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Rabinowitz New Chief Justice

Jay A. Rabinowitz, 51, has been named as the next Chief Justice of the Alaska Supreme Court.

Justice Rabinowitz was unanimously elected to the three-year term as Chief Justice by his colleagues. The Alaska Constitution provides that the five Supreme Court justices will elect one of their number as Chief Justice every three years.

Rabinowitz succeeds the present Chief Justice, **Robert Boochever**, 60, in the rotating position.

It will be the second time that Justice Rabinowitz has been elected as Alaska's highest judicial officer. Following former Chief Justice George Boney's untimely death in September 1972, Rabinowitz was elected and served until 1975, when Boochever was named Chief Justice.

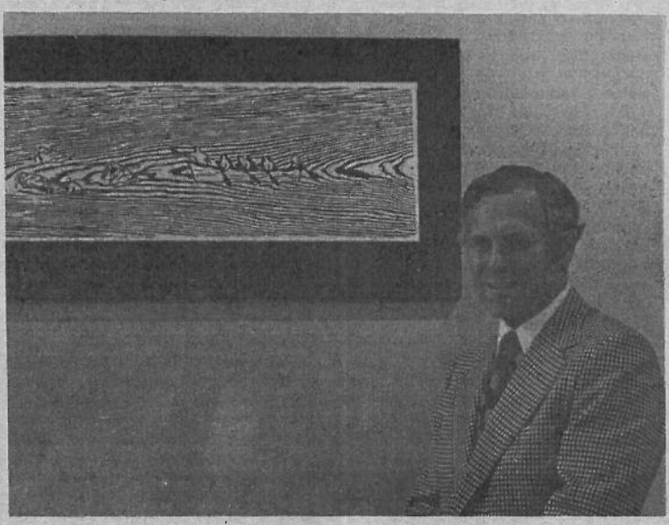
"I am honored to have the confidence of my colleagues and the privilege of serving again as Chief Justice," Rabinowitz said Friday morning. "I am confident that with the dedication and skills of Alaska's magistrates and District and Superior Court judges, together with our administrative staff, that this branch of government will continue to meet its constitutional obligation of providing equal justice to all of Alaska's citizens."

Jay A. Rabinowitz

"I want to assure the citizens of Alaska that our committment to provide the best possible judicial services to urban and rural Alaskans will continue and will be pressed to its fullest extent," Rabinowitz continued.

Rabinowitz, who resides in Fairbanks, came to Alaska in 1956. He served as Assistant U.S. Attorney in 1959 and then as Deputy Attorney General and Chief of the Civil Division in the state's Department of Law. He was appointed a Superior Court judge in May of 1960 and then, in March of 1965, was appointed as Associate Justice of the Alaska Supreme Court, which then consisted of only three members.

A 1952 graduate of Harvard Law School, Rabinowitz is married and has four children. He served as a member of the U.S. Army Corps during World War II.



Roger Kunayak's "Spring Walrus Hunt," presented to Chief Justice Boochever.

Chief Justice Boochever Honored

The Honorable **Robert Boochever**, Chief Justice of the Supreme Court of the State of Alaska from 1975 to 1978, attended ceremonies in his honor on September 27, 1978 in the Supreme Court, Juneau, Alaska. The master of ceremonies, succeeding Chief Justice **Jay A. Rabinowitz** introduced a number of speakers who paid tribute to the Chief Justice, focusing on various aspects of his career at the bar and on the bench since he first came to Alaska approximately thirty years ago.

On behalf of the State of Alaska, the Honorable **Lowell Thomas, Jr.** recounted personal and professional experiences with the Chief Justice. **Michael Holmes**, Esq., of the Alaska Judicial Council, praised the Chief Justice for his guidance and work with the Council. On behalf of the Alaska Bar Association and the Board of Governors, **Harry Branson** thanked the Chief Justice for his efforts in bringing about "a golden age of detente" between the Court and the Bar. **Michael Thomas**, Esq., vice-president of the Juneau Bar Association, added his comments on behalf of that organization.

It was noted that during his career at the bar, Chief Justice Boochever had been elected president of both the Alaska and Juneau Bar Associations.

Arthur H. Snowden II, Administrative Director of the Alaska Court System paid tribute to Chief Justice Boochever in his administrative role on the Court and in the system.

Former Justice **John H. Dimond** joined the present Associate Justices of the Supreme Court, the Honorable **Roger Conner**, the Honorable **Edmund W. Burke**, the Honorable **Warren W. Matthews**, and the Honorable **Thomas Stewart**, Presiding Judge, First Judicial District, in commenting upon the various aspects of Chief Justice Boochever's term on the Alaska Supreme Court, both as an Associate Justice and as its retiring Chief Justice.

Justice Rabinowitz joined the other jurists in urging Boochever to continue on the Court as an Associate Justice and put off any retirement plans from the Court itself as long as possible. Justice Rabinowitz presented the Chief Justice with a painting entitled "Spring Walrus Hunt" on behalf of his friends and well-wishers.

Hawaii Dissidents Appeal

Bar Association members who challenged this year's Hawaii meeting by the Board of Governors have appealed the superior court decision which upheld the meeting.

Superior Court Judge **Mark Rowland** upheld the validity of the meeting, held on Kauai in February, in an order signed September 11.

The dissident bar members, who are plaintiffs in the suit, filed notice of appeal from the September 11 order on the 30th day after the order was signed. **William Garrison**, bar counsel, said the Bar association had already appealed from Rowland's order denying attorney's fees in the case.

Bill Parker, Anchorage legislator who was instrumental in getting the open meeting statute passed, is one of the two non-attorney appellants. He contended that it was his intent and, he felt, that of the legislature that quasi-governmental bodies such as the Bar Association be covered by the statute provisions.

Bruce Horowitz, Alaska Legal Services attorney, said that the Board of Governors had admitted that its meetings were not open to the public.

Briefly, points on which the appeal is based are:

- The trial court erred in holding that Alaska's open meeting statute, AS 44.62.310, did not apply to meetings of the Board of Governors.
- That the trial court erred in holding that the association gave adequate notice of the February meeting under AS 44.62.310.
- That the court erred in holding that the Kauai meeting was properly conducted at that location.
- That the trial court erred in not ruling that the board "acted in an arbitrary and capricious fashion" in conducting the meeting in Kauai and not holding that such meeting violated the plaintiffs' constitutional rights.
- That the trial court erred in ruling for the board on a motion for summary judgment.

