

The Alaska BAR RAG

Dignitas, semper dignitas

VOLUME 39, NO. 4 October - December, 2015

The vulnerability of lawyers, no easy choices

It is the general policy of The Bar Rag not to publish stories from writers requesting anonymity. However, once in a while a story comes along that needs to be told, but in the telling could expose the author to repercussions ranging from undue embarrassment all the way to possible physical harm. In such cases we feel it is in everyone's best interest to protect the identity of the author.

**By an anonymous member
of the Alaska Bar**

He hit her. He strangled her. He threw their child across the room. He refused to leave the home. She's scared. Nervous to be in her own house, the one she bought with the money from her high-paying job, the money he controls now.

She's in pain — not only from the occasional slap or shove, but from the constant throb of tension in her neck and head, a result of her unconscious nighttime teeth-grinding — it's her only outlet for expressing the sorrow and shame of her daily life. During the day she has a poker face because to act otherwise would be unprofessional.

Her friends are gone. They too are proud independent women and when she couldn't leave him, they left her — to pressure her, to teach her a lesson that she already knew: that when you're a woman in a professional position of power, people expect better of you. You're not some helpless unemployed youngster held in thrall to the brute. You're a prominent, successful



attorney, and it's an embarrassment that you won't extricate yourself from the cycle of power and control that you've heard denounced in your courtroom in dozens of domestic violence trials.

So she's alone with her tormentor. How pathetic. Just leave! Do what you've told your clients — the women whose hands you've held as they wept and told you about the bruises, the rapes, the degradation and the inexorable loss of their ability to make choices, any choice. Go right to the courthouse, just as you've advised those other women to do. Just fill out an application for a restraining order. The system will help you.

Go and tell all your colleagues — the clerks, the lawyers, the judges, the police whom you know so well.

Tell them all the shameful details of your life. Do it even though your name will be in the court roster of your small-town newspaper. Do it even though you know that your prospective employers at the firm, or the judicial council, will see that your life was so out of control that not only do you have damaged credit, you're on Courtview! Do it even though you know you'll instantly disgrace yourself. You clients will doubt your advice. Your opponents will pore over every salacious detail and confirm what they had suspected — that you were damaged goods, and maybe not right in the head. Maybe that police officer who endured your withering cross-examination will have to photograph you with your

clothes removed so he can see all the bruises. Do it even though OCS may question your protective capacity as a mom — you've questioned them enough, haven't you?

And know that from now on, you will no longer be a hardworking, respected member of the Bar. You'll be a hypocrite who represented men accused of DV. You'll be a woman who makes poor choices. You'll be untrustworthy in a profession where credibility is everything.

He's taken your peace of mind, your money, your friends, and your dignity. But if you leave, and if you tell, he'll take the career that defines you.

And that's why you stay.

See related
story
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Judicial Council begins evaluation of 41 judges

By Susanne DiPietro

The Judicial Council has begun its evaluation of the performance of 41 judges who will be on the ballot in November 2016. In late June, the council will recommend whether voters should retain these judges for another term. An important part of the council's evaluation is its survey of Alaska attorneys. The council's contractor, University of Alaska's Center for Behavioral Health Research, will distribute the online retention survey in January. I'm writing to encourage all of you to respond to the survey.

Our judicial retention system depends on providing the council

and the public with as much information as possible. The accuracy and legitimacy of the information provided by the council depend to a large degree on the number of attorneys who respond to the council's bar survey. Attorneys observe judges firsthand and have the training to evaluate judges' legal abilities.

The council's survey is important not only because it educates the public, but also because it helps to educate the judges. The survey provides valuable and relatively detailed feedback on how judges can improve their performance. Conversely, the bar survey can serve to positively reinforce the performance of judges who excel.

The survey you will be receiving in January is especially important, because there are 41 judges eligible to stand for retention next year. When you open the survey, you will be prompted to read the list of judges and indicate which ones you would like to evaluate. Because of the large number of judges on the list, I am guessing that almost every attorney in the state can check at least one or two names. For that reason, I hope that almost every member of the Bar will review the judges with whom you have experience.

Susanne DiPietro, is executive director of the Alaska Judicial Council.

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Bar dues stable, still pay for a wide range of services for attorneys

By Nelson Page

Your Board of Governors met at the end of October. What is most remarkable about the meeting is what did NOT happen: We did not raise your bar dues. Again. For the fourth year in a row.

As Bar president I have had the privilege of meeting lawyers in places as far-flung as Barrow, Kenai and Juneau. Much to my surprise, the subject of bar dues has come up only once, in Kenai. After giving a little speech I asked if there were any questions. I had expected at least some complaint about bar dues and made a comment to that effect. Judge Charles Huguelet, who attended the lunch meeting, responded by saying, "Oh, we've given up on that."

The problem with Bar dues is that most of the money goes to things that we as lawyers and business people prefer not to have to think about. On a day-to-day basis I am more concerned with meeting court deadlines, keeping clients and judges happy, and paying my bills – of which a reliably annoying one is the annual fee for the bar. But imagine for a minute what life would be like if there were no bar association to pay dues to.

First consider the bar admissions process which every lawyer licensed to practice in this state has had some experience with. About 180 applications for admission to the bar are received every year. Some are requests for waiver or reciprocity from lawyers already practicing in another state. Others are new lawyers who are planning to take their first bar exam in Alaska. Each new application requires a time-consuming and painstaking process of evaluation and investigation to make sure the lawyers you practice with are reasonably competent and honest. You might want to consider what would happen if someone didn't do the work necessary to vet potential new members of the Alaska legal profession.

Someone has to do it, and the bar is charged with that responsibility.

Second, imagine what life would be like if there were no enforcement of the minimum standards we expect from our colleagues in the bar. A major part of your bar dues goes to ensuring that lawyers practicing in Alaska comply with the ethical and professional rules we have set for ourselves. The Bar pays the salary of two full-time lawyers (and a support staff) dedicated to evaluating and resolving some 235 complaints against lawyers each year. Many of the complaints are not well-founded. Some, unfortunately, are. Each complaint requires review and careful consideration. Some, require the resources of a fully contested trial, complete with the right of appeal.

Similarly, your Board of Governors regularly has to deal with situations in which a client has been damaged by an attorney's incompetence, misconduct or demise. When a lawyer dies or becomes disabled, leaving clients in limbo, the bar appoints and oversees trustee counsel, who is generally paid by the Lawyer's Fund for Client Protection. There is also a whole system that resolves complaints by clients who are unhappy with fees. And last but certainly not least, any lawyer can call our experienced and – yes – friendly discipline counsel and get free advice and assistance when faced with a difficult ethics problem. This is one of the most valuable services I can imagine, and it is free to you as a member of the bar.

Third, the Bar Association oversees a large and varied effort to provide us with opportunities for professional education and enrichment. Alaska doesn't require mandatory continuing legal education (except for ethics) but we do make available a large number of courses, seminars



"We did not raise your bar dues. Again. For the fourth year in a row."

and instruction on almost every conceivable topic. These seminars and conferences don't just happen: each one requires coordination and support, which the Bar provides. The Bar also provides staff support and meeting space for some 30 bar sections, which gives us all the opportunity to stay current and connected.

These are just a few of the most important things that your bar dues pay for. Elsewhere in this issue of the *Bar Rag* is a more detailed breakdown and explanation of the Bar Association's budget and its finances. As with many collective efforts, much of what the Bar does may not seem to have a direct impact on you or your professional life. But it is almost certain that something the Bar does affects you directly. And taken together, the activities of the Bar Association make it possible for you to practice your profession without having to worry about all kinds of mundane but essential things – like discipline, admissions and professional development.

When I talk about bar dues someone almost always tells me that they have better things to do with their money and that they would prefer to make their own decisions about what professional activities to support. I remind them of two unyielding facts: First, if we don't perform these functions, someone else will. And if you think that we won't be asked to pay for the cost of having someone else do these things you are dreaming – or perhaps taking advantage of the new laws on marijuana in Alaska.

Second, the size of our bar dues reflects the fact that the Bar Association performs these tasks in every corner of the largest state in the union. The bill has to be split among a relatively small group of lawyers. I wish there were a magic way to

avoid these unfortunate facts, but the numbers are what they are.

So how did we manage to once again avoid raising bar dues? First and most important, your incredible bar staff has performed miracles in making do with less. We have a staff that has decades of cumulative experience administering and supporting the activities of the bar. I can personally attest that these folks work very hard every day. They often wear several hats. And they are good at what they do. Turnover is small, which is a reflection on excellent management and efficient utilization of talent. The staff has been very good at finding all the change in the couch cushions: For example, this year you will see that the brochure for the annual convention is printed in a different format than before. It's basically the same information but in a format that

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The Alaska BAR RAG

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EDITOR'S COLUMN

From under gray skies of Kodiak, holiday greetings

By Meghan Kelly

I fully intended to open this column by heartily wishing everyone a happy holiday season, but I'm writing from Kodiak, where I sit gazing out at rain with no end in sight. I have to admit that it dampens my cheer. Perhaps it is time to check the Alaska Airlines fares to Costa Rica.

For those of you fortunate enough to have already booked your tickets I hope you will share some images and stories with us upon your return. In the meantime, this issue includes several features to temper any travel fever: local writer Jean Bundy shares culinary and modern art samplings from a recent trip with husband (and past Bar president) David to NYC; and past-Bar President Jon Katcher recounts his epic journey to Malawi.

Contributor John C. Pharr's so-

bering remembrance of his colleague David Schlerf prompted an ongoing emotional and appreciative response from readers who expressed regret for his loss and a hope that those experiencing substance abuse and other challenges will be able to connect with community and resources that can help during the dark times.

In the vein of health and wellness, this issue includes a poignant and powerful submission entitled *Vulnerability* that serves as a reminder of another heartbreaking reality many of us may encounter in our professional or personal lives: domestic violence. This victim, who is a member of the Bar, has been brave enough to share



"For those of you who have yet to join the jet set, and those of you reading this upon your return from more tropical climes, I wish you a safe and joy-filled holiday season."

some of her story – a decision that is particularly timely in light of the Alaska Network on Domestic Violence and Sexual Assault's (ANDSVA) recent updates to its Women's Legal Rights Handbook which is now available in its entirety on line.

In my short time as a resident I have noticed that for many of us Alaskans winter travel begins in mid-October and extends through late April/early May. For those of you who have yet to join the jet set, and those of you reading this upon your return from more tropical climes, I wish you a safe and joy-filled holiday season. We will see you again in 2016.

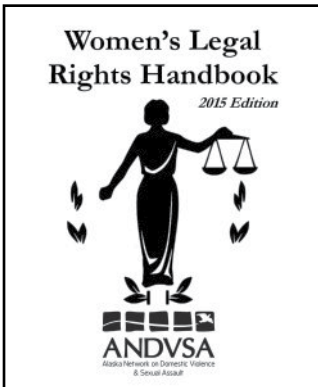
Meaghan

Women's legal rights handbook updated

The Alaska Network on Domestic Violence and Sexual Assault has updated its *Women's Legal Rights Handbook* and has made it available on line for free.

Alaska guarantees Alaska women the legal right to be treated equally. However, women often face problems exercising this right: They may have difficulty obtaining work because of their sex; they may be unable to collect child or spousal support from former partners; they may not obtain a fair property settlement when leaving a non-marital relationship; or they may face discrimination or harassment in their workplace.

This handbook outlines legal rights affecting women in various areas. The handbook was updated in 2015 with chapters written by attorneys and assembled by ANDVSA. Be aware, however, that the law can change and is sometimes difficult to interpret. If you have a legal problem, try to consult an attorney or government agency.



Copies of the print edition of the manual were distributed to member programs following its publication in 2015 and now the online version is here for you to use. Click on each chapter to get a downloadable copy of the full chapter at the network's main page <http://www.andvsa.org/wlrh/>. The full PDF of the *Women's Legal Rights Handbook* is available <http://goo.gl/GiIglp>. If you are interested in ordering a print copy, please contact ANDVSA for details at (907) 586-3650 or emailing andvsa@andvsa.org.



Poetry Corner

Passing the Bar

(Inspired by Tennyson's *Crossing the Bar*)

*Workbook and signal start,
And one deep breath for me!
And may there be no seizure of my heart,
When I start work on thee,*

*But such a task in thinking seems too steep,
Too dull my mind will roam,
When thoughts I pull from out their slumber deep
Turn again home.*

*Third day and signal end,
And after that the wait!
With fists clenched tight and smile I'll pretend
When news is late.*

*For though the days of working were not brief
They may not get me far,
I'll only breathe that deep sigh of relief
When I have passed the Bar.*

— Kym C. Miller

Crossing the Bar

*Sunset and evening star,
And one clear call for me!
And may there be no moaning of the bar,
When I put out to sea,*

*But such a tide as moving seems asleep,
Too full for sound and foam,
When that which drew from out the boundless deep
Turns again home.*

*Twilight and evening bell,
And after that the dark!
And may there be no sadness of farewell,
When I embark;*

*For though from out our bourne of Time and Place
The flood may bear me far,
I hope to see my Pilot face to face
When I have crossed the bar.*

— Alfred, Lord Tennyson

Kym C. Miller, sister of Eric Croft, is a licensed attorney in Oregon, now mainly writing for a living.

Letter to the Editor

To the Editor:

This letter is in response to the Bar Rag, Volume 39, No. 3. Having read the article on marijuana, and the letter to the editor from Jim Hanley, I felt the need to express a few thoughts. First, the law on marijuana in Alaska has been somewhat of a mess for a long time, and I think it is good that the Legislature and governor are addressing it and providing some predictable commercial/legal structure to its possession and sale. Law enforcement will adapt. To paraphrase an Alaska State Trooper with whom I spoke about it over 20 years ago, if he showed up on a disturbance call at 2 in the morning, and everyone was stoned, the only thing in the room that was in danger was a bag of potato chips. But if everyone was drunk, he had trouble. It was my impression that "legalization" made things easier on law enforcement in the greater scheme of things. I have no idea how one goes about quantifying that; it's just what I think.

Second, Jim Hanley is always angry about something; and he is usually correct. And he may be correct about the facts in the Ravin decision. But when I spoke with Irwin Ravin about it in Homer, Irwin told me that he got arrested on his front porch. I cannot attest to the accuracy of that, but it's what Irwin told me to the best of my recollection. Whether he had possessed marijuana in a vehicle prior to his arrest, the locus of his arrest for possession would have been in the privacy of his home. I differ in opinion with Jim Hanley as to whether Chief Justice Rabinowitz was stretching the facts to accomplish an objective. The charge itself would not have needed to address whether the marijuana was possessed in a vehicle or in some other location; just that it was knowingly possessed. And on remand, some direction to the lower court was justified, in my humble view, since the privacy protections addressed in that decision were limited to the privacy of the home, not a motor vehicle.

Third, and as long as I am at it anyway, after reading the Hon. Roy Madsen's history of the Kodiak bench and bar, and now having spent more than 15 years on the bench myself, I reminisced. I can only say that Roy Madsen, and Jim Hansen in Kenai for that matter, were FAR better judges in practice than I ever gave either of them credit for when I was a prosecutor in Alaska. My humble apologies to either or both of these early pioneers of the law in Alaska if I ever said something totally stupid in their courtroom. (Might have happened.)

As for Shakespeare, I was never much of a fan. The marijuana thing is certainly much ado about nothing. But the reference to killing all of the lawyers from Henry the Sixth is actually, to my limited understanding, a reference as to how to create chaos and disruption in society. For some reason, it is usually cited to mean the opposite. But in any event, carry on. Love reading the Bar Rag.

*Nathan A. Callahan
Waterloo, Iowa*

Bar dues stable, still pay for a wide range of services for attorneys

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will save thousands of dollars. This gets added to any number of ways in which the staff has found more cost-effective approaches to doing business as usual.

We also had the benefit of some unusual occurrences. Steve Van Goor, discipline counsel for 32 years, retired this spring. Much as we will miss him (he has been on my speed dial for decades) there was a period of several months when we were not paying a full salary for discipline counsel. We also made adjustments to the employee benefits package, always a tricky thing to do when

you have fantastic staff you want to keep. These and other efforts allowed us to project that we can balance the books in 2016 without raising dues.

Since you don't have a choice about paying them, I won't try to suggest that you ought to be happy about your annual dues. But I do hope I can convince you that, when put in perspective, things are not all that bad – and certainly not as bad as they could be. You should be proud of the work your Bar Association does, and, I hope, not begrudge the cost of that work as we move forward.

Nelson Page is president of the Alaska Bar Association

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How to obtain testimony from the federal employee you need

By Christina Randall,
with E. Bryan Wilson and
Richard Pomeroy

To put things mildly, there is a large federal presence in the State of Alaska. The federal government owns approximately 60 per cent of the land in the state. Civilian and military employees combine to make up approximately 10 per cent of Alaska's workforce. Given these statistics, it is likely that every attorney who practices for any length of time in the state will eventually have a case that involves a federal employee as a witness. The purpose of this article

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is to provide guidance on the procedures for obtaining the testimony of a federal employee when the United States is not a party to the lawsuit.

Section 5 U.S.C. § 301 grants federal agencies the authority to prescribe regulations to restrict employee conduct and to preserve agency records. The essential case interpreting agency powers under Section 301 is *United States ex rel. Touhy v. Ragen*.¹ There, a gangster nicknamed "Roger the Terrible Touhy" filed a habeas corpus proceeding claiming he was imprisoned by fraud. The district court issued a subpoena duces tecum to have an FBI agent produce documents that Touhy claimed were exculpatory. Following issuance of the subpoena, the agent advised the court that he could not produce the documents because the attorney general had ordered him not to produce them under a Department of Justice regulation. The court found the agent in contempt. The department appealed the order and the Seventh Circuit

reversed. The United States Supreme Court granted cert and found that 1) the department's regulation was valid; and 2) courts cannot use the contempt power to enforce a subpoena against a federal employee when that employee was instructed under a valid agency regulation not to honor the subpoena.

Since *Touhy*, most federal agencies have adopted or revised their own regulations to prevent or limit their employees from testifying in certain circumstances when the government is not a party.² These regulations, while limiting, generally recognize that requestors are

entitled to relevant testimony from government employees as long as it doesn't infringe on or interfere with certain protected government functions. Most of the regulations require the agency to deny any request for testimony which does not comply with the regulations.³ Therefore, it is important to properly submit a Touhy request to obtain the desired testimony.

The first step in a Touhy request is to examine the relevant Touhy regulations for the agency where the testimony is sought. Most Touhy regulations can be found in the Code of Federal Regulations.⁴

Some agencies require greater specificity in the Touhy request than others. For example, the Environmental Protection Agency requires that Touhy requests be (1) in writing, (2) setting forth the nature

of the testimony, and (3) explaining the reasons why the testimony is in the interests of the EPA.⁵ By contrast, the Department of the Interior has seven requirements that include (1) identifying the employee, (2) describing the relevancy of the testimony, (3) identifying the parties in the action, (4) showing that the desired testimony could not be obtained from another source, (5) showing that no record could replace the desired testimony, (6) stating the substance of the testimony, and (7) explaining why the Touhy request complies with 43 C.F.R. 2.88.⁶ An agency can deny the Touhy request if the request does not comply with the application procedures.

Once the Touhy request and the subpoena are submitted, the employee who receives the subpoena is required to notify the agency's central authority, usually the local general counsel.⁷ The agency's central authority will generally contact the United States Attorney's Office in the district where the testimony is sought to obtain its consent and/or advice.

Following consultation, either the general counsel or U.S. Attorney's Office will contact the requesting party to clarify details of the request, discuss possible limits on the scope of testimony and/or obtain possible dates for the testimony. Depending on the nature of the request, the agency may want an assistant U.S. attorney present to ensure that testimony does not go beyond that permitted by the regulations. Employees cannot testify until they have been given permission — even if the testimony comes due before the agency has made a decision.⁸ Thus, agencies should be given as much lead time as possible on these requests to avoid delays to the litigation.

If a Touhy request is denied, the options for challenging the denial depend on whether the case was filed in federal or state court. Generally, all administrative remedies must be exhausted before resorting to judicial review, although an agency's denial letter is sufficient to fulfill the exhaustion requirements.⁹ The federal district court is the forum to challenge an agency denial.

While circuits differ on the issue, the Ninth Circuit has held that sovereign immunity does not shield government agencies from federal subpoenas.¹⁰ Therefore, if an agency denies a Touhy request and the case is in federal court, the court may review the agency decision under the federal rules of discovery and balance the needs of the government and the parties.¹¹ Alternatively, the decision can be appealed under the Administrative Procedure Act (APA).¹² The APA's deferential standard overturns agency decisions that are "arbitrary, capricious, an abuse of discretion, or otherwise unlawful."¹³

If the case was filed in state court, the court has no jurisdiction to compel the federal employee to testify because of sovereign immunity.¹⁴ This restriction cannot be circumvented by asking a federal court to issue a subpoena while the underlying action remains in state court

because the federal court lacks subject matter jurisdiction.¹⁵ Instead, the agency's decision should be challenged in federal court under the APA.¹⁶

In sum, while the majority of Touhy requests are granted and the employee is allowed to testify, advance planning is required to allow agencies time to process the request and get the testimony scheduled at a time convenient to all involved.

