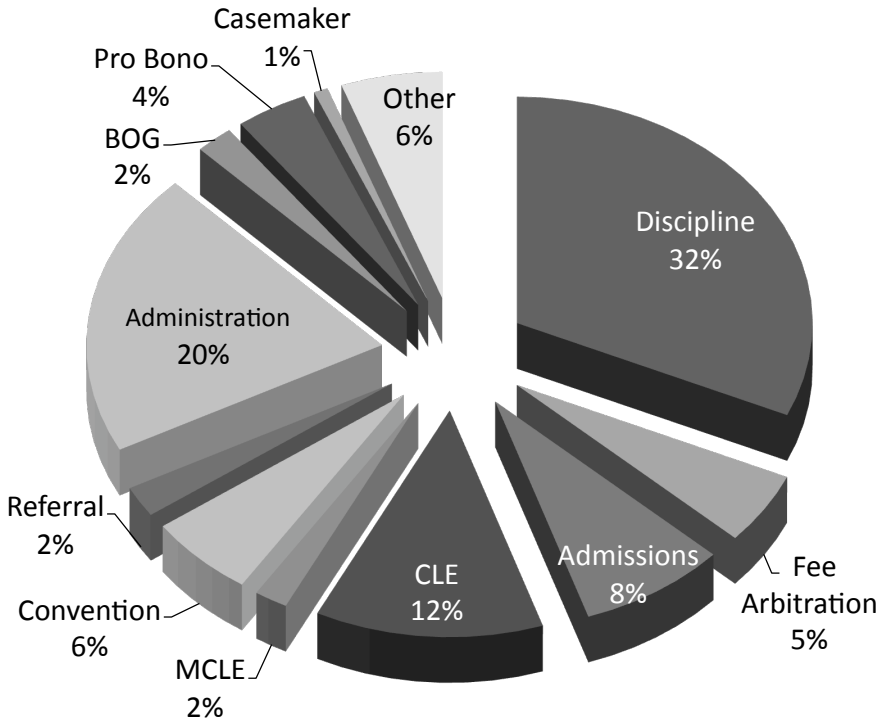
"Can anyone cash a check?" Baron de Stoeckl reaches for his billfold. "Seven million two hundred thousand dollars should buy a lot of ice-cream follies."

NEWS FROM THE BAR

Board of Governors action items for October 24 & 25, 2013

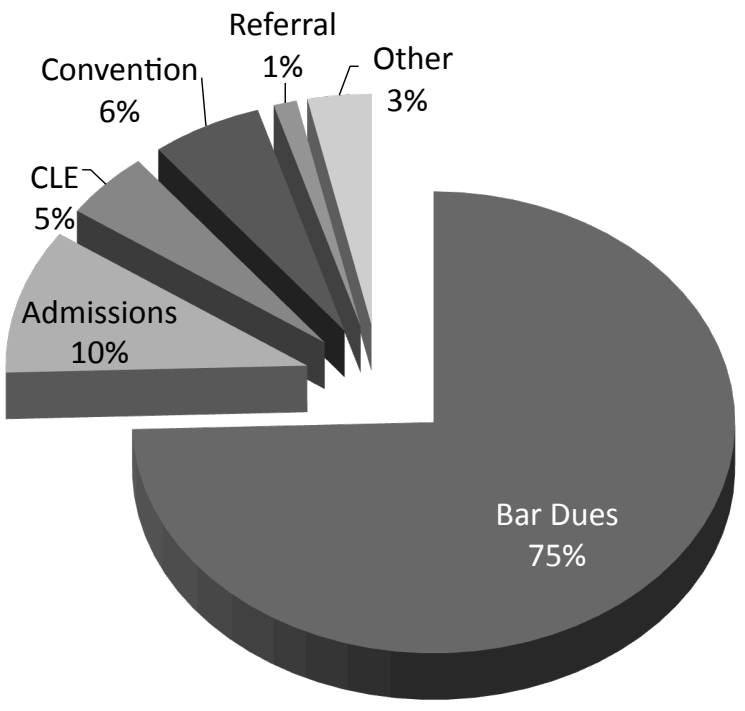
- Voted to certify the results of the July 2013 bar exam.
- Voted to approve 5 reciprocity applicants for admission.
- Voted to send to the Supreme Court proposed amendments to Alaska Bar Rules 1 – 5, adopting the Uniform Bar Exam (UBE).
- Voted to adopt the 2014 budget as amended (and printed elsewhere in the Bar Rag) and to retain dues at $660.
- Voted to adopt the Findings of Fact and Conclusions of Law of the Area Hearing Committee in a discipline matter and recommend disbarment to the Supreme Court.
- Voted to delete the requirement in the Standing Policies which required a run-off poll if no candidate received more than 40% of the vote in the Alaska Judicial Council poll.
- Voted to approve an applicant for admission via reciprocity; directed the staff to draft a policy regarding how much time on a per year basis must be spent in the active practice of law to be eligible.
- Agreed to send a letter from the Bar President to the ABA Section of Legal Education and Admission to the Bar in support of Seattle University School of Law's application to establish a satellite campus in Anchorage.
- Heard presentations from representatives from the law schools from Duke, Gonzaga and Willamette regarding their proposals to publish the Alaska Law Review. The Board voted to continue the relationship with Duke Law School, but to offer the Law Review online only, with the opportunity for members to subscribe to receive hard copies, to be paid for by the individual members. The Year-in-Review online publication will be continued and sent to members when published.
- Voted to adopt the Lawyers' Fund for Client Protection Committee's recommendation for reimbursement to the client from the Lawyers' Fund for Client Protection in the amount of $11,899.
- Voted to adopt the Lawyers' Fund for Client Protection Committee's recommendation for reimbursement to the client from the Lawyers' Fund for Client Protection in the amount of $25,025.
- Voted to adopt a Standing Policy regarding informal ethics guidance provided by Bar Counsel to members of the Bar.
- Viewed the second film in the Pro Bono series with this film focusing on volunteer support to the Alaska Network on Domestic Violence and Sexual Assault.
- Voted to approve the minutes from the September 5 & 6, 2013 board meeting.

2014 Expense Budget



Other: Bar Rag, Sections, Law Library Foundation, Web Page, LRE Grants, Committees, Credit Card Fees, Alaska Law Review

2014 Revenue Budget



2014 BUDGET REVENUE/EXPENSE

REVENUE

Admission Fees - All	297,950
ContinuingLegalEducation	139,089
MandatoryContinuingLegalEducation	5,367
Lawyer Referral Fees	36,570
The Alaska Bar Rag	8,489
Annual Convention	175,013
Substantive Law Sections	24,995
AccountingSvc Foundation	14,818
Membership Dues	2,164,135
Dues Installment Fees	10,700
Penalties on Late Dues	15,820
Disc Fee & Cost Awards	0
Labels & Copying	1,297
Investment Interest	44,880
Miscellaneous Income	500
SUBTOTAL REVENUE	**2,939,623**

EXPENSE

Admissions	237,771
ContinuingLegalEducation	366,125
MandatoryContinuingLegalEducation	53,583
Lawyer Referral Service	64,436
The Alaska Bar Rag	38,244
Board of Governors	60,660
Discipline	928,484
Fee Arbitration	150,707
Administration	595,508
Pro Bono	116,171
Annual Convention	174,573
Substantive Law Sections	56,400
New Lawyers Travel	3,000
AccountingSvc Foundation	14,818
MLK Day	5,000
Law Related Education Grants	0
ADA Member Services	1,000
Casemaker	18,380
Committees	10,447
Duke/Alaska Law Review	0
Miscellaneous Litigation	0
Internet / Web Page	15,021
Lobbyist	0
Credit Card and Bank Fees	48,655
Computer Training / Other / Misc.	500
SUBTOTAL EXPENSE	**2,959,484**
NET GAIN/LOSS	***-19,861***

New policy adopted for ethics guidance

The Board of Governors has adopted a new Standing Policy regarding informal ethics guidance provided as a service to members by bar counsel.

Informal Ethics Guidance. As a service to members of the bar, informal guidance on active and pending ethics issues may be provided by bar counsel or counsel's designees. Such guidance is generally based on unverified information under informal circumstances, and assumes that the facts as related are all true and accurate. Informal guidance has no binding legal effect on Courts, the Ethics Committee, the Disciplinary Board or the Board of Governors and cannot be used as evidence in any legal or administrative proceeding. It is intended to provide practical, real-time guidance to practitioners faced with ethics issues. It is not a substitute for an attorney's own duty to be aware of the requirements of the Rules of Professional Conduct. However, it may be used as a defense or in mitigation of any subsequent ethical action involving the same facts.

Law school enrollments on decline

From the National Law Journal, Sept. 4, 2013

Law school remains a tough sell—the number of people applying for admission nationwide plummeted by more than 12 percent this year, marking the third straight year of declines.

However, a handful of law schools bucked the trend and are welcoming incoming classes notably larger than last years'.

Those that fared well had little in common, necessarily. Some are small and rural, others large and located in large cities. Their administrators credited factors ranging from new programs and upgraded facilities to more generous financial aid packages. In some cases, the numbers recovered following unprecedented enrollment drops in 2012.

The University of Missouri-Kansas City School of Law experienced a 15 percent increase in the size of its 1L class, which comprises 174 students. The admissions office would have been happy to have landed 150, dean Ellen Suni said.

But it was touch-and-go: At one point, early in the admissions cycle, applications were down by 25 percent. The school canceled one of three 1L sections and reassigned faculty. But then applications picked up and administrators could afford to be pickier about extending offers.

"This was a surprise, and we had to scramble to add back that section and faculty," Suni said. The school hired two faculty members who'd been laid off from other law schools.

One factor, she said, was a new Summer Start Program, which gives students a jump-start by letting them take core first-year courses during the summer. More than 30 students opted in during the inaugural year. The school's relatively low tuition, at just more than $18,000 for Missouri residents, also appealed, Suni said.

Perhaps the biggest surprise was at George Washington University Law School, which brought in 484 students. Interim dean Gregory Maggs told the George Washington Hatchet campus newspaper that the class is 22 percent—80 students—larger than the previous 1L class.

The growth represents something of a rebound, after the size of the entering class plummeted last year. Maggs said the school's two new buildings might have been a draw; associate vice president for law development Rich Collins added that the school was "more aggressive" with financial aid.

The College of William and Mary Marshal-Wythe School of Law welcomed 227 new students, up by nearly 16 percent from 196 in 2012, according to associate dean of admissions Faye Shealy. The yield—the percentage of admitted students who actually enrolled—was higher than expected, she said.

...it appears that most law schools this year either maintained or reduced their incoming class sizes in attempts to maintain their median LSAT scores and undergraduate grade-point averages.

The University of California, Berkeley School of Law saw an 8 percent climb in 1L enrollment, welcoming 284 students. Spokeswoman Susan Gluss said Berkeley typically enrolls between 270 and 280 students each year.

The Mercer University Walter F. George School of Law also saw a surge in new students this year. Its 1L class has 187 students, up nearly 44 percent from 130 last year, said Michael Dean, the school's associate dean and chief operating officer. That increase more than makes up for the 19-student decline the school saw in 2012.

Applications were down 21 percent over last year, but more students than expected took the school up on its offer of admission, he said. Moreover, Mercer gave financial aid to a larger number of students this year.

"Considering the sharp decline in applicants, we are very fortunate to have experienced such a positive outcome," Dean said.

At the University of Idaho College of Law, 110 1Ls represented a nearly 8 percent increase over last year. Applications had increased by nearly 12 percent, interim dean Michael Satz said.

"Law school is a serious investment, and even with scholarships offered by other schools, students selected Idaho Law because our tuition is the 13th most affordable in the country and our employment prospects are encouraging," associate dean of admissions Jeffrey Dodge said. "We worked hard to promote the quality of our faculty and academic program during the last admissions cycle."

Tuition for Idaho residents is less than $16,000 a year.

Idaho Law's recruiting push may have hurt the only other law school in the state—the Concordia University School of Law; it saw 1L enrollment drop from 73 student in 2012 to 44 this year, its second year of operations.

Savannah Law School, which also opened its doors in the fall of 2012, fared somewhat better. Its incoming class grew by 11 percent, although that reflects the addition of just five students, assistant director of admissions Matthew Kerns said. Its 8-to-1 student-to-faculty ratio gives Savannah students a very different experience than they can expect at a larger, more established school, he added.

"The spirit of entrepreneurship is definitely alive among our students," he said. "Being the first, they know they will have a say in what's going on."

The official enrollment figures that law schools report to the American Bar Association won't be available for months, but it appears that most law schools this year either maintained or reduced their incoming class sizes in attempts to maintain their median LSAT scores and undergraduate grade-point averages. Any drop in those metrics could result in a lower U.S. News & World Report ranking. Admitting lower-performing students could also strain a school's academic resources and eventually hurt its bar passage rate.

The incoming class at Missouri-Kansas City had a slightly lower median LSAT score this year, Suni said, but their GPA statistics were virtually unchanged. George Washington has yet to release its class' academic credentials, but Collins told The Hatchet that the school relied more heavily on GPAs and lowered its LSAT standard.

It appears that Berkeley managed without adjusting its admission standards too much, despite the fact that it received about 1,000 fewer applications. The school's median LSAT score for the class of 2016 remained unchanged, although its 75th percentile LSAT fell from 170 last year to 169.

Berkeley's 25th percentile LSAT score rose significantly, however—from 163 to 166 this year. All of the school's GPA figures were down slightly.

Mercer Law's median LSAT score dropped one point, Dean said, but its GPA measure remained consistent with the previous year.

Contact Karen Sloan at ksloan@alm.com. For more of The National Law Journal's law school coverage, visit: http://www.facebook.com/NLJLawSchools.

Retirement from the practice of law

A lawyer's journey

By Molly Shepherd

According to a survey that the State Bar of Montana conducted in 2011, forty-six percent of its members are over the age of fifty. Thus a significant number of Montana lawyers already have begun a journey that will lead them toward and beyond retirement. It's an integral part of a life in the law.

Practicing lawyers follow different routes on their journey toward retirement. Some lawyers work full-time until a predetermined retirement date. Many more lawyers gradually reduce their workload and hours until their presence at the office is largely ceremonial. At some point, they cease to practice.

Finally, there are the few stalwarts who continue to work into their seventies or even their eighties. For them, practicing law is the default mode of life. They retire with reluctance.

The journey toward retirement doesn't always follow a predictable path, however. Family, money, illness, disability and other circumstances may drive how and when a lawyer retires. Avoidance and both kinds of luck also may affect the route that he or she travels.

I retired ten years ago at the age of sixty. I had enjoyed the practice oflaw- the satisfaction of helping others, the relationships with colleagues and clients, the intellectual challenges. But for the call of the North Fork, I might have continued to practice until age sixty-five or seventy, gradually reducing my workload.

Almost thirty years ago, however, I bought land on the North Fork of the Flathead River, above Polebridge. The property adjoins Glacier National Park and is fifty mostly unpaved miles from a grocery store. For years, I drove up from Missoula for an occasional weekend. But longed to spend more time in this extraordinary place. Commuting to work in Missoula wasn't feasible. Nor was telecommuting: the North Fork is off-the-grid and has only twice-weekly mail service. So I opted to work until a predetermined date, then headed north.

I have no regrets about my retirement. My life is rich and varied; I'm never bored. Even on weekdays, I can spend time with family and friends, weave rugs, cook, garden, read, travel, get plenty of exercise, and try to be a good steward of my eighty acres.

Moreover, I have durable ties to my former colleagues and to the Bar. I've served as an officer and/or member of multiple boards and continued my long-time association with the Montana Justice Foundation. I've also been active in the North Fork community and, since the fires of 2003, have chaired its wildfire mitigation efforts.

For those of you in the over-fifty age group, as well as those of you who one day will attain that status, here are some tips about a lawyer's journey toward and beyond retirement.

1. Plan carefully for your retirement, in collaboration with your colleagues and in consultation with others who will be affected by it.

2. Save money! If you're not already doing so, start contributing as much as you can to your retirement/savings plan(s).

3. Don't wait too long to retire. If possible, do it while you still have the physical and mental capacity to lead an active and fulfilling life.

4. Develop skills, interests and relationships that will give you good reasons to get up in the morning after you retire. Keep learning.

5. After retirement, don't sever ties to your colleagues and to the legal profession, at least for a while. Abrupt termination of established routines and connections can leave an unhealthy void in your life.

6. Consider pro bono practice. The State Bar's emeritus program is a good fit for many retired lawyers.

7. Continue to be engaged in public service and in nonprofit organizations. The skills and experience gained from practicing law, and the habits associated with thinking like a lawyer, still have relevance and value.

8. Get a dog, if you don't already have one.

—Molly Shepherd, Polebridge, Montana, August 2013.

Molly Shepherd served as Montana State Bar president in 2000-2001.

Drunk driving accident leads to lawyer's suspension

The Alaska Supreme Court, on August 23, 2013, suspended Anchorage lawyer Henry Graper, III after his conviction for a drunk driving accident that seriously injured three victims. In 2010, Graper was involved in two accidents caused by alcohol impairment. In the first one, he collided with a parked car, then left the scene of the accident. In the second one, he left a bar after several hours of drinking and collided with another vehicle, causing it to leave the highway and roll. The three occupants were all hospitalized. Graper left the scene of the accident, and was found in nearby woods. He was convicted of DUI, leaving the scene of an accident, and felony assault. The court sentenced him to 62 months, with 49 suspended, and criminal probation till 2016. In August 2011 the Supreme Court placed him on interim suspension pending the outcome of proceedings under the lawyer discipline rules.