Fairbanks Attorney Wins $400,000 Verdict

On Wednesday, September 27, 1978, Fairbanks attorney **Richard Savell** won a $400,000 verdict for his client, police sergeant Mark Wayson in an employment discrimination suit against the City of Fairbanks and former City Manager Edward Martin.

Martin had ordered Police Chief Richard Wolfe to re-assign Wayson after a complaint was lodged against him alleging brutality and racial prejudice in arresting black persons. Wayson was removed from his job as parole shift supervisor, assigned briefly as a clerk and later as an investigator in the District Attorney's office.

Wayson was denied a grievance hearing and a petition to the City Commission on Ethics and Employee Appeals was rejected on the grounds that the reassignment was a reclassification and not a demotion or suspension. In arriving at its decision, the Commission stated that it found no evidence of racial prejudice in Wayson's performance and added that the procedure followed by the City Council of Fairbanks was "fundamentally unfair."

After nine days of trial and four hours of deliberation, the jury decided that Wayson was entitled to $200,000 compensatory damages because of lost overtime pay and promotion opportunities caused by the reassignment, and $200,000 in punitive damages.

Inside

West Publishing Sales Representative Dies

Roger J. Gill, 54, suffered a fatal heart attack on September 4, 1978. Gill, a sales representative for West Publishing Company for over twenty years was responsible for law book sales in Washington state and Alaska and was in Alaska on a selling trip when the heart attack occurred.

Born October 24, 1923, Gill was a lifelong resident of Seattle, Washington. Surviving him are his wife and nine children. Although a law school graduate, Gill never practiced. His education, however, served him well in ably assisting young lawyers in purchasing libraries for starting practice. West has not yet appointed another sales representative for Alaska and is taking book orders directly from its home office in St. Paul, Minnesota.

New Child Support Regs Stir Protest

On October 13, at 7:00 P.M., the **Alaska Department of Revenue, Child Support Enforcement Agency**, held its Anchorage round of hearings to receive public comment on its new proposed regulations.

The stated purpose of these regulations is to establish an administrative process for setting and collecting child support payments. In an attempt to assist in the process of determining the amount of child support, the Agency contracted with the Institute of Social and Economic Research of the University of Alaska to prepare a document entitled **Standards for Determining Child Support Obligations in Alaska**. This document was prepared by **Michael J. Scott**, Assistant Professor of Economics, and **Paul Stout**, Information Officer for the Agency.

Hearings on these regulations were also held in Fairbanks and Juneau. The Anchorage round of hearings was the best attended, with 8 adults and 2 children. In Fairbanks, 4 people appeared; in Juneau, no one.

Prior to the commencement of the hearings, attorneys acting on behalf of the **Family Law Committee** of the **Alaska Bar Association** requested a continuance to review both the regulations and the Standards. This almost one pound document, while dated June, 1978, was not placed into the hands of any of the members of the public until October 11. Prior to that time a "bootlegged" Xerox copy had been circulated among a few attorneys.

Far Ranging Effect Conceded

The major objection voiced by the attorneys who have been involved in the regulations is that their effect will be to establish child support obligations for all cases in Alaska, not just those handled by the Child Support Enforcement Agency. During the hearings, **Paul Stout** and **Phil Nash**, Executive Director of the Agency, acknowledged that this would be the effect. Mr. Stout indicated that he felt that the Standards needed to be reviewed. However, neither of these individuals on behalf of the Agency, nor **Bruce Tennant**, from the Attorney General's office, representing the Agency, were willing to commit themselves to an agreement that the time for public comment on the regulations would be extended.

It was interesting to note that Mr. Scott in his acknowledgements, thanks a number of Anchorage attorneys, including several who presently oppose the speed with which these are now being adopted. However, in reviewing the information provided by the attorneys, Mr. Scott states, "No notes were taken during these discussions, which averaged 45 minutes in length; therefore, to some extent, these comments reflect the authors recall and fragmentary notes written after each session." The major criticism expressed so far is that no one who contributed to the information contained in these Standards has had an opportunity to review them in order to determine whether or not the final form and use of that information is accurate.

An additional criticism which has been voiced is that the Agency would have the option of attempting to collect from the custodial parent all or a portion of the actual costs which might be incurred. Additionally, there is no requirement for notice to the general public that these fees may be charged and no schedule included as part of the regulations.

It has been the position of the attorneys involved in reviewing this matter that standards are, indeed, necessary. However, the lack of involvement by the practicing Bar in the preparation of the present Sandards is a great weakness. A request has been made to the Child Support Enforcement Agency to extend the time for evaluation of these Standards and to assist in arranging meetings between Mr. Scott and concerned attorneys.

91 Pass Exam

The results of the July bar exam were announced on October 26. Names of the successful applicants are listed below:

Allan, Daniel W. c/o Baker SRA 473-B Anch. 99507.
Anderson, Patrick c/o Rice Hoppner, Hedland etc. 1016 W. 6th, Anchorage 99501.
Armstrong, Vaughn S. 5307 Dorbrandt St., Anchorage 99502.
Avery, Charles R. 1219 Inlet Pl., Anchorage 99501.
Baird, Ronald L. Kemppel & Huffman, 310 K St. No. 404, Anchorage 99501.
Bagne, Conrad N. P.O. Box 69, Barrow 99723.
Barnett, Terry 311 Franklin No. 201, Juneau 99801.
Beebe, Thatcher 1741 W. 13th Ave., Anchorage 99501.
Blum, Madelon P.O. Box 1021, Auke Bay 99821.
Brown, Cecelia P.O. Box 304, (Ak. Legal Services-VISTA), Kodiak 99615.
Buckalew, Robert J. 3124 Antioch Cr., Anchorage 99504.
Bunyan, S. Wyanne, Pouch K, Juneau 99811.
Burton, Danny W. P.O. Box 622, Palmer 99645.
Campbell, Sharyn G. 4240 Tahoe Dr., Anchorage, 99502.
Cavness, Charles L. 1725 Brink, Anchorage 99504.
Cerro, Linda Croft, Thurlow etc., 725 Christensen Dr., Anchorage 99501.
Cheek, Allen R. S.R. Box 30142, Fairbanks 99701.
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Coe, Charles W. 8520 Pioneer Dr., Anchorage 99504.
Cole, Patrick SR 20664, 20 Mile Steese Hwy., Fairbanks 99701.
Colver, John W. 2123 Hillcrest Pl., Anchorage 99503.
Coyne, John W. 3641 Burl Court, Anchorage 99504.
Cummings, Wm. F. Box 727, Douglas, Ak. 99824.
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Ells, Mark 1220 Cordova St. No. A, Anchorage, 99501.
Elsten, Lloyd 604 Barnett No. 228, Fairbanks 99701.
Erickson, Paul J. Hughes, Thorsness, etc. 509 W. 3rd Ave., Anchorage 99501.
Floyd Francis c/o Brad bury and Bliss, 430 C St. No. 301, Anchorage, 99501.
Foster, Gary (Hughes, Thorsness, et al) 509 W. 3rd Ave., Anchorage 99501.
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Gingras, Thomas S. 2608 W. 30th No. A, Anchorage 99503.
Goff, Neil 7078 Weimer No. 2, Anchorage 99504.
Gottstein, James B. 1400 E St., Anchorage 99501.
Hamm, Kenneth R. P.O. Box 248, Bethel 99559.
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Holmes, John M. P.O. Box 309, Barrow 99723.
Horetski, Gayle A. D.A.'s office, 941 W. 4th Ave., Anchorage 99501
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Kashi, Joseph L. P.O. Box 2073, Soldotna 99669.
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King, Gregory 4161 Hampton Dr., Anchorage 99504.
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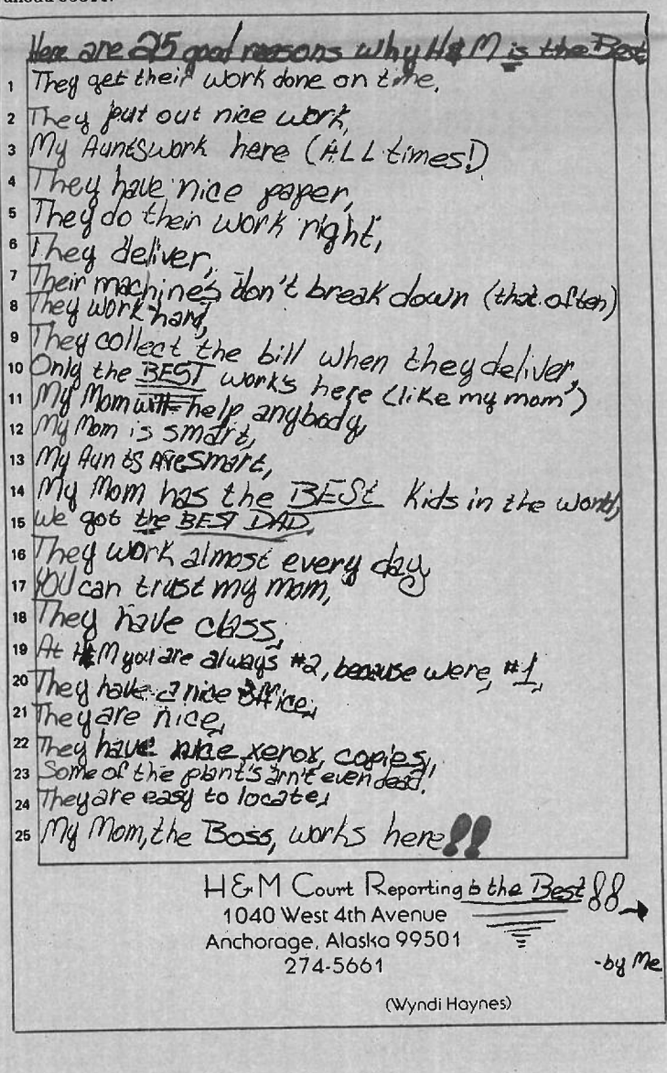
Williams, Deborah L. Dunn, Baily & Mason, 429 D St., Anchorage 99501.
Wong, William J.S. Box 430, McKinley Park 99755.
Zimmerman, Christopher E. S.R. Box 61209, Fairbanks 99701.



The ERA — Is It Really Necessary for Sexual Equality?

by Carol Johnson

A few weeks ago, Congress voted to extend the deadline for ratification of the Equal Rights Amendment. The Senate also defeated an amendment which would have allowed states that have approved the proposed amendment to rescind that vote. To date, the amendment has been approved by thirty-five states, three short of the number needed for ratification.

Phyllis Shafley, the President of STOP ERA, the strongest and most organized opponents of the Equal Rights Amendment movement, may have partially succeeded in obscuring the real issues concerning the need, or lack thereof, for an Equal Rights Amendment, by clouding it with emotional, nonlegal accusations. It is the position of Ms. Shafley and her supporters that the ERA would take away the rights and benefits that women purportedly now enjoy, such as the "right" to be supported by their husbands, to attend "single sex" schools, or participate in "single sex" sports, use separate lavatories, and not be drafted. She argues that the Equal Rights Amendment would bring the Federal government into all aspects of our lives, destroy the family, take power away from the states, remove the wife from the family home, and take jobs away from men. Her propaganda mixes the legally impossible ("unisex" toilets) with what has always been unquestioned (the drafting of women). Ms. Shafley tells all who listen that an Equal Rights Amendment would mean gay teachers, women forced into combat, and men refusing to support their wives.

Ms. Shafley, a law student in addition to being a mother of six, columnist, author, and lecturer, fails to distinguish between 19th century common law and 20th century laws and practices. Those states which have adopted ERA-type constitutional amendments and transitions to the realities of modern domestic life without causing the immediate disintegration of the social fabric that Ms. Shafley forewarns. In fact, there is no evidence that women in those states which have adopted Equal Rights provisions in their Constitution or which have passed Equal Rights statutes have litigated the loss of those rights they claim. It is uncontroverted among legal scholars that the Equal Rights Amendment would, in no way, threaten a citizen's already existing constitutional right to privacy.