Footnotes

- ¹340 U.S. 462, 468 (1951).
- ²John A. Fraser III, *Sixty Years of Touhy*, Fed. Law., March 2013, at 75.
- ³Robert D. Peltz, *Who Is This Guy Touhy, and What Am I Supposed to Be Requesting?*, Fla. B.J., May 2012, at 9-10.
- ⁴A listing of the regulations of the more commonly requested agencies is attached as an endnote.
- ⁵40 C.F.R. § 2.403.
- ⁶43 C.F.R. § 2.284.
- ⁷See, e.g. 40 C.F.R. § 2.404(a) ("Copies of subpoenas must immediately be sent to the General Counsel") 28 C.F.R. § 16.22(b) ("the employee shall immediately notify the U.S. Attorney for the district where the issuing authority is located), 16 C.F.R. § 4.11(e) (2) ("any employee or former employee who is served with compulsory process shall promptly advise the General Counsel of its service").
- ⁸*United States v. Henson*, 123 F.3d 1226, 1237 (9th Cir. 1997).
- ⁹*Yousuf v. Samantar*, 451 F.3d 248, 251 (D.C. Cir. 2006).
- ¹⁰*Exxon Shipping Co. v. U.S. Dep't of Interior*, 34 F.3d 774, 778 (9th Cir. 1994) ("The limitations on a state court's subpoena and contempt powers stem from the sovereign immunity of the United States and from the Supremacy Clause. Such limitations do not apply when a federal court exercises its subpoena power against federal officials." (citation omitted)); *Watts v. S.E.C.*, 482 F.3d 501, 508 (D.C. Cir. 2007) ("a challenge to an agency's refusal to comply with a Rule 45 subpoena should proceed and be treated not as an APA action but as a Rule 45 motion to compel (or an agency's Rule 45 motion to quash)"); *Northrop v. McDonnell Douglas Corp.*, 751 F.2d 395, 398 n.2 (D.C. Cir. 1984) (declining to "graft onto discovery law a broad doctrine of sovereign immunity.");
- ¹¹*Exxon Shipping*, 34 F.3d at 780 ("district courts should apply the federal rules of discovery when deciding on discovery requests made against government agencies, whether or not the United States is a party to the underlying action.");
- ¹²5 U.S.C. § 706.
- ¹³*Exxon Shipping*, 34 F.3d 780 n.11; 5 U.S.C. § 706(2)(A).
- ¹⁴*Exxon Shipping*, 34 F.3d at 778.
- ¹⁵*Houston Bus. Journal, Inc. v. Office of Comptroller of Currency, U.S. Dep't of Treasury*, 86 F.3d 1208, 1213 (D.C. Cir. 1996).
- ¹⁶*Id.* at 1212.

Commonly Requested CFR Cites

- AGRICULTURE, 7 C.F.R. §§ 1.210-219
- AIR FORCE, Instruction AFI51-301(available at <http://www.e-publishing.af.mil/forms-pubs/>)
- ARMY, 32 C.F.R. Part 516
- COAST GUARD, 33 C.F.R. § 1.20
- COMMERCE, 15 C.F.R. §§ 15.11-.18
- CUSTOMS AND BORDER PROTECTION, 19 C.F.R. §§ 103.21-27
- DEFENSE, 32 C.F.R. Part 97
- ENERGY, 10 C.F.R. §§ 202.21-26
- ENVIRONMENTAL PROTECTION AGENCY, 40 C.F.R. §§ 2.401-406
- FEDERAL COMMUNICATIONS COMMISSION, 47 C.F.R. § 0.463
- FEDERAL AVIATION ADMINISTRATION, 14 C.F.R. Part 185
- FEDERAL EMERGENCY MANAGEMENT AGENCY, 44 C.F.R. §§ 5.80-.89,
- FEDERAL ENERGY REGULATORY COMMISSION, 18 C.F.R. § 388.111
- FEDERAL RETIREMENT THRIFT INVESTMENT BOARD, 5 C.F.R. §§ 1631.30-.34
- FEDERAL TRADE COMMISSION, 16 C.F.R. § 4.11(e)
- GENERAL SERVICES ADMINISTRATION, 41 C.F.R. §§ 105-60.601-.608
- HEALTH AND HUMAN SERVICES, 45 C.F.R. Part 2
- HOMELAND SECURITY, 6 C.F.R. §§ 5.41-.49
- HOUSING AND URBAN DEVELOPMENT, 24 C.F.R. §§ 15.201-205
- INTERIOR, 43 C.F.R. §§ 2.80-.90
- INTERNAL REVENUE SERVICE, 26 C.F.R. § 301.9000-1 - 301.9000-7
- JUSTICE, 28 C.F.R. §§ 16.21-.29
- LABOR, 29 C.F.R. §§ 2.20-.25
- NATIONAL TRANSPORTATION SAFETY BOARD, 49 C.F.R. Part 835
- NAVY, 32 C.F.R. Part 725
- POSTAL SERVICE, 39 C.F.R. §§ 265.11-.13
- SMALL BUSINESS ADMINISTRATION, 13 C.F.R. § 102.10
- SOCIAL SECURITY ADMINISTRATION, 20 C.F.R. §§ 403.100-155
- TRANSPORTATION, 49 C.F.R. Part 9
- TREASURY, 31 C.F.R. §§ 1.8-.12
- VETERANS AFFAIRS, 38 C.F.R. § 14.800-810

Depending on the nature of the request, the agency may want an assistant U.S. attorney present to ensure that testimony does not go beyond that permitted by the regulations.

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907-282-2791

Michaela Kelley
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Serena Green
777-7258

Megyn A. Greider
269-5540

David S. Houston
278-1015

Mike Lindeman
760-831-8291

Suzanne Lombardi
770-6600 (wk)

Matthew Magliaro
(907) 782-5988

Will Baynard
276-1500

Jennifer Owens
269-8809

Michael Stephan
McLaughlin
793-2200

Greggory M. Olson
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Lawyers' Assistance Committee
Alaska Bar Association

Succession planning: Protect clients before the unthinkable occurs

From the Ethics Committee

The Alaska Bar Ethics Committee was asked to provide guidance and a reminder on the importance of succession planning for solo and small-firm practitioners.

In looking at this topic, one of the committee members recalled when some friends were rebuilding their house. The project was going ahead full steam, with the roof off and the walls stripped to studs, when the contractor dropped dead of heart failure. “Everything was in his head,” the friends found out — subcontractors, payments made, materials bought, building permits and plans. Winter was approaching, it was a horrible mess, and it took more than a year and buckets of money and heartache before they could move back in.

Now, imagine you’re a lawyer’s client, embroiled in messy litigation, a complex transaction or a lengthy probate — the biggest, ugliest legal problem of your life — when your lawyer departs from the scene as suddenly as that contractor. It happens. Whether by illness, accident or disability, a number of Alaska lawyers unexpectedly leave the practice of law every year. If the departing lawyer “had everything in her head,” the client will be in just as bad a spot as the committee member’s friends were when their contractor died: left scrambling for the legal equivalent of blue tarps and duct tape as the litigation storms approach. Not a good situation, and particularly bad for the unfortunate client of a solo practitioner who has passed on to the great courthouse in the sky, leaving no contingency plans in place and no other lawyers to step in and save the day.

It’s not easy to contemplate one’s own demise. Given the chance, most of us will cheerfully avoid any opportunity to do so. The Alaska Bar Association, however, recognizes that we are mortal and considers the inevitable even though we, as individuals, might prefer to avoid the topic. The lawyer’s duty of diligence to clients, the Alaska Rules of Professional Conduct state, “may require” making plans:

The lawyer’s duty of diligence to clients, the Alaska Rules of Professional Conduct state, “may require” making plans

requiring solo and small-firm practitioners to have plans in place to handle transitions to new counsel resulting from the lawyer’s death or disability. Malpractice carriers are taking note of whether a lawyer has a succession plan when making coverage decisions and setting premiums. And, regardless of the current wording of *RPC 1.3 Comment 5*, as Alaska lawyers we owe fiduciary duties to our clients of diligence, loyalty and competence, which includes anticipating events or circumstances that may adversely affect the representation, including death, disability, or other unexpected exits from the practice of law.

So, what to do? The Alaska comment to *RPC 1.3* sets out a simple formula for the solo or small firm practitioner: (1) prepare a succession plan that (2) designates “another competent lawyer” who will (3) “review client files, notify each client of the lawyer’s death or disability, and determine whether there is a need for immediate protective action.” Perhaps it goes without saying, but the lawyer chosen should agree to take on the task, the designation should be in a writing easily located in the event it is needed, and the designation should be updated if the prospective successor for any reason is no longer in a position to take on these duties. These steps are the minimum that every solo and small-firm practitioner should aim to accomplish, as a matter of good business practice and diligence, regardless of whether the current rule absolutely requires them.

For the lawyer who dies without a succession plan, Alaska *RPC 31* allows Bar counsel to petition the Superior Court to appoint a trustee counsel to exercise “all the powers of a personal representative of a deceased under the laws of the State of Alaska insofar as the unavailable attorney’s practice is concerned,” and wind up the lawyer’s practice. For the deceased lawyer’s family, this means having a stranger asking questions and being involved in their affairs, making an already sad situation worse. The deceased lawyer’s clients will be forced to deal with a stranger who has no history in their case, and may not be able to take on their case at all. Switching lawyers in mid-case is never easy, and all the more difficult when the former counsel is not available to assist in the transition.

Those brave souls who have served as the trustee counsel for a solo practitioner who had made absolutely no plans whatsoever for the sudden and permanent end to his or her practice will attest that it is hugely difficult for a new lawyer to come in cold in these situations. Whether the successor is an appointed trustee counsel or a volunteer designated successor counsel, a clearly defined succession plan is an infinite help — and not just for the successor counsel, but for all concerned.

Happily, there are many helpful resources readily available to assist developing a succession plan, and no

need to reinvent the wheel. Most of the advice given for succession planning is simply good practice for all lawyers, but it takes on additional importance in this context. ALPS has a fine and thorough CLE presentation on succession plan that they will be pleased to send you on request (contact lchurchman@alpsnet.com). The Oregon State Bar’s excellent “*Planning Ahead: A Guide to Protecting Your Clients’ Interests in the Event of Your Disability or Death*,” <http://goo.gl/dy7Vwe> (2009) is readily available, as is the New Mexico Supreme Court’s “*Succession Planning Handbook for New Mexico Lawyers*,” <http://goo.gl/Cs-bXxl> (2014). The Washington State Bar Association’s “Checklist for Lawyers Planning to Protect Clients’ Interests in the Event of the Lawyer’s Death, Disability, Impairment or Incapacity,” <http://goo.gl/834Ikx> (2012), and the American Bar Association’s “*Being Prepared: A Lawyer’s Guide for Dealing with Disability or Unexpected Events*” <http://goo.gl/WtM4yj> (2008) are very good resources.

In sum, while nothing can keep the Grim Reaper from a lawyer’s door forever, with a succession plan in place the lawyer can at least hope to be fondly remembered by clients, family and colleagues — rather than as having caused chaos and financial terror for the poor survivors.

The Alaska Bar Association Ethics Committee thanks Dick Monkman for his work on this article.

This is an educational and, we hope, informative article from the Ethics Committee to members of the Bar. This is not a formal Ethics Opinion and has not been approved by the Board of Governors.

Common Tips For Succession Planning

1. Have a written agreement with an attorney willing to step in as successor counsel if you become unavailable to practice law.
2. Develop a good office procedure manual and keep it current and accessible.
3. Maintain an up-to-date client list, with written attorney contracts and current contact information.
4. Have a good calendaring system and make sure **all** your deadlines are in it.
5. Keep your client files in good order.
6. Make sure that your practice’s electronic records, including client records, trust account records and bank accounts can be accessed by your successor.
7. Inform your office staff, partners and family members about your succession plan, and introduce them to your successor counsel.

Marilyn May receives award for distinguished service

Marilyn May, clerk of the Alaska Appellate Courts, received the J.O. Sentell Award for distinguished service from the National Conference of Appellate Court Clerks Aug. 6, 2015, in Snowbird, Utah. The J.O. Sentell Award is given out every year to recognize distinguished service to the conference.

May’s service to the NCACC includes membership on the Executive Committee for more than 10 years, as president from 2011-12, president-elect from 2010-2011, vice president from 2009-2010, and treasurer from 2005-2009. May has also chaired several committees and serves on numerous others, and she served as host for the 2004 Annual Meeting and the co-host for the 2013 Annual Meeting.

The National Conference of Appellate Court Clerks was organized in 1973, with current members throughout state and federal appellate courts. The conference has three main objectives: to improve the skill and knowledge required of those performing the duties of appellate court clerks by conferences, seminars or other educational programs; to promote and improve the contribution of the offices of appellate court clerks within the area of effective court administration; to maintain facilities for the collection and dissemination of information and ideas with regard to the operation and improvement of the offices of appellate court clerks.

Marilyn May has been clerk of the Appellate Courts since her

appointment in 1999. Echoing the words of this recent recognition, the Alaska appellate courts are better due to Marilyn’s hard work, her willingness to serve, and her warmth and love for the court system, its employees, and those who use it.

J.O. Sentell Award—The Executive Committee created an annual award to recognize distinguished service rendered by the recipient who has contributed in a substantial way to the objectives of the Conference. Known as the “J.O. Sentell Award,” it was first presented at the 1979 annual meeting in Monterey, California.



Marilyn May displays her distinguished service award.

Laying out rules in the beginning: Mediation finds a home

As a young assistant public defender in Anchorage from 1971-73, I had the opportunity to appear and try cases before Judge James Fitzgerald while he was on the Third Judicial District. I also had the pleasure of arguing a landmark case authored by Judge Fitzgerald while he was on the Alaska Supreme Court, which established the right to bail under the Alaska Constitution. *Martin v. State of Alaska*, 517 P.2d 1389, 75 ALR3d 941 (1972). Judge Fitzgerald was a lasting example and mentor to me throughout my legal and judicial career. I was pleased to read a recent article in the King County Bar Bulletin written by Judge Charles Burdell ret., my colleague at Judicial Dispute Resolution, about the history of mediation in the Northwest. He quoted a memorandum of Bill Dwyer, who later became a U.S. District Court judge in Seattle. Judge Dwyer credited Judge Fitzgerald for the approach he took as a mediator. The complete article and memorandum follow. — Judge Larry A. Jordan



Judge Larry A. Jordan

volunteer mediators to try to settle as many cases as possible. Rule 39.1 was drafted and instituted as a result of this process.

I was somehow dragged into this situation and asked to write an article for the Federal Bar Newsletter explaining mediation and how a volunteer mediator should conduct a mediation. Since mediation was Bill's idea, I asked him to put his ideas in writing to help me with the article.

Richard Yarmuth and I were both partners at Culp, Dwyer, Guterson & Grader at this time. A few days ago, Richard kindly emailed a copy of Bill's memorandum to me, which Richard discovered in an old file. It occurred to me that this might be something to print in the Bar Bulletin for an historical perspective of mediation in the Northwest. I've attached Bill's memorandum.

MEMORANDUM

May 5, 1981

This is in answer to your request for a summary of the method I use as a mediator under Local Rule CR 39.1.

1. The first step is to send a letter to all counsel confirming the appointment of the mediator, confirming the time and place of the mediation session, and reminding counsel of the main things they are required to do under the rule. The following is a suggested form of letter:

Gentlemen:

This will confirm that I have agreed to act as mediator in the above-entitled case under Local Rule CR 39.1. The mediation session will be held at my office in Seattle commencing at 9:30 a.m. Wednesday, June 17, 1981. Please be prepared to spend as much of that day as may prove to be necessary.

Please be sure to bring with you each client, or a representative of each client, who is

authorized to enter into a binding settlement. This is required by the rule and is necessary for effective mediation.

If you have not already done so, please send me as soon as possible a copy of the pretrial order (or, if no pretrial order has yet been lodged or entered, copies of the currently effective pleadings).

The rule requires that each side submit a settlement memorandum not to exceed ten pages in length. These should be delivered a week before the mediation, i.e., by June 10, 1981. The ten-page limit should be observed. However, any party may also provide copies of exhibits, reports, or the like which are considered especially important.

Please bear in mind also that a notice of my selection as mediator should be filed by counsel with the Clerk of the Court under Local Rule CR 39.1.

I look forward to working with you in this matter.

2. On the day of the mediation, I have available a conference room and two other offices. The conference room is used for the mediation sessions. The other offices provide private space for the parties and their counsel; one office is ordinarily set aside for, the plaintiff and the other for the defendant.

The method I use as a mediator is based upon the approach taken by Judge James Fitzgerald of the District of Alaska, who served as the settlement judge in a complex case in which I was one of the lawyers. To the extent that the method has merit — and I believe it has a great deal — the credit is due to Judge Fitzgerald.

I begin by having a general meeting in the conference room with all parties and their lawyers present. I give them a general explanation of why the mediation is being undertaken and how it will work. The following is a sample explanation:

Thank you all for coming this morning.

We are here to try to reach a settlement of this case. If we succeed in reaching a settlement, we will be accomplishing a great deal for the United States District Court. The lawyers in the room know — perhaps the clients also know — that the federal court in this district is faced with a very serious problem of calendar congestion. This has been caused mainly by a longstanding shortage of judges. There simply have not been enough judges to handle a very heavy load of criminal and civil cases. Each judge in the district now has about 500 civil cases pending, on top of his or her load of criminal cases. To clear away this backlog we must settle as many cases as we possibly can.

Equally important, a settlement is usually much better for the clients than a trial. A trial always involves expense, delay, anxiety and uncertainty about the result. A reasonable compromise will eliminate all of that and will permit all of you to put the case behind you and get on with your other business in life.

The Court has established a panel of mediators whose job is to help parties and their counsel reach settlement agreements. We work as volunteers and our only purpose is to help the parties arrive at a resolution of the controversy between them. We do that based on an objective view of the case, and on past experience in other cases.

In this case I have read the settlement memoranda which all parties have submitted, have read the pretrial order [pleadings], and have checked the legal authorities to the extent that seemed to be necessary. I believe I understand the case. I am prepared to spend as much time with you as necessary to get the case resolved. As long as we are making progress, I can work with you all day today, or beyond today. Usually a mediation can be done in part of a day, but we certainly will put in as much time as proves to be necessary.

This is how we will proceed: First, I will meet just with the plaintiff's lawyer — no one else. While we are talking, the others can

By Charles Burdell

Originally published in the July 2015 issue of the King County Bar Association Bar Bulletin. Reprinted with permission of the King County Bar Association.

Mediation began around here about 35 years ago when the Federal Bar Association was formed. A group of attorneys including Bill Ferguson, Al Malanca and Bill Dwyer dreamed up the idea in an attempt to find some solution to the huge backlog of civil cases pending in the local U.S. District Court due to a "longstanding shortage of judges."

After formation and a few meetings, and at the suggestion of Dwyer, the group came up with the idea of experienced civil litigators serving as

Call for nominations for the 2016 Jay Rabinowitz Public Service Award

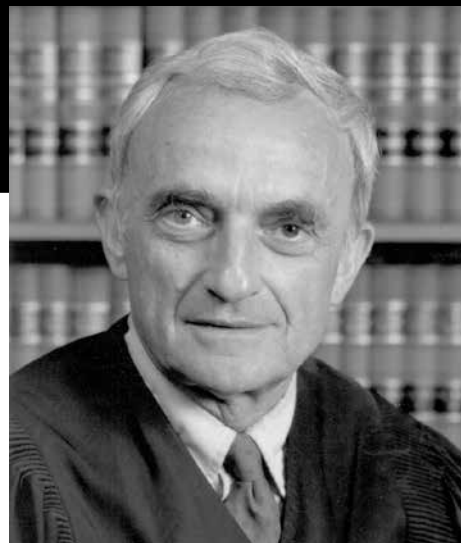
The Board of Trustees of the Alaska Bar Foundation is accepting nominations for the 2016 Award. A nominee should be an individual whose life work has demonstrated a commitment to public service in the State of Alaska. The Award is funded through generous gifts from family, friends and the public in honor of the late Alaska Supreme Court Justice Jay Rabinowitz.

ALASKA BAR FOUNDATION



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, 2016. The award will be presented at the 2016 Annual Convention of the Alaska Bar Association.



Jay Rabinowitz



SENIOR JUDGE MICHAEL I. JEFFERY
2015 Recipient



JANET McCABE
2014 Recipient



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

Continued on page 7

Retired judge speaks at historians luncheon

Retired Superior Court Judge Niesje Steinkruger spoke at the annual Alaska Bar Historians Committee Luncheon on Oct. 27, 2015. Judge Steinkruger gave a presentation on “The Lost Alaskans: Morningside Hospital and Mental Health in Territorial Alaska.”



Justice Daniel E. Winfree, Judge Niesje Steinkruger and Marilyn May stopped for a photo.