A discipline hearing committee found that Graper violated Alaska Rule of Professional Conduct 8.4(b) by committing criminal acts that adversely reflected on his fitness to practice law. In aggravation, the hearing committee found that he acted recklessly, knowingly, and with a selfish motive, and caused serious injuries. In mitigation, the committee found that he was candid and cooperative in Bar Association proceedings, had no prior discipline record, was genuinely remorseful, and was addressing his alcohol problem. The committee recommended a three-year suspension, effective on the date of his interim suspension. As conditions of reinstatement to practice, the committee recommended that Graper show he has maintained sobriety, attended support group meetings, passed a medical test for substance abuse, and complied with the conditions of his criminal probation. On review, the Disciplinary Board approved the committee recommendation with the extra proviso that Graper cannot apply for reinstatement till he completes his criminal probation. The Supreme Court approved the committee and Board recommendations. Public documents concerning the discipline case can be reviewed at the Bar office in Anchorage.

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Disciplinary board issues private reprimand

At its September 2013 meeting, the Disciplinary Board reprimanded Attorney X for negligent management of his client trust account. Overdrafts occurred on the trust account when a deposit wasn't credited to the account. Failure to monitor and keep ahead of the overdraft bank fees led to insufficient funds being kept on deposit to cover the fees which meant client funds were depleted and an account out-of-trust resulted.

Upon notification of the overdrafts, Bar Counsel requested documents that Attorney X promptly provided. The Bar's reconstruction of transactions revealed bookkeeping errors that included failure to identify deposits and withdrawals, math errors and failure to make final reconciliation of client accounts. The absence of accounting controls resulted in overdraft situations.

Attorney X's negligence caused no actual money loss or harm to any client, although Attorney X agreed there was a potential for loss during the times that the trust account was underfunded due to his failure to handle his IOLTA account with scrupulous attention to detail.

Prior to issuing a private reprimand, the Board considered several mitigating factors that included the absence of a disciplinary record during a decades-long practice; the lack of a dishonest or selfish motive; timely good faith effort to rectify the misconduct by taking steps to improve his trust accounting practices; full cooperation with Bar Counsel; and, willing agreement to resolve the grievances through a disciplinary stipulation.

In addition to being privately reprimanded, Attorney X agreed to provide a mandatory quarterly audit report to the Bar for a two year period. A certified public accountant will prepare the report and certify that Attorney X is maintaining his general law office accounts and client trust accounts in accordance with recommended law office management practices; that is, Attorney X will keep ledgers, reconcile accounts monthly, preserve bank records and safekeep client funds in compliance with ARPC 1.15.

New 9th Circuit guide

The Ninth Circuit Appellate Lawyer representatives have published a practice guide. The guide is not an official publication of the court. However, it includes common questions and subjects of interest to appellate practitioners. A copy is available on the court's website.

http://cdn.ca9.uscourts.gov/datastore/general/2013/10/07/Oct_7_13_Final_Appellate_Practice_Guides.pdf

Federal cuts violate constitutional rights of poor

By Andrew J. Lambert

Fifty years ago in the landmark case of *Gideon v. Wainwright*, the U.S. Supreme Court established that the Sixth Amendment's "right to counsel" guaranteed legal representation to every American charged with a criminal offense, even if the person could not afford to pay for a lawyer.

Across the nation, budget cuts known as "sequestration" are imposing intolerable costs upon our federal court system and the administration of justice. Federal Public Defender offices have been facing terminations, layoffs and unpaid furloughs of attorneys and staff. Additionally, the government has implemented delay of payments to court appointed private defense counsel ("CJA attorneys"), causing financial hardship for solo practitioners and small firms who are willing to take court-appointed cases at a drastically reduced fee from what they typically charge. CJA rates were reduced from $125 per hour to $110 per hour for work performed after September 1, 2013.

This reduction is scheduled to last through fiscal year 2014. This situation is causing a crisis in indigent defense for the country. Indigent resources were already limited and the professionals within the system overburdened. With these budget cuts and layoffs our justice system is at risk of losing 50 years of progress. In addition to the current "sequestration," there have been are additional massive budget cuts implemented for the 2014 fiscal year commencing October 1, 2013.

In the American system of government an independent judiciary is the engine of freedom. The zealous defense of the individual before the awesome power of the government is a vital limit on government.

The Federal Public Defender office in Anchorage represents indigent federal criminal defendants from every city, town, and village in Alaska. In addition to the head Federal Defender, Rich Curtner, there are now only five other full-time assistant federal defenders directly responsible for handling all new trial cases coming in to the office. Because of the general seriousness of federal charges, the vast majority of which are felonies, these cases are often complex and time consuming.

The 2014 budget for the Alaska office was slashed by 9.35% (in addition to the 5.25% 2013 sequester cuts) at the start of the new fiscal year in October. The Federal Defenders, who receive funds directly from the Federal Courts, have virtually no ability to obtain alternate source funding. The primary expense for defender service is for personnel salaries. Therefore, the only solution is to fire attorneys and staff, leaving the remaining employees over-burdened and demoralized. In order to implement the reduced budget, Mr. Curtner was forced to terminate the office's two receptionists, one of whom had worked for the office for over 15 years. One full time attorney was moved to a half-time position, a senior part-time attorney retired from the office, and the IT administrator position was eliminated. For the second year in a row, there are no funds available for training or travel for training.

A criminal justice system is vital to a free society and democracy. The rule of law is basic to a free society. In the American system of government an independent judiciary is the engine of freedom. The zealous defense of the individual before the awesome power of the government is a vital limit on government. Without an independent judiciary and zealous advocacy for criminal defendants, our modern democracy cannot long survive.

The Alaska Association of Criminal Defense Lawyers joins with the National Association of Criminal Defense Lawyers, The American Bar Association, the Federal Bar Association, and criminal defense organizations all over the country in urging Congress to provide adequate funding for the Federal Courts and Federal Public Defenders.

The author is president of the Alaska Association of Criminal Defense Lawyers ("AKACDL"), a non-profit organization and the only professional association of criminal defense lawyers in Alaska, with well over 100 members statewide. The members of AKACDL include both private attorneys and state and federal public defenders who provide criminal defense for individuals accused of crimes in all of courts of Alaska.

Substance Abuse Help

We will
- Provide advice and support;
- Discuss treatment options, if appropriate; and
- Protect the confidentiality of your communications.

In fact, you need not even identify yourself when you call. Contact any member of the Lawyers Assistance Committee for confidential, one-on-one help with any substance use or abuse problem. We will not identify the caller, or the person about whom the caller has concerns, to anyone else.

Anchorage

Michaela Kelley Canterbury
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Dale House
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Suzanne Lombardi
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Jennifer Owens
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Michael Sean McLaughlin
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Greggory M. Olson
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Conference helps inmates succeed on release

Members of the National Association of Women Judges hosted the eighth annual "Success Inside and Out" conference on Saturday, October 26, 2013 at Hiland Mountain Correctional Center.

Chief Justice Dana Fabe of the Alaska Supreme Court founded the conference in 2006 to bring professional women together to help inmates nearing their release date prepare for transition to life outside prison. Chief Justice Fabe remarked: "As judges, we see first-hand the need to stop the revolving door into and out of our courtrooms. We designed this conference to provide an opportunity for women judges and professional women in the community to provide mentorship, life-skills training, and support to inmates who are close to their date of release. We want to help these women succeed upon their release to the community"

Over 70 professionals from the community offered their time and expertise to provide practical guidance on finding jobs, housing, and transportation; continuing education; handling finances; and maintaining personal health. Inspirational keynote addresses were offered throughout the day. During lunch, a fashion show highlighted appropriate dress in the workplace.

Over 70 professionals from the community offered their time and expertise.

Over 100 women inmates scheduled for release within the next year participated in the conference. Co-sponsors include the Alaska Court System, the Alaska Bar Foundation, the National Association of Women Judges, the George Fabe Fund of the Greater Cincinnati Foundation, and Hiland Mountain Correctional Center along with over 29 conference supporters.

Family Law Self-Help Director Stacey Marz and volunteer Bernie Ruskin

Second Run owner Ellen Arvold with Second Run staff and Hiland Mountain Correctional Center fashion show model dressed for success when applying for a trade job.

Commissioner Joseph Schmidt, Alaska Department of Corrections; Chief Justice Dana Fabe; Deputy Commissioner Ronald Taylor, Re-Entry & Population Management; Hiland Mountain Correctional Center Superintendent Michael Gilligan.

Shirley May Springer-Staten, Inspirational Speaker.

Photos by Aliki Joannides and Bryan Hickok

Chief Justice Dana Fabe.

Retired Palmer Superior Court Judge Beverly Cutler and Chief Justice Dana Fabe.

Jessica Rostad and Second Run owner Ellen Arvold.

Ninth Circuit's first all-Alaskan Appellate Panel convenes in Pasadena

The United States Court of Appeals for the Ninth Circuit made judicial history in October when it convened its first all-Alaskan appellate panel.

Circuit Judge Morgan Christen of Anchorage, Senior Circuit Judge Andrew J. Kleinfeld of Fairbanks, and Senior District Judge John W. Sedwick, also of Anchorage and sitting by designation, will hear oral arguments on October 11, 2013, at the Richard H. Chambers U.S. Court of Appeals Building in Pasadena, California. Three cases are on the docket with arguments scheduled to begin at 9:30 a.m. in Courtroom Three.

Appellate panels are randomly assigned and the all-Alaskan panel resulted from the luck of the draw.

"I was deeply honored to have been chosen to serve on this court and I have the greatest respect for my new colleagues. The opportunity to sit with two judges from my home state is truly special," Judge Christen said. "I think the first all-Alaskan sitting will be a proud moment for us and for members of the bench and bar back home. I feel very fortunate to be a part of this bit of Ninth Circuit history."

"I think all of us who represent Alaska on the federal courts consider it an honor and privilege," said Judge Kleinfeld. "It really feels like Alaska is coming into its own with this first all-Alaskan panel being convened by the court."

Judges Kleinfeld and Christen are the second and third Alaskans to serve on the Ninth Circuit Court of Appeals. Nominated by the first President Bush, Judge Kleinfeld came onto the court in 1991. He served as an active judge until 2010, when he assumed senior status, creating a vacancy on the court. President Obama nominated Judge Christen to fill the vacancy. She came onto the court in January 2012 and is the first woman to represent Alaska on the Ninth Circuit bench.

Judge Sedwick has served for more than 20 years as a judge of the U.S. District Court for the District of Alaska. Also nominated by the first President Bush, he was confirmed in 1992 and served as chief judge of the district from 2002 to 2009. He assumed senior status in 2011.

Listening to arguments in Pasadena were Circuit Judge Morgan Christen of Anchorage, center, Senior Circuit Judge Andrew J. Kleinfeld of Fairbanks, left, and Senior District Judge John W. Sedwick, also of Anchorage.

The first Alaskan to sit on the Ninth Circuit Court of Appeals was the late Honorable Robert Boochever, who was nominated by President Carter and confirmed by the Senate in 1980. After serving as an active judge for six years, he assumed senior status in 1986. Judge Boochever died in 2011 at age 94.

The Ninth Circuit Court of Appeals hears appeals of cases decided by executive branch agencies and federal trial courts in nine western states and two Pacific Island jurisdictions. All of the states are represented by at least one judge while states with large populations have multiple representatives.

Women lawyers gather at Snow City

Courtney Kitchen and Stephanie White Thorn

Court of Appeals Judge Marjorie Allard and Anchorage District Court Judge Leslie Dickson.

The Anchorage Association of Women Lawyers, the National Association of Women Judges and Dorsey & Whitney hosted a networking event at Snow City Café on November 6, 2013 to promote and encourage women lawyers to consider applying for judicial positions. Judges from the District and Superior Court gave an overview of the process of applying for a judicial opening, what to expect, and how to build qualifications for a judicial position.

Anchorage District Court Judge Jo-Ann Chung, Anchorage Superior Court Judge Catherine Easter and Palmer Superior Court Judge Kari Kristiansen

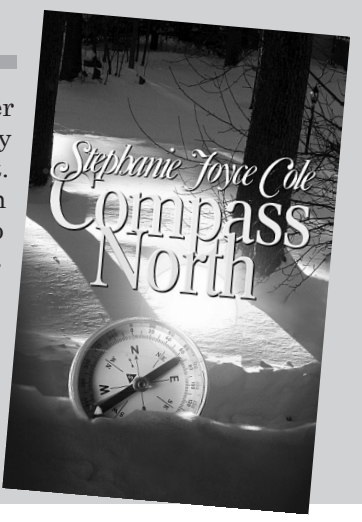
Books by lawyers

Cole

Stephanie Cole, former administrator of the Alaska Court System, has just published a mystery novel. Set in Homer, "Compass North" will be released in December.

Cole retired in 2009, and told the Bar the book was on her mind for awhile. Of its plot, she says, "Reeling from the shock of a suddenly shattered marriage, Meredith flees as far from her home in Florida as she can get without a passport: to Alaska. After a freak accident leaves her presumed dead, she stumbles into a new identity and a new life in a quirky small town. Her friendship with a temperamental artist and her growing worry for her elderly, cranky landlady pull at the fabric of her carefully guarded secret. When a relationship with a local fisherman unexpectedly blossoms, Meredith struggles to find a way to meld her past and present so that she can move into the future she craves. But someone is looking for her, someone who will threaten Meredith's dream of a reinvented life."

Wayne Anthony Ross also has published a new book, entitled, "Courtrooms, Cartridges and Campfires."



ESTATE PLANNING CORNER

Is the practice of law a business?

By Steven T. O'Hara

Some years ago I was advising a Board of Directors when one of the Directors really did not like what I had to say. "What do you know?" he said to me privately. "You're just a lawyer. You're no businessman."

One of the basic truths I was taught in law school, confirmed over many years as a lawyer, is that a law practice is not a business. Consider the words of Chief Judge Breitel writing for the New York Court of Appeals in *Matter of Freeman*, 34 N.Y. 2d 1 (1974):

> A profession is not a business. It is distinguished by the requirements of extensive formal training and learning, admission to practice by a qualifying licensure, a code of ethics imposing standards qualitatively and extensively beyond those that prevail or are tolerated in the marketplace, a system for discipline of its members for violation of the code of ethics, a duty to subordinate financial reward to social responsibility, and, notably, an obligation on its members, even in nonprofessional matters, to conduct themselves as members of a learned, disciplined, and honorable occupation. These qualities distinguish professionals from others whose limitations on conduct are largely prescribed only by general legal standards and sanctions, whether civil or criminal. (*See* Pound, *The Lawyer from Antiquity to Modern Times,* pp. 4-10.) Interwoven with professional standards, of course, is pursuit of the ideal and that the profession not be debased by lesser commercial standards (*see* Drinker, *Legal Ethics,* pp. 210-273). Departures from the ideal, few or many, should rarely, if ever, justify a lowering of the standards (*cf.* Ryan, *Address to the Graduating Law Students of the University of Wisconsin,* 1873, 19 *Notre Dame Lawyer* 117, 135 140 [1943]).

As a lawyer I hung out my shingle with an Alaska professional corporation. In Alaska professional corporations are prohibited from engaging in business. Alaska Statute 10.45.040 provides: "A professional corporation may not engage in business; however, it may own real and personal property necessary for or appropriate in rendering its own professional services and may invest its funds in all types of investments."

Business is honorable and great. It is just different from law. For example, in law there is no hesitation to disengage from a client when called for under the rules of professional conduct. A basic principle is that the loss of revenue to the lawyer from the disengagement is irrelevant to the decision. By contrast, the businessperson may think it is nuts to fire a customer unless the potential economic cost of maintaining the business relationship outweighs the potential economic benefit.

Let me be clear. My experience is that businesspeople are ethical. I grew up around business, including helping my father keep his books. A wholesaler of fruits and vegetables, he advised: "Integrity's all you got. Once it's gone, you got nothing."

"One of the basic truths I was taught in law school, confirmed over many years as a lawyer, is that a law practice is not a business."

More specifically for us lawyers, independent judgment is all we have. Once it is gone, we have nothing. In 1879 John D. Rockefeller, Sr. and Standard Oil needed a lawyer. He found Samuel C. T. Dodd:

> When Rockefeller hired him in 1879, Dodd held out, not for more money or titles but for assurances of his integrity. Taking a relatively small salary (it would never exceed $25,000 a year), he resisted Rockefeller's plea that he take Standard Oil stock, arguing that this might compromise his legal judgment, and he never became a Standard director for that reason. Ron Chernow, *Titan: The Life of John D. Rockefeller, Sr.,* Chapter 13 (Vintage Books 2004), Kindle Edition.

A century ago Northwestern University had a professor by the name of Arthur Andersen who worked in the accounting field. A man of integrity, he did not compromise when rendering an opinion about a company's books.

In 1913 he founded an accounting firm bearing his name. The firm became a leader in its field but, unbelievably, it was forced to close its doors in 2002 for allegedly ignoring accounting practices that made the books of a lucrative client, Enron Corporation, look favorable.

Professor Andersen established "four cornerstones" for the firm: "provide good service to the client; produce quality audits; manage staff well; and produce profits for the firm." According to one accountant who worked with Arthur Andersen, the firm changed over the years "to the point that making profits eventually dwarfed all else." He and other partners in Arthur Andersen joked "that the four cornerstones were really 'three pebbles and a boulder.'" Brown and Dugan, *Andersen's Fall From Grace Is a Tale of Greed and Miscues, Wall St. J.*, June 7, 2002, at A6, Col. 1.

Rather than focused on profits the practice of law is focused, in my experience, on preserving independent judgment and training young lawyers who love the law. In turn the young lawyers train up new lawyers who guard independent judgment and train up new lawyers and so on. The result is the client is served well.

I am familiar with at least one law firm where some of the same clients have worked with over three decades of lawyers from the same firm.

Another word for business is competition. There is nothing wrong with business, except where competition isolates rather than unites. Business school concepts can take a unified firm of collegial professionals and transform it into isolated units of production. They can leave young lawyers, who naturally have no "books of business," with less opportunity for client interaction and advancement.