The proposed amendment that has caused all this furor is, on its face, a remarkably uncomplicated document. The text of the Equal Rights Amendment is as follows:

Section 1. Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex.

Section 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

Section 3. This amendment shall take effect two years after the day of ratification.

In the midst of all this uproar, or perhaps sitting, not so quietly, on the sidelines, are those who are asking: "Is the Equal Rights Amendment necessary for sexual equality?"

Many lawyers, including those opposed to the Equal Rights Amendment, argue that the existing guarantees of the Fifth and Fourteenth amendments of the United States Constitution already prohibit discrimination based on sex. They also point out the Federal legislation which has been enacted that purports to guarantee sexual equality in educational, employment, housing, and credit opportunities. While most of these statutes regulate private acts, in some instances they govern public conduct as well. In addition, state legislation in many jurisdictions, including Alaska, provides similar protection and remedies which can be enforced in state administrative agencies and/or in state courts.

The supporters of the Nineteenth amendment to the United States Constitution, which was ratified in 1920, undoubtedly expected its ratification to bring true, legal equality to women. It soon became apparent, however, that true sexual equality would only occur in a piecemeal fashion, and thus many women were convinced that only by another Constitutional amendment would this occur.

Unquestionably, the inequities in sexual equality have gradually been eroded through legislation or litigation in many areas, including jury service, social security benefits, treatment in the military, taxation, welfare, legal capacity, age-of-minority laws, classifications, discriminating against a parent or child based on out-of-wedlock birth, and restrictions on access to contraceptives and abortion.

However, the United States Supreme Court has treated most of these cases as occasions for *ad hoc* rulings, and many of these decisions are fraught with inconsistency. As a result, at the present time the Court's position can perhaps best be characterized as "confused." A brief review of sex-based discrimination cases decided by the Court during the 1970s is helpful in this regard.

Equal Protection

The first major case in which the Court confronted the issue of sex-based differential treatment was *Reed v. Reed*. In a unanimous decision written by Chief Justice Burger, an Idaho statute giving men preference over women in administering estates was struck down. The basis for the Court's decision was that the state's interest in reducing the work laid on probate court was inconsistent with the equal protection clause. Two years later, in *Fontiero v. Richardson*, the Court held that married women in the military were entitled to the same fringe benefits as married men. The language in the opinion raised expectations that the Court was prepared to give sex the same close review that it gives to classifications based on race, national origin, and religion. Four justices of the Court declared sex to be a "suspect classification." However, since the opinion was approved by less than a majority of the Supreme Court, its precedential value is quite limited. As a result, lower court decisions have been inconsistent in their application of the prinicple of equality.

Pregnancy

Further, in 1974, the Court, in *Geduldig v. Aiello*, upheld as consistent with the equal protection concept a California statute that excluded women disabled by pregnancy from a worker's income protection disability insurance plan, despite the fact that it had previously held, in the same year, in *Cleveland Board of Education v. LaFleur*, that school teachers may not be dismissed or placed on involuntary leave arbitrarily at a fixed stage of pregnancy. The following year, the Court held that pregnant women who were ready, willing and able to work may not be denied unemployment compensation when jobs are closed to them.

Employment

In *General Electric v. Gilbert*, the Court, in response to an invocation of Title VII of the Civil Rights Act of 1964, which prohibits sex discrimination in all terms and conditions of employment, held that exclusion of women disabled due to childbirth did not violate Title VII. The following year, in *Nashville Gas Co. v. Satty*, the Court held that it was unlawful under Title VII for an employer to deprive a woman disabled by pregnancy of accumulated seniority.

However, in subsequent cases, it appeared that, at least in those cases where the circumstances could also affect a man, the Court changed its tune. In *Weinbuger v. Weisenfeld*, for example, the Court held that a widowed father was entitled to the same child care benefits that a widowed mother receives. In *Craig v. Boren*, the Court struck down an Oklahoma statute which permitted women to purchase 3.2 beer at the age of 18, but required boys to be 21. However, the United States Supreme Court has *affirmed* a District Court's upholding of an Alabama statute requiring a married woman to use her husband's surname when applying for a driver's license. ERAs supporters content that only enactment of an Equal Rights Amendment would remove this obstacle.

Domestic Relations

In the areas of domestic relations, it has largely been the states which have granted women equal rights with those of the opposite sex. Alimony is no longer an automatic right in virtually all jurisdictions, and in twenty-nine states it is available to both the husband and the wife. In community property and common law states, women share equal rights with their husbands to sell, encumber, manage, and collect income from community property, and are also presumptively marital property.

In most states, each parent has equal rights for custody of his minor children, with the "welfare" or "best interests" of the children the standard by which the Court makes this determination. In reality, though, the "tender years" doctrine, giving preferential treatment to mothers, operates in many jurisdictions. Husbands, however, are increasingly challenging the apparent presumption that the mother is the most fit parent.

Criminal Law

In the area of criminal law, many states, including Alaska, have, or are in the process of, expanding their definitions of rape to include homosexual assaults, the rape of a man by a woman, and the forcing of a husband's sexual demands on his wife when they are separated. Further, admissibility of rape victims' prior sexual conduct or reputation for unchastity or proof of her resistance is now limited or prohibited in several jurisdictions. State prostitution and solicitation statutes have traditionally been enforced only against women. This has led to their challenge on equal protection grounds. As a result, many states are amending their laws to apply to males as well as females.

Some state courts have held that a woman's homsexuality alone is sufficient to make her "unfit" for custody of children born to her and her husband during their heterosexual relationship. Women are beginning to challenge this denial on the basis of the Constitutional guarantees of freedom of association and due process. In the area of treatment of offenders, in many jurisdictions, women are often sentenced to indeterminate, as opposed to minimal or maximum sentences, which men are primarily given. Since women may thus spend less time incarcerated than a man would under a minimum sentence, this sex-differentiated sentencing has been alleged to be violating the equal protection rights of male prisoners. At the same time, since it is possible for a woman to be imprisoned for longer than the maximum sentence than can be given to a man, women are also contending that their constitutional rights are being infringed upon by indeterminate sentencing.

Incarceration conditions frequently differ for men and women, with security measures tending to be less for women, the ratio of staff to inmates higher, but with recreational and vocational opportunities less available. Little of the litigation focusing on prison conditions has challenged the sexually discriminatory aspects of institutionalization of an offender.