Attending the luncheon from left were: Kelly Taylor, Justice Daniel E. Winfree, Buck Sterling, Roger Brunner, Judge Niesje Steinkruger, Marilyn May, Michael Schwaiger and Judge Peter Michalski.

Laying out rules in the beginning: Mediation finds a home

Continued from page 6

wait in offices which we are making available for you. There is a plaintiff's room and a defendant's room. While you are waiting in these offices you are welcome to use the telephones, read, write and make yourselves comfortable.

In my session with the plaintiff's lawyer we will have a full and frank discussion about the case. I will learn more from him and will give him some of my initial impressions. Anything he wants to tell me in confidence I will keep in confidence.

As soon as I have finished talking with the plaintiff's lawyer, he will join his client in the plaintiff's office, and I will then have a private session just with the defendant's lawyer — no one else. This will proceed in the same way — we will have a full and frank discussion of the case. Again, if counsel wants to tell me anything in confidence, I will of course respect that confidence completely.

By the time these first two meetings are finished, I will have a much better idea of the case, and of what a reasonable settlement might be. I will go ahead with further meetings which will include the parties — I will meet with plaintiff and his lawyer, then with the defendant and his lawyer, and so on.

By this method, if all goes well, we will be able to arrive at a settlement which will be acceptable to all concerned. Nobody will need to make any speeches or arguments. Our aim will be to get to the heart of the matter honestly and in plain English, and to resolve it if we can.

This method succeeds in settling most cases. I hope it succeeds today.

Now, before we start, does anyone have any questions? [Usually there are none.]

3. The next step is to start the series of meetings — first with the plaintiff's lawyer, then with the defendant's lawyer, then with the plaintiff and his lawyer, then with the defendant and his lawyer, and so on. In the initial meetings with the lawyers, I give a very short summary of what strike me as the strong points and the troublesome points faced by each side. It is of course important to make clear to each side what its problems are and what difficulties it will face at trial. It is also important to give each lawyer the opportunity to explain to the mediator any important parts of the case which he feels were not sufficiently covered in the settlement memoranda.

Most lawyers get down to business quite readily once they see that the mediator really does understand the case and is prepared to talk sense about it. I ask each lawyer to put aside any unrealistic figures and tell me the figure which he believes his client really should accept (or pay). Often the lawyer prefers to give this figure in confidence. I also try to find out what the settlement history has been; if there have been previ-

ous offers or demands, it is helpful to know about them.

Usually I will not broach a settlement figure until after the first four meetings have been held. (The meetings can, of course, be quite brief, depending on the case.) When I do raise a figure for the first time, I do not advance it as my recommendation, or as the figure at which the case should be settled. Rather, I take a figure which appears to me to be within the realm of reason and ask the lawyer for one party whether he and his client would consider a settlement of thus-and-so many dollars.

This usually starts a back-and-forth process in which the mediator uses his persuasive powers with both parties, continuing to talk to them separately, and pointing out to them the strengths and weaknesses of the case and the appropriateness of a settlement in the area which he believes to be reasonable. (During this process, of course, the costs and risks of trial, as compared to the advantages of a fair settlement, play an important part in the discussion.)

When this process works well, a settlement is reached in the area which the mediator considers reasonable. Announcing a figure too soon can reduce the chances of success and can even sabotage progress toward settlement which the lawyers may have made before the mediation began. In many cases it is unnecessary to announce a “mediator's figure” at all. (However, if the mediation fails to make progress, the mediator should usually recommend a definite figure before the session adjourns.)

4. Once a settlement agreement has been reached, the second (and last) general session should be held in the conference room. The mediator should thank all concerned for their efforts and their spirit of reasonableness, should go over the terms of the settlement in detail, and should ask the parties and counsel to stand by while a short memorandum of the settlement agreement is prepared.

If at all possible, the memorandum should be typed, signed, and approved by the mediator all

at the same session. Of course, a short memorandum agreement will usually be valid even if implementing documents remain to be prepared.

5. If a settlement cannot be reached, the second (and last) general session should be held anyway, and the mediator should thank all concerned for their efforts, and invite them to stipulate to arbitration (either binding or non-binding) under the rule. This will require an explanation of the arbitration procedure.

6. The last step is to report to the Court by letter on the results of the mediation. The report is limited to a short statement either that the mediation did, or that it did not, succeed in settling the case.

Judge Larry A. Jordan was appointed to the King County Superior Court in 1991 and served until July 2001. Before taking the bench, he served from 1975-1991 as a commissioner of Division I of the Washington State Court of Appeals. He was law clerk to the Honorable Jerome Farris and the Honorable Keith M. Callow, and also served as an assistant public defender for the State of Alaska.

DO YOU KNOW SOMEONE WHO NEEDS HELP?



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

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

Fairbanks: Aimee Oravec,
aimee@akwater.com

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.



Oneness of humankind as an emerging human rights principle

By Daniel B. Lord

“. . . that culminating and blissful stage in their long, their slow and painful evolution throughout the ages, which is at once their inalienable right and their true destiny.” – Shoghi Effendi

There are, and certainly have been, no greater opportunities for a values-oriented jurisprudence than in the human rights field. Such an orientation need not only be based on revival of a natural law philosophy, but also on recognition of evolutionary forces at work and manifested in the rise of global social consciousness. One value, universal and embodied in the Preamble of United Nations Charter and in subsequent human rights instruments, is the “dignity of the human person”; another is one that is still emerging and can be called “law and the principle of the oneness of humankind”.

There will be an immediate objection that principles, no matter how compelling, are not rules of law -- and therefore not legally binding. However, while principles and laws do differ, a legal principle may be an inchoate rule of law. Cf. Ronald M. Dworkin, *Models of Rules*, 35 U. Chi. L. Rev. 14, 22-29 (1967) (arguing that sometimes principles are well-established through judicial precedent, and at times do not become established until there is adjudication of “hard cases,” yet these principles may become justification for case decisions, and in

turn rules of law). Attorneys and law school faculty, moreover, can assess and advocate for public awareness of a particular value or principle as “the greatest amount of good for the greatest number.”

In international law, the principle of the oneness of humankind is implicit in the concept of the “common heritage of mankind.” First appearing in the treaty governing Antarctica, see Antarctic Treaty, *pmbi. art. VI, Dec. 1, 1959, 12 U.S.T. 794, 402 U.N.T.S. 72*, and later in the treaties governing outer space and the seabed, see Treaty on Principles Govern-

ing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, Jan. 27, 1967, 610 U.N.T.S. 205; U.N. Convention on the Law of the Sea, *art. 136, Dec. 10, 1982, 1833 U.N.T.S. 397*, this principle is a “fairly advanced” one in international law. Noel G. Villaroman, *The Right to Development: Exploring the Legal Basis of a Supranorm*, 22 Fla. J. Int’l L., 299, 310 (2010). Running through the law is the “norm” that Antarctica, outer space and deep seabed, should be “preserved for the benefit of future generations,” that is, not for the benefit alone of any particular nation, class or people. See Jennifer Frakes, *The Common Heritage of Mankind Principle and the Deep Seabed, Outer Space, and Antarctica: Will*

It is significant that the Declaration on the Right to Development proclaims the indivisibility and interdependence of all human rights and fundamental freedoms.

Will number of duties on states to provide for this right, including formulation of appropriate national development policies, *id.*, art. 2(3), the creation of national and international conditions conducive to realization of the right, *id.*, art. 3(2), inter-state cooperation and order to ensure development and eliminating obstacles thereto, *id.*, art. 4(1); and emphasizes the individual and collective responsibility of states to devise development policies that will lead to full realization of human rights. *Id.* International consensus on its provisions surfaced in 1993 at the UN Conference on Human Rights, which concluded that the right to development was “a universal and inalienable right and an integral part of fundamental human rights.” World Conference on Human Rights, Vienna Declaration and Plan of Action, in Report of the World Conference on Human Rights, UN Doc. A/CONF.157/24 (Part I) (1993), at 23.

Developed and Developing Nations Reach a Compromise?, 21 Wis. Int’l L.J. 409, 411 (2003) (also discussing a non-appropriation norm, a norm of shared management, and a norm of sharing resources between nations).

In the field of human rights, the right to development, as embodied in the U.N. Declaration on the Right to Development, 4 December 1986, G.A. Res. 41/128 (*Annex*), UN GAOR, 41st Sess., Supp. No. 53, at 186, UN Doc. A/41/53, contains conceptual aspects that more explicitly point to the principle of oneness. The Declaration, in brief, affirms

that the right to development is an inalienable right through which all human rights and fundamental freedoms can be fully realized, *id.*, art. 1, and imposes a

number of duties on states to provide for this right, including formulation of appropriate national development policies, *id.*, art. 2(3), the creation of national and international conditions conducive to realization of the right, *id.*, art. 3(2), inter-state cooperation and order to ensure development and eliminating obstacles thereto, *id.*, art. 4(1); and emphasizes the individual and collective responsibility of states to devise development policies that will lead to full realization of human rights. *Id.* International consensus on its provisions surfaced in 1993 at the UN Conference on Human Rights, which concluded that the right to development was “a universal and inalienable right and an integral part of fundamental human rights.” World Conference on Human Rights, Vienna Declaration and Plan of Action, in Report of the World Conference on Human Rights, UN Doc. A/CONF.157/24 (Part I) (1993), at 23.

It is significant that the Declaration on the Right to Development proclaims the indivisibility and interdependence of all human rights and fundamental freedoms. See also Vienna Declaration and Plan of Action, *op cit.*, art. V (reaffirming that human rights are “indivisible and interdependent and interrelated”). This is considered as one of the important “conceptual achievements in international human rights” of the last century. Cf. Paul Hunt, *Reflections on Human Development and Human Rights*, in Human Development and Human Rights: Report on the Oslo Symposium, 2-3 October

1998, 10 (1998). One might ask, then, how one can conceive of the inseparable nature of human rights without considering the object of human rights, both in its individual and collective dimensions, as similarly one and indivisible.

Another aspect of the right to development going to the principle of the oneness of humankind is that it is multidimensional, involving multiple actors. Implementation of the right to development involves the active participation of an international community. Ved P. Nanda, *The Right to Development: An Appraisal*, in World Debt and the Human Condition 41, 47 (V. P. Nanda, G. W. Shepherd, Jr., & E. McCarthy-Edwards eds. 1992) (“The right to development reflects interdependence in that it does not rely solely on states for implementation and the achievement of development, but it addresses all actors and seeks compliance from all those involved in the development process, whether they are at the grass roots, national or international level”). In addition, the right applies between individuals, peoples and states, as well as between states. CHR/Res/5 (XXXV), in conjunction with A/Res/34/46. See also Roland Y. Rich, *The Right to Development as an Emerging Human Right*, 23 Van. J. Int’l L., 287, 315-16 (1983) (identifying human rights scholars supportive of view); Mohammad Bedjaoui, *The Right to Development*, in International Law: Achievements and Prospects 1177, 1188-1193 (M. Bedjaoui ed. 1991) (summarizing responsibilities and potential claims of peoples and states under the Declaration on the Right to Development).

Thus, the right to development can be interpreted as unprecedented in its global ramifications in recognizing the rights of men and women, as individuals, peoples and nations, and, to an extent greater than any human right instrument had done before, the obligations that all men and women owe to their fellow human beings, thus facilitating an awareness in the world of the essential oneness of the human race. Cf. Alex Y. Seitias, *Globalization and the Convergence of Values*, 3 Cornell Int’l L.J. 429, 460-461 (1998) (observing processes that facilitate global awareness, resulting in common values across nations and a stronger sense of international community).

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Registration questions – Kathy Kline, 800-253-8648 or 206-543-0059, email uwcle@uw.edu

Program information – Patricia Kuszler (kuszler@uw.edu) or Jeffrey Feldman (feldmanj@uw.edu)

As many as 175 attend diversity luncheon

The Anchorage Association of Women Lawyers, in cooperation with the Alaska Supreme Court's Fairness, Diversity and Equality Committee and the Alaska Bar Association met for a luncheon Nov. 3. The theme was "Diversity in Our Community: Stories Affecting Our Lives." Approximately 175 attorneys and community members attended at the Captain Cook Hotel. The event was underwritten by Davis Write Tremaine LLP and Perkins Coie LLP. In-kind contributions were provided by Calista Corporation, Doyon, Ltd. and BP Exploration (Alaska) Inc.

Christine Williams, with Davis Wright Tremaine LLP and past president of the Anchorage Association of Women Lawyers, introduced the moderator, Justice Dana Fabe of the Alaska Supreme Court. Panel members included Alma Upicksoun, former general counsel, Arctic Slope Regional Corporation; Professor Christina Halliburton, associate professor, Seattle University School of Law; Kirsten Kingak-Friday, associate general counsel and shareholder, Calista Corporation; and Peter Boskofsky, corporate counsel of Afognak Native Corporation.

This is the fifth year this event has been held and many participants stayed afterward to talk with the panelists.



Presenters from left are Kirsten Kingak-Friday, Professor Christian Halliburton, Alma Upicksoun, Peter Boskofsky, Justice Dana Fabe.



Christine Williams, Alma Upicksoun, Professor Christian Halliburton, Justice Dana Fabe, Kirsten Kingak-Friday, Peter Boskofsky

Oneness of humankind as an emerging human rights principle

Continued from page 8

Admittedly, the right to development is not without detractors. One researcher, for instance, recently took the position that it is doing a "disservice" to human rights, especially economic, social and cultural rights, in that in a weak international enabling environment a consolidation of rights results in any one being "insufficiently asserted." Arne Vandenberg, *The Right to Development in International Human Right Law: A Call for Its Dissolution*, 31 Neth. Q. Hum. Rts. 187, 207 (2013). But others maintain that lack of institutional support underscores the need for a framework of human solidarity, which the right of development with more content and clarity can provide. See, e.g., Upendra Baxi, *Mambrino's Helmet?: Human Rights in a Changing World* 1, 52 (1994); Koen De Feyter, *Towards a Framework Convention on the Right to Development* 9 (2013); Ibrahim Salama, *The Right to Development at 25: Renewal and Achievement of Its Potential*, in *Realizing the Right to Development: Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development* 485, 494 (UNCHR ed. 2013) (also suggesting "rediscovery" of the right as "guarantor" of indivisibility of all human rights and as "tool" for reconciling "artificially divided sets of rights").

The opinions of formulators of the right to development show awareness of such solidarity and oneness. In his seminal address justifying a right to development, Kèba Mbaye stressed that as members of

a common humanity it was incumbent upon all to "conquer the egoism of peoples by an aspiration towards the universal," and that charity "is imposed on our hearts within the circle in which we live." Kèba Mbaye, *Le Droit au Développement comme un Droit de L'Homme*, 5 *Revue des Droits de L'Homme* 505, 523 (1972). He then spoke of an evolution toward ever greater expansion of that "circle."

"... But little by little the family circle grows from the person to the family then to the people, to the small town, to the country. . . . Today, the dimension is towards the universal. This process of the march of man towards total solidarity may be considered slowed by the barriers of race, religion, or other kinds of limitations. But it is necessary that the egoisms end by succumbing little by little as the conception of society grows."

Id. at 524-25.

In a similar vein, Johan Galtung put forth the following conceptual framework, namely, that "development" in the right to development stands for the development of human beings and not for the development of countries, the production of things, their distribution within the social system or the transformation of social structures. These may be means toward the end, but they must not be confused with the end, which is that of developing the entire human being and all human beings.

Ved P. Nanda, *The Right to De-*

velopment under International Law -- Challenges Ahead, 15 *Cal. W. Int'l L.J.* 431 (1985), quoting UN Conference on Trade and Development, *Development, Environment and Technology -- Towards a Technology for Self-Reliance* 3 (1979) (footnote omitted).

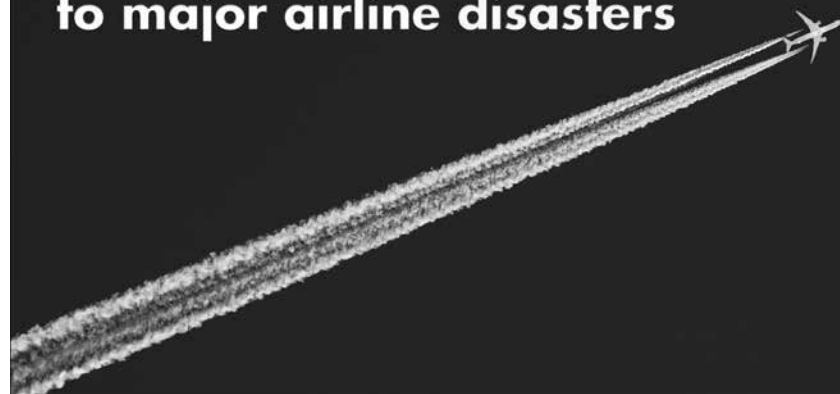
More to the point, a former director of the U.N.'s Division of Human Rights wrote that beyond the obligation of states under the right to development, there is the "common responsibility" of the international community that "reflects a universal principle of the unity of humankind and the dignity and worth of all human beings." Theo van Boven, *Human Rights and Development: Rhetoric and Realities* (1988), in *Human Rights from Exclusion to Inclusion: Principles and Practices* (F. Comans, F. Grünfeld, I. Westen-

drop, & J. Willems eds. 2000) 315, 326. Cf. Howard B. Tolley, *The International Commission of Jurists: Global Advocates of Human Rights* 1, 11 (1995) (depicting advocates for "human rights as global values promoting world unity" as "idealists").

Whatever one's interpretation, position or opinion on the right to development, what is certain is that the bifurcations, dichotomous thinking and contesting notions that have characterized the human rights field for so long, is giving way to an acceptance of the principle of the oneness of humankind and its implications.

Daniel B. Lord worked in the area of common interest community law, and as an assistant public defender and public advocate. He has been a member of the bar since 1997.

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Travel for art: Autumn exhibitions in New York City

By Jean Bundy

With our Maine Coons and Cocker Spaniels tucked away at Rabbit Creek Kennels, and the office transferred to mobile devices, Dave and I headed for a week of “Autumn in New York,” to watch son Elliott run the New York Marathon before we sleuthed for some art.

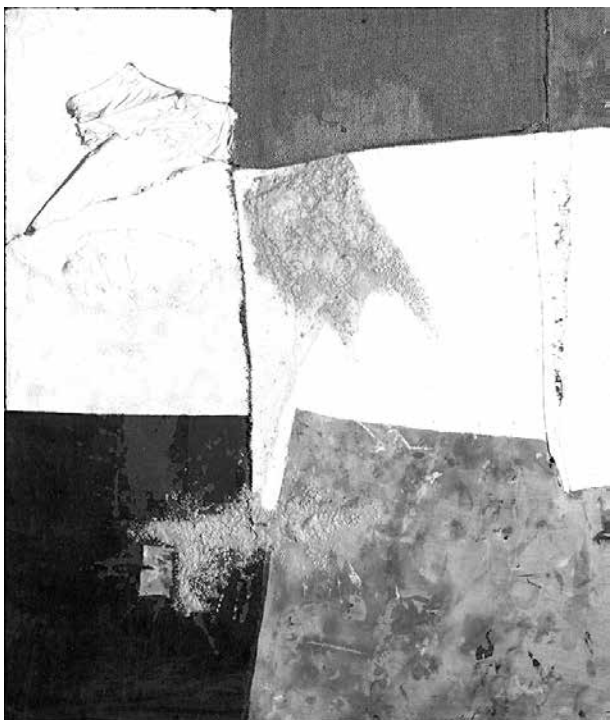
As jet-lagged parents, we sat on Central Park bleachers for 4.5 hours of tracking Elliott and his 6 mph pace app'd onto our cell phone. It was shirt-sleeves in November as we happily endured multi-colored signage (example: my mummy runs faster than your mummy), clanky cowbells and the necessity to use New York's finest: porta-potties. Exiting Central Park was like navigating a garden maze; it took two hours to find an open subway station.

So we kicked fallen oak leaves while passing Victorian statuary, mostly chauvinist dudes on horseback. The smells from yellowed foliage reminded us of mandatory school sports at eastern ivy'd brick schools decades past; unlike Elliott, running wasn't our thing. We thought of the Jack Lemmon/Sandy Dennis movie, *The Out of Towners* (1970), about unsophisticated Midwesterners navigating the park's Manhattan Schist while being mugged on no sleep.