Where law is viewed as business, a law firm might adopt a business school mindset requiring each lawyer to justify his or her economic existence regularly, as if to a Board of MBAs. Sadly, lawyers in the firm might see one another as units of production rather than as colleagues. The question on everyone's mind might devolve to: What have you done for me lately? The follow-up question might be: Could I make more money elsewhere?

Risking relationships in pursuit of personal profit is not only bad policy in the practice of law, it is bad policy in business. My father's success as a businessman was based on the strength of his relationships with business associates for over 50 years.

In the wake of the 2008 economic collapse in the U.S. and across the world, business schools are drawing on the practice of law as a field where the interests of others are placed above self-interest. As Steven J. Harper explains:

> Nohria [of Harvard Business School] identified the law as an example of a profession that business might emulate. His goal was to develop a more ethical core transcending attitudes that had come to dominate MBA programs. He even pushed for a lawyer-type MBA oath. Since then, students at some top schools, including Harvard, Columbia, and the Wharton School of the University of Pennsylvania, have taken one. Steven J. Harper, *The Lawyer Bubble: A Profession in Crisis*, Epilogue (Basic Books 2013), Kindle Edition.

A business school mindset could make it harder for young lawyers to become equity partners. Associates and other lawyers who own no equity in the firm could be viewed as part of a pyramid that needs to be preserved, with the pyramid creating wealth for the equity partners vested at the top. Moving lawyers to the top could be viewed negatively, at least in the vocabulary of business school, because more lawyers of equal rank could reduce "leverage" and make the firm "top heavy."

With a business school mindset, so-called rainmakers might be paid more than those doing the work. As the saying goes, there are finders and there are grinders. The introvert who writes a great brief and prefers email to face time with a client might have less bargaining power within the firm (with a business school mindset) than an extravert with a "good book of business."

Another example of a business school policy is eat what you kill. Here "eat what you kill" means that a partner might get paid based on what he or she gets credit for as contrasted with lockstep compensation such as where all partners are paid the same.

In the face of business influences, including eat what you kill, shareholders of one professional corporation with which I am familiar have given direction to the firm's Board of Directors. Their concern is that placing too much emphasis on keeping score could make the law firm a firm in name only and waste a lot of time that could be spent helping clients. They believe the debiting and crediting of eat what you kill could destroy their collegial firm and replace it with a cost-sharing arrangement among lawyers who jealously guard from one another "their" respective clients. The direction, denominated a Statement of Intent, reads as follows:

> This is a nonbinding statement among two or more shareholders of . . . , an Alaska Professional Corporation (the "Firm"). Those not signing this statement either disagree with some or all of its content or simply wish to abstain. All affirm it is perfectly acceptable not to sign this statement.
>
> Historically the Firm has treated shareholders equally in terms of compensation, including bonuses, so long as each has contributed roughly the same within a zone of reasonableness. Historically once an individual becomes a shareholder, the new shareholder's compensation is adjusted over an appropriate number of years such that the individual's compensation becomes equal with the other shareholders. By the same token, on occasion one or more shareholders have voluntarily frozen their salaries and have removed themselves from consideration for bonuses.
>
> The Firm's approach to compensation is not perfect. We believe the Firm's approach to compensation, while imperfect, has proven itself in terms of fostering strength and permanency in the relationship among shareholders and the best legal services to clients.
>
> The Firm is aware of approaches to compensation used by other firms, including formulas that give credit to those who bring work in the door and manage associates, as well as those who do the work. We believe formulas may engender competition among shareholders, such as who gets credit for bringing work in the door. We believe such competition can work against the best interests of the Firm and clients.
>
> The Firm's approach to compensation has evolved over the years and will no doubt continue to evolve. The Firm may consider any formula approach at any time. We have an open mind on the subject. We do not anticipate supporting an approach to compensation that is based on a formula unless it fosters strength and permanency in the relationship among shareholders and the best legal services to clients.

Supreme Court adopts UBE

The Alaska Supreme Court on Dec. 4 adopted the Uniform Bar Exam (UBE).

The first UBE exam administered in Alaska will be in July, 2014. The Alaska Bar will start accepting applications for admission via UBE score transfers from other states effective January 1, 2014.

To transfer a score, the applicant must have achieved a scaled score of 280 or above on a UBE exam in another state within five years preceding the date of application to the Alaska Bar Association.

The application fee will be the same as the bar exam fee, currently set at $800.

Sailing

Continued from page 1

excuse to discriminate against women in modern Vanuatu. She observed that proclaimed "traditional" women's chores, such as washing dishes and doing laundry, simply did not exist in more traditional times. There were no clothes; there were no dishes.

What is clear is that kastom varies greatly from island to island. On the island of Tanna, Mark was invited to visit a village "nakamal." In this village, the nakamal was like parliament, where men gathered every evening to drink kava (a plant whose root has mild narcotic characteristics) and to discuss the issues of the day. Women were not allowed in the nakamal and were prohibited from seeing the kava prepared. On the day Mark attended, the meeting opened with a discussion about a tobacco leaf that had been stolen from the community—this was a very big deal. Also on the agenda were the issue of youth losing interest in native traditions and a discussion on how to capitalize on the high tourist traffic on Tanna. (Many people, like us, stop in Tanna to visit Yasur, the live volcano which is relatively easily accessible). An hour long discussion followed on the directive to families to plant vegetable gardens and raise pigs beyond their needs to contribute to community kastom ceremonies—such as circumcisions and weddings.

In comparison, Roslyn Tor described the nakamal in her village on the northern island of Ambae as a clearing with two sides: men gathered on one side and women on the other. After the men and the women discussed matters separately, representatives of each group met in the middle of the clearing to decide on matters of importance.

Farther north in Vanuatu, I realized that kastom might be better understood as another word for magic. We spent several days anchored in the uninhabited Reef Islands, part of the Banks Islands group in northern Vanuatu. The Reef Islands were inhabited until fairly recently, when the fresh water source was contaminated by salt water and the islanders moved to the nearby islands of Vanua Lava and Mota Lava. We stopped in Vanua Lava to get permission to visit the islands from the custom land owner, Reuben. Reuben's son Cliff paddled over in his outrigger canoe from Vanua Lava (about 6 miles away) to bring us a coconut crab. He visited with us for a while, and as we were sitting on deck, he motioned toward a section of reef. "You see that reef? That is a kastom reef. …" A traditional reef? I didn't understand. "What do you mean?" Cliff explained that, many years ago, people on Vanua Lava were dying. It turned out that the reef was killing them because of some misunderstanding between the villages. The chiefs got together and pigs were slaughtered and the reef stopped killing people. Cliff showed us other sections of the reef which were "tabu"—where fishing was prohibited as a conservation measure.

The Reef Islands were inhabited until fairly recently, when the fresh water source was contaminated by salt water and the islanders moved to the nearby islands of Vanua Lava and Mota Lava.

In November, Mark and Laurence piled into the back of a covered flatbed truck with about 20 other villagers and slowly made our way to the village of Ukiangang at the southwestern end of Butaritari atoll. Writes Mark on their blog: "As we made our way to the school grounds, the road was lined with young children - all wearing Kelly green-and-white school uniforms, and each adorned with a freshly woven coconut palm leaf hat that oddly resembled a military helmet. When our truck came to a stop, we were swarmed by a hundred smiling kids, some toting homemade toy rifles and pop-guns. They were shouting "I-Matang! I-Matang!" - the Kiribati phrase for white man. Today was a special day for the island: a day to celebrate the 70th anniversary of the Kiribati liberation from Japanese occupation during WWII. Lolo and I had timed our visit here to witness this little known event. Being ushered to our front row seats, we had become the de facto American Representatives for this day of commemoration," in what became known as the Battle of Makin.

Laurence and Mark are documenting their Pacific Ocean journey on an extensive blog at http://www.sailblogs.com/member/thebigblue/.

There, you can explore their extensive preparation and refitting of Radiance for the trip, sail logs, photos, satellite map of their current location, and a Google map of their planned expedition.

Reuben had to defend his rights to the Reef Islands in court when a foreigner started to make plans to build a hotel there. Apparently someone had sold the foreigner land on the Reef Islands, unbeknownst to Reuben. Reuben's case was pretty solid—under the Vanuatu constitution, land ownership is firmly based on custom and indigenous rights. It provides that land in Vanuatu "belongs to the indigenous custom owners and their descendants," and that "the rules of custom shall form the basis of ownership and use of land." Still, if Reuben had not somehow found the resources to get to Port Vila and challenge the action, we may have seen a foreign-owned hotel at our pristine anchorage. Interestingly, the constitution does allow land transactions between an indigenous citizen and either a non-indigenous citizen or a non-citizen, but these are "only permitted with the consent of the Government." Now, Reuben has gone back to court to ask for exclusive rights to manage the fishery on the Reef Islands. Other people have rights as custom users of the property, so it will be interesting to see what happens. Note that Reuben is not a wealthy or particularly educated man. He does not speak English, lives in a completely traditional village in a grass hut with no electricity.

Vanuatu's official language is Bislama—a kind of pidgin English. But the villagers all speak what they call "the language"—which is the local village language. Amazingly, each village has its own language—resulting in the existence of over 100 distinct languages in Vanuatu alone. To add to the confusion, Vanuatu was colonized by both the English and the French, so French and English are still both official languages in addition to Bislama.

We reluctantly left Vanuatu in late October, once again chased away by the onset of a hurricane season. Today I write from Butaritari Atoll, the site of the Battle of Makin, a sandy spit of land in the nation of Kiribati, far from the lush volcanic islands of the South Pacific. We are at one degree north, in the northern hemisphere, and we have begun our long journey north and east, back to Alaska.

Anchorage attorney named MacArthur Genius

Anchorage immigration attorney Margaret Stock was named Wednesday as one of 24 recipients of a MacArthur Foundation "genius" grant, and with the honor comes a five-year stipend which she plans to use to promote her idea that immigration doesn't threaten national security.

She also founded a program that pairs volunteer attorneys around the country with military families in need of legal assistance with the deportation of loved ones and other immigration issues.

Stock, a retired lieutenant colonel in the Army Reserves who came to Fort Richardson in Anchorage as a military policeman in 1986, has opposed efforts to shut down immigration and deal punitively with immigrants. She has also worked as a professor at the United States Military Academy at West Point, and she currently serves as an adjunct instructor at University of Alaska. Stock is a member of the American Bar Association Commission on Immigration. Stock earned her A.B., with honors, in Government from Harvard College, and earned her J.D., with honors, and M.P.A. from Harvard Law School and the Harvard Kennedy School of Government.

She spoke against a bill in the Legislature this year by Rep. Bob Lynn, R-Anchorage, that would have restricted driver's licenses for legal immigrants, forcing the Alaska Department of Motor Vehicles to monitor the immigration status of non-citizens.

The MacArthur grant — $625,000 over five years — "makes it much easier for me to get the message out," Stock said in an interview Tuesday. "I've been writing for years about the connection between immigration and national security and how, after 9/11, we looked at it the wrong way.

In Memoriam

Judge James A. von der Heydt

Judge James A. von der Heydt died on December 1, 2013. He was 94 Judge von der Heydt was born July 15, 1919, in Miles City, Montana. He is preceded in death by his parents, Dr. Harry Karl and Alice Arnold von der Heydt, and his brother, Dr. Karl Edmond von der Heydt. Both his father and his brother were orthodontists, his father practicing in the early days of orthodontics.

A graduate of Albion College in Michigan, James first came to Alaska in 1943 and worked construction, first on the Alcan Highway and later, on Mark's Air Force Base in Nome. In July 1945 he was appointed deputy U.S. Marshal at Nome, serving in that position until August of 1948, when he resigned to attend law school at Northwestern University in Chicago. After graduating in 1951, with a Juris Doctor degree, James returned to Alaska, where he worked construction at Cape Prince of Wales while waiting to take the Alaska Bar examination in October 1951. He served first as U.S. Commissioner at Nome and then as United States Attorney until 1953, when he entered private practice in Nome.

While attending law school, James met Verna Johnson, whom he married in Seattle on May 21, 1952. A few days later, the couple flew to Nome to establish their home.

James was a member of the Alaska Territorial Legislature during the 1957 session. In 1959, when Alaska became a state, he was appointed Judge of the Superior Court for Alaska at Juneau. In 1966, President Lyndon B. Johnson appointed him to the position of U.S. District Judge for the District of Alaska. He will be remembered as a mentor to the Alaska legal community and known for his sage advice, frequently saying, "If you make a mistake, learn to forgive yourself."

His interests were varied and included painting, in both watercolors and oil, and writing. He authored two volumes of Alaska fiction, "Mother Sawtooth's Nome" and "Alaska, the Short and Long of It" as well as a collection of poetry dedicated to his wife, entitled "Simple Rhymes of Whimsy, and Others" (unpublished).

Judge von der Heydt was instrumental in bringing several attorneys to Alaska, including Russell Arnett, also a graduate of Northwestern University School of Law.

At the Judge's retirement party in 1994, the Sweet Adelines sang "Unforgettable," a song which exemplifies his service to the State of Alaska as well as the United States. The September-October 1994 issue of *The Alaska Bar Rag* quoted speakers at the party who described Judge von der Heydt as "kind, distinguished, gentlemanly, elegant, fair, charming, compassionate and, yes, unforgettable."

As a youngster in the eighth grade and early high school, James was a Junior Assistant at Trailside Museum in River Forest, Illinois, working with well-known curator Mary Cooper Back and studying birds native to the area, and avian taxidermy. One of his chief avocations while in Nome was the study of western Alaska bird life. He collected 156 scientific avian specimens, all of which were donated to the University of Michigan Museums, at Ann Arbor, Michigan.

During his years in Anchorage, he was one of the founding members and first President of the Anchorage Fine Arts Museum Association (now AMA). He served on many community boards, including AFAMA and AMA for many years, the Anchorage Municipal Fine Arts Commission for 21 years, and the Rasmuson Foundation. He was President of the Alaska Bar Association from 1959-1960. He was the master of ceremonies for numerous bar functions for many years. When he was active in the museum he was always the M.C. when one was needed. In 1995, he received the Distinguished Alumni Award from Albion College. He was a member of the American Bar Association, the Alaska Bar Association, Sigma Nu fraternity, Phi Delta Phi, the Fraternal Order of Masons, Scottish Rite, Inns of Court, and Pioneer Igloo #1 in Nome, Alaska.

Alaska Supreme Court Justice Walter L. Carpeneti wrote the following in the January-March 2010 *Alaska Bar Rag*: "With the work of people like Tom Stewart, John Dimond and Jim von der Heydt, we have a very different and much better system than the one we abandoned in 1959. We owe a great debt to these early Juneau pioneers. I hope we pause for a moment today, 50 years after our admission to the Union, and acknowledge our debts to these greats."

Verna and Judge James A. von der Heydt together at a recent annual Territorial Lawyers Dinner.

Judge von der Heydt is survived by his beloved wife of 61 years, Verna, and a number of nieces and nephews.

In lieu of flowers, memorial donations may be made to the Collections Fund of the Anchorage Museum of History and Art, 121 West Seventh Avenue, Anchorage, AK 99501. A memorial service was held on Dec 6 at First Presbyterian Church of Anchorage, followed the next day by internment at Anchorage Memorial Park Cemetery.

In Memoriam

Bill Ruddy: Gentleman and Statehood pioneer

On Nov. 16, Dan Branch I interviewed Bill Ruddy for the Bar Association's history project. Shortly thereafter, Mr. Ruddy passed on.

By Dan Branch

Fifteen minutes into my interview with Bill Ruddy, I thought, "This is a gentleman." Reclining on a hospital bed, in a room offering a favored view of Portland Island, he summarized his history as a lawyer in Alaska and the Russian Far East. We talked about music, and how he formed the Juneau Marching Band, because a town like Juneau should have band music during its Forth of July parades. He was kind, respectful to me, showing no fear of his impending death. Here is a thumbnail of his Alaska life:

Bill graduated from Yale Law School in 1962 then served his country in a military reserve intelligence unit. His first legal job was with the Federal Maritime Commission. It regulates shipping rates and practices for vessels coming into contact with American shores. He enjoyed the work and had no plans of quitting until in 1964, Alaska Attorney General George Hayes offered him an assistant attorney general position in Juneau. He wanted Bill to represent the new state in maritime law matters. Mr. Ruddy didn't accept the offer before checking with his fiancé, Susan Ruddy, who now lives in Anchorage. She had already expressed interest in moving to Alaska to work on a newspaper and was delighted with General Hayes's offer. She was working as a cub reporter for the Washington Star at the time. Bill accepted the offer, thinking that he and Susan would return to mainland Alaska in two years.

At that time, the Attorney General Office in Juneau had eight civil and two criminal attorneys. It had one lawyer stationed in Anchorage and another in Fairbanks who handled criminal and civil case. Dorothy Oz Holland held that position in Anchorage. The future Alaska Supreme Court Justice Jay Rabinowitz represented the state in Fairbanks. The Juneau office was located on the fourth floor of the Capital Building, right above Governor Bill Egan's Office. Mr. Ruddy believed that the governor knew everyone in their office. Once, while concentrating on a project at his desk, he felt a shadow over him. Looking up he saw Bill Egan. They introduced themselves. The governor remembered Mr. Ruddy's name for the rest of his life. He had the ability to put names and faces together and even remember the names of the person's wife and children. He even took the time to write the odd letter to them. But the state was a lot smaller and poorer then, before the discovery of oil.