In the juvenile offender area, women are often arrested for "activities" which they probably would not be if they were male, such as, status offenses (sexual promiscuity).

Family Planning

In the areas of contraceptives and family planning, the U.S. Supreme Court has invalidated, on Fourteenth amendment due process grounds, a statute which prohibited the use and, in a subsequent case, the distribution to married women of contraceptives. The latter case was decided on equal protection grounds, the former on due process, holding that the right to privacy is the right of an individual, married or single, to be free from unwarranted government intrusion.

The Supreme Court has not yet considered the constitutionality of statutes which restrict a person's right to voluntary sterilization by requiring spousal consent. It has held that spousal consent is not necessary in order for a woman to obtain an abortion; however, while public hospitals must perform elective abortions, private hospitals are not subject to these constitutional guarantees and, therefore, can refuse the provide such ser-

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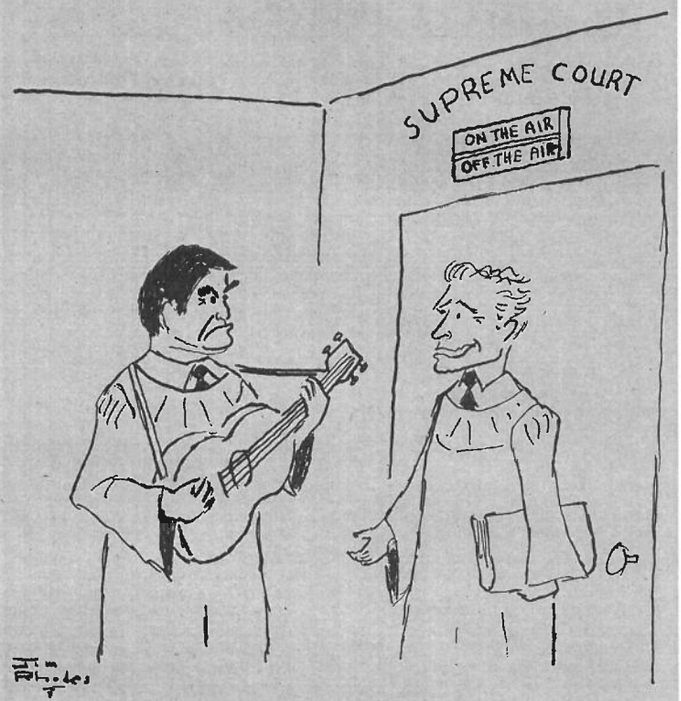
From the Editor

Bad circumstances usually result in bad remedies if the knee jerk reaction principle is followed. It is better to allow the bad situation to precipitate thoughtful analysis leading to a reasoned method of resolving the problem. Given our recent experience with the questionable manner in which our primary election was conducted and the resultant role of our Attorney General, it is now time to thoughtfully pursue possible alternatives to an appointed Attorney General. Putting aside past incidents involving our Attorney General over the past several years, which arguably are politically motivated, and focusing just on the post election court challenge, it seems we have created a situation whereby the actions of an attorney which would otherwise be unethical are in fact sanctioned by law. This is not to be taken as an allegation of wrongdoing on the part of our Attorney General. Rather, it is a realistic characterization of the predicament the Attorney General finds himself in at the present time. He was called upon to represent, simultaneously, the interests of the people of the State of Alaska, the Lieutenant Governor in his role as chief of elections for Alaska, and his boss, the Governor, who had narrowly eked out a victory over his primary opponents.

Had these three interests approached an attorney in private practice and requested he represent them simultaneously in a lawsuit he would surely have informed them that a conflict of interest was inevitable and he could only represent one of them pursuant to our canons of professional responsibility—but in Alaska we have, by law, said that this is all right. While the ethical problem dissolves insofar as attorney representation is concerned, the ethical considerations very much remain. Our Attorney General still must attempt, unsuccessfully, to represent interests in direct conflict with one another. An elected Attorney General would not have such a problem of reprosening the people, his boss and another elected official. He could do precisely what we expect him to do—represent us to the fullest extent possible.

Obviously both an elected and appointed Attorney General procedure will be subjet to extensive politicizing. From that perspective one is no better or worse than the other. Weighing the undesirability of campaigning and getting oneself elected against the public accountability an elected official faces, the scales tip on the side of accountability. But the most important consideration for an attorney—and that's exactly what we are talking about—is that he not be compelled to represent conflicting interests. Rather he can devote his entire attention and energy to representing only one client. In the case of the Attorney General—that means us. Let's think about that.



ED, I KNOW ITS OUR FIRST T.V. APPEARANCE, BUT I QUESTION WHETHER ITS APPROPRIATE FOR YOU TO SING YOUR DISSENT TO THE TUNE OF "I DID IT MY WAY"

Josephson at Large

By Joe Josephson

In a recent article in Encounter magazine, lawyer-sociologist David Riesman has spoken of the legal profession as "a field which caters to the nation's adversarial spirit and litigiousness," adding:

"I say this, although I recognize that many lawyers are in practice people who do seek to resolve conflicts, not to create them. Still, we have created a climate for business in the USA in which, as with universities now, litigation and the fear of it are the order of the day; and litigation is usually an effort to *stop* something, some productive process, and not to *start* something. Hence, I confess I felt a certain dismay when a very intelligent lawyer recently became President of Dupont. Maybe it is the new model. Not a chemical engineer, but someone capable of coping with government regulations, litigious customers, and stockholders, and environmentalists."

An Anchorage Superior Court judge, lamenting the growing work load and calendar congestion, wondered aloud from the bench recently whether citizens' patience with the judicial system would soon come to an abrupt end, culminating even in some dramatic event of protest at the court house!

Observations like these should cause us to wonder whether the bar is doing enough to seek other ways of resolving disputes—ways that are faster, cheaper, and equally just.

The lawyer's finest hour may be in the office prophylactic practices, through counseling and careful draftsmanship, which we designed to avoid misunderstanding and arguments later on. Maybe it is the "adversarial spirit" of the dominant culture that makes good draftsmen and counselors unsung heroes of the profession.

Whenever the subject of the adversary system comes up, the easy response is to say that, like democracy itself, the legal system was never meant to be efficient, or to note that constitutional limitations preclude experimentation with any other modes of conflict resolution.