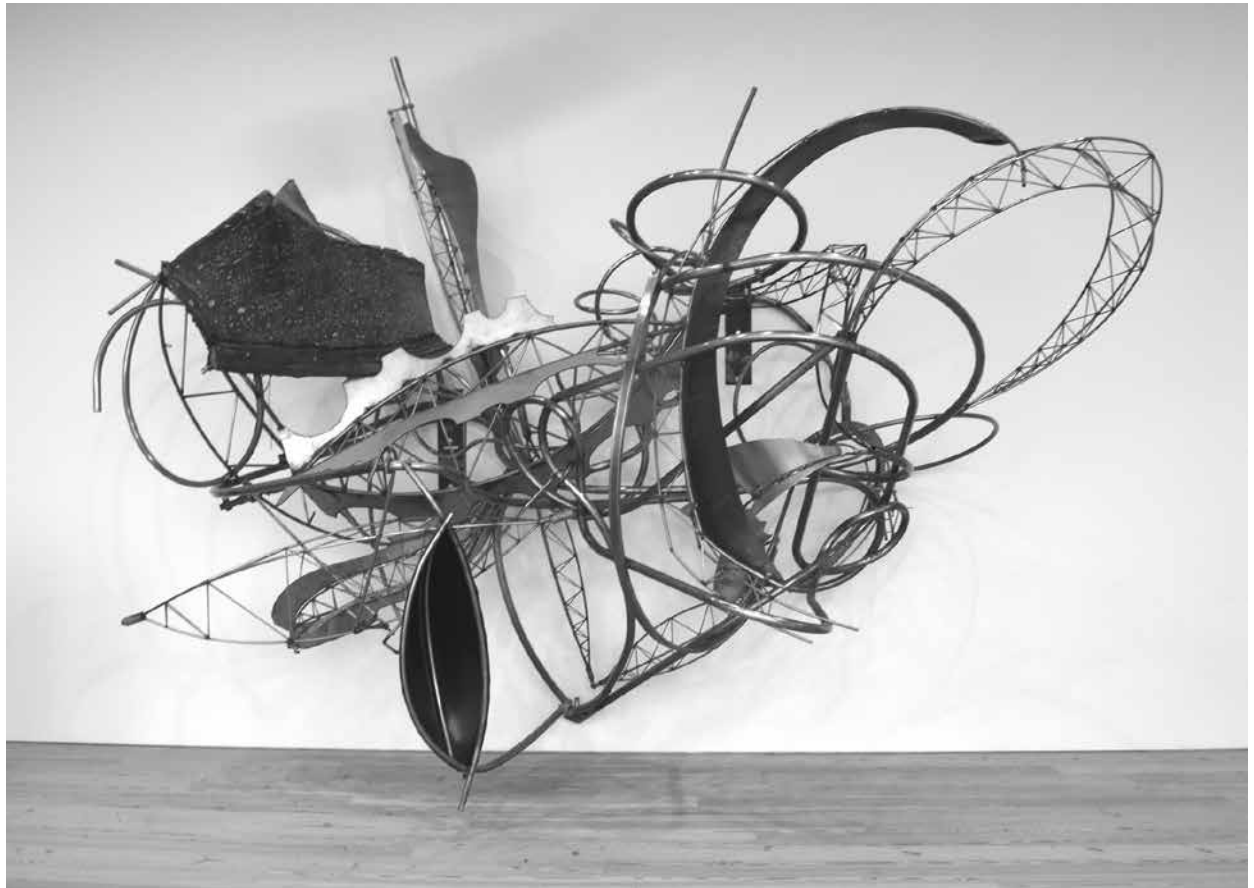
Dave and I had also flown to New York to find out what the major museums were serving up — definitely comfort food in the form of “oldies” albeit well reworked exhibitions of “goodies.” *Picasso Sculpture* (until Feb. 7) at the Museum of Modern Art showed the genius in three-dimensions — cardboard maquettes to large bronzes. Picasso clearly mused while manipulating discarded metal and wood similarly to the way he 3-D'd his now iconic paintings.

As usual, eyes and noses get misplaced/misshaped, so do torsos and limbs, while newsprint snips reveal timely politics. He reduced color to muddy hues as Picasso was all about line, and fracturing Modernism's subjectivity/objectivity philosophies. Thus impeccable designs of layered organic forms struggle to leave these sculptures the way they work to leave his canvases — form becomes the point. OK, if Pablo had been the proprietor of a local boulangerie, plying his skills at baking baguettes, instead of challenging notions of French Impressionism/Romanticism, many of his sculptural thought processes, made from basically garbage, would have been trashed. But he made it to stardom, so even his experiments became priceless. True, charismatic Picasso copied other aesthetic folks and persecuted girlfriends along the way. But I digress: Metropolitan Museum of Art viewers can compare these sculptures to Picasso paintings in neighboring galleries; *Les Femmes d'Alger* (1907) is always a crowd pleaser.

Dazed after circling the exhibition, we headed for afternoon tea at Metropolitan's *Café 2*. Sitting farm-style we shared a flowerless brownie with ice cream while gazing outside onto architectural styles that represent many decades of Gotham



Alberto Burri: *Nero bianco e sacco* (1954)



Frank Stella: *kandampat* (2002)

in stone and steel. Brownstones, post-war high rises, neoclassical adornments, and yes, Philip Johnson's iconic skyscraper resembling a high-boy dresser, all genres snuggle like tessellated puzzle pieces.

The Guggenheim Museum, 1071 Fifth Ave., makes museum goers think a bit harder. The show, *Alberto Burri: The Trauma of Painting* (thru Jan. 6) screams textures of burlap in red and black, even tar as paint, all heavily troweled. Continuing the quandary is it 2-D or 3-D? Here, Burri challenges the viewer to now consider flatworks as sculptures.

Dave and I elevated to the top of Frank Lloyd Wright's New York art-palace that bulges onto Fifth Avenue like coned ice cream. Circulating while descending, we absorbed Burri's paintings made from plastics tortured by blow torches used instead of paint brushes. His works reference experiences being a fascist physician, who survived as a World War II Italian POW. Halfway down, we stopped to watch a Burri video about a Sixties earthquake in Gebellina, Sicily. Burri took the concrete debris and crushed it, thus forming sculptural blocks or *land art* that he positioned onto the hill where streets and houses used to be—think walking through sugar cubes while contemplating ghostly reminders of this former town, relocated 18 miles. A newsreel of war-torn Italy loops in Guggenheim's entryway reminding viewers that destruction and reconstruction always comes with traces.

Hungry after absorbing Burri's shiny, pigment-exploding paintings, we walked a block to a funky restaurant, *Bluestone Lane*, housed in the *Church of the Heavenly Rest*, 2 East 90th St. Dave and I ordered chicken salad sandwiches with avocado, and pasta salad with sundried tomatoes. The unusual warmth and sunshine allowed us to lunch outside gothic stone while people watching Central Park cyclers and runners circling the Jacqueline Kennedy Onassis Reservoir. At Metropolitan Museum of Art and Guggenheim, we'd observed aesthetic forms challenging dimensionality while Picasso's color got reduced and Burri's restricted to authoritarian reds and blacks.

Continuing to art sleuth, we headed to the relocated Whitney Museum, 99 Gansevoort, in the old meat-packing district of lower Manhat-

tan West's Village. Designed by Renzo Piano, this wacky off-rectangular façade of stacked glass and steel boxes has an exterior pedestrian walkway reminiscent of tenement fire escapes — think *West Side Story*. Inside Whitney's first floor glass foyer, complete with gift shop, are three elevators that carry visitors to art spaces with salvaged flooring rescued from wrecking balls. Doors opened onto *Frank Stella: A Retrospective* (thru Feb. 7), psychedelic colors blasted us as a flatwork or dimensional monstrosities lurched off walls. Again, fall art venues were questioning: Is it a painting or a sculpture? Resembling spaceships painted in Day-Glo hues, Stella's metallic things are assembled from wire, sheet metal, and painterly drips. Similarly, his high-key paintings dare not to be square, perhaps are hard-edged, or just like to show off their stripes — wide as highway lanes or narrow as chalk lines on a gangster's pin-striped suit.

Whitney's eighth floor *Studio Café* boasts Hudson River vistas, warehouses morphed into chic condos, and sneak-peeks of *The High Line*, the park created from abandoned elevated train tracks. I sipped smoked tomato soup with pecorino peppers while Dave spooned duck ramen with shitake mushrooms; we shared open-faced sandwiches of smoked Arctic char on potato, and chicken salad with marinated cabbage. Sightseeing boats and cargo ships cruised by as we sinned on carrot cake with dabs of pumpkin pie filling. Although the Whitney doesn't reside on Fifth Avenue's museum mile, a subway ride from Grand Central to 14th Street followed by a cross-town bus will get art lovers to this new Mecca of American masterpieces: deKooning's tortured females, Hopper's lonely America and George Tooker's subway commuters contemplating Cold War paranoia.

Before flying home to Anchorage, we took Amtrak to D.C. and spent the weekend watching our grands, Tess and Kai, kick soccer balls on George Washington's former farmland — far more athletically skilled than Dave and me. Happy traveling for art. Museum catalogs available on Amazon.

Jean Bundy (38144@alaska.net)- aica-usa is a writer/painter living in Anchorage.

Picasso and Stella photos by David Bundy; Burri photo complements of Guggenheim.



Picasso: *Head of a woman*

Alaska attorneys surveyed on threats, violence against profession

By Stephen D. Kelson

In 2015, national media groups reported a number of sensational acts of violence against the legal profession. For example, in Indiana, a family law attorney was targeted in an alleged murder plot by a mother and son with a syringe containing a lethal dose of anesthetic succinylcholine. In Mississippi, an attorney was shot and killed during a deposition. In Alabama, a city attorney while at his office was shot in the chest. In Delaware, a man attempted to hire an undercover detective to kill his former defense counsel and a prosecutor.

These incidents might lead one to think that threats and violence against the legal profession are exceptionally rare. However, many members of the legal profession, including members of the Alaska legal profession, experience threats of violence and actual violence in their practices – some regularly. To better evaluate the degree of threats and violence against attorneys, from April 20, 2015 through May 25, 2015, all active, in-state members of the Alaska legal profession were invited to participate in an online survey regarding violence and threats of violence experienced in the practice of law. This article provides a brief summary of the responses to the survey.

The Survey of Violence against the Alaska Legal Profession

The survey was conducted independently by the author, using an email list created from alternative online sources, and administered through <http://www.surveymonkey.com>. For the survey, a “threat” was defined as: “A written or verbal intention to physically hurt or punish another, and/or a written or verbal indication of impending physical danger or harm.” In March 2015, the Alaska legal profession consisted of 2,444 active, in-state attorneys. The survey received a total of 471 responses, representing 19.3 percent of all active, in-state attorneys.

Threats and acts of physical violence

The survey’s chief question asked attorneys if, while serving as a member of the Alaska legal profession, they had ever been the recipient of a threat or had been the victim of a violent act. Of the 471 responses to this question, 195 (41.4 percent) of the respondents reported that they had been threatened and/or physically assaulted at least once, and provided more than 200 examples. Some examples include:

- Threat to kill me, kill my client and burn our houses. The client’s boat did get burned;
- Attempted murder of me by poisoning;
- Our office received hundreds of threatening calls over the course of a couple of days from an angry stalker of one of our clients;
- Client’s family member threatened violence to my family and stalked my home;
- [H]ad gun waved at and thrust on me. [T]hen client stated he could kill me or himself.
- I have been threatened by opposing parties both in depositions and after court hearings.
- [A] divorce litigant hired a man to kill me. He was convicted and sentenced. About 15 years ago was shot in the back with a .22 pistol.

Not surprisingly, a significant percentage of respondents who reported threats and violence practice in the areas of criminal defense/prosecution (29.2 percent) and family law (12.3 percent). However, a significant percentage of respondents in other areas of practice reported being the recipients of threats and violence: General Litigation (14.9 percent); Judge (8.7 percent); Administrative (5.1 percent); Corporate/Commercial/Real Estate (4.6 percent); Wills/Estates (3.1 percent); and Labor/Employment/Civil Rights (2.1 percent). An additional 20.0 percent of respondents, practicing in other areas of law, reported being the recipients of threats and violence.

Types of threats and violence

The survey asked respondents to identify the types of threats and acts of violence received as a legal practitioner. See Table 1 below. An overwhelming majority of respondents identified inappropriate and threatening communications and approaches. Inappropriate communications were made primarily in person or by phone, included direct and veiled threats, and included vandalism (e.g. tampered wheels, slashed tires, broken and shot out car and office windows, feces left on office chair, etc.). Inappropriate approaches included face-to-face confrontations, attempts to commit violence, and being followed.

Type	Number
Inappropriate Communications	154
Inappropriate Approaches	99
Physical Assault	20
Property Damages	18
Other	20
Total	311

Threats and Violence as a Public or Private Attorney

The survey asked respondents to identify whether the most recent threat(s) and violence experienced occurred while they were employed in public or private practice. Of 184 respondents, 77 (41.9 percent) identified the last threat and violence occurred while employed in private practice, 96 (52.1 percent) occurred while employed in public practice, and 11 (6.0 percent) indicated that it occurred while they were employed in both public and private practice. As in other states, these responses suggest that Alaska attorneys experience threats and violence regardless of whether they are in private or public practice, while the number of threats and violence may differ based on the specific area of practice.

Locations of Threats

The survey asked members of the Alaska legal profession to identify the location/s where they experienced threats. Not surprisingly, the majority of respondents identified the business office (117 responses) and the courthouse (87 responses) as the most prominent locations of threats and violence. However, many reported threats and violence at other locations, including at home (24 responses) and elsewhere (57 responses). For example, attorneys reported threats and attacks made in parking lots, at depositions, jails, the airport, a boatyard, grocery and retail stores, bars, on roadways, and traveling to and from court.

Several attorneys reported instances of stalking. One reported being followed on the highway for approximately 20 miles after a court hearing. Another received a call from the Alaska Psychiatric Institute and was told that the husband of a plaintiff in a civil lawsuit had been stalking the attorney for four months with the intent to kill him.

Relationship with the Perpetrator of Threats/Assaults

Recipients of threats and violence were also asked to identify their association with the individual who most recently threatened/assaulted them. See Table 2. Respondents reported that threats and violence were primarily perpetrated by opposing parties and the attorney’s own client. However, responses show that threats and violence can occur from any individual involved in a legal case, and unfortunately, including other members of the profession. Examples of the attorney-attorney threats and violence reported by respondents include:

Screamed at by opposing counsel after court was done for the day. Yelled at, then poked in the shoulder by opposing counsel – court services officer had to step in and tell that lawyer to calm down and step away.

[An] attorney with a propensity toward rage backed me up against a wall and screamed at me.

The scariest incident involved a now former attorney who came storming into my office about a custody case, started verbally berating me and refused to leave until I called the police.

Opposing counsel threw books at me in courthouse clerk’s office, screaming obscenities.

	# of Respondents	Percentage
Client	42	22.8
Relative/Associate of Client	9	4.9
Opposing Party	77	41.9
Relative/Associate of Opposing Party	14	7.6
Opposing Counsel	7	3.8
Unknown	9	4.9
Other	26	14.1
Total	184	100%

Conclusion

Many Alaska attorneys have experienced a wide range of work-related threats and violence. The reality is that work-related violence and threats of violence can come from any side of a given case and can occur beyond the courthouse and office, regardless of one’s area of practice. Recognizing the reality of potential violence in the practice of law is a first step in helping to avoid and prevent becoming the victim of work-related violence.

Stephen Kelson is an attorney and mediator at the law firm of Christensen & Jensen, P.C. in Salt Lake City, Utah, where his practice focuses on civil and commercial litigation. He has published numerous articles on topics related to legal professionalism and professional liability issues, and is a frequent presenter on professional legal topics. For more than a decade, he has studied, documented and conducted statewide surveys regarding violence against the legal profession and methods to prevent work-place violence.

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It's a Wonderful Text: Alaska tidies up Declaration of Independence

By Peter J. Aschenbrenner

Thomas Jefferson exits his limo to thunderous applause. "Thank you, thank you," he bows. "Thank you very much."

"The Worshipful Company of Cheesemongers," our host casts a hopeful glance over the arrivals, "may yet make their maiden appearance in Anchorage, Alaska."

"He did as good as he could," James and Dolley Madison excuse Jefferson. "He booked Jimmy Stuart to attend, in lieu of the aforesaid 'Mongers."

The said authority figure approaches and signals peaceful intentions via the drinky-drinky motion.

"Jimmy," the first of the next-to-the-last of the Stuarts pumps hands. "Glad-ta-meetcha."

"You didn't," James Madison offers his paw for a manly massage, "always take pressure this well."

"In 1621, I sent for the Journal of the House of Commons," Stuart begins. "If that's your reference to print culture."

"It's a tender issue," Dolley shushes her husband. "I mean, he tore off a piece."

"So here's my question for Alaskans," Stuart puts the matter to the assembly.

"This guy is way cool," the Governor enthuses.

"I can't get past the accent," I reply.

"If'n it's naught Scots, it's crep!" the Governor emulates the brogue of the moment.

"Take your Alaska constitution," Jimmy goes on. "All political power

is inherent in the people. All government originates with the people, is founded upon their will only, and is instituted solely for the good of the people as a whole."

We consult our pocket versions.

"Article I, Section 2 supplies chapter and verse," Dolley nudges her husband.

"But the Declaration reads a bit differently," Jimmy (the Virginian) speaks up. "Too bad you didn't number your points in the damn thing," the Fourth President growls at the Third. "Here it is. Second paragraph, first sentence. '... Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed'."

"So which is it?" Jimmy (the Scot) asks. "Is state government in Alaska here to protect the *rights* of the people (Philadelphia) or to promote the *good* of the people (Fairbanks)? Did they get it right on College Road or on Chestnut Street?"

TJ asks for a show of hands.

"I mean," he excuses the interruption, "who wants a filler-upper?"

"Weren't you the guy who tore the Great Protestation out of the Journal of the House of Commons?" The Sarah inquires. "Just asking."

"The same, Gov'n'r."

"And now you've acquired a passion for textual fidelity. Right?"

"That was so 1621," the King replies. "Anyway, Samuel Richardson replaced the Protestation with asterisks. Viz:

Post Meridiem

MR. Speaker taking his Chair, The Protestation read several

Times; and, upon Question, allowed: and ordered to be presently entered of Record in the Journal of the House: And every Member of the House, that will, to have * * of it.

That's how the Journal has been reporting the events in question. Since 1742."

"Didn't Richardson write *Pamela*?" the Governor asks. "The same guy who edited the Commons Journal for publication?"

"*Pamela* being the world's best known whilst unread epistolary novel?" I ask.

"Now, what about answers?" The Stuart insists.

"I think it's pretty obvious," Jefferson ahems. "Alaskans are, like, following Edmund Burke. 'Government is a contrivance of human wisdom to provide for human wants'."

Jimmy Madison checks the cite in the Boston edition of Burke's *Works*. "Yep, that's how it runs. From his *Reflections on the Revolution in France*, penned in 1790. So basically," Madison declares, "it's like the constitutional founders in Fairbanks amended the Declaration of Independence."

"Fairbanks was honouring the works of Burke," Dolley adds. "He was the leading anti-war voice in the House of Commons. 'Cruel and oppressive Acts of Parliament.' That was 1774 and so forth."

"So what's your answer?" James Stuart draws.

"It's a bit of a mélange," Mr. Whitecheese speaks for all of us. "Fairness for the individual and goodness for the group, but moooshed togeth-

er. And then the preamble to our constitution requires a bit of teasing apart. We are 'grateful ... to those who founded our nation and pioneered this great land' But that doesn't mean that we aren't grateful to both our non-founding pioneers and, on the other hand, to founders who didn't set foot in Alaska."

"You're saying it's a bit muddled?" King James fixes the gaze Stuarline on the assembly.

"Sort of," the Governor looks over at me. "Actually yes."

"Maybe it's good for the people, taken as individuals, to have rights, just as I wrote," Jefferson considers the matter. "Hence, the broad aspirational language in your Article I, Section 2 covers the same ground as I did in my Declaration."

"Lemme change a few words here and there."

He passes the screen around so that we can admire his handiwork. "Does anybody have a Jefferson nickel handy?" the King calls out to the assembly. "Let Caesar render unto thee all the blessings which thou shouldst richly deserve.' I mean that's a lively paraphrase of what I've cobbled together for your revised text. You get the idea."

"Do you have a name," I blurt, "for this translation of our state Constitution?"

James Stuart studies his nails. "Let's just call it the King James Version."

Peter J. Aschenbrenner has practiced law in Alaska since 1972, with offices in Fairbanks (until 2011) and Anchorage. From 1974-1991 he served as federal magistrate judge in Fairbanks. He also served eight years as a member of the Alaska Judicial Conduct Commission. He has self-published 16 books on Alaska law. Since 2000 the Bar Rag has published 44 of his articles.

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ECLECTIC BLUES

One after another fast-food franchise disappears from Juneau

By Dan Branch

Starbucks just closed their only store in downtown Juneau a year and a half after it opened. Sure, we still have a Starbucks-lite coffee stand in the Fred Meyer and another one in the Mendenhall Valley Safeway. But neither offers Wi-Fi that allows Starbuckaroos to sip a skinny caramel macchiato while watching gerbil surfing on their iPhones. Without access to Wi-Fi, even a fully charged Starbucks reward card can't deliver Nirvana. (The happy place, not the metal band).

I am not a big fan of corporate coffee. I don't need a national-chain coffee shop to pay two dollars for a cup of liquid that I could produce in my kitchen for 10 cents. I can do that at one of the coffee houses owned by a local pirate. (I mean entrepreneur). But, I worry that our town of 32,406 souls might not be worthy of franchised food and beverage service.