Bill Ruddy's initial job at the Attorney General's Office was to monitor the fairness of the rates and practices of waterborne common carriers. Senator Ernst Gruening had publicly expressed concern that the Alaska Steamship Company was overcharging Alaska canneries for moving their product to the Lower 18. After reviewing the company's records, Bill determined that rather than making exorbitant profits, the company was actually losing money. Because their ships had to use the bulk freight method, which required the use of expensive longshoremen services for loading and unloading, the Alaska Steamship Company could not compete in Alaska with carriers using the less expensive container shipping method. They relied instead, upon earnings from shipping material to Viet Nam. The company had ceased their passenger service by this time. In days before regular air services to Southeast Alaska, the company operated elegant vessels on the run between Seattle and Juneau. Mr. Ruddy's career didn't suffer as the result of his work on the Alaska Steamship matter and eventually he and Senator Gruening because good friends. Bill described the senator as a wonderful man and admired him for being one of only two senators to oppose the United States' entry into the Viet Nam War even though Alaska had such a large military presence at the time. Mr. Ruddy thought that this stand might have resulted in the senator's loss to Mike Gravel in the next election. Bill was also impressed with the Senator's command of the English language and public speaking ability.

Later, Bill worked with the Department of Commerce to establish the Alaska Public Utilities Commission.

Mr. Ruddy left the Attorney General Office after private attorney Fred Eastaugh invited him to go sailing so he could offer him a job with his firm. When Mr. Eastaugh retired, Mr. Ruddy, his wife Cathy Kolkhorst and Jim Bradley set up their own firm. He said he currently is an active member of the Bar Association, but is, "just out here at Mile 15 (Glacier Highway)… not doing anything too serious."

During his career, Mr. Ruddy practiced law in Russia with the help of a law school friend named Jonathan Ruskin. After he graduated from law school, Mr. Ruskin went around the world starting law offices in places where the big firms did not practice. After the Soviet Union fell, he opened an office in Moscow. When Alaska Airlines began offering service between Alaska to the Russian Far East, it was possible for Bill to commute from Juneau to Vladivostok, a town of 700,000 people. In 1997, he helped Mr. Ruskin put together a law firm there with four Russian attorneys. It is still a successful office, now staffed with English speaking Russians, working under the American canons of legal ethics. This gives the firm an advantage over the other law firms in the area. At the time he worked there, lawyers in the firm had to police themselves as there was no local bar association strong enough to enforce ethics rules legal licensing requirements. Anyone could walk into a court and plead a case, whether educated in the law or not.

The Russian judges wanted to rule honestly but there was a lot of pressure on them to please the local governor who appointed them. Some governors left their appointed judges alone, while others forced their judges to come out with politically driven rulings. Mr. Ruddy found the rules and laws for the arbitrage (civil commercial) courts were very good. The Russian Courts followed the same contract law concepts applied in the U.S., which allowed for fair resolutions of cases unless the court was constricted by political pressure. While Russian court decisions were not published as they are in America, each judge maintained a library of her own decisions. If the judge liked you, she permitted access to them, allowing you to know how she would decide the case. It was important to maintain good relationships with the judges.

One of Bill's Russian cases involved a corporate shareholder's dispute. He and his clients, representatives of the majority shareholders in a brewery, arrived at the site of a shareholders' meeting in plenty of time to attend. They joined s long line to get into the meeting. When they reached the front of the slow moving line, they were told that they were too late to register and therefore could not attend the meeting. This prevented them from voting at their shares. Bill filed a court challenge that succeeded in the trial court. An appellate court reversed and remanded. Bill won again at the trial but lost the appeal. This went on like that for six months. In another case, Bill represented the US Counsel General in a tort case that turned on diplomatic immunity.

In Russia cases start, like here, with the filing of a complaint. However, the matter is resolved with motions supported by affidavits. There is no trial or discovery.

Bill had a varied caseload while in his Alaskan practice. In one case, *Katz v. State of Alaska*, the court adopted the principle of comparative negligence. He also worked on a criminal case, where the appellate court limited the scope of warrantless searches during a police investigation. He had at least seven more reported Supreme Court decisions.

Mr. Ruddy felt lucky to have been an Alaska attorney during the first years of statehood when lawyers had to practice, "by the seat of their pants." He said people like Bob Robertson and Burt Faulkner were creating Alaska law by arguing positions before judges who had very little precedent to guide them. I asked Bill if he ever wanted to work in another profession. He said that once he outgrew the child's goal of being a fireman, he wanted to be a lawyer. During my November 16 interview, he told me, "I was very happy in the law."

William G. Ruddy, at age 76 died in Juneau on November 26, 2013, a gentleman.

William G. Ruddy

William G. Ruddy, 76, passed away Nov. 26th after a year's battle with bone marrow cancer, or multiple myeloma.

He was born July 19, 1937 in Ansonia Connecticut, and graduated from Yale University in 1959 and Yale Law School in 1962.

He served in Army Intelligence and spent a summer working for the Bank of Brussels and wrote a thesis for law school about reasons for formation of the European Common Market. He attended the Sorbonne Cours de Civilization in the summer of 1959.

Bill worked for the Federal Maritime Commission in Washington D.C., before being recruited to come to Alaska to work for the Attorney General's office to evaluate the steamship contracts. He drove across country with his first wife Susan Lynch Ruddy in 1964, and after the attorney general's work, joined Robertson, Monagle, Eastaugh & Annis (later Robertson, Mondagle, Eastaugh & Bradley) from 1965 to 1985. He served in the Alaska National Guard from 1962 to 1968.

Bill and his wife Kathy Kolkhorst were married in 1979. In 1986 Bill, Kathy and Jim Bradley opened Ruddy, Bradley & Kolkhorst, a law firm which continues to the present.

Bill used his knowledge of the Russian language and history to connect with the Russian Far East. In 1989 he was invited by the Soviet Ministry of Aviation to tour aviation facilities in the USSR. In 1997, after the fall of the Soviet Union, he helped found an American law firm in Russia with his college classmate-- Russin & Vecchi. He worked in the Vladivostok office of Russin & Vecchi from 1996 to 2005.

Bill and his wife Kathy renovated and operate the Princeton Hall, a wooden boat built by Tlingit, Haida and Tsimpsian students at Sheldon Jackson College in Sitka and launched three days before Pearl Harbor. The U.S. Navy seized the vessel for wartime service in troop transport and mine sweeping; after the war the Presbyterian Church used the boat to link with people in the local island villages. After renovation, the Princeton Hall has been inspiration and guide to explore the bays and coves of southeast Alaska. The boat is a member of the Classic Yacht Association.

Bill participated in starting the Juneau Volunteer Marching Band in 1976, when he noticed that the July 4th Parade lacked music. He played trumpet in that band until last year, and also for several years in the Juneau Symphony. He also played for many years in the Juneau Student Symphony, Juneau's intergenerational music group. He organized a travelling Dixieland band called "The Ruble Rousers" (Vdoxnoviteli Rublei) and took the band to the Russian Far East in 1994 to help plant Rotary clubs in Vladivostok and Khabarovsk. He also played trumpet in the St. Paul Singers, the Chapel Brass and the Juneau Concert Band.

Every year before Juneau's Fireworks at midnight July 3rd, the Princeton Hall carries members of the Juneau Volunteer Marching Band in front of the waterfront docks so people can enjoy hearing band music--mostly Sousa-- along with the fireworks.

Bill taught International Business at the University of Alaska Southeast, and was President of the Juneau Glacier Valley Rotary Club.

He is survived by his wife Kathy Kolkhorst Ruddy, and children Lydia Ruddy of Jakarta, Indonesia; Sean (Pauline) Ruddy of Anchorage and Halibut Cove, Alaska; Anna (Jason) Speichinger of Nairobi, Kenya; and Elena (Forrest) Merrill of Missoula, Montana; grandchildren Ezra and Ruth Speichinger of Nairobi, Kenya; and many foreign exchange students, mostly from Russia.

Services were held at Chapel by the Lake Dec 5th at 3 p.m. Donations may be made to Multiple Myeloma Research Foundation Inc. and Hospice and Home Care of Juneau.

In Memoriam

James Rhodes


Rhodes

Jim Rhodes passed away on September 25, 2013 in Austin, Texas.

Jim grew up in Amarillo, Texas. After a tour of duty with the U.S. Marine Corps, he received both an undergraduate degree and a law degree from the University of Texas, and was admitted to the Texas bar in 1967.

After completing the Texas bar exam, he moved to pursue a great adventure in Alaska, arriving in Anchorage in 1967. As an assistant attorney general for the State of Alaska, he represented Alaska in a number of important cases before State and Federal Courts including a dispute with the U.S. government over ownership of land rights beneath Tustumena Lake.

In 1971, Jim was one of the founding partners of the law firm, Hartig Rhodes LLC. He was a successful litigator who tried many complex and interesting cases before he retired in 1992. He was also an accomplished cartoonist and many of his illustrations were published, including some in the Alaska Bar Rag. He was fiercely loyal to his clients and a wonderful mentor to those in his firm. He was known to give his friendship generously and without condition.

After retirement, he moved to his small ranch at Dripping Springs Texas where he wrote two novels and enjoyed reading, gardening, music, old movies, and making model planes.

Most of all, Jim liked being around family and friends. He admired the beauty of nature and was a great storyteller from his many adventures.

Jim is survived by his two daughters, Anne Lazenby; grandsons, Sage Lazenby and Michael Lazenby; Emily Johnson, and her husband Steve; grandson, Steven Johnson.

Other family members who enjoyed Jim during his lifetime include his sister, Connie Johnson. Nephews, Chris Johnson; Donnie Johnson; and David Smith. Nieces, Nancy Garcia; Elizabeth Cooksey; and Michelle Bean Neffendorf. Jim maintained contact with many friends including John Norman of Anchorage; Granville Bennett; Wayne Ford; and Phil Bullock.

A memorial service was held on Saturday, November 9, 2013 at 11:00 a.m. at Remembrance Gardens in Austin, Texas.

In lieu of flowers, donations in Jim's memory may be made to charities for veterans or a charity of your choice.

Bill Council

Bill Council died on September 8, 2013 after a valiant struggle with Parkinson's disease. He was born May 23, 1944 in Raleigh, North Carolina to Charles and Frances Council and had two siblings: Sonny Council and Janet Council. Bill graduated from Cary High School in 1962, from Davidson College in Davidson, North Carolina in 1966, and from the University of North Carolina Law School at Chapel Hill in 1969. He played competitive tennis during all the years he was a student, winning many titles. He moved to New York City and practiced law with Sherman and Sterling (1969-1971), before moving to Fairbanks and becoming an Assistant District Attorney for the State of Alaska. After two years he became a Public Defender in Ketchikan, where he built a ferrocement hull sailboat on weekends. In 1975 he moved to Juneau and worked in the Attorney General's Office doing civil litigation. Bill married Fran Ulmer in 1977, and together they raised two children Amelia (Amy) Council and Louis Ulmer. Between 1980 and 2005, Bill practiced law in his own firm, at various times with Bud Carpeneti, David Crosby, Vance Sanders, and others. He served on a variety of community boards, including the Alaska Judicial Council. Bill was an effective advocate, talented and competitive tennis player, expert boatman, avid reader, good cook, supportive husband, loyal brother, and patient and loving father. He is survived by his family and friends who will miss his keen insight, sharp intellect, irreverent humor, remarkable courage, admirable strength and unfailing love.

Hugh Fleischer: A Great Alaska Legacy

By Steve Cleary

In early October, Anchorage lost a great humanitarian and selfless advocate for justice and equality. Hugh Fleischer was a great example of a life well-lived and I was privileged to work alongside him for many years at the Alaska Public Interest Research Group (AkPIRG).

AkPIRG was just one of many organizations that Hugh supported through his hard-work and steadfast caring. He was a founding board member of AkPIRG and remained on the board, serving terms as president, for all of AkPIRG's 40 years in Alaska. In addition, Hugh was a founder of Alaskans Against the Death Penalty and on the boards of the Friends of the Library, Planned Parenthood, Out North, Alaska's Independent Blind, Cyrano's Theater, and the Board of Trustees for the Senior Activities Center.

Hugh was a compassionate lawyer who represented the disadvantaged and powerless, assuring they received the equal treatment the law guarantees. But he also had a big-heart for the small acts of making this world a better place. I remember when hurrying to yet another meeting downtown, I would see Hugh having lunch at the Sandwich Deck with his Compeer friend. Compeer is a program that matches adults with mentally challenged people for activities and friendship and Hugh, a busy lawyer, took the same man to lunch, almost every Friday, for more than ten years.

He always had time for a kind word or some wise advice that would keep me and often the organization going.

And he was humble. I knew Hugh for many years before he casually mentioned that he had spent time with Martin Luther King Jr. He had just recorded a radio show around MLK Jr. day and we had some time to chat before a board meeting. When he mentioned it, I was speechless, as though Hugh had just stepped out of the pages of history. But for Hugh, it was part of his hard-working life and now it was time to roll up his sleeves and tackle the next issue that would make Alaska and the world better.

Former AkPIRG Director Steve Conn had this to say about Hugh: "Hugh's good cheer and steady hand equaled that of Ralph Nader's through good times and bad. I did not know of his personal heroism during the civil rights era until I attended a University panel session long after my retirement from AkPIRG. But, given my own regular support and counsel from Hugh, I must say it did not surprise me. Hugh made Alaska a better place for us all."

I wish I had a nickel for every thank you note I wrote Hugh in my years at AkPIRG. It would add up to a lot, but his financial generosity to AkPIRG and all the organizations he helped support was only a small part of the gifts he shared. I often think that there is something special about Hugh's generation, particularly when I think about the great achievements of Hugh's wife Lanie as well.

Hugh's hard work and dedication leave a big hole to fill. It is a good challenge for all of us: to care – in big ways and small ways – to care about our community every day. That's what Hugh did and I am honored to have known him.

Steve Cleary served as Executive Director of AkPIRG from 2003-2008.

LAWYER, NOME ALASKA (A Memoir)

By James A. von der Heydt

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

The law office building was very narrow, squeezed between the North Star Bakery and Coffee Shop and Rose's Trading Post.

The lot itself was a meager 14 feet wide, and the building a mere 10 or 11 feet. There were three rooms in a row, railroad style, about 24 four feet in all, a small reception area, then the law office itself, and at the rear about four final feet for the oil heater storage tank and the proverbial Nome honey bucket.

The building (with sharply peaked roof so snow could slide off easily) was painted what had become over the years, a worn and somewhat chipped battleship gray. The window facing Front Street was placed high so those passing by could not easily look in. The word "Lawyer" in gold paste-on letters was near the bottom.

When I rented the office from the widow of a Nome attorney who had died in a hunting accident a year or so before, the former occupant's name was deleted with a razor blade. I was fortunate to find identical lettering in a lost corner of the Northern Commercial Company department store down Front Street a building or two, and so added, "J. von der Heydt" to the window, above the already existing "Lawyer." Thus, I entered the private practice of law at Nome, Alaska, and became the only attorney practicing in the Second Judicial Division.

It was March of 1953.

In the beginning it should be noted that this short memoir is not intended to cover all aspects of my Nome law practice. Many experiences must be reserved for later recollection and subsequent inspiration.

I recall my office phone number was Main 82, and my home was Black 82. Thus, with the old live-operator activated system, one ring on the line was for my office, and two were for home. Conveniently, either ring could be heard at either location, so at home office calls could be answered, and vice-versa. This system proved to be most convenient, as when gone from the office for court or other duties, my wife at home could answer for me.

All these wonderful benefits have since been sacrificed to a modern touch-tone system, which, unfortunately, Nome fell heir to in the early 60's, after my departure from the city. No more operator named Christine, who, when no one responded to either ring, would tell the caller, "He's in court and the Missus is over at Audrey's for lunch. I'll take a message." Later, when back at the office, the message from Christine would be duly related, e.g., "You had a long distance call from Seattle, a Mr. Soandso called. Call him," and she would have the number. Since I had no secretary and did all my own office typing and phone answering, Christine, and her companion operators, bless them, were akin to secretary message-takers.

In the course of the seven years I occupied that funny little law office, sooner or later, nearly every type of legal work materialized as various clients came through the office door.

In a small town such as Nome, the practice was general as general is. In the course of the seven years I occupied that funny little law office, sooner or later, nearly every type of legal work materialized as various clients came through the office door. I recall patent and copyright, tax, anti-trust, contract, criminal defense, almost all by court appointment, as I was "the only lawyer there," and, of course, among many others, divorce.

As guided by published standard Bar fees, an uncontested divorce cost $225, of which $25 constituted the court filing fee. Other allowable charges were equally meager by today's standards. One could make a decent living practicing law in Nome in the 1950's, and on a fairly regular basis, a significant case would come along that made it all worthwhile.

During these years, Alaska remained a Territory, with all the political limitations such status entailed. Nome, the largest city in the Second Division, had a population of nearly 3,000 in summer, but fewer in winter, when the faint of heart and cowardly fled south on the last boat to such inferior locales as Seattle or Southern California.

The city was the Division's transportation, legal, and commercial center. The seat of the U. S. District Court for the Territory of Alaska, Second Division, was at Nome, as was the Division's headquarters of the Department of Justice, represented by a U. S. Marshal and his deputies, and a U. S. Attorney. Other federal departments had offices there, such as Interior and its "Reindeer Service," an agency now thankfully long gone from the spectrum of government responsibilities. Noted too are the beginnings of the Weather Bureau and the Civil Aeronautics Administration, for commercial aviation in Alaska was then coming into its own.

The people of Nome in the 50's had pretty liberal standards. Open gambling was evident in several places, particularly the "Glue Pot" where Charlie the Tramp managed poker or panguingui games, and was noted for his rapid sleight of hand, removing a generous cut from each pot for the house.

There were many liquor stores, and just as many saloons, and most any time of the day or night, one could hear raucous voices and blaring juke boxes emanating from these latter emporiums. Winter or summer, for there really are only two seasons in Nome, the atmosphere was much the same. Every now and then a Lady of the Night appeared, self evident by dress and manner, usually financed by a Seattle or San Francisco syndicate. These unfortunate women rarely graced the city for long. Standing in front of the Polar Bar on a dark, cold, and windy winter evening did little to stimulate contentment, long term employment, or suggest meaningful career advancement.

