

## NOTE FROM THE EDITOR

On behalf of the staff, I am delighted to present the June 2013 issue of the *Alaska Law Review*. This volume marks our thirtieth year serving the Alaska Bar Association and the members of Alaska's legal community, a privilege that we hope will continue for the next thirty years and beyond. The staff of the ALR takes great pride in our work, and we appreciate the continued opportunity to participate in the discussions shaping Alaska law. With that goal in mind, we have prepared an issue of diverse pieces that we hope will appeal to a wide range of readers. In addition, I would like to remind subscribers about the availability of our 2012 Year in Review. Anyone can access this summary of significant state and federal court decisions from the last year for a near real-time portrait of developing Alaska law. The Year in Review, as well as downloadable copies of all of our articles, can be found on our website, [www.alr.law.duke.edu](http://www.alr.law.duke.edu).

The first article in this issue, *The Right to Challenge the Accuracy of Breath Test Results Under Alaska Law*, comes to us from Paul A. Clark, a former public defender from Ketchikan and former clerk for the Alaska Supreme Court and 9<sup>th</sup> Circuit Court of Appeals. The article argues that an Alaska criminal statute, which prevents the defendant in a DUI case from disputing the result of a breath alcohol test by introducing evidence of inconsistency in the testing procedure, violates the defendant's constitutional due process rights. It goes on to propose a system of multiple breath tests to reduce uncertainty in DUI prosecutions.

The next article, *Protection of Our Elderly: A Multidisciplinary Collaborative Solution for Alaska* by Elisia Gatmen Kupris, discusses the implications of the Elder Justice Act and other components of the Patient Protection and Affordable Care Act as they apply in Alaska. Ms. Kupris, an assistant municipal prosecutor in Anchorage, goes on to outline a two-prong legal approach for combating the rising problem of elder abuse in the state.

In our final article, Miranda Strong, a current clerk for the Alaska Superior Court in Anchorage, argues for measures to protect the subsistence rights of Alaska Natives. State-imposed limits on the amount of fish and game that may be harvested put Alaska Native subsistence hunters and fishermen in competition with commercial and sport hunters. Ms. Strong's article, *Alaska National Interest Lands Conservation Act Compliance & Nonsubsistence Areas: How Can Alaska Thaw*

*Out Rural & Alaska Native Subsistence Rights?*, advocates for changes to the Alaska Constitution allowing for the establishment of a rural priority for hunting and fishing and bringing Alaska into compliance with federal law.

This issue's student notes address two different theoretical points of Alaska Law. In *The Awareness of Wrongdoing Requirements in the Wake of Hazelwood*, ALR's executive editor Brian Flanagan attempts to reconcile a long line of Alaska case law on when awareness of wrongdoing is a necessary element of *mens rea* with the 1997 Alaska Supreme Court case *State v. Hazelwood*. He concludes that requiring the prosecution to prove the defendant's awareness of wrongdoing for cases of willful violation or omission liability provides the only way to resolve what seems to be a contradiction caused by the *Hazelwood* decision.

Finally, my own note, *The Item Veto and the Threat of Appropriations Bundling in Alaska*, recounts the Alaska State Senate's tentative assault on gubernatorial power in the spring of 2011. I argue that the proposed "bundling" language in the senate version of the 2012 capital projects appropriations bill, if passed, would amount to an unconstitutional violation of the governor's item veto power and the Alaska Constitution's confinement clause. While the final version of the bill omitted the controversial language, it is my humble hope that my note will provide a starting point for further discussion of the issue, either in Alaska or in one of the multitude of other states with similar constitutional provisions.

It saddens me to say that I must end this preface on a somber note. On Easter weekend, as the staff was preparing for publication of this issue, Andrew Katbi, our senior lead editor, was tragically killed in a car accident on his way back to Durham. He was our classmate, our colleague, and most of all our friend. We will miss him dearly. As he did with all of his endeavors here at Duke, Andrew worked hard on preparing this issue of the *Alaska Law Review* for publication. Respectfully, we dedicate this issue to him.

*Nick Passarello*

*In Memoriam*  
Andrew Katbi