Why can Starbucks make a go of it in Mount Despair, Montana, but not Juneau? Maybe it's our culture. Starbucks' downtown demise is the latest in a series of franchise failures for Alaska's capital city.

In remembrance of the late Patrick Swayze's portrayal in *Point Break* of surfer dude-bank robber-philosopher Bodhi, I chant the roll of dead Juneau franchises: The valley and downtown Taco Bells — over, Sizzler Steak House —over, Wendy's, Burger King, the downtown McDonalds — all over, Kentucky

Fried Chicken — up in greasy smoke, Shakey's Pizza and Pizza Hut — come and gone, and Baskin Robbins — melted away.

We still have a McDonald's burger joint out near the airport. Three Subway restaurants have survived our anti-franchise culture and the sex abuse scandal surrounding the chain's national spokesman. But any Juneauite wanting a chalupa has to get on a jet plane.

(At the moment they could also take a ferry to Bellingham. But, that option may be gone by press time if the Legislature doesn't fund the Alaska Marine Highway.)

Thinking that the absence of fast food enterprises in Juneau can be explained by demographics, I search the Internet. A recent study by the University of California at Davis established that it is the great American middle class that keeps our fast food industry sizzling. People with lower tier incomes can't afford the twenty-eight dollars it costs to feed a family of four at McDonald's. But that does not explain why the downtown Juneau McDonald's closed. The medium household income in the capital city from 2009 through 2013 was \$81,490. The 2014 medium family income in the USA was only \$51,939. So, most Juneauites earn enough to keep their families in tacos, burgers and French fries.

Is it an age thing? Statistically,



"I worry that our town of 32,406 souls might not be worthy of franchised food and beverage service."

avid fast-food eaters are 45 percent more likely to be millennials (18-29). Maybe the salmon-like tendency of Juneau's kids to spend their young adult years in a larger sea dooms our fast food franchises. It's hard to tell. The U.S. Census doesn't report the percentage of millennials in Juneau's population. You can find a lot of them in the Front or Franklin Street bars but most parents use Skype

to keep in touch with their adult children.

Why don't our kids stick around? According to the website *Niche*, in all of Alaska, Juneau has the most features attractive to the millennial. So, why aren't they here, supporting the local fast food economy? I'd ask my 20-something daughter or one of her friends from high school, but most live in larger towns within a

block or two of a Starbucks.

According to The U.S. Census Bureau, in 2014 only 10.6 percent of Juneauites had lived longer than 64 years. But after gazing into a statistical crystal globe, Juneau's local politicians limited the senior tax exemption to protect the town from a wave of old people expected to sweep through town like a plague of locusts. Given the dietary restrictions and limited income of seniors, even if it arrived, the silver tsunami would do little for the local fast-food industry. What the town needs to bring back Taco Bell and its brother franchises is an in-swelling of middle-aged, middle-income folks — the kind that star in TV commercials for hair dyes, prescription drugs, Fords and, most important, fast-food chains.

Dan Branch, a member of the Alaska Bar Association since 1977, lives in Juneau. He has written a column for the Bar Rag since 1987.



Did you hear the one about the lawyer who ...?

Q: I show you Exhibit 3 and ask you if you recognize that picture?

A: That's me.

Q: Were you present when that picture was taken?

— from the Salt Lake Tribune from actual court records.

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Interview with Kodiak's Dawson Williams

By Mamie S. Brown

The Honorable Dawson Williams is Magistrate Judge in Kodiak. He previously clerked for the Honorable Leonard Devaney III in Bethel. He is married with three children. He is thankful to work and live in beautiful Kodiak.

Magistrate Dawson Williams' hometown: Missoula, Montana.

What inspired Williams to move to Alaska: BBC's Oceans Blue Documentary (1995), Episode 4 (Frozen Seas).

You may not know that Williams once broke his neck in an accident. He once had an interest in becoming an Alaska bush pilot. However, as he was recovering from spinal surgery, his interest in being a pilot petered out and he became more focused on the practice of law. His tale of survival has formed who he is today. You also might not know that when the weather allows he enjoys longboarding.

Kodiak is like Seattle with a little more snow and surf in the winter. Williams appreciates the large swell window that runs more North to East in the winter. His favorite swell is exposed to the Pacific.

The best part about living in Alaska: Williams said Alaska was amazing from the beginning. He also said the most salient image of Bethel is the subsistence fishermen on the Kuskokwim River who pull delicious fish from their nets. This remains his most meaningful mem-



Dawson Williams catches a wave near a Kodiak beach.

ory of Alaska.

The best part about living in Kodiak: His favorite thing about Kodiak is the amazing surfing and beautiful ocean vistas. He also remarked that there is great hiking, fishing, hunting, and on blue sky days, longboarding. Depending on the winter, there is great back-

country snowboarding and skiing. He said Kodiak is the perfect size. Kodiak is just big enough to have life's essential modern conveniences – bowling, movie theater, brewery, swimming pool, etc., but still small enough so you can walk almost anywhere, and you never get bogged down in traffic if you do drive. They only have one stoplight.

Activities he shares with his three kids: hockey and fishing. Kodiak is a great place to raise kids.

Most common question Williams is asked about Kodiak: "How's the surf?"

Williams' best travel deal to date was a flight from Burma to the United States, advertised in foreign currency rather than U.S. currency. He learned about this deal through Flyertalk, <http://www.flyertalk.com/>.

Other places Williams has lived: Anchorage, Bethel, Michigan, Montana, Oregon, Panama, Unalaska and Utah.

Adventures on the Unicorn,

a sailboat. He is still learning how to sail on his sailboat the *Unicorn*, a vessel that bore that name when he bought it. He admits that sailing keeps him humble.

Williams' bucket list items include traveling the islands of the Kodiak Archipelago in Southwestern Alaska in search of Kodiak Brown Bears; visiting the Pacific Spaceport Complex-Alaska (formerly known as the Kodiak Launch Complex) which is located at the Narrow Cape on Kodiak Island; surfing at Fossil Beach Kodiak on Kodiak Island; and remote fishing off the coast of Kodiak Island.

Mamie S. Brown is an associate at Clapp, Peterson, Tiemessen, Thorsness & Johnson LLC in Fairbanks, Alaska. Her practice consists of primarily of professional malpractice defense. Her family is eagerly awaiting the arrival of her second child, a son. Naming suggestions welcome. She can be reached at (907) 479-7776 or msb@cplawak.com.

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RAINMAKING FOR THE NEW SOLO

Ramping up after several months of maternity leave

By *Monica Elkinton*

My last column in the Bar Rag was in the spring 2015 issue. I was preparing to have a baby and close my office for maternity leave over the summer. I promised to let readers know how it worked out when I returned.

My baby was due mid-June. I had stopped taking new cases in March. I had prepared all my clients, letting them know in March or April that if their case didn't settle by May, they would either need to find a new attorney to represent them or put off their case until the fall. For my criminal cases where I was appointed by the Office of Public Advocacy (OPA), I had OPA find new contractors to represent the clients. I kept one criminal client. He was undergoing cancer treatment, so his case was continued until late November 2015 anyway.

Starting March 1, I only accepted cases on an unbundled basis: meet with clients for an hour for a flat fee, do an eviction for a flat fee, or draft a motion or do one small part of a case for someone proceeding pro se. I had one former client who wanted to hire me in a new matter. The client and I agreed in writing that if her case didn't settle by May 15, then I'd file a Motion to Withdraw. I also had one divorce where we had already had the trial, and were just working out post-trial motions. I contracted with another lawyer to take that one over on my behalf, with the client's consent. Both of those arrangements worked as planned.

I tried to shut down as much as possible on June 1. That was about Week 37 of my pregnancy, and I didn't really want to do much outside the house anyway. I was waddling around, drinking as much water as I could, going to the bathroom constantly, and moving around on the couch trying to find a comfortable position. By June 5, I no longer had any clients. I changed my outgoing voice mail greeting to indicate I was on leave and would return in September. I spent my days at home. I had a tablet so I still checked email, but there wasn't anything urgent. I got a little bored.

My water broke one morning and my adorable sweet baby girl was born a day before her due date. For the rest of June, and July and August, I stayed home. I had saved enough money to pay myself my normal salary over the summer, effectively giving myself three months paid leave. My assistant was conveniently able to work for the other attorney in my office.

I came back to work Sept. 1. The first few weeks back, I had a lot of client calls, but not very many hired me. I spent a lot of time staring at the phone, wondering why in the world we were paying day care for me to sit in my office and stare at the phone not ringing.

It's a weird feeling to be a lawyer and not have any clients. It was the same feeling I had when I first started the practice. Tak-

ing time off certainly involves a long "ramping down" period and a "ramping back up" period.

During the time when I was waiting for clients, I considered changing things about my practice, even my practice areas. I considered adding practice areas that didn't involve as much drama, or dropping family law. I love representing folks who undergoing crises in their lives, but sometimes they can take out their frustration on me.

In late August, September and October, I went back to networking and reminding people that I was back at work and taking new cases. It just takes a while for referral sources to remember you're back at it, and for

the news to work its way back to potential clients. I didn't really get back up to speed until mid-October.

These days, I still have room for new clients, but I also have enough work to justify the cost of day care. Since the baby was born, I find myself working much more efficiently. I don't goof off in the office. I want to finish my work, and get out of the office early so I can play with my kid. She's old enough now that playing is actually really fun, and it is getting better each day.

My baby loves to babble at the other babies in her day care class, including a few others with lawyers as parents. The teachers tell me, with a smile, that she is "bossing the others around." That just makes

me think that if she's got leadership skills like that at 6 months old, she's going to be a CEO or president some day. And to get there, she'll need a strong working mom role model. Let's see if I can make that happen for her.

These days, I still have room for new clients, but I also have enough work to justify the cost of day care.

Monica Elkinton started her solo practice in 2011. She practices statewide criminal defense,

family law, and other civil litigation for individuals such as small claims and FED. Her website is www.elkintonlaw.com, and you can follow her on twitter at @elkintonlaw. She is co-chair of the Alaska Bar Unbundled Law Section and serves on the Alaska Bar Pro Bono Services Committee.

I came back to work Sept. 1. The first few weeks back, I had a lot of client calls, but not very many hired me.

NEWS FROM THE BAR

Board of Governors Action Items for Oct. 29, 2015

- Approved the results of the July 2015 bar exam and recommended 45 people for admission; recommended the admission of six reciprocity applicants and two applicants by UBE score transfer.
- Voted to send to the Supreme Court a proposed amendment to Alaska Bar Rule 43.3 as a waiver to practice law before Alaska National Guard courts-martial and all subsequent appeals.
- Voted to send to the Supreme Court a new Bar Rule 43.4 which would allow military spouses with a J.D. and admission in another Bar, to get temporary admission in Alaska without taking the bar exam.
- Voted to adopt the recommendation of the Lawyers' Fund for Client Protection Committee to reimburse a client from the fund in the amount of \$30,763.50.
- Voted to reimburse Trustee Counsel Foster Wallace for his expenses in the amount of \$110.97, to be paid from the Lawyers' Fund for Client Protection
- Voted that the new ABA Young Lawyer Delegate position be a position that is appointed by the Board; that David Wilkinson be appointed to be the Young Lawyer Delegate.
- Voted that an re-applicant's original bar exam application is considered to be the application for admission, and that the reapplications are continuing applications, for the purpose of allowing the MPRE score to be counted for the admissions requirement.
- Voted to join with 34 other states in a national virtual law clinic; the national interactive pro bono website is being undertaken by the American Bar Association.
- Approved the minutes of the September board meeting.
- Voted to pass the 2016 budget as proposed, keeping bar dues the same at \$660.

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Bar People

Three join Birch Horton Bittner & Cherot

Birch Horton Bittner & Cherot has announced that **Kathryn Davies**, **William Earnhart** and **Leila Kimbrell** have joined the firm as attorneys in its Anchorage office.

Davies' practice primarily focuses on Alaska municipal government. Davies has represented firm clients in the enforcement of municipal codes and regulations, and is involved in a wide array of procedural and legal issues that arise in the context of statutory compliance, contract law, and litigation strategy. Most recently, Davies has helped guide her municipal clients through the regulatory process of legalizing recreational marijuana. Davies also previously served as a trial attorney at the Anchorage District Attorney's Office prosecuting felony-level crimes. Davies received her J.D. and Master in Environmental Law and Policy from Vermont Law School in 2010.



Davies

Earnhart's practice will focus on labor and employment law, commercial litigation and appeals and municipal law. Earnhart has over twenty years of trial experience in state and federal Courts. He has also advised clients on labor issues including serving as lead negotiator and has extensive experience before administrative agencies including ASCHR, AERC, and EEOC. He has represented municipal governments both as City Attorney and as special counsel. He received his juris doctorate from the University of Washington School of Law in 1994.



Earnhart

Kimbrell's practice at Birch Horton Bittner & Cherot includes providing general legal services to municipal governments throughout Alaska, advising clients navigating complex layers of government bureaucracy at all levels of government, as well civil litigation and administrative appeals and real estate and commercial transactions. Prior to joining the firm, Kimbrell served as a policy advisor to U.S. Senator Lisa Murkowski in Washington, D.C. She received her juris doctorate from Willamette University College of Law in 2006.



Kimbrell

Six Davis Wright Tremaine lawyers named Alaska Super Lawyers

Six lawyers from the Anchorage office of **Davis Wright Tremaine LLP** have been selected by their peers for inclusion in the 2015 edition of Alaska Super Lawyers. The Super Lawyers list, published by Thomson Reuters Legal, is identified through an extensive research and survey process, starting with peer nominations. Only five per cent of the lawyers in Alaska are named to this list.

The Davis Wright's Alaska lawyers named to the 2015 Super Lawyers list are:

- **Jon S. Dawson** – business/corporate, business litigation, M&A, intellectual property
- **Gregory S. Fisher** – employment and labor, appellate
- **Michael Jungreis** – real estate, business litigation, utilities
- **Barbara Simpson Kraft** – real estate, business/corporate, land use/zoning
- **Joseph L. Reece** – business/corporate, real estate
- **Robert K. Stewart Jr.** – employment and labor, government contracts, general litigation

Davis Wright Tremaine LLP is a national law firm with approximately 500 lawyers representing clients throughout the United States and around the world. For more information, visit www.dwt.com.

Rotary funds Color of Justice program



Anchorage Rotary East is providing funding for the 2016 Anchorage Color of Justice Program, and Cook Inlet Region Inc. (CIRI) is donating space for the first day of the program. Attending the donation ceremony from left are Steve Boyle, Community Service, Rotary Club of Anchorage East; Mara Rabinowitz, communications counsel Alaska Court System; Bruce Anders, vice president, general counsel Cook Inlet Region, Inc.; Stephanie Galbraith Moore, chair Alaska Bar Association Law Related Education Committee; and Peter Boskofsky, Afognak Native Corporation/Alutiiq, LLC.

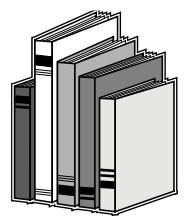
Darrel Gardner nominated fellow of Federal Bar Foundation

Darrel J. Gardner was recently nominated to the Fellows of the Federal Bar Foundation. The Foundation of the Federal Bar Association established the Fellows program in 2002 to recognize individuals who have demonstrated exceptional commitment to and leadership within both the FBA and the legal community. Membership in the Fellows is an honor accorded to only a very small number of FBA members. There are currently 216 Fellows nationwide. Alaska's only other Fellow is **Lloyd B. Miller**.

Law Library News

Law Library has books (both print and electronic)

By Susan Falk



Hopefully many of you have stopped by the newly remodeled Anchorage Law Library to check out our new digs. You may have noticed that our beautiful new space – featuring wireless internet and wired tables, abundant light, and comfy chairs scattered throughout the stacks and Reading Room – currently has quite a few empty bookshelves. You'll be happy to hear that we are also in possession of more than 3,000 boxes of books, just waiting to fill those sadly empty shelves. All the materials that we put into storage in February 2012 are back at the courthouse, and we hope to get all the books out of boxes and back onto shelves by the end of the winter (thankfully, our Alaska winters make that deadline pretty far away).

While most of those books still linger in boxes, we have made some progress on the unpacking front. Responding to customer demand, we started with some of your favorites. I'm happy to announce that AmJur, ALR, and Words and Phrases are all back on the shelves. Need some definitional or encyclopedic assistance and hanker for some quality time with the printed word? We've got you covered. Want to know what else has been unpacked? Come on down and see for yourself.

Registered for eBooks yet? Perhaps you'll be interested in the experience of an actual, real life Alaska Bar member and eBook user. I asked attorney Paul Cossman, in the library on other business, if he was registered to access the Lexis Digital Library. That rang a faint bell; Paul said he'd cut out one of my *Bar Rag* columns on the subject and stuck it to his fridge, with the full intent to ... do something about it, at some point. I set Paul up as a borrower and showed him just how great the service is, to which he replied, "Wish I'd done this when I first cut out the article!" Don't you have the same regrets! Don't waste any more time! Register now!! Simply speak to a friendly librarian in Anchorage, Fairbanks or Juneau, or send an email with your bar number and a four-digit PIN of your choosing to library@akcourts.us.

From all of us, to all of you
Merry Christmas!



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We are especially grateful to our 2014-2015 campaign co-chairs: Ann Gifford, Charlie Cole, Saul Friedman, Josie Garton, Jonathon Katcher, Erin Lillie, Peter Michalski, Susan Orlansky, Joe Paskvan, and Jim Torgerson.

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An urban trapline leads to a table in the middle of a restaurant

By William Satterberg

When I was growing up, Dad would leave the home every Saturday morning. It was such a regular occurrence that one could almost set the clock by the event. Mom would explain that Dad was going out again on his "trapline." Dad likened the ritual to that of our mongrel pound dog, Utz. Utz would run out the door every morning as well, marking his canine territory throughout Spenard. Utz would invariably return, often a bit beaten up, looking scruffy and wet, but with a big smile on his doggy face, having reportedly met some cute little purebred in the neighborhood. Usually, Utz had also rolled in something which smelled quite pungent. Dad explained that Utz also had his trapline. It was a guy thing. Clearly, it was a route that Utz would religiously check every Saturday morning, often lining up behind other neighborhood dogs to establish dominance at the local birch trees. For years after Utz died his untimely death, the neighborhood had a canine population that looked a lot like Utz. Obviously Utz had been remarkably successful in his exploits.

So, as I became older and entered middle age, I too, developed my own trapline. It now is a regular thing. It involves first waking up in the morning and, after normal chores, heading for the local coffee shop known as "The Diner." In fact, The Diner is where my trapline often stops. I visit The Diner three times a week, sometimes more. I normally arrive at approximately 7:30 in the morning where I am now welcomed to a table in the center of the cafe. But, it was not always that way. I first had to earn my status.

The Diner is not a fancy place. For many years, the cushions in the booths were ripped and torn many with chunks of weathered blue-green vinyl missing. The tables would miss pieces of Formica, and old cigarette burn spots can still be found. But The Diner is a friendly place. The waitresses treat the regulars as family, and know their standing orders. The Diner is a location which attracts a diverse clientele. Various groups of people come into the establishment, often just to have coffee, visit, and to scrutinize

the other patrons. As the day goes on, the political philosophies change like the colors of a rainbow blending into each other.

When I first started visiting The Diner, I was not accepted into the middle table group. After all, I was new. I was a strange face. Worse yet, I was a lawyer. Reputedly, a disdained defense lawyer, to boot. As such, I quickly became the topic of suspicious conversation. Presently, there is only one other lawyer who regularly frequents The Diner. That is Fairbanks attorney, Wil Schendel. Barry Donnell used to frequent the place, but has apparently moved on to another eatery. On balance, Wil is perhaps the wiser attorney. Wil always sits alone in a corner booth and quietly reads a scholarly book while having his traditional cup of coffee. It is clear that Wil deliberately chooses not to engage in the social exchange which takes place in the center of the facility. But, Wil is spun well to the political left. The center table bounces hard to the right. To the center table group, Ted Cruz is a liberal and Attila the Hun was a moderate. As such, I suspect that Wil would be the functional equivalent of antimatter.

One attraction to The Diner is that the coffee is good. The price is reasonable. The meal prices sometimes vary, but that is okay. The food is also good and the portions are large. The service is almost like being at home. In fact, someday, I expect to see our waitress with curlers in her hair and a cigarette dangling from her mouth, dragging a pot of coffee with her as she walks from table to table in her pink flowered bathrobe.

Eventually, after I had attended The Diner several times, a person I knew sat down at the center table. He soon recognized me, and I was cautiously invited to join the group. My days as an outcast were possibly becoming numbered. I felt particularly special. I happily moved over and sat down. Contrary to my normal style, I actually tried to listen to the others rather than talk.



"So, as I became older and entered middle age, I too, developed my own trapline. It now is a regular thing."