Another response is to cite arbitration as an alternative to the judicial process; but arbitration is the adversary system in another guise—old wine in a new bottle.

Alaska lawyers should perhaps take a more intense interest in the legal-anthropological work of Alaskans like **Steven Conn** and **Arthur Hippler**. We may learn something from the way in which the successful Native cultures of Alaska have dealt with question of interpersonal conflict. Even if constitutional provisions preclude involuntary experimentation with other methods of conflict resolution, new voluntary techniques may suggest themselves.

One rarely hears about mediation of disputes, except in structured labor-management confrontations. Maybe it's the nature of mediation that it occurs privately, without public fanfare Or maybe mediation isn't occurring very often. As lawyers, when disputes arrive at the office, we assume that the dispute must go into the adversary process, or at the least into arm's-lenght lawyer-to-lawyer negotiations. Perhaps we should also take into account the possibility of mediation and conciliation in areas outside labor law and family law.

The historic medieval techniques of dispute resolution that I remember aren't very appealing. Ordeal by combat, on the theory that the winner of a joust must have fought in a God-approved cause, seems to be illogical—and messy. The variation of putting the disputants' hands in boiling water to see whose skin was first to heal is equally unappealing.

Years ago, family disputes in Alaska were settled sometimes violently, by a method called "the Spenard divorce." We hear little about Spenard divorces anymore, perhaps because of the unification of the Anchorage municipality.

So it's high time to look to the neighboring indigenous cultures for possible guidance, and to suggest the mediation techniques that can keep more people out of court rooms and the expensive procedures of the adversary system.

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"Random Potshots"

By John Havelock

"Courtroom Broadcasting by Televison"

The most compelling argument for television broadcasting of pertinent courtroom proceedings is not the "Right to know" but the obligation to tell.

Some lawyers are too close to the mechanics of judicial procedures to be aware of the importance of the judicial functions to the overall health of a democratic society. Even my brother Josephson, who should know better, sees the court only as a boring, largely private, disputes repair shop, about as worthy of televising regularly as automobile transmission overhauls.

Though Josephson, the seasoned politician, does know better, other intellectuals on the shady side of 40 are handicapped in identifying the essential in public communication by the shelter which a distant youth and directive parents have provided from a new technology. If books, magazines and newspapers and not television have guided his own developing perception of public affairs, an otherwise astute observer is less likely to be sensitive to the role of the visual media, and particularly television, as the socializer of the masses of the people, and then some, now and for the foreseeable future.

Those who broadcast television production may likewise be oblivious to the socializing effects of television despite some recent rude reminders such as the negligence action against NBC, the precursor, perhaps of other efforts to account for television's externalities.

But, at a different level of consciousness, broadcasters are aware of the grip held on the public imagination by the many facets of justice and the system that serves it. The dramas of individual against societal interest, of truth against deceit, of

Continued on next page

A Flight

by Jack Fyfe

It's spring time. The air is still cool and the ground is not yet obscured by grass and a thick mantle of foliage; you can still see a lot of brown soil and last year's dried grass. Perfect conditions for thermals.

You've made this flight a hundred times but you still feel a slight twinge of apprehensive excitement. You always will. You're standing, with several others, on top of Mr. Baldy just outside Eagle River. It is 2700 feet vertically and nearly two miles as the hawk soars to the landing field in town. Mostly forest with some houses and a few winding roads between take-off and landing. That's no problem-you know that, even in still air, you will have at least a thousand feet between you and the ground when you get there. But you're not hoping for still air.

You want to go up and you've dressed for it. You pre-flight your hang glider, adjust your altimeter and variometer and clip in. No one wants to be the first penguin off the ice floe.

And neither do you. It's convenient to have someone out front so that you can see, several hundred feet before you get there, just where the thermals are and where the sink is.

The cool, but warming, air is relatively calm. But then it picks up; in a few moments it's blowing twelve or fifteen so you decide to fly. You pick up the glider, look to both sides to be sure you are clear of obstructions, and start your take-off run. In this wind it's only a step or two and you're off. And climbing in a steady thermal. The variometer registers your rate of climb—400 feet a minute. In several minutes the altimeter shows a thousand feet gain and you're still going up.

Looking down is always thrilling. Especially if you see other gliders—the ones who didn't want to be first off—circling in your thermal.

You continue to fly in a gentle turn, always watching the variometer to be sure of staying inside the strongest part of thermal. As you climb, the air gets cooler and you're glad you wore a jacket and gloves. The altimeter shows 6800 feet—more than 4000 feet above your two-step take-off and nearing a mile and a half above the landing field. Still 500 feet above is the flat, expansive, base of the cloud that is being generated by the thermal and which delineates the point of condensation. The rate of climb is reduced, now, as you near the top of the thermal. Only one or two hundred feet per minute and the air is choppy. In an upward bounce you float a hundred feet up inside the cloud. The ground dims and the air is misty grey and decidedly moist. In another minute you're again beneath the cloud.

This part of the flight is almost ethereal. The cloud base is flat but wispy tendrils, a hundred feet long, trail below the cloud. While floating beneath the cloud you fly between and through the tendrils. You drift in and out of the cloud, never really out of sight of the toy landscape below, hoping that the ground so far below continues to generate the uplifting warm rush of air that is allowing you to play tag with the clouds.

The ground is still thousands of feet below—the altimeter says just under 7000 feet. Eagle River houses, diminished to Lilliputan size, dim and brighten as you drift in and out of the cloud. You're flying prone, your arms slightly outstretched on the control bar. Unless you turn your head to the side, you cannot see the wing of the hang glider; intellectually you feel alone in the sky. The feeling is one of silence, solitude, and peace. You are mindful of the thermal core in which you are flying, of the cloud above, of the other gliders circling with you. But you are more cognizant of the warm rising air, of the aloneness, and of the airy freedom.

As suddenly as it started, it silently ends. Cool air engulfs you as the bottom of thermal drifts up into the cloud. The lift abandons you and you begin the descent.

You look around hopefully for another cloud and another thermal. Your searching flight carries you to the other end of Eagle River, over the large asphalt roof and parking lot of Carr's, over the UBS lumber yard and over a gravel pit. Although the variometer buzzes a few times and shows 100 feet per minute up, and although you instinctively pursue the sound by sharply turning toward the elusive thermals, you miss it—or it wasn't there.