All had been addressed simply, "Lawyer Nome Alaska." Since I was the only individual in the area known by that designation, the postal clerks deposited such envelopes in my mail box.

Nome's "Police Force," for the most part, was one man, the "Chief', who normally calculated to see and hear as little as possible. The position, if such it was, was not a particularly enviable one, and Chiefs came and went with notable regularity. Often, the city's official listings indicated the Chief to be a person named "Vacant." The town generally was wide open for any temptations that fate or chance might offer. Nome, then, was its own town, with its own rules, and few limitations, but nevertheless, an interesting place for a novice young lawyer to begin the practice of law.

My wife and I came to know many of the native Eskimo people of the community, and found them to be gentle, responsible, and trustworthy citizens. For various reasons, over the years, a substantial number became clients, and this relationship was rarely other than an enjoyable one. Those few Native friends still living in Nome now have become the "Elders," and upon the rare occasion I return to the city, meeting is a sentimental happening, with enthusiastic welcoming hand shakes. It's good to go back.

I soon learned that divorce was to become a major part of my law practice. Individuals living in Anchorage, Fairbanks and Juneau, who cherished the privacy of a Nome filing and disposition, often became clients, and traveled to Nome only for the final court hearing. For many of those living in outlying villages of the Second Division, particularly the Native people, divorces were handled solely by mail.

The envelopes came in all sizes, shapes and colors. Some were fat, others lean, suggesting a message, short and to the point. All had been addressed simply, "Lawyer Nome Alaska." Since I was the only individual in the area known by that designation, the postal clerks deposited such envelopes in my mail box. I learned by sight experience what to expect from the outward appearance of each envelope. The stout ones contained currency in unknown amount, and an accompanying note, hand written, usually in pencil, indicating that the writer wanted a divorce. The lean ones contained only an inquiry

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LAWYER, NOME ALASKA (A Memoir)

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about securing a divorce and the costs.

The envelopes were from villages located anywhere from Hooper Bay to Barter Island, an enormous area, covering most of Northwestern Alaska. All were promptly answered, and replies to the ones containing currency always contained a receipt.

It was fortunate at this time that obtaining a divorce through proper legal channels became fashionable. The fat and lean envelopes arrived with surprising regularity. Distances often were great, and it soon became evident that some method need be devised so that a simple, uncontested divorce could be obtained without the otherwise necessary substantial expenses of plaintiff's air travel to Nome.

The use of written interrogatories, answered under oath, came to mind, and the method was tested. A motion was filed before the judge of the District Court to allow plaintiff to present his or her evidence by sworn answers to written interrogatories. An order was signed by the judge authorizing this procedure, which became known in the von der Heydt law office as the "mail order divorce."

Questions were then prepared in writing calculated to cover all aspects of the necessary proof, and these were forwarded by mail to the plaintiff, with instructions to take the document before a Notary Public, or the local Postmaster, who also could administer oaths. The questions propounded were answered in writing in spaces provided, signed by the plaintiff, and sworn to before the particular official. The document was then returned to the Nome law office.

Assuming all appeared in order (and once in a while it did not), a court time was set for publication of the proof. The judge took the bench, the questions and answers were read aloud into the record in open court, and if the judge found the proof to be sufficient, a decree of divorce was entered.

The system worked well for the most part, and filled a need for judicial relief for many individuals who lacked funds for the considerable expense of air fare from far away villages to Nome. But, the method was only successful under certain limited circumstances. First, no controversy could exist regarding property rights, custody of minor children and their support, and it was necessary that the defendant sign and file with the court an "Appearance and Waiver" form, whereby he or she agreed not to contest the granting of the divorce under the allegations and prayer for relief contained in the complaint. However, it was a rarity that conflicts existed, and the vast number of "mail order divorces" proceeded without difficulty.

From time to time, particularly during the summer tourist season, wandering attorneys from areas in the Lower 48, having seen the message spelled in golden letters on the office window, stopped by to chat and ask questions about the practice of law on Front Street in Nome, Alaska. In various ways, the question was usually asked, "What in heaven's name are you doing practicing law in this remote corner of the world?" I suppose the answer, that I liked the place, found it interesting and rewarding, and no, I did not want to move to Denver and practice there, was none too satisfactory. Shaking their heads, many left obviously unconvinced. But, I was surprised by the number of letters that later came, thanking me for my time and wishing me well. It surely is not Boston, some wrote, but it is amazing to think about you and your law office in Nome, and by the way, good luck.

These many years later, the time I lived in Nome and practiced law there, seem a hazy sequence of my life. But that day in 1959 when I 1eft to assume the newly created Superior Court bench in Juneau, it was difficult to hide a serious lump in my throat. The first months in Juneau I found myself frequently Nomesick. The tundra, the icy sea, the summer beach with its magnificent rolling breakers, the Sawtooth Mountains on the northern horizon, all had become a part of me. My dear wife, Verna, experienced the same nostalgia for that place called Nome. But, in time, Juneau too became home.

It was the good life. I knew it then and I know it now.

Winter in Nome was a special time, the quiet season.

Like many Alaskan cities that are thronged with travelers in summer, after September made way for October, Nome was returned to its year-round residents. A delightful and meaningful social life reactivated. Snow piled high on roof tops, deep on city streets, and the Bering Sea became an extended plain of white as far as the eye could reach. Cars, tractors, and road graders were bedded for the winter. The city spent no money foolishly to clear the streets or wooden boardwalks. When the snow heaped too deeply, someone cut ice steps for transit over the higher drifts. Fur parkas were the fashion of the time, as were bunny boots and mukluks.

Temperatures met 30 degrees below zero, the air was crisp and zinged one's cheeks. The darkest days welcomed a reluctant dawn, low over the sea to the southern horizon, near 10 in the morning, and saw twilight fade to darkness by three in the afternoon.

It was the good life. I knew it then and I know it now.

--Reprinted from the Alaska Bar Rag, February 1998

2014 Convention preview

Continued from page 2

The lecture will focus on civil, domestic and criminal trial work, and covers new material never presented before.

Lastly, the value of the opportunity to meet and catch up with fellow professionals cannot be overstated. The Convention provides many opportunities that you don't often otherwise have for these interactions with others on a personal or professional level, be it at the Opening/Welcome Reception Wednesday night with a casino theme, the Banquet, luncheons, session breaks, hospitality suites, or just in passing. And don't forget the opportunity to visit the trade show and see what's new and available to Bar members from sponsors and exhibitors.

I hope to see a lot of familiar faces there, as well as meet many new ones.

Proposed gun trust regulations make more hassle than offer protection

Continued from page 1

the famed Thompson submachine gun. After the Supreme Court of the United States overruled many parts of the act, the NFA was revised and enacted as Title II of the Gun Control Act of 1968, 26 U.S.C. Chapter 53, with the procedural and substantive requirements codified in 27 C.F.R. § 479. This is why firearms that fall under the NFA are often referred to as "Title II" firearms. Some people also refer to them as "Class 3" firearms, which actually refers to the license required to deal in Title II firearms.

Title II firearms are more restricted than typical Title I firearms (revolvers, semi-automatic pistols, standard hunting rifles, shotguns, etc.) and include machine guns, short barreled rifles, "sawed-off" shotguns and silencers. These firearms are not illegal to own; they are just thought of as more dangerous and therefore, more regulated and difficult to acquire.

Silencers and suppressors are classified as Title II firearms and are also legal to own and use. They have become popular with hunters throughout the United States because most hunters do not take hearing protection with them in the field, nor do they want to spend time putting on gear when a shot is available. Silencers and suppressors also reduce recoil and muzzle rise, so a second shot is more easily taken, which is important when hunting large game like bear or moose. Alaska currently has no restrictions on the use of silencers for hunting and using a Gun Trust to acquire them is very efficient.

A Gun Trust functions like any other trust. The trustee(s) (normally the "grantor") holds assets, in this case Title II firearms, for the benefit of another person. If an individual purchases a Title II firearm, only that individual may possess and use that firearm. A Gun Trust is written so any trustee can use the trust assets and therefore, multiple people can possess and use Title II firearms. This means an entire family, assuming they are all trustees and are not prohibited persons, can individually use a silencer for hunting. The Gun Trust also has provisions dealing with the disposition of the trust firearms, or the continuation of the trust, after the settlor's death. However, this does not mean just anybody can use the Title II firearms. The trustees of the trust must still meet all the requirements under the NFA, meaning felons, fugitives, drug addicts, people adjudicated as mentally defective, and people convicted of domestic violence are all prohibited from being trustees and using Title II firearms.

In 2000, the BATFE received 840 applications by trusts or other legal entities. In 2009, that number was 12,600; and in 2012, it exploded to 40,700. Gun Trusts are not a loophole as they were once described in the New York Times. An individual must create a trust compliant with federal firearms laws and register the trust with the State of Alaska as required under the Alaska Statutes. Any trust attorney worth his salt will be sure the settlor and trustees are compliant with federal firearms laws and advise his client of the consequences of violating the NFA – up to 10 years imprisonment, a $250,000 fine and the forfeiture of the firearms.

As earlier stated, the proposed regulations require all "responsible persons" of a trust or other entity to submit fingerprints and photographs, and obtain the signature of the CLEO. Because the regulations are still unpublished, "responsible person" is not yet defined, but according to the notice of proposed rulemaking:

> Depending on the context, the term includes any individual, including any grantor, trustee, beneficiary, partner, member, officer, director, board member, owner, shareholder, or manager, who possesses, directly or indirectly, the power or authority under any trust instrument, contract, agreement, article, certificate, bylaw, or instrument, or under state law, to receive, possess, ship, transport, deliver, transfer, or otherwise dispose of a firearm for, or on behalf of, the entity.

In other states not as 2nd Amendment friendly as Alaska, CLEOs can refuse to sign transfer forms without giving any reason or rationale, making it essentially impossible to purchase a Title II firearm. Fortunately for Alaska residents, Alaska Statute 18.65.810 requires the CLEO to execute the required federal forms within 30 days of submission. One reason the NFATCA has opposed the proposed regulations is that it's petition asked to remove the CLEO requirement completely and replace it with National Instant Criminal Background Checks for responsible persons, after which, the CLEO is notified of the transfer.

An unaddressed issue in the proposed regulations is that trusts, LLCs and other entities can terminate and replace trustees and other officers. Thus, even though a responsible person will have to file all the required documents, there is nothing preventing the responsible person from being replaced or a new trustee added after the firearm has been acquired. Ease of administration is one reason why trusts and LLCs are popular and why the proposed regulations are relatively ineffective and more bureaucratic red tape. According to the BATFE's thinking, people not allowed to own Title II firearms are paying lawyers $2,000 to form a trust, registering it with the state, and then using that trust to purchase firearms, which includes submitting all trust documents to the BATFE. However, nothing is going to prevent these same phantom lawbreakers from soliciting somebody to settle a trust, purchase the firearm and then take over as trustee once the paperwork has cleared and the trust is in possession of the firearm. A prohibited person is violating the NFA if he is in possession of a Title II firearm no matter how he or she acquires it.

The proposed regulations do make one positive change and clarify the possession of Title II firearms registered to a decedent. The new section will specify that the executor, administrator, personal representative, or other person authorized under state law to dispose of property in an estate may lawfully possess the decedent's Title II firearms during the time of the probate without such possession being treated as a transfer from the decedent. The new section also clarifies that the executor may transfer a Title II firearm to a beneficiary of an estate on a tax-free basis. However, when the transfer is to a person outside the estate, the appropriate transfer tax must be paid.

Despite the proposed regulations, collectors and those looking to purchase Title II firearms should still consider forming a Gun Trust.

These proposed regulations are likely to pass as proposed. Little has come out of the gun control debate and restricting what many see as a loophole will score major political points. Most people can agree that as a society we want to keep firearms out of dangerous people's hands. However, the BATFE's proposed regulations do little to accomplish this goal other than add an extra step to a person already set on breaking the law and increase the burden on law abiding citizens who have good forethought and estate plans.

Gun Trusts are nevertheless a very useful tool for purchasing and holding Title II firearms. Gun Trusts allow more than one person to use a Title II firearm as compared to an individual transfer. They also allow a person to plan for the preservation or transfer of their collection on his or her death or disability and can also protect a collection against creditors or divorce. Despite the proposed regulations, collectors and those looking to purchase Title II firearms should still consider forming a Gun Trust.

Jeffrey Davis is an attorney at Manley & Brautigam, P.C. Please visit their brand new website at www.mb-lawyers.com.

FEDERAL BAR ASSOCIATION

Federal bar association sets a record

By Darrel J. Gardner

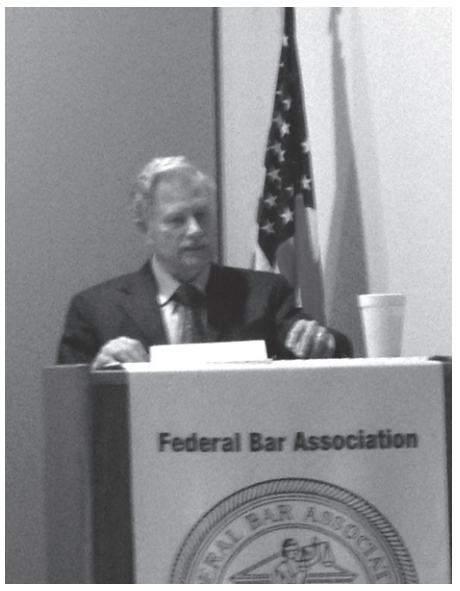
The Alaska Chapter of the Federal Bar Association (FBA-Alaska) has hit a new record with 54 members in November, and 2014 is shaping up to be another great year. In the coming months we hope to have presentations by two nationally-known speakers from out of state, plus numerous meetings featuring local speakers from the bench and bar.

U.S. District Court Judge Timothy Burgess

The eighth meeting of 2013 took place on September 10, 2013: "Technology in the Federal Courtroom." District Judge Timothy Burgess presented numerous technology related topics as they impact on practice and trials in federal court, including a discussion and demonstration of the Jury Evidence Retrieval System (JERS) currently installed in one of the jury deliberation rooms. Litigants using the JERS are to submit a digital version of exhibits, which are uploaded to the JERS computer at the conclusion of the trial. Judge Burgess also discussed his favorite legal applications for the digital tablets such as the iPad, and demonstrated their function over the court's projection system using the wireless "Apple TV" device installed in his courtroom. Judge Burgess plans to present additional in-depth "hands on" technology seminars at the court; please contact Darrel Gardner if you are interested.

"In Alaska, court staff has been reduced, and "reserve funding" had to be used to keep the court functioning."

The next meeting was held on October 8: "Round Table with the Judiciary, Featuring Judge Roberts;" attendees included Senior Judge H. Russel Holland, Senior Judge James Singleton, and Magistrate Judge Deborah Smith. This special event was free to non-FBA members. Judge Smith kicked off the meeting with a court report regarding fiscal year 2014, which started October 1. Unfortunately, the continuing federal sequester and Congressional budget issues continue to have a pronounced negative impact of the federal judiciary, including the courts, U.S. Probation Offices, and Federal Public Defenders. In Alaska, court staff has been reduced, and "reserve funding" had to be used to keep the court functioning. Federal Defender Rich Curtner added that he had been forced to reduce his office by eliminating several staff and attorney positions. Moving to a more pleasant topic, Judge Smith introduced Judge Roberts with a short biography of his professional background and accomplishments. Judge Roberts is retiring at the end of this year, after more than 30 years on the federal bench. Judge Roberts began work in the U.S. Attorney's Office in 1974, and then became a federal magistrate judge in 1977.



U.S. Magistrate Judge John Roberts

After a hearty round of applause by those in attendance, Judge Roberts took over the podium and recalled numerous highlights from his judicial career. Judge Roberts described some of the major changes since he began: the 1979 Speedy Trial Act; a great increase in the complexity of criminal cases; an increasingly diverse citizenry in Alaska; massive changes in federal sentencing following the landmark decision in *U.S. v. Booker*; and, the establishment, growth, and excellence of the Federal Public Defender and CJA system. Judge Roberts described a Hell's Angels case where gang members brought various weapons to their friend's proceedings; the judge's concerns directly resulted in the installation of a courthouse magnetometer to detect weapons. He also recounted the occasion in 1938 when *Hustler* publisher Larry Flynt appeared in his court after having landed in Anchorage while trying to fly from the U.S. to the Soviet Union in a private jet. Flynt was arrested for violating the terms of his California bail release on a federal charge of desecrating the American flag. Flynt, who was paralyzed due to an earlier assassination attempt, was wearing a complete Santa Clause suit as he was rolled into court in a gold-plated wheelchair, accompanied by two *Hustler* centerfold models who were both dressed as nuns. In another story, Judge Roberts told the audience that he hadn't necessarily minded when hotel employees confused him with U.S. Supreme Court Chief Justice John Roberts when they were both attending the same national conferences together.

Judge Roberts' life long career of dedicate public will be celebrated at his retirement party at the Dena'ina Center from 5:00 – 7:00 PM on December 9, 2013. The event is being co-hosted by the Alaska Chapter of the Federal Bar Association, along with the U.S. District Court.

The last 2013 meeting of FBA-Alaska will be: "Taking It Up - Appellate Practice and Procedure with Judge Morgan Christen." Our own Ninth Circuit Court of Appeals Judge, Morgan Christen, will be sharing her experiences and observations after more than a year with the Ninth Circuit.

For more information, or to join the Federal Bar Association, please contact Darrel Gardner or visit the Chapter website at www.fedbar.org, like us on Facebook at "Federal Bar Association – Alaska Chapter," and follow "Fed Bar Alaska" on Twitter at "@bar_fed."