In minutes, I became the subject of some good natured ribbing. It was pointed out to everybody that I was a lawyer. But that was something they already knew. Worse yet, he said that I was one of those despised defense attorneys. But, they already knew that, too. Fresh meat.

When I returned to the table the following day, I wisely kept my confidences to myself. Instead, I slowly moved in on the conversations, rather than trying to be my usual gregarious self. Eventually, I became more than just somebody who showed up once every so often. In time, I actually even began to have my own implied "assigned" seat at the table. The waitresses knew my standard order for morning breakfast. Many of the other people at the table became casual friends and we actually looked forward to our morning visits.

My first host at the middle table and the person who had invited me to the group was a local trailer court owner known as Herman. Herman was a former highway maintenance worker who had chosen as his personal cause the goal of removing all calcium chloride from the streets of Fairbanks. To Herman, calcium chloride was to asphalt as fluoride was to teeth. Calcium chloride was the bane of existence and should have never been invented by the obviously mad scientist who had created it. Invariably, every year, as winter approached, Herman would launch into his sermons on the evils of calcium chloride. Herman is now dead. Cancer claimed him. But when Herman was alive, he was salt of the earth.

It was not long before I realized that members of the morning social circle had certain things in common. With the rare exception, we were all older than 50 years in age. We were predominantly male, and we had many common viewpoints about politics and the economy. To fuel those viewpoints and to provide constant entertainment, the management keeps the liberal news service, CNN, on the two overhead televisions. The benefit to having CNN on the overhead televisions is that the show gives everybody something to argue about and to criticize. After all, if a conservative station such as Fox News were the mainstay channel, no one would complain. There would be no lively debates. And Wil Schendel would likely drink his coffee elsewhere rather than chuckle at us from the corner.

One thing I have noticed over the years at The Diner is that the constituency of the center table changes with time. But the table always remains. After, Herman died, another good friend of Herman's, Karl, one of the most humorous table regulars, later unexpectedly succumbed to a heart attack. Another

regular, Whitey, also later died of cancer. And my good guitar playing buddy and Valdez charter boat captain, Charley Walton, recently moved on as another young heart attack victim. So, as the days, weeks, and months pass, we learn not only about the good sides of people's lives, but also the tragic sides, as well. The table is where people take interest in each other's lives and personal welfare, events, and developments. When a regular's seat becomes empty, a period of quietly shared grief follows. But, eventually, the seat becomes filled. And the process continues.

On most Saturdays, I take my 6-year-old grandson, Jake, to The Diner. Jake has also become a regular, himself. Jake's standard order of waffles, four pieces of crispy bacon and two scrambled eggs is well known. As "part of the guys" Jake also has his cup of coffee on Saturday mornings. Jake's coffee consists of one-half inch of brew in the bottom

of a white ceramic mug, topped off with four inches of milk, two heaping tablespoons of sugar and a bunch of liquid vanilla flavored dairy creamers. If Jake's coffee could even be tasted, it would be a miracle. On the other hand, the ritual gives Jake his chance to have coffee with the guys and to share his own thoughts.

Jake, too, has been accepted into the group. As such, he gets his own share of good natured teasing, which he tries to give back in kind. When Jake doesn't show up for breakfast, questions are asked. Jake, however, does not appreciate the camaraderie as much as myself. Like any other kid, he often becomes bored listening to a bunch of old guys talk about stupid things such as the economy, the president, terrorists, and Democrats. Besides, Jake likes to feed the ducks which congregate in the nearby Chena River. He generally gets fidgety and wants to leave to feed his feathered friends right after his waffles, but that may also have a lot to do with his massive Saturday morning sugar intake.

I accept that in the end, I, too, likely will move on from The Diner. My strategy is that it will be for warmer climates like one of the snowbird trips that many of the surviving members now take, and not directly for the Great Beyond. Nevertheless, I suspect that, one day, "they" (whoever "they" are at the time) will likely talk about me as "that attorney" who used to come and join the table for breakfast and who later departed, to be with Herman, Karl, Whitey, Charley and "the others." Still, my personal plan is that the conversation will be a long ways off. After all, there are a bunch of others who are much older than me and still claim a seat at the table. I will have to wait my turn.

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

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Herman Walker Jr. sworn in as Superior Court Judge

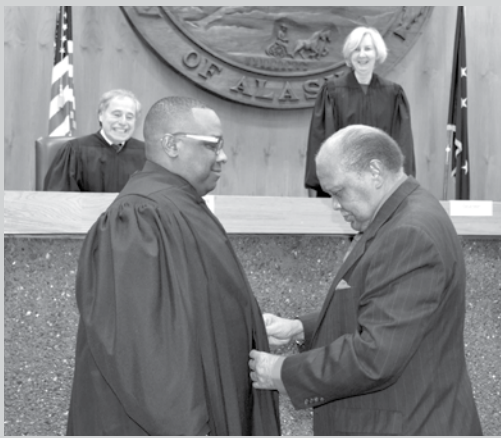
Herman Walker, Jr. was sworn in as Anchorage's newest superior court judge at a ceremony Oct. 30 in the Supreme Court Courtroom. Walker was appointed by the governor on July 24 and replaces Judge Philip Volland.

Prior to joining the bench, Judge Walker worked in both private practice and in the public sector throughout Alaska. For the past 15 year, he has been a partner at Limón and Walker, where he has represented injured parties, criminal defendants, corporations, and family law litigants.

Walker has also worked for the Office of Public Advocacy and the State Public Defender Agency. He is a member of the Alaska Bar Association, the Alaska Association for Justice, and a founding member of the Alaska Association of Criminal Defense Lawyers. He received a bachelor's degree in political science from Arizona State University and a juris doctor from the University of Wyoming College of Law.



At the ceremony from left are: Retired Superior Court Judge John Reese; Chief Judge David Mannheimer, Alaska Court of Appeals; Justice Dana Fabe, Alaska Supreme Court; Superior Court Judge Herman Walker Jr.; District Court Judge Pamela Washington; and Senior Superior Court Judge Larry Card.



Herman Walker Sr. robes his son as Judge Mannheimer and Justice Fabe watch.



Judge Herman Walker's family joined him for the ceremony.



Judge Herman Walker recites the oath with Supreme Court Justice Dana Fabe. On the bench from left are Judge Larry Card (retired), Judge David Mannheimer, and Justice Fabe.

Anchorage Superior Court Judge appointed

Governor Bill Walker announced his appointment of Dani Crosby to the Anchorage Superior Court. Ms. Crosby will replace Judge Michael Spaan, who retired at the end of November after serving on the Anchorage Superior Court since 2007.

"It is an honor to appoint Dani Crosby as the next Anchorage Superior Court judge," said Governor Walker. "Dani has been described by her colleagues as hardworking, well-reasoned, and able to evaluate a legal problem from many different perspectives. These are traits I consider critical for a judge to be successful at his or her job, and I believe they will serve Dani well in this new role."

Raised in Sitka, Alaska, Ms. Crosby has practiced law for nearly 20 years, focusing on employment issues, complex business disputes, and family law matters. For the past two years, she has worked as a private practice attorney for Dani Crosby Law Office, Inc. Prior to that, Ms. Crosby was an attorney at Ashburn & Mason, P.C. for 14 years, where she was a leader in the firm's litigation practice, and worked on complex matters for the State of Alaska, the University of Alaska, and other private clients. In addition to her work as an attorney, Ms. Crosby is the President of the Alaska Bar Foundation, a member of the Civil Rules Committee, and a regular volunteer with Alaska Legal Services Corporation. She received a bachelor degree in English and Comparative Literary Studies from Occidental College, and a juris doctor from Gonzaga University School of Law.

"After reading the recommendations submitted by her peers, it is clear that Dani has the sound judgement and strong character to make difficult but fair decisions on a daily basis," said Governor Walker. "Dani is well respected by many in the legal community, and has an outstanding career ahead of her on Anchorage's Superior Court bench."

Nominated by the Alaska Judicial Council and appointed by the Governor, Ms. Crosby will now be one of 42 Superior Court judges in Alaska.



Anchorage Superior Court Judge Dani Crosby

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Delaware Tax Trap is a valuable tool for Alaska lawyers

By Steven T. O'Hara

Under federal law, rich Alaskans face three taxes on their wealth. Having already paid federal income tax over their lifetimes, they now face estate tax at death, gift tax on any applicable lifetime gift and generation-skipping transfer ("GST") tax on any applicable transfer.

The rate under each of these federal wealth tax systems is currently 40%.

These taxes are cumulative. For example, both the estate tax and the GST tax can apply on one event, such as possibly where a grandmother dies and gives her wealth to grandchildren. And, during her lifetime the grandmother may have paid gift tax.

If they can be cumulative, taxes can be minimized legally through use of the right tools. In Alaska a valuable tool to select the less costly transfer tax system under facts then existing is the so-called Delaware Tax Trap.

A famous tax attorney with a love for Alaska, Jonathan Blattmachr, and a famous tax professor at Emory University School of Law, Jeffrey Pennell, published the seminal article on this tool in 1988. The article is entitled: *Using "Delaware Tax Trap" to Avoid Generation-Skipping Taxes*. The article is in the April 1988 issue of *The Journal of Taxation* at 242.

The article continues to have a fundamental effect on recommendations to clients about trusts with GST tax exposure.

The brainchild of Blattmachr and Pennell is simplicity and flexibility through providing children-beneficiaries of trusts the option to trigger the Delaware Tax Trap as contained in the Internal Revenue Code (*IRC Sections 2041(a)(3) and 2514(d)*). Here children-beneficiaries of trusts use the Delaware Tax Trap as part of their estate planning to reduce tax as applicable.

In essence the article deals with three variables.

First, for non-tax reasons many chose to pass their wealth through the protection of long-term trusts. Certainly over the years since the publication of Blattmachr and Pennell's article, long-term trusts have become even more popular and valued. Alaska has enacted a whole body of unique law whereby you may create and fund a trust for yourself and, if the rules are followed, obtain creditor protection. But the rules are many. For example, under the safe harbor in Alaska you, as the creator of the trust, cannot be trustee of the irrevocable trust for yourself (*AS 34.40.110(g)*). By contrast, where a third party, such as a parent or grandparent, creates a trust for you, the trust can be designed to allow you to be trustee without compromising creditor protection (*Id. and cf. AS 13.36.153*). In the area of trusts it continues to be true that others can do for you what you cannot do for yourself.

Second, there are many cases where subjecting property to the GST tax system can generate less tax than subjecting the property to the estate tax system. For example,

the child-beneficiary of a trust may live in a state with a significant death tax in addition to the federal estate tax. As another example, GST tax generally does not apply where the child-beneficiary has no children. Subjecting property to the estate tax system to avoid the GST tax system in such situations could result in more tax payable and thus a windfall to the taxing authorities.

Third, formula clauses designed to minimize tax are unpredictable at best and may be unavoidably flawed. For example, a formula clause purporting to grant a child-beneficiary of a trust a general power of appointment over that trust only when needed to minimize tax may actually always grant the general power. The reasons can vary but consider that we can control our taxable estates (within the meaning of *IRC Section 2051*) through tax deductions, such as by gifts to spouses or charities. A large charitable gift can result in a zero taxable estate, and like magic you undeniably have a general power under typical formula clauses. So if you are granted a possible general power, and you are in control of whether that general power comes into existence, does that control mean you always have the general power? Suffice it to say formula clauses raise difficult questions.

So what is the advantage of the Delaware Tax Trap? The advantage is simplicity and flexibility. With this tool in combination with Alaska law, children-beneficiaries of trusts may reduce tax as applicable as part of their estate planning.

By way of background, recall the meaning of the following terms:

Power of Appointment: Suppose someone has died, leaving a trust for you. A power of appointment is where, in this example, the deceased has given you the power to transfer property (including money) out of that trust, whether now during your lifetime or at your death.

Lifetime or Presently Exercisable Power: A power of appointment that you can exercise now while you are alive is called a lifetime or presently exercisable power.

Testamentary Power: A power of appointment that you can exercise by Will is called a testamentary power. In my experience, clients prefer granting testamentary powers rather than presently exercisable powers, except when intentionally triggering the Delaware Tax Trap.

General or Unlimited Power: A power of appointment that you can exercise for the benefit of yourself, your creditors, your estate, or the creditors of your estate is called a general or unlimited power. A general power can be a presently exercisable power or a testamentary power or both. If you have a general power, federal transfer tax law treats you as the owner of the property that is subject to the power (*IRC Sections 2041, 2514, and 2652(a)(1)*).

Special or Limited or Non-General Power: A power of appointment that you may NOT exercise for the benefit of yourself, your creditors, your estate or the credi-



"So what is the advantage of the Delaware Tax Trap?"

tors of your estate is called a special or limited or non-general power. A special power can be a presently exercisable power or a testamentary power or both.

Rule Against Perpetuities: This rule means you can use trusts to postpone the ownership of property, and thereby protect the property so it is there when needed, but there is a limit. In Alaska the maximum period is generally one thousand years (*AS 34.27.051 et seq.*). In this area ownership is known as vesting. When property held in trust indefeasibly vests in you, you now own the property. Then the Rule Against Perpetuities no longer applies. The rule applies, if at all, only when vesting has been postponed. To keep track of the maximum period in a particular case the Rule Against Perpetuities has a start date, when the postponement of vesting has begun, and an end date, when property has vested.

So what exactly is the Delaware Tax Trap? It is a trap that renders property taxable to you as if you were the owner of the property. Under the federal estate tax system the Internal Revenue Code provides:

The value of [your] gross estate [which may be taxable at your death] shall include the value of all property ... [t]o the extent of any property with respect to which [you] ... by will ... exercise ... a [special] power of appointment ... by creating another power of appointment [such as a presently exercisable general power] which under the applicable local law can be validly exercised so as to postpone the vesting of any ... interest in such property ... for a period ascertainable without regard to the date of the creation of the first power. (IRC 2041(a)(3) (annotations provided).) There is similar language under the federal gift tax system (*IRC Section 2514(d)*).

Tailoring this language for Alaska as the "local law," suppose you hold a special power of appointment. Here the property subject to that power is generally not considered yours for federal gift or estate tax purposes. But you will be considered to have held a general power, which subjects you to gift and estate tax, if you appoint the property in further trust and give a trust beneficiary a presently exercisable general power of appointment (*see IRC Section 2041(a)(3) and 2514(d) and Blattmachr and Pennell, supra, and AS 34.27.051(b)*).

What does your creating a presently exercisable general power of appointment do? It makes the start date of your special power of appointment – the "first power" as referenced in the Internal Revenue Code – irrelevant. The individual you give the presently exercisable general power can appoint property in further trust and "postpone the vesting ... for a period ascertainable without regard to the date of the creation of the first power" (*Id.*).

Consider an Alaska resident who is preparing her Will. As of her death, she wants to pass assets to a

long-term Alaska trust for her child. The trust will have GST tax exposure.

Instead of giving the child-beneficiary a general testamentary power of appointment over the trust with GST tax exposure, Blattmachr and Pennell have long taught a better alternative is to give the child-beneficiary a special power of appointment.

Indeed, Professor Pennell has called the general-power approach as "misguided stupidity." His words are as follows:

*I have this fear, maybe it's unfounded, that there are a lot of people out there who hear generation skipping. They know only that if the estate tax applies instead, the generation-skipping tax does not and so what they do is, in a trust that's going to last for children for life and then for grandchildren, and so forth, they simply give the children a general power of appointment to intentionally incur the estate tax thereby defeating the generation-skipping tax. And they justify on the grounds that well, after all, the generation-skipping tax is at the highest estate tax bracket, the estate tax will never be greater than that, so why don't we just make life easy for everybody. Give the kids a general power and not worry about the generation-skipping tax. My sense is there's a lot of that misguided stupidity out there. And if you're one of those people, wake up. ****

In a nutshell, all you need to do in your drafting ... is give child a non-general power of appointment. You don't need a general power, not a formula general power of any variety. All you need is a non-general power. The Delaware Tax Trap allows child to decide which tax to incur. – (Jeffery N. Pennell, Choosing To Incur GST Tax, 11 The Audio Estate Planner (Summer 1994).)

So to wrap up this overview, suppose in our example that the child-beneficiary of the trust is given a special testamentary power of appointment over the trust. To minimize tax, the child-beneficiary may then exercise the special power any number of ways, including the following as applicable:

- By giving a beneficiary, such as his or her own child, a presently exercisable general power of appointment over trust principal, thus intentionally triggering the Delaware Tax Trap (*AS 34.27.051(b)*). Here the child may elect, in effect, to subject the property to the federal estate tax system at her generational level where such tax would be lower than any otherwise applicable GST tax (*see IRC Section 2041(a)(3) and Blattmachr and Pennell, supra*).
- By giving trust principal to his or her spouse, a sibling, a sibling's spouse, or a charity (*see IRC Section 2651 on generation assignment under the GST tax*).
- By giving trust principal to his or her grandchildren, thus

Continued on page 21

Other factors influencing Alaska's handling of fiscal challenge

By Cliff Groh



Cliff Groh

Alaska's circumstances become more dire by the day as oil production and prices remain far below the levels needed to balance the state budget. The choices for the State of Alaska remain the same. Those choices are:

- Change spending through cuts and/or efficiencies
- Collect more revenues
- Use our savings accounts and/or money generated by or in the Permanent Fund (Gov. Walker's newly proposed sovereign wealth concept fits into this category)
- Get someone else to pay by shifting more responsibilities to local governments or the federal government, borrowing, or selling off assets

The depth and urgency of the present difficulties make it more likely that the State of Alaska will explore all four of those options.

The balance of this column lays out why it is hard for many Alaskans to comprehend the scale and pressing nature of our fiscal challenge and to confront the actual options and trade-offs necessary to address it.

Some of the factors affecting the State of Alaska's response to the fiscal challenge are the kinds that are sketched out in economics and civics textbooks. Others are not. Below is my list of some other considerations at play, based on more than 40 years of watching the Alaska State Legislature and my conversations over the past year with many Alaskans, including legislators, former legislators, legislative aides, lobbyists and other close observers of the political process.

• **"Doom fatigue" and the spirit of Mr. Micawber.** Many Alaskans seem to be suffering from "doom fatigue" following several past predictions of collapse that have not materialized. This history of narrow escapes appears to give some Alaskans an excessive faith that an external event will always bail Alaska out from having to make tough decisions. We hope for — even bank on — substantially higher oil prices, new oil discoveries, or new revenues from a gas pipeline project. This highly optimistic sentiment could be called "the spirit of Mr. Micawber" after the character in the Charles Dickens novel *David Copperfield* who repeatedly said "Something will turn up" in the face of terrible circumstances.

But the odds against another reprieve are strong. A critical difference in Alaska's circumstances now is that Alaska's oil production is much lower than it was before, meaning that the State of Alaska now has much less oil to produce oil taxes and royalties. After a steady decline for more than 25 years, the trans-Alaska pipeline today carries less than a quarter of the oil it transported in 1988.

Despite this long fall in production, some Alaskans seem more influenced in their thinking about the fiscal future by the road maintenance and construction particularly prominent in Anchorage this year—but that work was financed by large past capital budgets. Future capital spending appears likely to fall sharply from levels in fatter times.

• **The apparent multiplicity of options.** With the Permanent Fund, the Permanent Fund Dividend, and a heavy reliance on revenues from taxes on corporations based outside the state, Alaska's unique fiscal profile makes our politics more complicated than in most, perhaps all, other states. Elsewhere, tough budget times usually give policymakers only two choices: cut spending or raise taxes on residents. The greater array of options in Alaska is, ironically, paralyzing — contributing to a bias toward inaction.

• **Rise of Ideology.** Political polarization has increased nationally, and that trend has bled through to Alaska. Republicans and Democrats agree that rigid ideologies are increasingly driving legislators in Alaska, with those ideologies and symbols — and even the words candidates and office-holders use — originating from Outside. The increased power of ideology clearly makes legislative compromise and coalition-building more difficult.

• **Incumbent Self-Preservation.** A number of legislators are scared that any talk — much less action — about imposing new taxes (like income or statewide sales taxes) on individuals, or using substantial Permanent Fund income in the budget, could cost them their offices. This fear of being voted out helps produce some odd-sounding statements from lawmakers, such as "I sure hope the governor can do it." Legislators making such statements are of course not spectators sitting at the top of the stadium cheering on their favorite team's quarterback, but instead are integral players on the field. Alternatively, some legislators who want voters to come to them and ask the legislature to impose taxes or use Permanent Fund income in the budget seem like aging former high-school football stars, expecting girls to keep calling them years after the end of the glory days.

• **Other pressures on legislators.** Being a legislator is a difficult job in these tough times. A number of observers report that other factors weigh on lawmakers' minds when they're thinking about the state's fiscal

challenge. One sentiment is perhaps best expressed by a legislator who has repeatedly observed that "In the Old West, the pioneers got the arrows and the settlers got the land." A number of legislators appear to want to be settlers with the bounty and the rewards while others—the governor, other legislators—step up to take the arrows for the public good. Taken to its most extreme, this feeling might lead a legislator to believe that no matter how good it might be for the people of Alaska to avoid a crash in providing public services or in the state's economy, letting that crash happen and finding someone else to blame might be the best course for that particular legislator. Pinning the blame on someone else in the wake of the crash would be a more successful strategy if there is not a "Throw all the bums out" election—a result these would-be settlers are betting against.