Nearly a half hour after losing the first thermal, and more than two hours after stepping into the sky, the ground is now only moments away. A few lazy eights, each initiated by a stall, a near vertical dive and a climbing turn to burn off the remaining altitude. Fly down the road, turn right over the trees that are only ten feet below, and land. The others are already there or are making their approaches and the next minutes are spent re-flying the flight with each other.

Jack Fyfe is an Anchorage attorney with a general practice. Active in the Alaska Sky Sailors: won first place last year in Alaska-wide hang glider competition and third place this year. Longest distance flight is five miles at Hatcher Pass. Longest duration flight was 3½ hours at Waimanello, Hawaii. Highest launch was 5500 feet. Has flown from Pioneer Peak near Palmer and will fly from the 10,000 foot high peak of Haleakala on Maui in February (after the Bar convention).

Continued from preceding page

privilege against poverty, of man against woman, of private conflict and societal resolution, for better or worse, these are the grist of the television mill. Cops, courts, prisons, fairness and unfairness, the mitigating and aggravating circumstances of social tension, these are the settings and subjects of most television production. You knew that, didn't you?

Boring? Well, justice is boring, Anchorage is boring and life is boring if you do not use some editorial selectivity. There has been no suggestion that all judicial proceedings should be televised all the time.

The real questions for television coverage are not in the threshold question, whether it should be done, which my friend stumbled over, but in how it should be done, the shaping of practical and ethical editorial policies. What should television show and how can it be edited to provide maximum information in limited time? The editorial question is no more a reason to bar TV than it is to bar newspapers. We do not bar news reporters from the courtroom because they provide selectively limited accounts of proceedings. Nor do we bar reporters because some lawyers, upon seeing a reporter in the audience (or a client, or a pretty girl), may adjust their style with another audience in mind than the judge.

The opening of the courtroom to television brings with it more of an adaptive challenge to the medium than to the courtroom. A new strategy for providing coverage must be found to suit a new medium. A new opportunity is offered, and a new obligation, to think through the edtiorial process. A new style of coverage may emerge which better informs the public of the operation of this nuclear, social institution.

Massive visual media coverage exists now, but it is derived from the realm of artistic liberty, not factual exposition. The problem with television treatment of justice and its system, you say, is that what is shown bears no resemblance to the reality.

Not so. What is so socially dangerous about the present coverage of the justice system provided by the visual media is that it bears so much resemblance. The ingredients are all there, the uniforms and the sirens, the robes, the paneled courtrooms, the gavel, the counsels' tables, the barred prisons, the ferocious animals. It seems very real. The problem with the coverage by visual media of the law and justice scene, is not its irrelevancy but its distortions.

The fascination, though, of the visual media and the public with justice is no more than recognition due to the central role of justice and its administration to the social circumstances of life.

Since Pound and Cardozo removed the veil, we acknowledge readily that the courts, on many occasions, are about much more than narrow dispute resolution and the "Finding" and application of established law. The judges, particularly in America, with its tradition of written constitutions, are legislators of a higher order whose influence on the evolution of the legal environment complement that of more obvious legislative bodies. Since this legislative product is not the work of a representative body, and is not directly influenced by the popular will, there is all the more compelling a need to get the justifications of judicial acts before the public.

A democracy in which judicial administrative is a central part of the public administration, based upon separation of powers and judicial review, cannot afford to have public understanding of its institutions, practices, and its results left exclusivley to the representational whims of media whose basic functions and traditions are to entertain as an inducement to the sale of commercial products. There is no realistic possibility near of radically altering the direction of the "wasteland" in this country. But it can and has been turned gradually by exemplary eforts. Small doses of accurate and interesting reporting of judicial events can influence the commercial producers to follow more realistic modes.

The make its case, the justice system must not only make itself available, a disdainful and slightly begrudging allowance to the "people's right to know" about all matters financed from the public purse; it must seek opportunity to speak for itself, to speak clearly, directly and truthfully. And it must seek that opportunity in films and television which are the way ordinary people learn about life beyond first hand experience including the way that society handles its internal group and individual tensions and conflicts.

It is important that the public learn how and why the courts reach the conclusions they do. But television can serve an even more important social role in portraying affirmations of normative behavior. The public learns from judicial drama, from watching the machinery of justice mill the grist of conduct, how it is to behave.

Fortunately for the administration of justice and for the quality of community life, almost everybody behaves according to norms, that is normally. The norms are learned. For better or worse they are learned now very much through television. Particularly the young learn from television about normal behavior in extraordinary circumstances.

The function which the courts serve as normative learning centers can be traced back through judicial history to the origins of civilization. The division of labor, particularly communications specialization, and allocations of time in an industrial society have robbed the courts, temporarily, of much of this original function. In an agricultural society before radio, television, movies and the impersonalities of metropolitan life took hold, it was feasible for the county courtrom to be a focal point of a host of activities and community interest. We still keep to a tradition of building courtrooms with spacious spacious spectator accommodations from the actual experience of balmier days. No one goes down to the court to learn about what's going on today. Urban time is not structured that way.

But the atrophy of the courts' communications power is a problem for society and its justice institutions, not an advantage, as evidenced in part by such phenomena as lack of confidence in the judiciary, contempt for the lawyer's role and massive indifference or hostility to constitutionally protected civil rights. When its professional practitioners are indifferent to public perceptions of the judicial process, then we are left to those who would portray the system falsely for their own purposes. The system can be portrayed as so stupid and irrational that "Dirty Harrys," contemptuous of procedural justice, men whose power comes from the barrel of a gun, become the models of a sound justice administration.

When Solzhenitsyn spoke of a right "not to know," the last place he had in mind for a blackout was the courts. His point was that our preoccupation with trivia allowed us to overlook central institutions. The alienation of the general public from the judicial function is a central problem of American society. Much of this problem is a result of changing patterns of communications which in half a century have partially isolated the courts from the mainstream of public communication. Yet the courts' role remains essentially central and the need of the public to be familiar with this institution was never less. Reports from other states which have brought television to the courtroom tend with little exception to discredit fears that the quality of justice in the courtroom is in any way impaired by television coverage subject to reasonable controls.

