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"SHOW ME YOUR HANDS!" Analyzing a Critical Element in Qualified Immunity

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DAY IN THE LIFE

SCOTT BLOOM
City Attorney, Kenai, Alaska
Interview by Avery Morris, IMLA Editorial Staff

Municipal Lawyering on the Kenai River

Scott, thanks for taking the time to talk at this busy time of year. Tell us about your route to the City Attorney's office--where were you born and raised, and how did you end up in Kenai?

I was born and raised in Juneau, and got my undergraduate education at Whitman College in Walla Walla, Washington. Then I went to law school at Gonzaga University in Spokane. At the same time, my wife was getting her teaching degree at Gonzaga. The school district in Kenai was recruiting teachers at Gonzaga, and she got a job offer to go there. I said, "Well, let me see if I can find one, too." So, I obtained a clerkship with a Kenai Superior Court Judge, Judge Huguelet. That's what brought us here to start with, back in 2005. We didn't really intend on staying in Kenai. But after my clerkship was over, I accepted a job with the Kenai Peninsula Borough as an Assistant Borough Attorney. I served in that role until 2012, when I moved over to the City of Kenai as the City Attorney.



So a native born Alaskan returned home! Thirteen years as City Attorney is a long stint—has your job changed over that time?

Not a whole lot. Our department has a lot of long-term employees, but I'm certainly one of the longer-term department heads. I think I've grown my position in the organization--one of the things I like about my job is that I don't just do legal work. I help out in a lot of different areas. For example, if we have a planner opening for a while, I'll kind of tag team with others to help out in the planning department until we get a planner in position, that sort of thing. I've been fortunate that a lot of our City Council members have been here since I started. I've developed really good, long-term relationships with a lot of our Council members, so I'm able to work with them well and help them with their projects and initiatives.

Tell us about your law department.

It's just myself. There are no other attorneys here. I have an administrative assistant, not a paralegal. While the help I have is excellent, it can make things difficult because there's nobody else to act in my position or take over, so I'm really cognizant about when I do things outside of work. I still have to be in touch with the office all the time, meaning it's never really a full break, even if I go on vacation.

That's a lot to handle. We know that Kenai, and the Kenai River, are famous for fishing—is that one of your interests?

Yes, I've fished commercially my whole life, and until last year took weeks off in the summertime to fish commercially. I always take my inReach, which is a satellite communication device, on the boat with me so that if something does come up at work, I can always respond because there's nobody else. I live on the Kenai River, but that's just sport fishing. The commercial fishing I do is actually in Bristol Bay.

What other hobbies do you have?

Like most people that live in Alaska, I really like the outdoors. I do a lot of sport fishing and hunting and I also do a lot of coaching. I have three daughters, and all of them are soccer players.







I coach their competitive soccer teams, and then I also help out with the girls high school soccer team.

That's wonderful. Did you grow up playing soccer?

Yes, in high school, but not in college. They just sort of needed a coach in our small town, and I've been doing it ever since.

Can you tell us about some of the unique municipal legal activities in Kenai—is any of it related to hunting and fishing?

One of the things that's unique about Kenai is that we have a municipal airport here that is run by the City. We took it over from the Federal Government, and part of transfer included a huge land grant, so the city owns a lot of property that came from the Federal Government. We do a lot of land transactions here because we're such a large property owner within the municipal boundaries. We also have a lot of oil and gas activity outside the City, and inside the City there are a lot of active wells and other associated oil and gas activityThere's also something unique in the Kenai River: we have what's called a personal use dip net fishery. People from all over the state travel to Kenai to catch their salmon for the season, so we have this huge influx of Alaskan residents that come to the City every July to do what's called dip netting, catching fish in a hoop shaped net as the fish travel upstream.. That's been a huge lift for us and has really transformed over the years.

As the landowner of the beaches, the parks, the launch ramps where people the dock and where people access the fisheries, we take many steps to manage everything. There's such a high volume of fish that are taken from the river during this time that we've taken a new step--to rake the beaches with tractors every day to make sure that all the fish carcasses get put back into the water. That's a big effort that we do for a short period, about three weeks every year. Thousands of visitors come, and we're a pretty small population.

Within City boundaries, we're probably just under 8,000 residents, but we're kind of a hub for the area. There are a lot of other towns or census areas around where people come from to do their shopping, like at Home Depot and Walmart, so we provide a lot of services and economic activities for people outside of our borders. Otherwise related to fisheries, which can become very political with all the different user groups; sport, personal use, guided, subsistence, and commercial, the City stays out of allocation issues, and focuses any advocacy with state and federal regulators on healthy runs and opportunity for all.

Within City limits, are residents fairly spread out? Is there a central hub of Kenai?

Yes, we are spread out, although Kenai certainly has a central commercial core and a large residential area. I think a lot of people that work outside the city live in the City. Alaska is really heavy in oil and gas development, and many of our residents work in other places around the state. We have many people here that work shifts on the North Slope--they'll go to work for two weeks and then they're off for two weeks and they'll come home to Kenai.. A lot of our residents might not work here in the City but choose to live here because it's such a great place to live.

Do you often work with native organizations in Kenai?