Darrel J. Gardner is the Alaska Chapter President

Q&A with Brian J. Sullivan, from the farthest-north U.S. city

By Mamie S. Brown

First question people often ask when they meet Brian Sullivan: "How tall are you?" (Answer: 6 feet, five inches tall.).

What led Brian to Barrow, Alaska: "DA Mike Gray is my immediate supervisor. I wanted to work for him—and have the opportunity to work on the wide variety of misdemeanor and felony criminal cases Barrow presents. I get to live Law and Order—Barrow style," he says. He added that the local culture is unlike anywhere else in the world. In a small community, he expects to run into the same people in court and in the grocery store. If he stays long-term, he would like to focus on the community's infrastructure needs—getting paved streets and possibly getting the legislature and court system to create a Therapeutic Court for the North Slope.

Brian J. Sullivan is assistant district attorney for the Criminal Division of the Department of Law in Barrow, Alaska. His practice consists of criminal law. He has been licensed to practice law in Alaska since 2004 and is also a member of the US District Court of Alaska Bar and US District Court for the Western District of Washington. He can be reached at 907-852-5297 or brian.sullivan@alaska.gov.

Favorite Barrow visitor to date: Brian recently was asked to be a "tour guide for a day" for Federal District Court Judge Dennis Shedd, who was a former staffer for the late U.S. Sen. J. Strom Thurmond. "It was fascinating driving around Barrow with an individual who had been at ground zero of so many of the political events of the 1980s. We went to Point Barrow—about 10 miles north of town; there's nothing like kicking whale bones and dodging polar bears with a Federal Judge."

Recommendation for travelers to Barrow: "The Federal Research Center hosts science lectures on Saturdays. Locals in attendance get to hear frequent lectures from PhD candidates on their dissertation topics—lots of global warming studies and theories."

Brian's military experience: Active duty, Military Police Battalion Executive Officer -Major at Fort Richardson. Previously served as a company commander at Guantánamo Bay, Cuba, responsible for a support company of approximately 280 people. Often when traveling back to Cuba in civilian clothes—he would find himself mistaken for incoming defense counsel for the commissions. An interesting part of his job was conversations with defense counsel and other professionals—doctors and nurses—and viewing the whole facility from the inside. Based on his experience working in GTMO and aside from the greater policy questions, he was left with the impression that fundamentally the American military "tries very hard to do the right thing.

Survival Advice: As an Army Northern Warfare School alum, Brian has this survival advice: "In Alaska, build a little cushion and level of safety into everything you do. Buy a little extra food, keep an old sleeping bag in the car—take the extra step. Alaska can be very unforgiving for the unprepared."

Where Brian likes to travel outside Alaska: Brian looks forward to leaving the minus-40 degree temperatures,complete darkness, and howling winds of Barrow, and traveling to the French Quarter in New Orleans: "The smell of food, humid air, the aroma of last night's party, the cool music, narrow streets and architecture."

Something Brian would like to try: "Flying a motorized hang-glider. Forget about camping. Going to Iraq in 2007 cured me of camping," he says.

Advice from Brian's grandfather (former Justice of the Montana Supreme Court): "As I was driving to law school he said, 'Don't go to law school. Go into business'," Brian recalls

Favorite restaurant in Barrow: Osaka's Restaurant. "A Bento Box is a great reminder of a bigger urban center."

Book recommendation. *The Caspian Gates* by Harry Sidebottom.

Favorite quote: *"Let the Dice Fly High!"* - Julius Caesar, the crossing of the Rubicon in 49 B.C. (rough translation)

Inside Joke: "Why am I exiled here?"

Interviewer: Mamie S. Brown is an associate at Clapp, Peterson, Tiemessen, Thorsness & Johnson LLC. Her practice consists primarily of professional malpractice defense and entertainment law. In 2008, she met her husband, when, in a twist of fate, a "deicer debacle" led to the temporary grounding of planes in Seattle. In the spirit of adventure, Mamie moved to Fairbanks in 2009 from Seattle. When she is not star-gazing with her family, she enjoys baking with her two year old daughter and hanging out with fellow Rotarians. She can be reached at (907) 479-7776 or msb@cplawak.com.

Appellate Practice update:
News, notes, links, and guides

By Gregory S. Fisher

Appellate law practitioners enjoyed a full calendar of Fall activity this year.

- Judge Morgan Christen recently addressed the Appellate Law section of the Alaska Bar Association on Oct. 30, sharing her views on the similarities and differences between appellate practice before the Ninth Circuit and the Alaska Supreme Court. Justice Daniel Winfree followed Judge Christen, speaking to the Nov. 20 section meeting. Justice Winfree discussed his experiences serving on the Alaska Supreme Court, and offered practice tips and pointers for appellate lawyers.
- Power outages caused the Alaska Chapter of the Federal Bar Association to cancel its Nov. 12 meeting; Judge Christen's address to the chapter will be rescheduled for a future date. Contact Chapter President Darrel Gardner for updated information at 907-646-3406
- On Oct. 11, the Ninth Circuit witnessed its first ever "all Alaskan" panel. Judge Christen presided on a panel that included Senior Circuit Judge Andrew Kleinfeld and Senior District Judge John Sedwick. The Ninth Circuit's website posted a press release with photos commemorating the event. http://www.ce9.uscourts.gov/absolutenm/templates/template_ce9.aspx?articleid=626&zoneid=1
- The Ninth Circuit Appellate Lawyer representatives have published a practice guide. The guide is not an official publication of the court. However, it includes common questions and subjects of interest to appellate practitioners. A copy is available on the court's website. http://cdn.ca9.uscourts.gov/datastore/general/2013/10/07/Oct_7_13_Final_Appellate_Practice_Guides.pdf
- Paul Eaglin passed along this link to a recent program of the Hawaii Appellate Law Section: http://www.recordonappeal.com/record-on-appeal/2013/04/ninth-circuit-judge-richard-cliftons-practice-pointers-and-other-tips-on-brief-writing-and-oral-argu.html. An interesting observation from one of the panelists (Judge Clifton) was that he prefers New Century Schoolbook as a font because it is easier to read on the portable devices that many of the Judges on the Ninth Circuit are now using.
- Mr. Eaglin also forwarded this link from the District of Nebraska that addresses hyperlinking in briefs. http://www.ned.uscourts.gov/attorney/electronic-case-filing.

Secret Santa

By William Satterberg

In 1981, when Brenda and I lived in Saipan, as Christmas approached I bought a Santa suit. It was my first year of marriage. I was still the romantic type. At first, the Santa suit was nothing special, and not too spendy. But it later became special. The suit was a mail order suit from JC Penney's. When it finally arrived on island, just a few days shy of Christmas, I donned it one day and entered Brenda's second grade classroom unannounced. I was an instant hit to the delight of thirty excited second graders, and my beautiful, young bride, as well. As expected, Santa admirably did his "Ho, Ho, Ho" thing passing out candy to the children, which was permissible on the school ground, provided one was in a Santa suit and closely watched. That evening, Santa even got a nice gift from a grateful Mrs. Santa. The Alaskan Santa soon became the rage of the island. For the next several days, Brenda and I crashed various on island parties, quite often at people's homes whom we had never met before, but it did not matter. Since I was Santa, we were immediately accepted. Drink and food were plentiful, and unexpected invitations followed for cameo appearances.

One evening, Santa visited the local Hyatt Hotel. It was a venue ripe for picking. The hotel was full of beautiful Japanese women who had come for a convention. As Brenda sat across the room with two family friends, Al and Angela Wong, Santa invited the young Japanese ladies to all climb onto his lap and tell him in broken English just how much they loved him. Occasionally, Santa would even get or give a sweet smooch on the cheek.

All was going well until Santa's Chinese elf, Honorable Al Wong, quietly whispered into Santa's left ear that the Hyatt Hotel was hosting a transvestite convention which was why the girls were so beautiful and why Santa was such a big hit.

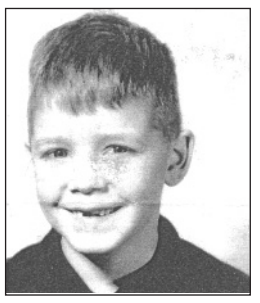
With a stunned realization that something was amiss, Santa immediately leapt to his feet, rudely dropping one young lady on her butt while pointing his finger and announcing that she had been a "bad little girl!" As the rest of the group broke into hysterics, Santa grabbed his bag and left, truly red-faced, and not simply from flying in from the North Pole.

One year, when I was serving as a firefighter with the Steese Volunteer Fire Department, the crew decided to decorate an engine and to launch a tradition which soon became known throughout Fairbanks as the "Steese Santa." On that first occasion, it was not myself, but a friend of mine, Ben, who was chosen to be Santa. At the time, Ben was in no condition to protest, having consumed several brandies earlier that night. We strapped a portable power generator to the engine, ringed the rig with gay Christmas tree lights, and drove around the neighborhoods with Christmas carols being blasted over the loudspeaker system as Santa sat on top of the engine, waving wildly at the young children who would venture out to see him and pelting them unmercifully with hard candies.

All was going well until Santa toppled off the back of the engine and ripped the crotch out of my Santa suit. Fortunately, there were many medics available, and Santa was not seriously injured, not that he would have necessarily felt the pain. The suit, however, sustained much greater damage, requiring a professional seamstress.

When our oldest daughter, Marianne, was two years old, it was time for Santa to pay her a personal visit. On Christmas Eve, once the house was dark and all presents had been placed with care under the tree, I donned my now well-used Santa suit and snuck into Marianne's bedroom ringing a handful of sleigh bells. My memories are still quite fond of Marianne waking up wide-eyed and immediately gasping out an excited "Santa!" For several minutes, Santa and Marianne shared a very personal and special time talking about how good she had been and how Santa loved her so very much. When it was finally time to leave, Santa put his finger to his lips and told Marianne to keep the visit as "our secret" just before he trundled down the hall with bells jingling and out the door into the winter night.

As soon as Santa had disappeared,



"Since I was Santa, we were immediately accepted. Drink and food were plentiful, and unexpected invitations followed for cameo appearances."

Brenda worked her way down the hallway and into Marianne's room, having been woken up by some "strange noises in the house." By then, Marianne was totally amped up and proceeded to immediately disclose that Santa had just left her room. So much for secrets. Realizing after thirty minutes that the young child would not go to sleep, Brenda and I then ushered her into our bedroom where she could nestle between us. For what seemed like the remainder of the night, almost as if on a schedule of every 30-40 seconds, Marianne would involuntarily shudder and cry out "Santa!" By the time morning approached, it was clear that there was no way the child was going to go back to sleep, so we opened our presents early that day. Santa was able to sneak into Marianne's room for two more years before the young kid became wise that something was up.

When Marianne was three years old, we adopted Kathryn, Marianne's younger sister. Whereas Marianne was a true believer in Santa and had fully immersed herself into the event, Kathryn has always been the family's redneck rebel. When Kathryn was approximately three years old, Santa snuck into her bedroom to once again bestow Christmas greetings. By then, Marianne was on to Santa, but played along well with the event.

By comparison, where Marianne had welcomed Santa, truly filled with youthful innocence and excitement, when finally roused, Kathryn summarily rolled over and slugged Santa soundly in the face, ordering him to leave her alone. She was trying to sleep. Years later, Kathryn claimed that she had figured out right away that the Santa in her room was not the real Santa, but her father. Regardless, to this day, I still think that Kathryn was probably making it up just a bit to justify her vicious assault on the vulnerable old geezer. But I was proud of her. In retrospect, she sure had a solid right hook for a three year old.

In later years, Kathryn blessed us with a young grandchild, Jacob. By 2012, Jacob was three years old, and the reliable Santa suit was well over 30 years old. Sensing again the call of duty, Santa once again donned his now tattered and torn uniform, this time to visit Santa's special grandson. As usual, the presents were placed under the tree, the hallway lights were dimmed, the tree lit, and the aroma of a Christmas bayberry candle filled the air. After Jacob was confirmed to be soundly asleep, Santa snuck into his room with his sleigh bells once again jingling loudly. Like his mother, Jacob would have nothing of it. Fortunately, he held his punches. Despite his best efforts, Santa could not rouse Jacob from a deep sleep.

After 5-10 minutes of vigorous bell jingling did not work, Jacob's mother finally whispered loudly from the next room "Santa! Turn the bedroom light on and off quickly." Jacob's mother obviously knew something that Santa did not. So Santa snuck over and jiggled the light switch. As if on cue, Jacob promptly sat up in bed, rubbing his eyes and protesting loudly. The flash of light was just enough for Jacob to get a glimpse of Santa. The kid had now clearly been roused. With the lights off again, Santa snuck over to Jacob's bed and spoke with the tyke, thanking him again for the tasty reindeer carrots and Santa's cookies and milk. When asked if he had been a good little boy, Jacob quietly responded with a head nod, still rubbing the sleep from his eyes. Santa then told Jacob that he should now go back to sleep. Saying he loved Jacob, Santa then stole out of the room as he had done many times before with Jacob's mother and auntie, and once again disappeared off into the winter night.

The next morning Jacob awoke and ran into Grandpa and Grandma's room, loudly announcing that he wanted to see if he had any presents, especially his long expected Legos and toy cash register. I then asked Jacob if Santa had visited that night. Although Santa had visited Jacob the year before, Jacob had only vague memories of the intrusion.

This time, Jacob unequivocally confirmed that Santa had visited him. He then looked me squarely in the eye and said "Santa was in my room, Grandpa, but he looked a lot like you."

Being a good attorney, I denied any involvement with the event. Sensing something was amiss, I tried to redirect the young fellow's inquiries.

To my frustration, Jacob would have nothing of my avoidance strategy, fixing me with a steely-eyed three-year-old's glare and saying "Are you sure it wasn't you in a Santa suit, Grandpa?"

"No," I replied, no longer being sure, myself.

Closing in on his prey, the child continued, "Well, it sure looked a lot like you in a Santa suit!"

I responded the only way that I could. I told the truth. Well, maybe. "Jacob, as you know, Santa is magical. But some kids think that he is scary. So what Santa does when he goes to children's houses is to make himself look like their Grandpa so the kids don't get scared of him in the middle of the night and slug him. I'm sure that is what happened."

This last explanation was something that Jacob had not expected. Jacob wrinkled his brow and gave me a skeptical look. I was proud of myself. Grandpa still had some tricks up his sleeve, after all. I did not expect the ruse to last long, but, when Jacob saw the presents under the tree, he wisely decided to drop further interrogation and conclude that Santa had, in fact, visited him. Either that, or the precocious little kid was smarter than the adults and realized that, once the gig was up, he would lose the ability to cash in on all the extra presents under the tree.

Fortunately, in the end, it appeared that my masquerade was safe for at least another year. For the rest of the day, Jacob proudly bragged to his cousins that Santa had visited him and had left presents under the tree. Santa, meanwhile, has already begun to consider how to deal with what will now be a much wiser grandson in 2013. And, as for the Tooth Fairy, I will simply let Brenda continue to handle that one. After all, I never really did look that good in a pink tutu fairy costume, no matter what some folks say.

Because justice has a price.

The staff and board of Alaska Legal Services Corporation extend our sincere thanks to the individuals, firms, corporate sponsors, and friends of legal services who contributed to the Robert Hickerson Partners in Justice Campaign.

We are especially grateful to our 2012-2013 campaign co-chairs Charlie Cole, Saul Friedman, Josie Garton, Ann Gifford, Andy Harrington, Jonathon Katcher, Peter Michalski, Susan Orlansky, Conner Thomas, and Jim Torgerson.

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Author revisits the voting rights act

By Kevin Clarkson

"Kevin", I heard as I was enjoying my lunch at Simon & Seaforts. I looked up from my soup and salad to see my good friend Tom Daniel smiling down at me. "I have to tell you that I totally disagree with your article in the *Bar Rag*," he said with a smile. My article regarding the United States Supreme Court's decision in *Shelby County v. Holder*, the case that struck down § 4(b) of the Voting Rights Act ("VRA"), was simply intended to be informational and non-controversial.

It did not occur to me that inserting just one small opinion, to the effect that the Court's decision was "long overdue for Alaska," would elicit significant response. But, there Tom was, and I realized that I was wrong. My face immediately broke into a smile, and I couldn't help but laugh as I said in jest, "Tom I find it remarkable that anyone would disagree with something that I've written." We sat and had a good conversation for a while—he talked, I listened, and vice versa—and then we parted with a handshake to return to work.

But, Tom's comments got me thinking. And as a result, I decided to look more deeply into the question of whether Alaska had rightly or wrongly remained covered by § 5 of the VRA, the Act's preclearance provision from about 1975 through June, 2013. I found a fair amount of material on the subject, including but not limited to, the Amicus Curiae briefs that were filed in the United States Supreme Court in *Shelby County* by the State of Alaska and the Alaska Federation of Natives and Alaska Native Voters and Tribes. The arguments presented are interesting. Anyone wanting to read more detail can find the briefs appended to the *Shelby County* decision on Westlaw. What follows below is a summary—intended to be dispassionate—of the opposing Alaska amici's respective positions. The briefs were lengthy, and so I will do my best to describe the high points.

AFN's position

AFN took the position that "Alaska is a textbook case" for why the VRA's coverage formula set forth in § 4(b) remained valid. AFN focused almost exclusively upon what it called educational disparity in Alaska as between Alaska Natives and other citizens. "Section 5," argued the AFN, "remains a necessary response to widespread educational and voting discrimination against Alaska Native citizens." Alaska became covered by §§ 4(b) and 5 of the VRA, said the AFN, "because of its long history of educational discrimination, resulting in a legacy in which thousands of Alaska Natives cannot understand college-level English used on ballots and voting information." Alaska Native voter turnout, said the AFN, "is 17 percent below the statewide average, and some places with a higher Limited English Proficiency ("LEP") population are more than 30 percent below." The thrust of AFN's argument was essentially that educational disparity in Alaska has led to higher levels of illiteracy among Alaska Natives and, thus, lower levels of voter participation by Alaska Natives.