Another pressure on legislators is that while the idea of large budget cuts is popular with many Alaskans, many specific budget cuts are not. That tension helps make across-the-board budget cuts more likely.

• **The speed of spending Permanent Fund income versus collecting taxes on individuals.** Independent of political or philosophical considerations, spending Permanent Fund income in the budget is allowed as a matter of law, and as a purely logistical matter would be easy for legislators to accomplish. The first revenues from an individual income tax or a statewide sales tax, on the other hand, would not arrive for one to two years after statutes establishing such taxes were enacted. That means after the Constitutional Budget Reserve and other (much smaller) savings pots are exhausted, in the very short run the only way for the State of Alaska to get money would be to spend Permanent Fund earnings. This reality — plus the (mostly unexpressed) preferences of some legislators to spend Permanent Fund income in the budget if a crisis gave them political cover — makes a crash followed by heavy spending of Permanent Fund income more likely.

• **Decline in dealmakers.** Given the rise in ideology and other changes, many legislators in Alaska are different now than those in the first two decades following the achievement of statehood in 1959. One important change has been a decline in the number of lawmakers who can put together big deals to address big issues.

Cliff Groh is chair of Alaska Common Ground. He was the principal legislative assistant working on the legislation adopted in 1982 that created the Permanent Fund Dividend we have today and the special assistant to the Alaska Commissioner of Revenue in 1989 during the consideration and adoption of the legislation revising the oil severance (production) tax's Economic Limit Factor (ELF).



Asking people to name their top five favorite songs presents a uniquely difficult challenge. It also provides insight (if you consider yourself an amateur psychologist) into the personalities of the various members of the Alaska Bar. In this installment we highlight the top-fives of: Laurence Blakely, who represents indigents in their appeals and hosts a weekly radio program on KNBA in Anchorage. She also writes songs and learns to play new musical instruments on a regular basis; Maria Bahr, who is the new Bar Counsel for the Alaska Bar Association. She supervises the Discipline section, and answers your ethics questions; and Peter Boskofsky who serves as corporate counsel for Afognak Native Corporation. After finishing his undergraduate degree and before law school, he spent time traveling and living in various parts of Quebec, Canada, which why his list includes a couple of songs from that area.

Laurence Blakely

1. Tommy Flanagan's rendition of "Peace" by Horace Silver
2. "Oh You" — Greg Brown
3. "Utrus Horas" — Orchestra Baobab
4. "Tsy Anao Zao" — Jaobjob
5. "The Golden State" — John Doe, duet with Kathleen Edwards

Maria Bahr

1. "I've Got the World on a String" — Frank Sinatra
2. "Bach Prelude in C Major" — with anyone playing it
3. "Sugar Sugar" — The Archies
4. "Baby, It's Cold Outside" — Ella Fitzgerald and Louis Jordan
5. "Beyond the Sea" — Bobby Darin

Peter Boskofsky

1. "Imagine" — John Lennon
2. "Un Musicien Parmi Tant D'autres" — Harmonium
3. "Dede" — Les Colocs
4. "Wild Horses" — Rolling Stones
5. "Rocket Man" — Elton John

Delaware Tax Trap

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skipping estate taxation for multiple generations (*cf.* IRC Section 2653(a) on taxation of multiple skips).

Nothing in this article is legal or tax advice. Non-lawyers must seek the counsel of a licensed attorney in all legal matters, including tax matters. Lawyers must research

the law touched upon in this article.

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In private practice in Anchorage, Steve O'Hara has written a column for every issue of *The Alaska Bar Rag* since August 1989.

Federal Bar Association update: several events planned for 2016

By Darrel J. Gardner

The Alaska Chapter of the Federal Bar Association is now running smoothly under the leadership of its new president, Jamie McGrady, who assumed office Oct. 1. Our president-elect for 2017 is Assistant U.S. Attorney Kevin Feldis, who is also a Ninth Circuit lawyer representative. The association extends a special thanks to immediate past-president Brewster Jamieson, who did a fantastic job this past year.

In addition to planning numerous monthly meetings and helping tremendously with the 2015 Alaska Federal Bar Conference, Jamieson kept the new membership momentum rolling along with an increase of more than 10 percent. The Alaska Chapter now boasts 72 members, meaning that we have almost doubled our numbers since 2012. Our chapter even received a membership growth award for the third year in a row at the 2015 FBA Annual Meeting and Convention, held this September in Salt Lake City. I hope that everyone in federal practice will continue to support and help to grow the Federal Bar Association in Alaska.



Dean Tacha

The Second Annual Alaska Federal Bar Conference held in August was a great success, as the accompanying photos show. The conference featured the national immediate past-president of the FBA, Matt Moreland, who presented an ethics pro-

gram along with the 2014 FBA national president, Judge Gustavo Gelpi from Puerto Rico, who made his second trip to Alaska after having attended our first conference in 2014. Other speakers included Dean Erwin Chemerinsky (U.C. Irvine), who gave a Supreme Court and Ninth Circuit appellate update, and Dean Deanell Tacha (Pepperdine), who gave a luncheon keynote address on the future of legal education in America. Also featured were U.S. District Judge Sharon Gleason, Darin Sands, and Paige Hunt Wojcik, who jointly presented a program on managing e-Discovery in federal court; and Alan Dorfhofer from the U.S. Sentencing Commission, who provided an in-depth federal sentencing practice and procedure update for criminal practitioners.

FBA-Alaska is now planning the Third Annual Alaska Federal Bar Conference, set for Aug. 12, 2016. For the third year in a row, the national president of the FBA will be attending our conference. This year's president is Mark Vincent, an assistant U.S. attorney from the District of Utah. We are planning a terrific conference with many varied presentations that will have broad appeal for anyone who practices in federal court. We are also taking steps to reduce the cost of the conference to make it more accessible and an even better value, particularly to new practitioners. Please save the date.

The Annual Ninth Circuit Judicial Conference is already well into the planning stages. In September, District Judge Timothy Burgess and Lawyer Representative Coordinating Committee member Darrel Gardner represented the District of Alaska at a joint Conference Planning and Executive Committee meeting held in San Francisco. The next Ninth Circuit Conference will be July 11-14, 2016, in Montana, the home of Judge Sidney R. Thom-



as, who succeeded Alex Kozinski as Chief Circuit Judge in December 2014. Changes are afoot in federal court, with Chief Judge Ralph R. Beistline moving to senior status at the end of the year. Judge Beistline will be joining our three other distinguished senior federal judges, H. Russel Holland, James K. Singleton and John W. Sedwick. A reception honoring Judge Beistline will be held in December, and promises to be a highly entertaining event. Judge Beistline was an editor of the Bar Rag for many years, and he served as a Superior Court judge in Fairbanks before he was nominated to the federal bench; he has no shortage of Alaska legal tales.

The Honorable Timothy M. Burgess will take the reins as our new chief judge starting in January. Please join the FBA for a conversation with Chief Judge Burgess on Jan. 21, 2016, at noon in the executive dining room located in the cafeteria of the James M. Fitzgerald Courthouse and Federal Building. Lunch will be provided to FBA members.

FBA-Alaska is now planning the Third Annual Alaska Federal Bar Conference, set for Aug. 12, 2016. For the third year in a row, the national president of the FBA will be attending our conference.

The Alaska FBA Chapter has also adopted a community outreach project for the year. "We the People" is an instructional program on the principles of the U.S. Constitution and the Bill of Rights for elementary, middle and high school students. Activities include oral arguments and simulated congressional hearings with community members as judges. Local middle schools compete annually with dozens of four-person teams, and the winners compete in a national competition in Washington, DC. The experience for the students is enhanced by qualified and knowledgeable judges. This is a great opportunity for our members to give back to the youth of our community and share our love for the Constitution and Bill of Rights. We will be requesting volunteers as the program unfolds.

For more information, or to join the Federal Bar Association, please contact Jamie McGrady (jamie.mcgrady@fd.org), or visit the Alaska Chapter website at www.fedbar.org; like us on Facebook at "Federal Bar Association - Alaska Chapter;" and follow "Fed Bar Alaska" on Twitter "@bar_fed."

Darrel Gardner is a past president of the FBA's Alaska Chapter, and a current member of the Board of Governors of the Alaska Bar Association.



Matt Moreland and Brewster Jamieson.



FBA President Matt Moreland and Alaska Chapter President Jamie McGrady.



Chief Judge Ralph Beistline and Pepperdine's Dean Deanell Tacha share a laugh.

Office Space for Lease

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Gorgeous Class A office space for lease, corner of 4th Avenue and H Street, directly across from the State Court House and the Legislative Affairs Building.



- Parking available directly behind the building.
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mwdunne@alaska.net



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10th Inside, Out conference held at correctional center

Alaska members of the National Association of Women Judges hosted the tenth annual Success Inside and Out conference Oct. 24, 2015, at Hiland Mountain Correctional Center (HMCC) in Eagle River.

Justice Dana Fabe of the Alaska Supreme Court founded the conference to bring professional women together to help inmates nearing their release dates prepare for transition to life outside prison. 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."

More than 70 professionals from the community offered their time and expertise to provide practical guidance on finding jobs, housing and transportation; continuing their education; handling finances; and maintaining personal health. Inspirational addresses were offered throughout the day. During lunch, a fashion show highlighted appropriate dress in the workplace. Alaska's First Lady, Donna Walker, attended the conference and addressed the inmates during opening ceremonies.

This year's conference featured Dr. Ellen Cole who presented a session entitled *Celebrating our Strengths*. Dr. Cole is currently a professor of Psychology at Sages Colleges in New York and was the director of the graduate program in psychology at Alaska Pacific University. She is the past president of the Alaska Psychological Association and the Society for the Psychology of Women, and was also one of the original members of the Success Inside and Out steering committee.

More than 100 women inmates scheduled for release within the next year participated in this year's 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 more than 30 conference supporters.



From left: Hiland Mountain Correctional Center Superintendent Gloria Johnson, Justice Dana Fabe, First Lady Donna Walker, former Department of Corrections Commissioner Ronald Taylor.



Alaska First Lady Donna Walker addresses inmates during Opening Ceremonies.



From left: Donna Fischer (former HMCC inmate); Margi Mock (attorney and moderator of the panel- "Success on the 'Outside' for Those on the 'Inside' Being Successful on Probation); and Carrie Belden division director of Probation and Parole. All three were part of the Panel.



Judge Stephanie Rhoades working with an inmate during the Passport to Success portion of the program.



Judge Anna Moran and Hiland Mountain Correctional Center inmate Erin Jones.



Judge Jo-Ann Chung works with an inmate during the Passport to Success portion of the program.

Adventure to Malawi satisfying on several levels

By Jon Katcher

In 1964, Tom and Ruth Nighswander accepted a Peace Corps assignment to Malawi in Southeast Africa. The Nighswanders were among America's very first Peace Corps volunteers, sent out to the world under the leadership of Sargent Shriver. Tom and Ruth subsequently returned to the U.S. to obtain their medical and nursing training. They established public health care practices in Anchorage – Tom as a physician at Alaska Native Medical Center, and Ruth as a school nurse with the Anchorage School District. They are key members of the Anchorage community – indeed it is rare to encounter an Anchorage mover or shaker who does not know of them.

Over the past 50 years Tom and Ruth have maintained a deep relationship with Malawi through Malawi Childrens Village (MCV) (malawichildrens.org), a non-governmental organization (NGO) they helped found. MCV has touched upon and engaged countless Alaskans and institutions like Rotary, Denali Montessori Elementary School, Chugach Optional School, Willowcrest Elementary School, West High School, St. Mary's Episcopal Church, Congregation Beth Shalom, Providence Alaska Medical Center, and the Alaska Eye Care Center, to name but a few. As a result Alaskans have generously donated funds, equipment and goods to the people of Malawi. More importantly, numerous Alaskans have traveled to Africa to engage with Malawians and to perform needed services.

This article recounts how one group of Alaskans journeyed to Malawi in May and June of 2015 to celebrate the Nighswanders' 50 years of service to Malawi. We all returned home deeply touched by the dear people of Malawi. In writing this article it is my intention to encourage others to take their own journey to provide charitable services, if not in Malawi, then in some other needy country. Indeed, by arranging to donate less than \$1,000 in building materials, any of you could form a group to travel to Malawi for a week to assist with building a house for a family. For while we can travel as voyeur tourists to many destinations, it is only when we break through those bus and hotel windows and actually connect with people that we get the most out of our travels. And hopefully our hosts will benefit from our efforts.

Kurt Vonnegut's "Cat's Cradle" quotes the Caribbean mystic Bokanon as saying "Strange travel suggestions are like dancing lessons from God." It was with this in mind that I considered an invitation for my wife Kate Michaels and I to join several Denali Montessori Elementary School teachers on a mission to Malawi. The idea was for the Denali teachers to work with teachers at Nasenga Primary School, a southern Malawi public elementary school near Malawi Childrens Village. I'm no educator but I figured there would at least be some ongoing manual labor project I could assist. What was particularly appealing was the prospect of being hosted in Malawi under circumstances that would afford meaningful interactions with native Africans.

We were 11 in our group: the



Alaskans Joe Banta, Jon Katcher and Kevin Banks with local builders and MCV Family.



Nasenga Kindergarten teacher Stella, donates hand made learning tool for Ms. Paula's Classroom.

Nighswanders; Paula Davis, a Denali Montessori Kindergarten teacher; Kevin Banks, a retired State of Alaska Division of Oil & Gas director and economist; Janis Banta, a school counselor at Willowcrest Elementary School; Joe Banta, an environmental monitoring project manager with the Prince William Sound Regional Citizens Advisory Council; Wade Banta, a recent graduate of Colorado College now in graduate school at Northern Colorado University; Jonas Banta, a Stellar School senior; Michelle Katcher, a professional classical ballet dancer then in New York City and now in Phoenix; Kate Micheals, a retired Denali Montessori grades 1-3 teacher; and me, a semi-retired litigator and ski bum. We all arrived in Malawi at different times but came together to accomplish some really great things.

Wade Banta arrived in Malawi in March 2015 to teach high school biology at the MCV Gracious Secondary School. Tom and Ruth Nighswander, Janis, Joe and Jonas Banta, and Kevin Banks and Paula Davis arrived in late May. Kate, Michelle and I arrived on May 31, after 10 days in South Africa. Among the donated supplies we all brought with us were: information technology hardware to serve the students at MCV; medical supplies from Providence Hospital; eyeglasses from Alaska Eye Care Center; and dozens of t-shirts and sweatshirts bearing the mascots and logos of Denali and Willowcrest Elementary Schools.

South Africa – well worth the visit

Kate, Michelle and I decided that as long as we were traveling

10,000 miles across 10 time zones to the opposite side of the planet we should make the most of it and stay a month. So before heading to Malawi we spent 10 fascinating days in South Africa.

Our trip to South Africa was enhanced by reading James Michener's "The Covenant," a rich and detailed historical novel that includes painful descriptions of Apartheid. Cape Town is a pleasant combination of San Francisco and Los Angeles, with a mild dry May climate, first world amenities, and spectacular scenery. Cape Town day trips include a scenic wine country with charming Cape Dutch architecture, and Cape Point, with penguins, ostriches, baboons, hyrax (a marmot sized mammal most closely related to the elephant), and dramatic views of the South Atlantic and Indian oceans.

We then spent five nights at two private game reserves adjacent to Kruger National Park. The Elephant Plains Lodge in the Sabi Sands Game Reserve was small and intimate with only 26 guests. The Kapama Game Reserve had an Epicot type hotel with cruise ship style dining. But at both lodges the wild game viewing experiences were truly amazing, including giraffes lurking outside our bedroom windows. We rode in open air trucks with a white driver/guide and an African tracker perched on a front bumper jump seat, speaking to each other in Afrikaans, a language unique to South Africa combining 17th century Dutch, Malay, French, Portuguese, English, German and African languages. Our Kapama tracker Giv, from a nearby village, lamented how he had not gone to Alaska in 2000 to make big money in the fishing industry, which I assume meant working in a Dutch Harbor or Nanknek processing plant. I gave him my contact information and assured him he would be most welcome if he was crazy enough to come to Alaska to work a slime line.

Each game viewing truck had up to 10 guests. We had absurdly close encounters with elephants, white rhinos (endangered by relentless poaching of their mythically aphrodisiac horn; in Asian markets rhino horn is worth more than \$40,000 per pound), lions, leopards, cheetahs, a herd of more than 200 buffalo, wild dogs, hippos, crocodiles, hyenas, countless antelope species and birds of every size, shape and color. Highlights included getting within 10 feet of a pride of lions loudly cracking wart hog bones with their jaws, and getting close enough to almost touch an elephant and her calf. Our encounters with elephants were informed by Jodi Picoult's novel "Leaving Time," which provides interesting facts about the intelligence, emotions and society of these fascinating creatures. The game reserve animals, including predators, are habituated, indeed generally oblivious, to people in these open air tour trucks.

We then spent a night in Johannesburg, or Joburg, a city that looks like Chicago. Unfortunately its reputation for violent crime is well deserved. Affluent citizens of all races live in fortress-like homes with barbed wire capped walls, guarded gates, cameras, laser trig-



Nasenga teachers are fascinated by "Story Cube" gifts from Denali Montessori teachers.

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gered alarms, and secure front doors. And even with such measures one must arm and lock oneself in an impenetrable panic room at night. Joburg has a magnificent Apartheid Museum, which had a special Nelson Mandela exhibit. Our few hours there were not enough – you need a full day to take in this excellently presented history of those dark days.

Malawi: Beautiful people and land, dysfunctional government and economy

We then flew from Joburg to Lilongwe, Malawi's capital. We were greeted by Gordon, one of the proprietors of the Lake Malawi Palm Beach Resort, where the Nighswanders have a home, and where we would all be staying. The resort offered nicely appointed bungalows with indoor plumbing, spotty electrical service, and a restaurant and bar with very limited wi-fi coverage and a comical pool table. Gordon is a 50-something white former citizen of Zimbabwe, or Zim as he called it. During our three-hour drive from Lilongwe to Palm Beach, Gordon recounted Zim's sad transition from white minority rule to disaster under the now decades reign of President Robert Mugabe. Gordon proudly displayed his worthless Zimbabwe currency, including a 2008 note for 100 billion dollars.

The roads of Malawi have an endless stream of pedestrians, bicyclists and small trucks overloaded with passengers and goods. During our drive from the airport to Palm Beach, Gordon hit a goat and a chicken and barely missed the triecta of a dog. Gordon barreled on, never giving thought to investigating the carnage or seeking out the owners. We rushed at often break-neck speeds to arrive before dark, when the crowded unlit roads became even more dangerous.

Malawi is about the size of England. Its geography is dominated by Lake Malawi, a narrow body of fresh water running north to south in Africa's Great Rift Valley. Malawi is landlocked, with an apparently non-functioning railroad running east to Mozambique's Indian Ocean ports.

Malawi is rich in people and very poor in resources. Its present population is about 17.5 million, up from 15.3 million in 2010, with a population density among the highest in Africa. At least 40 percent of the people live below the poverty line, with 15 percent considered ultra-poor. Average income is about \$300 per year. The economy is basically agriculture, with 85 percent of the population in rural areas. Rural Malawians subsist largely on corn. The country is no longer food self-sufficient. There was great concern that heavy rains and flooding during the summer (our winter) 2015 planting season would cause substantial food insecurity during what is expected to be a very weak corn harvest in the spring (our fall). The entire economy is heavily dependent on aid from foreign governments and charities. However, due to rampant corruption at the highest levels, European donor governments and the United States have withdrawn direct assistance to the Malawi government.

Despite these challenges Malawians are exceedingly gracious. Malawi is well named "The Warm

Heart of Africa." The Malawians we met were consistently open, welcoming and engaging.

Navigating life in Malawi requires setting aside one's Western expectations of efficiency and punctuality. "Africa time" is very real and to be embraced in order to avoid unproductive frustrations. There is no hurrying about any activity.

Money is an interesting challenge. The Malawian Kwacha exchanged at about 450 Kwacha per dollar, most commonly in 1000 Kwacha bank notes. Trips to the ATM resulted in bricks of Kwacha to carry about. Credit cards are accepted at some but not most businesses. Bartering is expected from a cultural perspective. One can feel silly haggling over what for us would be a difference of \$5, especially when \$5 means so much to a Malawian. We found that African craft merchants well understand this dichotomy, and they were happy to take advantage of a Westerner who is willing to pay too much.

Three topics dominated Westerners' discourse in Malawi – digestion, malaria and the internet.



Tom, local artist and education supporter, created a painting of Nasenga for Denali Montessori.