Yes, that's one of the newer approaches that we've taken; we've really tried to work closely with some of the native organizations. The Kenaitze Indian Tribe and the Salamatof Tribe have a big presence in the City and our City Council has taken the initiative with the tribal councils to have at least one or two meetings together each year. We've partnered on things from culverts going under the road to improve fish passage to building parks and playgrounds. We've worked with them to apply for grants for new fire trucks and other resources. We have a really close relationship with the tribal organizations and work with them to make the City a better place for everybody.

Is there any one thing you enjoy most about being City Attorney of Kenai?

I think what I enjoy the most is the diversity of the legal issues that come to me Every day is something new. I also really enjoy the opportunity to collaborate with our departments on the front end of things before problems arise, working on policies with our police or other departments. I think a lot of attorneys are used to coming into issues when there's a prob-

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Day in the Life *cont'd from page 21*

lem, and I really appreciate getting to work on the front end of things to avoid problems before they happen.

I know you said that there's a lot of variety in your work, but can you walk us through a typical day in your life?

Sure. For example, today I have traffic court which takes place once a month. It reminds me of when I was a kid and I used to watch Night Court. I enjoy it. It's a lot of fun. It's a good opportunity for me to interact with our residents. So, I have that today. We'll do anywhere between two to ten mini-trials a day. I draft a lot of legislation for our Council and for the administration. I work on code amendments. I review every contract and help develop contracts. I also do a lot of HR work. We do have an HR director, but I get involved in a lot of disciplinary matters or other HR issues. I enjoy getting to work with our employees, finding solutions, and trying to make the City a good environment for all of our workers. We also do a lot of administrative hearings --"Board of Adjustment"-- for planning issues or other types of things. We also run senior housing here in a senior center, so I get to work with housing and feeding some of our senior population. I work with our animal control, police and fire, parks and recreation. I just enjoy, like I said, the diversity of all the different issues and working with everybody to get projects done in the City.

Are there any thoughts you'd like to leave us about Kenai?

I just really feel grateful that I get to live and work here. It's a great community. One of the things that I really enjoy is that I can come home from work and go fishing from my front yard and catch dinner. There are a lot of unique experiences. We have caribou and moose in our yard almost every day. Our closeness to the natural environment has been a great place for me to raise my three daughters and share my interests with them.

Thanks a lot, Scott, and Happy New Year!

ML

Amicus *cont'd from page 23*

imprimatur" necessary under Supreme Court standards, finding that in Stinnie's case there was "little question that [the] preliminary injunction's 'alteration of the legal relationship of the parties'" satisfied the necessary Section 1988 standard, because it afforded precisely the relief the plaintiffs had sought – the reinstatement of their licenses. Four judges dissented, arguing that "the relief must come from a judicial decision, not the voluntary act of the opposing party, so that it is enforceable by the court," and offering a non-legal analogy for the inadequacy of a preliminary injunction as the metric for attorney's fees:

> If anyone doubts that there is a difference between actually prevailing and having a likelihood of success, just ask the Atlanta Falcons—or better yet, their fans. Mid-way through the third quarter of the 2017 Super Bowl, the Falcons had achieved a great deal of success. . . . The Patriots came back to win 34-28, the largest comeback in Super Bowl history. Likelihood of success is just not the same thing as prevailing.[15]

Challenging the Fourth Circuit's analysis and citing a circuit split on the issue, the Commissioner of the Virginia Department of Motor Vehicles sought review by the Supreme Court, which granted cert on questions it had not previously resolved: whether, to "prevail" for Section 1988 purposes, "a party must obtain a ruling that conclusively decides the merits in its favor, as opposed to merely predicting a likelihood of later success" and "whether a party must obtain an enduring change in the parties' legal relationship from a judicial act, as opposed to a non-judicial event that moots the case."

Lackey v. Stinnie, no. 23-621, was argued before the Court on October 8, 2024, and an opinion awaits. Some Court watchers perceived that a majority of justices agree that the plaintiffs achieved "prevailing party" status for Section 1988 purposes. If so, the outsized financial implications of *Stinnie* for governmental defendants are evident, given that attorney's fees in Section 1983 civil rights cases can be massive, exceeding damage awards or other compensation, in some cases reaching millions of dollars. A decision establishing that a mere likelihood of success and/or a non-judicial event that moots a case satisfies the requisites for a Section 1988 fee award will no doubt stimulate further Section 1983 filings.

***Whitson v. County of Sedgwick*: Governmental Liability for Criminal Acts by "Final Policymakers" (Tenth Circuit)**

Sheriff Thomas Hanna, the highest-ranking law enforcement officer of Sedgwick County, Colorado, sexually assaulted an intellectually disabled prisoner at his home while transporting her between county jails. The victim's civil rights suit under Section 1983, filed through her guardian ad litem, resulted in a $8.25 million award of compensatory and punitive damages against Hanna, who was also criminally charged. But her action was dismissed by the district court as to the County and Sheriff's Department, on the basis that they could be liable only if "the challenged conduct [had] been taken pursuant to a policy adopted by the official or officials" and because "Hanna's actions were not pursuant to Department policies, but in direct contravention of them."[17]

On appeal, the Tenth Circuit reversed in a split decision, holding that "Sheriff Hanna's actions fell within the scope of his policymaking authority regarding the custody and care of prisoners and flow the municipal defendants to liability."[18] The majority cited a Colorado statute which provides that the Sheriff "shall have charge and custody of the jails of the county, and of the prisoners in the jails, and shall supervise them himself or herself or through a deputy or jailer," and concluded that "Hanna's