Clarkson

AFN pointed out that Alaska was swept under §§ 4(b) and 5 coverage in 1975 when Congress amended the formula to address the "pervasive problem" of voting discrimination against citizens of language minorities—coverage was extended to minority citizens "from environments in which the dominant language is other than English." Congress found that "language minority citizens are excluded from participating in the electoral process" where elections are conducted "only in English." As a result, Congress expanded the definition of the term "test or device" in § 4(b) to include "the use of English-only election materials in jurisdictions where more than 5 percent of the voting age citizen population is comprised of members of any single language minority group." AFN emphasized that a prohibition on English-only elections was intended to "fill that hiatus until genuinely equal educational opportunities are afforded language minorities" allowing them to understand election information in English.

AFN pointed out that in the 2012 Presidential Election, among 100 Native Villages required to provide language assistance under the VRA, just four achieved turnout rates at or above the statewide rate of 59.6 percent. The gulf in voter turnout was greatest, argued the AFN, in Native villages with the highest LEP rates, a pattern repeated across the State. For example, AFN emphasized that (1) voter turnout in Bethel was 25.7 percent below the statewide rate; 41.8 percent of voters in Bethel are LEP in Yup'ik, with an illiteracy rate of 33.9 percent; and (2) voter turnout in Barrow was 22.8 percent below the statewide rate; in Barrow, 20.4 percent of voters are LEP in Inupiat, with an illiteracy rate of 12.5 percent.

But, AFN also made arguments to the effect that the State did not provide Alaska Natives sufficient voting assistance or opportunity. According to AFN, Alaska was still conducting English only elections when the VRA was last reenacted in 2006, and its language assistance program entailed nothing more than allowing minority voters in Alaska to "ask for oral assistance in translation." In practice, such "assistance," argued AFN, might or might not have been available at the time that a request was received. The lack of translated materials, AFN claimed, "caused many Alaska Native LEP voters to mistakenly vote for an English-only Constitutional amendment because they could not understand the ballot language." AFN also argued that in the 2004 Election, 24 Alaska Native villages did not have polling places, and some that did sometimes had to cut voting hours short to haul their one voting machine to the other side of a river or to the next village. AFN faulted these circumstances for the lack of success by any Alaska Native candidate in a "majority white district."

AFN claimed that the State of Alaska, despite being "keenly aware" of "the widespread problems" did nothing to remedy the situation. AFN claimed that Alaska had fewer "objections" and fewer "More Information Requests (MIR)" from the U.S. Department of Justice simply because it "often failed to submit voting changes for preclearance." AFN pointed out that Alaska was sued twice in recent years for implementing voting changes before those changes were precleared. AFN pointed to (1) the 2010 Election in which a list of write-in candidates and their political affiliations—something Alaska had never done before—was provided to poll workers; and (2) the 2012 Election in which "an entire redistricting plan" was implemented "without preclearance." Further, AFN claimed the lack of adverse court decisions against Alaska was a reflection of the fact that "Alaska routinely withdraws discriminatory voting changes after receiving an MIR." Sections 4(b) and 5 of the VRA were necessary, AFN argued, to keep Alaska in line and moving toward voting equality for Alaska Native voters.

The State of Alaska's position

The State of Alaska argued that the State's history did not justify § 5 coverage and that "bailout"—the process by which a covered jurisdiction could free itself from the VRA's preclearance requirements—was simply a mirage that provided no real escape. The State pointed out that in 1965 bailout required only a showing that the formula had wrongly captured the jurisdiction, meaning that it had not used a "test or device" with the purpose or effect of discriminating against voters on the basis of race or color. The State acknowledged that the 1982 VRA reauthorization took a more remedial approach and offered bailout to jurisdictions that could demonstrate the requisite improvement in their records on voting discrimination. But, the State argued, "the current bailout standard is only 'more permissive' in the sense that it theoretically allows jurisdictions to earn release." "In practice," however, the State argued the VRA set the bailout bar unreasonably high and severed any reasonable connection between the State's conduct and the severity of the penalty. Under the then current standard, the State pointed out that it could bailout form the VRA only by achieving perfection and crossing its fingers and hoping that factors beyond its control would not frustrate bailout.

The State emphasized that to have qualified for bailout from §§ 4(b) and (5) the State would have had to show that during the previous 10 years (a) it had not used a test or device with the purpose or effect of denying or curtailing the right to vote because of race, color, or minority language status; (b) no federal court had found that the right to vote had been denied or curtailed anywhere in the state because of race, color, or minority language status; (c) federal examiners had not been certified to the state; (d) the State has complied with § 5, including submitting all voting changes for preclearance; and (e) the USDOJ has not objected to any preclearance submission. Further, to have achieved bailout, a State would also have had to satisfy "subjective criteria" such as showing that it has eliminated voting procedures and methods of election which inhibit or dilute equal access to the electoral process, and has engaged in constructive efforts to expand voting opportunities.

And, the State pointed out, even after meeting the bailout standards the State might not remain free from the VRA's clutches—the State could be dragged back under §§ 4(b) and 5 of the VRA via a "clawback" provision if it failed to maintain a perfect record for another 10 years following bailout. In the State's view "[t]he severity of § 5's treatment" was "strikingly disproportionate to the slight imperfection that w[ould] frustrate bailout"—the State found the VRA's preclearance coverage to be overbearing because of (1) the required perfection over a 20 year period to bail out, (2) the "unreviewable decisions of the DOJ" regarding subjective bailout criteria, and (3) "the [bad] behavior of others" that the State could be blamed for, despite its lack of control.

The State pointed out that the DOJ could dispatch federal observers to a location within the State and that this decision—a decision that was unreviewable—would have frustrated bailout for an additional decade. Federal observers could be dispatched under the VRA either by court order or by simple certification of the Attorney General—courts had ordered federal observers only 12 times in the VRA's history, whereas the Attorney General had certified 152 jurisdictions for observers. The Attorney general's certification need only recite that he "has received written meritorious complaints from residents, elected officials, or civic participation organizations that efforts to deny or abridge the right to vote . . . on account of race or color, or in contravention of the [language

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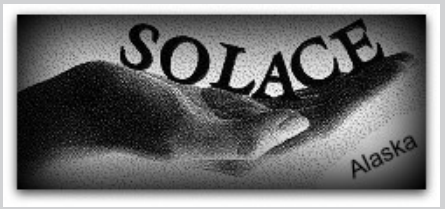

Do you know someone who needs help?

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

Contact one of the following coordinators when you learn of a tragedy occurring to some one in your local legal community:

Fairbanks: Aimee Oravec, aaolaw@gmail.com

Juneau: Karen Godnick, kgodnick@alsc-law.org

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

Through working with you and close friends of the family, the coordinator will help determine what would be the most appropriate expression of support. We do not solicit cash, but can assist with contributions of clothing, frequent flyer miles, transportation, medical community contacts and referrals, and a myriad of other possible solutions through the thousands of contacts through the Alaska Bar Association and its membership.

ECLECTIC BLUES

Parking in Juneau is just not fair

By Dan Branch

IN THE SUPREME COURT FOR THE STATE OF ALASKA

AKIO GRAY,)
)
APPELLANT,)
)
VS.)
)
CITY AND BOROUGH OF JUNEAU,)
)
APPELLEE.)
)

Case No. S-2014

BRIEF OF APPELLANT

Dan Branch
Attorney at Law
119 7th Street
Juneau, Alaska 99801
Ak Bar No. 7710100

Filed in Supreme Court on
June 19, 2012

Deputy Clerk

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JURISDICTIONAL STATEMENT

This court has jurisdiction under AS 22.10.020, which requires consideration of personal matters, including those the court might find distasteful or even vulgar, if on appeal from the Superior Court.

CITATION OF AUTHORITIES

STANDARD OF REVIEW

The court may not accept as true everything said by the City and Borough of Juneau just because they have their own police force. The court must listen with open hearts and minds to Ms. Gray's arguments even though she has over 200 unpaid parking tickets, underperforming children, and really should bathe more often. This is why America is such a great country. Please keep us the land of the free by giving more weight to Ms. Gray's position.

"This is why America is such a great country."

STATEMENT OF FACTS

On August 3, 2012, while rain hammered Downtown Juneau, a day no one could be expected to enjoy walking, Akio Gray parked her 2002 Jeep Cherokee in that little loading zone in front of the Dimond Courthouse. While she was inside challenging an unfair ticket, a normally pleasant and understanding parking patrol officer, then in a bad mood for reasons that can't be blamed on Ms. Gray, wrote up and secured under Ms. Gary's damaged windshield wiper a ticket for leaving a vehicle unattended in a loading zone. (Exc. 4-54)

Ms. Gray, while unrepresented by counsel. unsuccessfully challenged the ticket in both the Juneau District and Superior Courts. (Exc. 57-83) She then hired the undersigned attorney (Branch, or esteemed counsel), not for his stellar legal talents but because he once obtained an order from the Juneau District Court overturning his own parking ticket.

Facts in Branch's Case:

March 28, 2012 the sun shone in a pleasant way on Branch as he parked the family Subaru in front of the Alaska Office Building on Main Street. Except for the parking machine, he would have had enough time to attend a scheduling teleconference for an unrelated case and easily make an appointment with his urologist. Even though he parked in a two hour free zone, Branch still had to register with one of the confounding parking terminals that had recently appeared throughout Downtown. He tried with increasing desperation to get the blue metal tower to yield. When, with just minutes before his hearing started it thrust out a paper receipt Branch grabbed it and raced for the courthouse door, convinced that he had satisfied the law. CBJ argue that the paper, allowed a reasonable person to deduce that he had failed to register. Fifteen minutes later Branch found a parking ticket secured under his working windshield wiper.

ARGUMENT

Esteemed counsel recognizes that his story of overcoming the blind injustice of a machine has nothing to do with his client, who sinned for convenience, rather than cause. However the CBJ provided no evidence that anyone needed the space occupied by Ms. Gray. Truly the burden is on the city to justify this denial of Ms. Gray's freedom to park where she wishes, to avoid the temptation to seek retribution , to be nice once in awhile.

Counsel for Akio Gray
AK 7710100

Author revisits the voting rights act

Continued from page 28

assistance] guarantees . . . are likely to occur," or that in his judgment "the assignment of observers is otherwise necessary to enforce the guarantees of the 14th and 15th amendment." The Attorney General's certification decisions were unreviewable and thus unchecked.

The State pointed out that the Attorney General certified Bethel for observers in 2009, justifying his decision by reciting the statutory standard and explaining only that "in my judgment the appointment of federal observers is necessary to enforce the guarantees of the Fourteenth and Fifteenth Amendments." This certification came in response to mere allegations made by opposing legal counsel in pending litigation against the State and Bethel in a case titled *Nick v. Bethel*, No. 3:07-cv-0098-TMB (D. Alaska) (wherein the plaintiffs challenged the State's voter assistance program). The Attorney General made his certification for federal observers in Bethel without alerting the State or allowing the State to respond. In 2010, the Attorney General again notified the State that he would certify federal observers for Bethel—this certification was again made simply at the request of opposing counsel in Nick. The State, however, was never given any feedback from the observers or notified that any observed practices were improper.

The State pointed out that the only objection that the DOPJ had ever made to a preclearance submission by Alaska was to a 1993 redistricting plan, on the ground that it reduced the Alaska Native voting age population in a house district from 55.7 percent to 50.6 percent. But, the State argued, a jurisdiction that is covered by § 5 only because of the minority language assistance formula should not be forced to engage in race-conscious redistricting to comply with the VRA. And, the State pointed out that "in later rounds of redistricting, the DOJ ha[d] precleared plans with effective Alaska Native districts with less than 50 percent Native voting age population."

The State emphasized that "Alaska has never been found in violation of either constitutional guarantees of voting rights or statutory prohibitions against voting discrimination." With respect to educational opportunity for Alaska Natives, the State pointed out that "long-distance schooling had nothing to do with voting discrimination" and even if it did, there was no correlation between the VRA and educational opportunity in Alaska—"§ 5's preclearance requirement d[id] not impact a state's educational spending at all." Regarding voting materials in Alaska Native languages, the State pointed out that there are approximately 20 distinct Alaska Native languages and until recently many of these languages had no widely-read orthographies, and few if any Alaska Natives were able to read the languages while at the same time being unable to read English.

My view

Readers can make up their own minds, but as for me, I think the State has the better argument. If there are educational disparities in Alaska, then those disparities should be addressed. But, §§ 4 and 5 of the VRA, and the VRA as a whole for that matter, did nothing to redress educational disparity. So, Tom, or whoever else, I'd love to have lunch sometime and let you tell me what you think.

REQUEST FOR COMMENTS

The United States District Court for the District of Alaska has recently begun a review of the Local Civil Rules with the assistance of an advisory committee of local attorneys. The Local Rules are available on line at the District Court's website: http://www.akd.uscourts.gov/

We welcome any comments or suggestions you may have, whether favorable, adverse, or otherwise. This may include any suggestions for changes, identification of those rules that you believe work particularly well, and information about local rules in other district courts that you believe might work well in Alaska. Please send your comments as soon as possible, but no later than March 31, 2014, to the following address:

United States District Court
Clerk's Office
Attn: Pam Richter, Operations Supervisor
222 West 7th Avenue, #4
Anchorage, Alaska 99513

The path to being the longest serving judge in Alaska

By District Court Judges Jo-Ann Chung & J. Patrick Hanley

In December of 2012, Chief Judge of the Alaska Court of Appeals, Robert Coats, retired after 32 years on the bench. Retirement lasted only a few weeks, and Judge Coats was back on the bench, filling in for the vacancy when Justice Bolger was appointed to the Alaska Supreme Court.

At the time of his retirement, Judge Coats was the longest-serving judge in Alaska. As he looks back on his career and his path to the court, Judge Coats speculates that good fortune and happenstance placed him in his honorable position. Clearly, intelligence, hard work and follow-through played more of a role than his modesty allows him to admit.

Toiling away at his studies at the University of Washington, the future appellate judge in Alaska, Bob Coats, was wondering what his next step was going to be. The undergrad, Bob Coats, was interested in Alaska. A friend on his dorm room floor, Jim Rhode, happened to have a connection to Alaska and hooked him up with a summer job. Having no hands-on experience but seeking adventure, Coats was originally lined up to work on a construction crew in Alaska. However, in one of the first of many serendipitous turn of events, someone dropped out of the research crew with the US Bureau of Commercial Fisheries, and created an opening. The undergrad Coats jumped at the chance. Afterall, he did get an "A" in Oceanography.

So off he went to Little Port Walter, across from Baranof Island. He worked at the fishery for the next 6 summers, making good money, paying for college and graduate school as well. After going back and forth from Alaska to Washington, Coats got his degree in economics at University of Washington in 1965. Then after graduating, his choices were 1) working, 2) army, or 3) law school, so what other choice was there? Newly graduate Coats picked law school (although eventually the other choices picked him). So, he headed to Harvard Law School but kept his connection to Alaska, continuing to work at the fishery in the summers.

The summer before graduating, a friend mentioned that Supreme Court Justice Jay Rabinowitz was looking for a law clerk. Eventually, recent-graduate Coats got around to writing that letter to Justice Rabinowitz sometime in the Fall of 1967. He was too late. In another one of those fortunate turn of events, the law clerk hired that next year couldn't take the heat, or rather, the cold. The originally hired law clerk dropped out and Coats was available. After he graduated in 1968, he moved to Fairbanks to take a job as Justice Rabinowitz' law clerk. He fondly remembers his cabin which had no water, although it did have electricity. It was, after all, the Fairbanks way.

Newly employed Coats was drafted in January of 1969 and had to leave his new-found home in Fairbanks, for basic training at Fort Lewis. Once there, he remembers filling out a form where he checked off that he would like to go 1) Germany and 2) Alaska. He got Alaska since no one else checked it off.

He ended up in Anchorage at Fort Richardson as a legal clerk processing Article 15 actions and recording court martial proceedings. He was the the oldest guy there and certainly the only one to have gone to law school. After a couple of confrontations in which Private First Class (PFC) Coats found himself in an advocacy role, empathizing for the enlisted guys, and essentially speaking out of turn, the U.S. Army sent him to Fairbanks supposedly as "punishment" except "it wasn't really." He again connected with Justice Rabinowitz, who gave him a couch in the old Fairbanks courthouse.

Well, the courthouse was just fine living. The only problem was that he didn't have a shower, not a huge necessity but a luxury worth pursuing every once in awhile. Fortunately, there was the shower at the University of Fairbanks. Then-Chief Justice George Boney, noticing the vagabond on the couch, tried to muster him up a shower at the courthouse but it was not to be. Coats credits Chief Justice Boney's attempts as the impetus to put a shower in every other courthouse built in Alaska.

PFC Coats lived at the courthouse for a year and found it to be quite accommodating, the other choice being the barracks of course. His fondest memory is his trusty Oldsmobile that he called "Sherman" which he bought for $300. Sherman got him back and forth from his home at the courthouse to his job on the base where he had to be back each morning for roll call.

Meanwhile, PFC Coats spent some of his military leave clerking for Justice Rabinowitz. He made much more money at his military job but there was something about the digging deep into the law, even just for a few weeks at a time, that was worth so much more.

During his military service Fairbanks, PFC Coats continued to work in the JAG office, doing everything from wills and other legal services, mostly civil family type of issues. PFC Coats served in the Army until January of 1970. Immediately upon his honorable discharge, Coats applied to be Justice Rabinowitz' law clerk again. This time, he wasted no time, and now had some experience.

He clerked with Andy Kleinfield and worked the remaining year for about nine months. At the end of his term, law clerk Coats was replaced by three clerks, including future-Justice Bud Carpeneti, either because he was so good that it took three clerks to replace him or because, he now figures, it took three clerks to fix the mess he made. Whichever way it was, Andy was also partially responsible.