One had to be hyper vigilant about drinking water, sticking religiously to bottled water, even for brushing one's teeth. Shower with your mouth closed. Do not consume iced drinks. Lake Malawi was quite polluted. Swimming risked a snail borne parasite that could end up in your liver. Malaria bearing mosquitoes were present. We took our daily pills, slept in mosquito netting, and wore long sleeved garments. Internet access was spotty at best. Some of us had signed up for international cell phone plans with our home carriers – these were marginally functional. Others brought unlocked cell phones and purchased simcards with the local African carriers – this seemed to work better. If one could handle only periodic access to email and baseball scores, then occasionally connecting to a local wi-fi was more than satisfactory.

Malawi's 19th Century history was stained by horrific slave trading and tribal warfare. Dr. David Livingstone and his Scottish missionaries were among those instrumental in ending slavery, bringing "Christianity, Commerce and Colonialism." Malawi was a British colony until independence in 1964, when it became subject to the "benign" dictatorship of President for Life Dr. Hasting Kamuzu Banda, whose reign lasted until 1994. Ban-

da banned numerous books, films and records, including Simon and Garfunkel's "Cecelia" because it offended his powerful mistress of the same name. The Banda years were punctuated by mass arrests and detentions and automobile "accidents" which killed many dissidents.

The present government is a constitutional kleptocracy, with rampant corruption. There is a very robust free press, but there is little differentiation between reporting and commentary – front page scandal articles are followed by page two editorial lectures about corrupt politicians. Without Western funding the government has no resources. The court system cannot pay the judges and clerks. Lawyers must bring their own stationery to courts in order for the judges to transact business.

Getting to know the Malawians

MCV and the local area are dominated by the main national highway that runs parallel to the lake. About 10 miles south is the local district headquarters town Mangochi, with



Michelle Katcher volunteered at the Open Arms nursery for AIDS orphans.

teachers at the Nasenga Primary School. The goal was to give the Malawian teachers additional skills and resources to deal with their classes of often 60 students. Nasenga Village is a short walk from MCV. The village and its newly constructed school are across the highway from a modern and large Mosque and school. The Nasenga villagers, many of whom are Muslim, asked MCV to help with the construction and operation of a public non-denominational school. The villagers wanted their children to have the option of education without having to submit to parochial schooling.

Paula, Janis and Kate had great success working with 11 local teachers and enhancing their abilities. They used themes of Academic Engagement and Social Emotional Learning strategies to connect with the Malawian teachers and model skills for working with students. The learning was two-way as the Alaska educators were amazed by the creativity, ingenuity and caring of the skilled and dedicated Malawian teachers who did so much with so little.

Michelle spent most of her time working in the Open Arms Orphanage which is adjacent to the MCV campus. Open Arms is a private orphanage supported primarily by British charities. Open Arms cares for orphans of parents who have died of AIDS. Malawi has a staggering HIV rate. Open Arms nurtures the children to the point that they can be returned to relatives in their local villages rather than putting the children into foster care. Michelle had a wonderful time bonding with the orphans and the orphanage workers.

Joe, Kevin, and I primarily worked on building a house nearby for an older grandmother of four orphan children, who had lost her home in recent storms and flooding. We dug the foundation, built up the brick and mortar walls, and ended with erecting the tin roof. Malawians use handmade bricks to construct buildings of every size and purpose. The country is littered with piles of red bricks. The village had made the bricks for us to build the house. MCV purchased the cement to make the concrete mortar. Kevin, Joe and I, along with help from Jonas, Wade, Paula, Kate, Janis, Michelle and Tom, provided the manual labor. MCV provided Radisson, a skilled Malawian builder, and his assistant Charles, to supervise our efforts and make sure our walls ran straight and sturdy. The grand-

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mother for whom we built the house was very grateful, calling us her “angels.”

While at MCV we met Professor Alex Hills, a Palmer, Alaska Rotarian. Professor Hills is Distinguished Service Professor of Engineering & Public Policy and Electrical Computer Engineering at Carnegie Mellon University in Pittsburgh. Professor Hills was at MCV as a computer geek, installing Quickbooks and upgrading the wi-fi. Professor Hills was particularly well suited to the latter task, having built the world's first wi-fi network. Professor Hills has worked with more than 100 Carnegie Mellon students who have been sent out as consultants to governments and NGO's throughout the developing world. Professor Hills considers MCV to be one of the better NGO's he has worked with. Professor Hills arranged a grant through the Palmer Rotary to pay for materials that the MCV carpentry program could use to build 50 student desks.

Our last day in the MCV area was punctuated with a ceremony by the families, staff and students at the Nasenga Primary School. We had gathered to dedicate a staff housing building that was funded by Alaska donations. As we Alaskans approached the school we were greeted by a dozen women singing our welcome in unison. Many speeches of thanks were made. We then gathered with dozens of students wearing Denali Elementary and Willowcrest Elementary t-shirts and sweatshirts. It was a very moving and gracious demonstration of Malawian gratitude.

Mua Mission and Chamare Museum

It was not all work in Malawi. We took several excursions including a fascinating trip to Mua Mission, about a two-hour drive from Palm Beach Resort. Mua Mission is a Catholic outpost established in 1902 by the White Fathers order. There is a hospital, a school, and a wood carving workshop with art for sale.

A highlight of Mua Mission is the Chamare Museum, part of the Kungoni Centre for the Arts & Culture. www.kungoni.org. This fine ethnographic museum has a rich history of the region and its people, with detailed displays presenting fascinating origin myths, and pre-colonial, colonial and modern history, with reference to the interactions between natives and Christian and Muslim missionaries.

The Chamare Museum has the world's largest collection of about 400 Gule Wamkulu masks. Gule Wamkulu is a local traditional dance performed by secret societies of men wearing elaborate costumes and masks depicting various spirits enacting a variety of social and morality tales. Each mask represents a particular spirit that appears at specific annual events and ceremonies like weddings, births, puberty or the installation or death of a chief. The dancers, accompanied by drummers and singers, perform vigorous moves suggesting the origin of modern break dancing. Examples of Gule Wamkulu dancing are well worth watching on YouTube.

Sunday morning church, Sunday evening Gule Wamkulu

One Sunday morning we were invited to attend a local Episcopal Church. The service was an inspiring combination of Church of England liturgy, African singing and dance, and gospel music. Men and women sat separately. There were readings from John and Exodus, about which Rev. Banda preached. Rev. Banda proudly wore beautiful vestments given to him by Rev. Michael Burke of St. Mary's Episcopal Church in Anchorage. Rev. Banda was gracious enough to translate his sermon into English. There was a particularly moving moment when the entire congregation embraced, many of them making a point of seeking we Alaskans out for hugs.

That Sunday evening Tom Nighswander arranged for a Gule Wamkulu performance at Palm Beach Resort. Dancers, drummers and singers put on a mesmerizing performance, often cheerfully mocking we white spectators. When the drums began, dozens of adults and children from the surrounding villages gathered to watch the performance.

The contrast between the sacred of the church and the profane of the Gule Wamkulu was not as profound as one would expect. Both involve music, dance and spiritual connection. It makes sense that priests of the Mua Mission the Chamare Museum seek to honor and preserve Gule Wamkulu as a manifestation of Man seeking a Higher Power.

Lilongwe, Zambia and South Luangwa National Park

We left our friends at Malawi Children's Village with heavy hearts, promising to return. But we had one last African adventure, a game safari in the neighboring country Zambia. We started with a long drive back to Lilongwe in three vehicles of varying degrees of safety. Tom and Ruth have an old Subaru. Kate, Michelle and I rode in an old Toyota Landcruiser, and the rest of us rode in a relatively modern Mitsubishi van. Shortly into the trip we noticed that Tom's Subaru had a flat tire. We flagged them down and found that their spare tire was even worse than the flat. Indeed, all of the tires looked profoundly unsafe. Nevertheless we changed the tire and pressed on to Lilongwe.

We took a scenic mountain route with harrowing hairpin turns and steep unguarded cliffs. The mountains, which had once been covered with pine trees, are largely denuded. The contractor who cleared the forest was supposed to replant the trees. The contractor failed, claiming it could not plant trees fast enough to overcome the relentless subsistence harvesting of trees for firewood.

We arrived in Lilongwe, a typical third world mess of an urban sprawl. We stayed in a decent hotel downtown owned, and operated by the company that would take us on safari in Zambia.

While in Lilongwe we made a final effort to get a Yellow Fever certificate for one of us who had stubbornly refused to get his certificate while in the U.S. We had spent hours researching how to get a Yellow Fever shot in Malawi, to no avail. The word was that without a Yellow Fever certificate one could

not get into or out of Zambia, and more importantly one could not get back into South Africa to return to the U.S. The rather Kafkaesque solution was for the vaccine-less person to go to the local hospital and pay for a certificate without having gotten the shot. Perhaps this will become a new strategy for the American anti-vaccine movement.

We got up early the next morning and drove several hours to the Zambia border. The border was an absurdly inefficient transit point with far from foolproof inspections of health certificates and passports.

Upon arrival in Zambia one immediately noticed the contrast with Malawi. Where Malawi was a disorganized mess, Zambia was quite clean and tidy, with evidence of an actual economy. In Malawi the roofs are generally thatch; in Zambia they are generally tin. The contrast reminds one of aerial photos of the Haiti/Dominican Republic border.

That afternoon we arrived at our camp just outside South Luangwa National Park. The camp lies on the banks of a quarter-mile-wide river

with wildlife to be seen in the riverbed – hippos, crocodiles, elephants and many birds. The camp consisted of a group of two-person canvas wall tents. As we slept, or tried to sleep, the camp would be frequented by noisy hippos and baboons.

We spent several days on excellent game drives, seeing very large groups of hippos and elephants. Our drives were enhanced by Paula Banks, an avid birder, who made sure we saw all the species the beautiful park had to offer. Kevin Banks kept track of a total of more than 50 birds, mammals and reptiles.

One wildlife experience was particularly memorable. We were sitting at the camp overlooking the river watching a group of hippos basking in the sun mid-river, with a crocodile lying nearby. Along came several grey-crowned cranes, which look like sandhill cranes with punk rocker head plume mohawks extending several inches high. Much to my amazement, these skinny birds were able to shoo the hippos

Continued on page 28

Alaskan educators and families travel to Malawi

During May and June of this year, 11 travelers from Anchorage ventured to Malawi to serve at Malawi Children's Village (MCV). They included three past and current staff from Denali Montessori Elementary School (Paula Davis, Janice Banta, Kate Michaels) and their spouses; ASD school nurse Ruth Nighswander and her husband, Tom; former Denali students Wade and Jonas Banta; and Michelle Katcher. The trip, which was organized to celebrate the Nighswanders' 50 years of service to Malawi and their work on the MCV board, had been envisioned for more than 10 years of fundraising through annual Peace Concerts at Denali.

During their time in Malawi, members of the group built a house for a widow wanting to take in two MCV orphans; provided MCV with new technology to better serve students at MCV's Gracious Secondary School; started a college scholarship for recent secondary student, Alice Nakhuto (email jbanta@mac.com to learn how to contribute); delivered medical supplies collected from Providence Hospital and eyeglasses from Alaska Eye Care Center; and donated supplies and conducted teacher training for Nasenga Primary School, whose buildings were funded in large part through Denali fundraising.

The young people on the trip, age 17-23, were educated in Anchorage schools (primarily Denali Montessori and Steller Secondary School) that emphasized the importance of culture and service learning and were able to put that learning into practice in Malawi. From April through June, Wade taught biology to MCV secondary students, volunteered at a local medical clinic and raised funds through a GoFundMe campaign to construct a house for MCV orphans and their guardian. Jonas also helped with house construction and taught biology with his brother. They volunteered at the Open Arms nursery for very young and vulnerable AIDS orphans, as did Michelle, who spent as much time as possible with these little ones.

Kate, Janice and Paula trained with 11 teachers from Nasenga Schools, using a theme of Academic Engagement and using Social Emotional Learning strategies to build connections between participants and model skills for work with students. The learning was definitely two-way, as Denali staff were amazed by the creativity, ingenuity and caring of these skilled, dedicated teachers, who did so much with so little. In return, Nasenga teachers were delighted to try out new techniques and materials provided by the Alaska visitors.

Learn more about MCV at mcv.org.



Former Denali Montessori and Steller Secondary student, Wade Banta, instructs local clinic staff on use of donated materials.

Adventure to Malawi satisfying on several levels

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and the croc off the beach, with the dominant male making the extended wing display one sees in mating dances.

A final cab ride adventure in Lilongwe

We returned to Lilongwe and spent the night at the same hotel before heading to the airport for our return to America. Into the hotel bar came a group of young Peace Corps volunteers, with interesting tales of their lives in Malawi. One story was of a gay American volunteer. His unhappy mother had contacted the local Malawian Bishop, which unfortunately put the volunteer at risk in a country where homosexuality is a crime.

When one leaves the third world one makes an effort to leave goods

behind that are not readily available in one's host country. The hotel advertised a need for sunscreen and clothing to assist albinos – we happily left now unneeded t-shirts, hats and sunscreen. It occurred to us that one of the local Peace Corps volunteers might appreciate Kate and Michelle's yoga mat. So we asked the airport taxi driver to take a detour to locate the Peace Corps offices. After some searching we found a heavily guarded facility where photography was prohibited. It took some explaining but I was finally able to gain entry and leave the yoga mat with the receptionist.

We then proceeded on a remarkable cab ride to the airport in the cab of a Rastafarian named Hotman. To the amusement of Kate and Michelle, Hotman and I discussed Rasta religion, diet, ganga, Bob

Marley and Haile Selassie.

Hotman's Toyota was perhaps the most decrepit vehicle I had ever ridden in. Not surprisingly he was stopped at every Malawi police traffic control point, the first time being given a citation whereby he would have to report back later with a \$10 fine and proof that he had corrected the problem. Upon arrival at the airport I was astonished to see the dangerous condition of Hotman's tires. The vehicle was literally a menace to highway safety. We collected our last Malawian money to give to Hotman so the he could not only pay the fine but more importantly get some safe tires.

We flew Lilongwe to Joburg and then caught our very long and exhausting flights back to the U.S.A., swearing off international airline travel for at least a while. It felt

great to be home in the height of the Alaska summer.

But as the memories wane of travel hardships, and the good memories wax of service to gracious people amidst exciting scenery and wildlife, we find ourselves wondering when we will get back to the third world. So, don't hesitate. Start working on your own adventurous combination of charitable service, exotic scenery and exotic wildlife. The Alaska connection to the MCV makes such service travel very manageable and extremely satisfying. You'll be glad you went.

Jon Katcher was Bar president about nine years ago. He's written some past "adventure travel" articles for the Bar Rag, like taking the state ferry out along the Aleutians, and visiting the land of 10,000 smokes.

2016 Alaska Bar Association BUDGET REVENUE/EXPENSE 2016

REVENUE

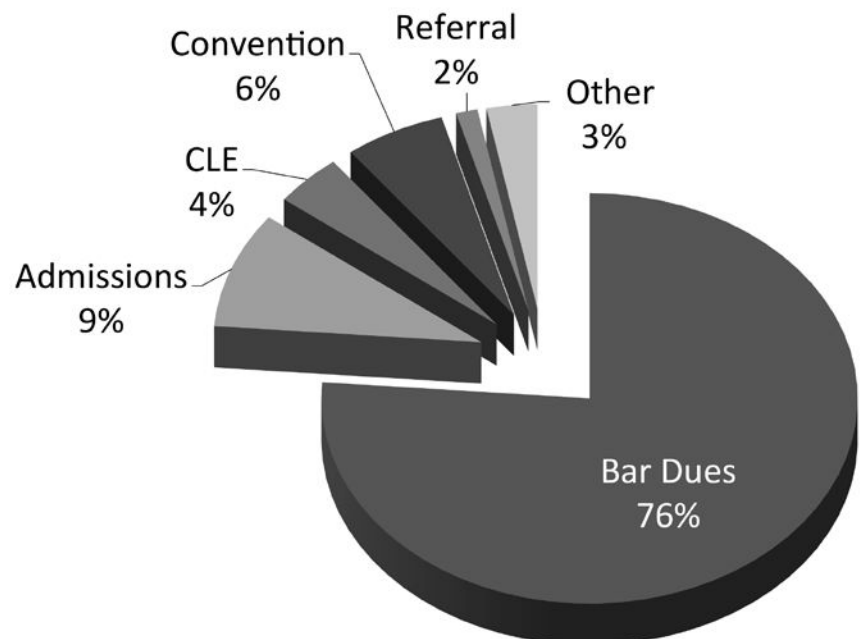
AdmissionFees-Bar Exams.....	98,500
AdmissionFees-MotionAdmit.....	45,000
AdmissionFees-Exam Soft.....	10,800
AdmissionFees-UBE.....	9,600
AdmissionFees-Rule 81s.....	97,500
CLE Seminars.....	118,200
Accreditation Fees.....	4,650
Lawyer Referral Fees.....	36,850
Alaska Bar Rag - Ads,Subs.....	11,068
Annual Convention.....	173,125
Substantive Law Sections.....	27,980
AccountingSvc Foundation.....	8,857
Membership Dues.....	2,147,125
Dues Installment Fees.....	10,450
Penalties on Late Dues.....	15,595
Disc Fee & Cost Awards.....	0
Labels & Copying.....	1,260
Investment Interest.....	33,000
Miscellaneous Income.....	500
SUBTOTAL REVENUE.....	2,850,060

EXPENSE

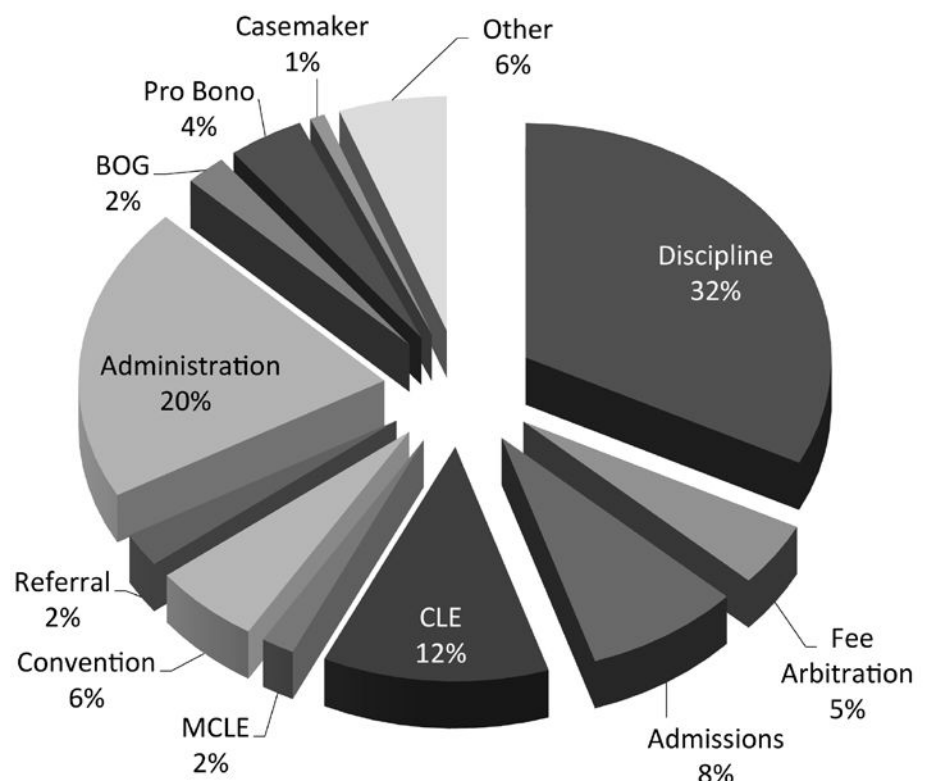
BOG Travel.....	48,932
Committee Travel.....	1,000
Staff Travel.....	36,733
New Lawyer Travel.....	3,000
CLE Seminars.....	89,126
Free Ethics Course.....	2,701
Alaska Bar Rag.....	29,547
Bar Exam.....	58,188
Other Direct Expenses.....	83,272
Annual Convention.....	163,125
Substantive Law Sections.....	7,379
AccountingSvc Foundation.....	8,857
MLK Day.....	5,000
Casemaker.....	24,000
Committees.....	10,256
Duke/Alaska Law Review.....	0
Miscellaneous Litigation.....	0
Internet/Web Page.....	15,684
Credit Card Fees.....	58,346
Miscellaneous.....	13,360
Staff Salaries.....	1,104,855
Staff Payroll Taxes.....	92,335
Staff 401k Plan.....	46,106
Staff Insurance.....	516,740
Postage/Freight.....	19,160
Supplies.....	23,426
Telephone.....	1,099
Copying.....	9,495
Office Rent.....	167,446
Depreciation/Amortization.....	88,406
Leased Equipment.....	29,509
Equipment Maintenance.....	53,152
Property/GLA/WC Insurance.....	28,063
Programming/Database Maint.....	23,523
Temp Support Staff/Recruitment.....	11,022
SUBTOTAL EXPENSE.....	2,872,844

NET GAIN/LOSS..... -22,783

2016 Revenue Budget



2016 Expense Budget



Other: Bar Rag, Sections, Foundation, Web Page, Committees, Credit Card Fees