When law clerk Coats was finishing up his clerkship, he had decided that he wanted to be a public defender. Word got around and he got an offer from the PD's in Fairbanks. Except that he also wanted to travel around the world. So newly unemployed Coats declined the offer and began his trip global journey.

Traveler Coats was gone from the U.S. about 9 months. Back in the days before email, the way he communicated to folks back home was to mail a postcard, indicating what country he thought he'd be in and when and hopefully, when he got to the new country, he would have some mail at the American Express office.

Arriving in India, he thought maybe he would check out the job prospects at home. The world traveler Coats mailed a postcard to the Public Defenders Agency and said he'd be in Thailand soon and was interested in coming back to Alaska. Things have a way of working out. It was a good feeling to walk into the American Express office without a job, and to walk out with an offer to work at the Public Defender Agency in Alaska. Newly employed Coats returned to Alaska and became the first public defender in Kenai in July of 1972. He was the first and only attorney and staff person in the Kenai office. While the DA at the time, Tom Wardell, had a support staff (which caused some office envy), the two got along very well.

Past and present judges of the Alaska Court of Appeals gathered to honor Judge Robert Coats during his retirement reception in 2012, after presenting him with his favorite office chair. L-R: Chief Judge David Mannheimer, Judge Joel Bolger (appointed January 25 to the Alaska Supreme Court), Judge Coats, Alex Bryner (former Court of Appeals Judge and Alaska Supreme Court Justice), and Judge Marjorie Allard, newly appointed to the Court of Appeals to fill the vacancy created by Judge Coats' retirement.

While in Kenai, a fellow named Wayne Jones held up several people by shooting their tires along the way. Assistant public defender Coats was his attorney. Weirdly, the issue of the shower came up again. The jail in Kenai didn't have a shower. So, the Department of Corrections agreed to release the prisoner to his attorney. Assistant Public Defender Coats picked up his prisoner and kept him in his custody so that his client could get a shower. Judge Coats thought it "more trouble to check out a library book."

Coats spent one year in Kenai. He then went to the Public Defender Agency office in Fairbanks, where he spent the next six years. After years of grueling trial work, the future Judge Coats changed career paths slightly and went to the Attorney General's Office in Fairbanks. At the time, he was married, and his first child, Emily, had come along. And so he decided the hours might be slightly more conducive to family life at the Attorney General's Office. There, assistant attorney general Coats did everything from consumer protection to legislative work.

In 1980, the Alaska Legislature formed the Court of Appeals, to ease the workload of the Alaska Supreme Court. His spouse at the time encouraged him to apply. Coats' interview was scheduled at the airport in Anchorage during a short layover when Gov. Jay Hammond was returning through Anchorage from Washington, D.C. A number of reporters had gathered at the airport to ask the Governor questions about ANILCA (the 1980 Alaska National Interest Lands Conservation Act).

While waiting for the Governor to arrive, one of the media outlet's reporter's didn't show up. The camera people were there with their equipment set up. Having done a ton of trial work, judicial candidate Coats decided to step up and volunteered to interview the Governor.

So, off-camera (he assumed), reporter Coats approached the Governor with a microphone and proceeded to ask him very important questions which were written down somewhere and which he now cannot remember. After the interview was over, the Governor mentioned something about outsiders not knowing anything about ANILCA. That's when candidate-turned-reporter Coats told the Governor he was actually a judicial candidate for the newly formed Alaska Court of Appeals.

And so off they went, to sit down in a lounge area at the airport, and the two of them had a nice chat/interview. Judicial candidate Coats felt good about the interview. "This was good practice for the next time," he thought. There was no next time. The Governor selected Robert Coats to fill out the appellate court with Alex Bryner (a future Supreme Court Justice) and James Singleton (later appointed to the Federal District Court).

The newly appointed Judge Coats again moved into the courthouse. At the time, his family was living in Fairbanks so Judge Coats figured the courthouse should work out, and he had lots of experience finding showers. Luckily, Justice Boney's efforts to put a shower in the courthouse was finally successful. To this day, however, due to loud squeaky pipes near the Supreme Court courtroom, the rule of "No Showering During Oral Arguments" remains.

Judge Coats hit the ground running and wrote the first six opinions for the newly minted Alaska Court of Appeals. One notable decision which provides insight into Judge Coats' jurisprudence was his dissent in Smithart v. State, 946 P.2d 1264 (Alaska App. 1997). Smithart was charged with kidnapping, sexually assaulting and murdering an eleven-year-old-girl near Glennallen. At trial, Smithart sought permission to introduce evidence that a witness called by the State actually committed the crime. The trial court carefully considered Alaska law that evidence of another person's guilt, to be admissible, must "tend to directly connect" the other person with the actual commission of the crime. The court's rulings limited Smithart's ability to name the other suspect in his opening and closing statements, and to introduce evidence of the other suspect's involvement.

The majority opinion of the Court of Appeals concluded that the trial court's rulings were partially correct, but that the court improperly limited Smithart's ability to specifically point to the State's witness as the killer. After an extensive review of the evidence presented at trial, the Court of Appeals ruled that the trial court's error did not prejudice Smithart's

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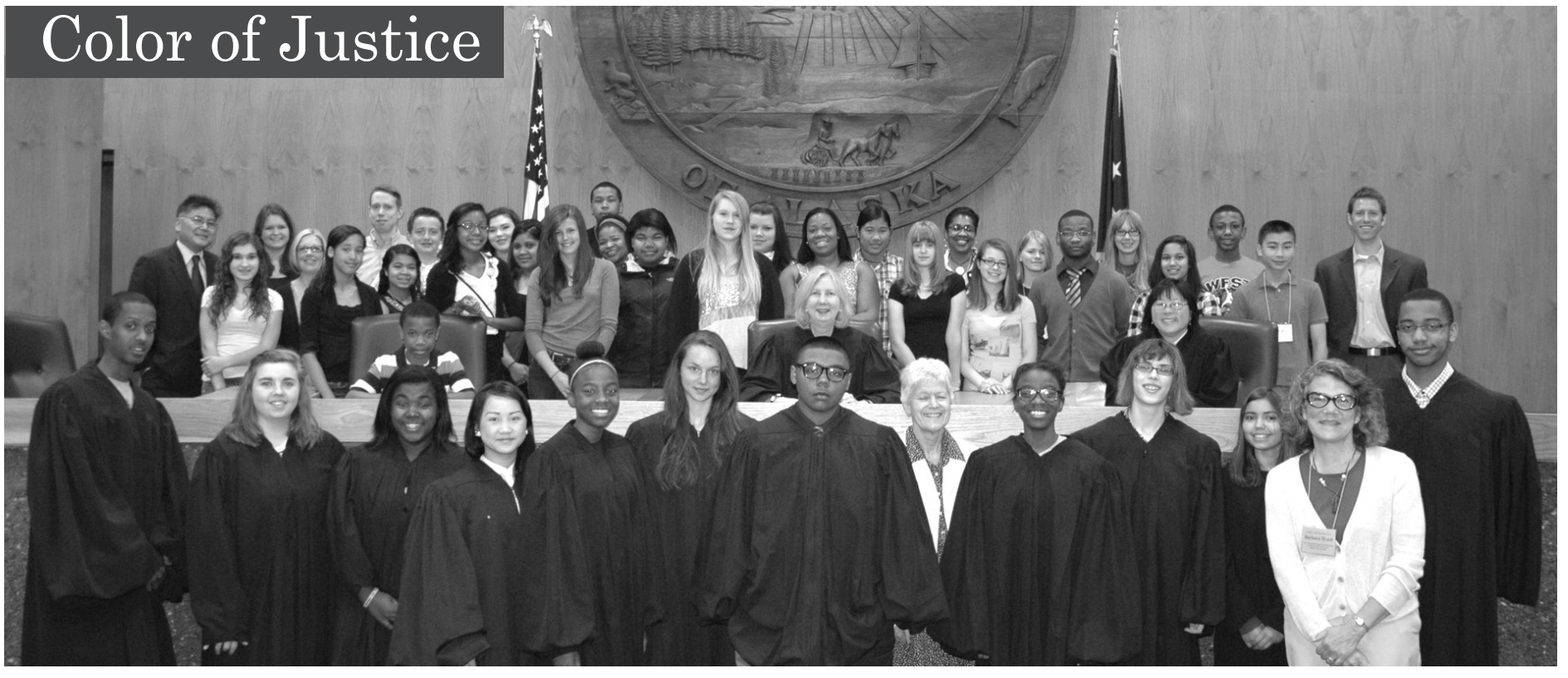
Color of Justice



Group photo of the June program taken after the "robing ceremony" in the Supreme Court Courtroom. Photo by Mara Rabinowitz

Program stimulates youth to study law

The Color of Justice program brings diverse youth from across the state together for exciting workshops and activities designed to introduce them to the study of law and to encourage them to consider legal and judicial careers. In June 2013, a two-day Color of Justice middle and high school program was held at the University of Alaska Anchorage and the Anchorage courthouse of the Alaska Court system.

The first day began with a tour of the UAA campus and an interactive session focusing on the qualities needed to be a lawyer and a judge, and the kind of academic and professional preparation and experience required. Students then participated in "Mentor Jet: A Speed Mentoring Experience," which provided them with opportunities to talk with diverse Alaska lawyers and judges about the steps to a successful and rewarding career in law. Presiding Judge Sen Tan next discussed the top 10 reasons why students would want to be judges. Judge Pamela Washington closed the first day by overseeing an active session of "Constitutional Cranium," a game show testing student's knowledge of Alaska's constitution.

The second day began with Chief Justice Dana Fabe, Judge Beverly Cutler (Ret.), and Judge Jo-Ann Chung introducing students to the Alaska Court system, and distributing judicial robes. Students next heard presentations from Seattle University School of Law Professors Mark Chinen and Stephanie M. Nichols, and University of Washington School of Law Professor Michele Storms on the topics of contracts and access to justice, and then they put their new legal knowledge to work by practicing deciding real cases. Students ended the busy second day by preparing for and participating in mock trials.

Color of Justice couldn't have happened without the outstanding efforts of the volunteer lawyers and judges who participated in Mentor Jet and the mock trial competitions.

The second Color of Justice program took place in September 2013 at the University of Alaska Anchorage in conjunction with their annual Law School/Career Fair. The program included sessions on the law school admissions process, pre-law support services, and featured a MentorJet Speed Mentoring session.

Students heard presentations from Susan Lee, the Director of Admissions at Gonzaga University School of Law and Whitney Earles, the Associate Director of Admissions at Seattle University School of Law on the Nuts and Bolts of the Law School Admissions Process. Professor Deb Periman with the UAA Justice Center gave students tips on how to prepare for the LSAT. Mathiew Le, Assistant Dean of Admissions and Financial Aid at the University of Washington School of Law and Peter Boskofsky with the Afognak Native Corporation gave a presentation to students entitled: "A Zillion Things You Can Do With a Law Degree." Justice Bolger and attorney volunteers served as mentors during "Mentor-Jet: A Speed Mentoring Experience."

Mentors and court staff at the June event, front row (L-R): Judge Sen Tan, Cheryl Jones, Lori Colbert, Prof. Ryan Fortson, Michele Storms, and Faith Rose. Back Row (L-R): U.S. District Court Magistrate Judge Deborah Smith, Stephanie White Thorn, Elizabeth Saagulik Hensley, Kirsten Kinegak-Friday, and Tonja Woelber.

Theresa Lyons, UAA Director of New Student Orientation, Anchorage District Court Judge Pamela Washington, and Anchorage District Court Judge Jo-Ann Chung.

Longest serving judge

Continued from page 30

ability to argue his case to the jury.

In his dissent, Judge Coats agreed with the majority that the trial court erred by prohibiting Smithart from arguing that the State's witness committed the crime. He disagreed however, with the impact this had on the jury, explaining that "in my judgment, this error was more of a handicap to Smithart's defense than the majority perceives it to be." He reasoned that Smithart had organized a valid defense, but because of the trial court's rulings "his defense lacked any cohesion." He concluded that the limitation of the trial court "was a serious handicap to the effective presentation of Smithart's defense" and that the error was not harmless.

Smithart appealed to the Alaska Supreme Court, which recognized the fundamental right of a defendant to present his defense. Smithart v. State, 988 P.2d 583 (Alaska 1999).

The Supreme Court agreed with Judge Coats' dissent that "the ruling, which prevented the defense from directly presenting its theory of [the other suspect's] guilt to the jury in his opening statement and summation, robbed Smithart's case of its cohesion and narrative force and impaired his right to present his own defense." The court reversed Smithart's conviction and remanded for a new trial. Many opinions over the years provide testament to Judge Coats' superior acumen, and respect for fairness, due process, and the rule of law.

After 32 years on the bench, "retirement" is a strange transformation. Fortunately for him and for all Alaska residents, the separation is not so abrupt. Judge Coats continues to serve, working on cases as the court transitions to a new generation of judges. While it is without a doubt sad to see him go, if you want to chat him up, Judge Coats can seen on another court--the tennis court--or can be found on the black diamond slopes of Alyeska. Alaska has been truly honored to have such an earnest, intelligent, and committed jurist.

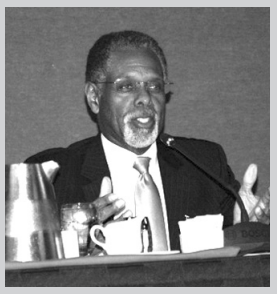
District Court Judges Jo-Ann Chung and J. Patrick Hanley both served as law clerks for Judge Coats in the 1990's. Judge Hanley is currently serving pro tem on the Court of Appeals.

Historians Luncheon

The eleventh annual Bar Historians Luncheon celebrated the 50th anniversary of the United States Supreme Court's decision in Gideon v. Wainwright, which held that indigent criminal defendants have a right to appointed counsel.

The luncheon panel consisted of retired Superior Court Judge Larry Card (pictured at the podium here), Federal Public Defender Rich Curtner, United States Attorney for the District of Alaska Karen Loeffler, and Alaska Public Defender Quinlan Steiner. Assistant Public Defender Michael Schwaiger moderated. The panel related the history of the provision of public counsel in Alaska and discussed past and continuing issues (pictured top left).

L-R: Rich Curtner, Federal Public Defender for the District of Alaska, Superior Court Judge Larry Card (Ret.), Karen L. Loeffler, U.S. Attorney for the District of Alaska, Quinlan Steiner, Public Defender, State of Alaska, Michael Schwaiger, Assistant Public Defender, Marilyn May, Clerk of the Appellate Courts.



Judge Larry Card

Photos by Barbara Hood

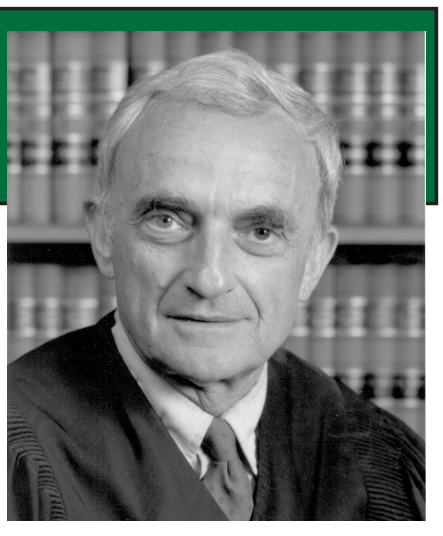
Historians lunch Group -- First row: Quinlan Steiner, Retired Superior Court Judge Victor Carlson, and Chief Justice Dana Fabe. Second row: Margi Mock (retired deputy public defender), and Sharon Barr (assistant public defender). Third row: Catherine Boruff, Josie Garton, Renee McFarland, Megan Webb, Kelly Taylor, and Mike Schwaiger (all assistant public defenders). Fourth row: Morgan White (assistant public defender), John Page (assistant public defender), Cindy Brewster (public defender investigator), Julia Metzger (assistant public defender), Jonathan Katcher (former assistant public defender), and Rich Curtner (Federal Defender)., Back left: Darrel Gardner (assistant federal defender).

Call for nominations for the 2014 Jay Rabinowitz Public Service Award

The Board of Trustees of the Alaska Bar Foundation is accepting nominations for the 2014 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, 840 K Street, Suite 100, 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, 2014. The

Alaska Bar Foundation



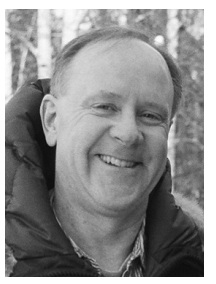
Jay Rabinowitz

KATIE HURLEY
2013 Recipient

TREVOR STORRS
2012 Recipient

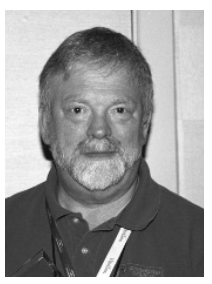
JUDGE MARY E. GREENE
2011 Recipient

BARBARA J. HOOD
2010 Recipient



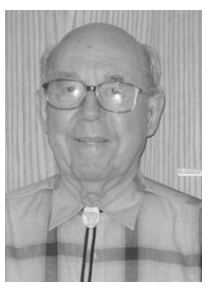
ANDY HARRINGTON
2009 Recipient

JUDGE SEABORN J. BUCKALEW, JR.
2008 Recipient



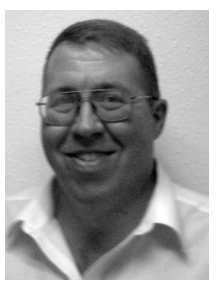
BRUCE BOTELHO
2007 Recipient

LANIE FLEISCHER
2006 Recipient



JUDGE THOMAS B. STEWART
2005 Recipient

ART PETERSON
2004 Recipient



MARK REGAN
2003 Recipient