It is possible that extensive television coverage of courtroom proceedings in Alaska will, for practical purposes, terminate next year. Courtroom proceedings do not lend themselves to the traditional, low cost spot coverage of events favored by conventional news programming. Hours of coverage and extensive professional editing are expensive. But if the television camera lens disappears from the courtroom, the major loser will be the justice system and democratic government.

Letters to the Bar Rag

Televised Trials

Most of us believe that trials should be open to the public. But hardly a courtroom in this state has room for more than a hundred spectators. Small wonder. The public has been very reluctant to come down and watch. Maybe it has something to do with the fact that most people would have to quit their jobs or leave small children unattended at home to meet the court schedule. The nerve!

It doesn't seem to be that the public is exactly uninterested, either; law is at least half the news in this State.

But when a video camera is interposed between the proceedings and the human eye, the trial acquires a mass audience. Is there something about a *televised* trial that will cause mass shootings and mob hysteria? Well, some spectre makes attorneys gnaw nervously at the handles of their briefcases at the very thought. Are we afraid we'll be forced to wear funny hats and learn to tapdance or play the slide trombone to entertain the public?

Now perhaps legal proceedings are too complicated or too heady and no one would bother to watch. But how could a video tape of live proceedings be more unsavory than analytical coverage of court matters by the newspapers, radio, and local television news. The press defends the public's right to know *about* what happens in court. Why can't the public have television access to the raw material upon which press opinion is based? Must a kindly press supervise court information? Can't the public handle reality?

The public "right to know" is, in and of itself, a pretty crummy right. "Knowing" implies that someone out there has a firm liplock on the Truth, a generous assumption at best. The *fundamental* public right is in the right to reasonable access to the raw data and information of civil government. There are a lot of problems with the legal system which only an alert public can correct. Why not make it easier for the public to see how the legal system really works?

Really, wouldn't it do your heart good to know that that vexious and foolish opposing counsel is getting reamed by a judge in front of the television public? Wouldn't the public like to know which attorneys seem to command the fair respect of the court, and which do not? And mightn't it be...*invigorating* to have the camera zero in on a dozing judge?

Obviously, the public can't spend its free evenings camped outside the courthouse to get a prime seat in the courtroom. When the public wants to know what courts and lawyers are *really* like, what's wrong with the *Paper Chase* or *Kaz* (new "lawyer" shows that will *really* turn your stomach)? How long has it been since you've seen the true murderer stand up amongst the courtroom spectators and confess all because..."I just can't take it any more?" How long has it been since you've seen a "young dedicated ex-convict lawyer" with Hollywood hair disco-dance his way to victory over grouchy judge Baldpate?

Why offend the public with reality? (Isn't something *better* on tonight? Sorry.)

Now, what is the *cost* of televised trial? In terms of money, remember that PBS (Public Broadcasting Service) Television is available to much of Alaska. We already pay for that anyway; its new Director, Frank Mankowitz encourages just this sort of direct experience programming (c.f. Kennedy Assassination hearings, Panama Canal Treaty Debates - Satellite live.) Commercial television is required to devote a certain amount of time to local public affairs. The cable television systems are required to reserve public access channels. Who *knows* that court coverage must be an expensive frill?

The real "cost" barrier to be hurdled, in my opinion, is that of the prejudice of the legal community. Will too much public access to the raw material of the legal process confuse the public and render the legal system unuseable?

I see this problem as one of "Future Shock." Pedantically posed, How can the public *not* be overwhelmed by access to so much data-or "cognitive input?"

Indeed, Alexander Solzhenitsyn has gravely warned the West that Americans are getting so overwhelmed with the increasing volume of data and information that it endangers our very spiritual existence, Solzhenitsyn, *Warning to the West*, Harvard Commencement Address, Cambridge, 1978. Now Solzhenitsyn is a fine Russian patriot and (since Marx was German) probably the most important Russian author this century. Unfortunately, he doesn't know borscht about this country. You have to remember that Solzhenitsyn's view of an ideal society is pious Russian Orthodox Rural Russia, circa 1900. One could hardly expect him to embrace the wonders of modern technology, especially since all he has gotten out of it is electro- and chemical shock "therapy."

The Soviet example which haunts Solzhenitsyn should prove to us that government is too important to restrict public information to experts. No one will be forced to watch televised trials. But maybe they would become popular. Proof?

Last month (September) the Public Broadcasting Service carried the Metropolitan Opera production of G. Verdi's *Otello*, a dark story of the folly of jealousy. Otello is one of the most popular, and many say, one of the greatest operas of all time. (Otello strangles his innocent wife on the advice of friends.)

On that one night, more people saw *Otello* than the sum total of people who have *ever* seen the opera, since its premiere around the turn of the century. Why were all these people too cheap to buy tickets?

How many people do you know who regularly attend opera? How many people would you *guess* would watch one for four hours on a week night? Where do these stingy opera lovers hide out? Right out there in the public?

The televising of public business is extremely cheap, compared with the number of people served. There should be a lot of people who would like to see for themselves whether the newspapers are telling the truth, or slanting it. Few of them would like to quit their jobs or leave their children unattended at home just to watch our legal system in action.

The only real objection is that some attorneys and judges aren't always going to feel or look sharp on television. The camera's eye makes some people look fatter. It shows up your five-o'clock shadow. People may point you out on the street and laugh if you make a fool of yourself in court. Tough.

If the court sees no reason why the parties' rights would be infringed any more by television than by having the public in the audience in person, why should we protest?

Let's keep an open mind and see if there isn't a valid and useful place for television in our courtrooms. And get those shoes *polished*, right? Hey! That aluminum tie will look great on camera...

Gary W. Vancil
Fairbanks

Judicial Evaluation

Dear John,

I was most impressed with the first edition of the "Bar Rag," and wish to convey the thought to you and your staff. Josephson and Havelock address interesting problems, and I am looking forward to your succeeding issues.

I was also interested in the Judicial Council's column on the evaluation of judges and the "response" by Judge Brewer. Part of the problem is the unfortunate wording of the 1975 legislation, where it not only *ordered* evaluation and information concerning the judiciary, but also "suggested" that the Council could provide a recommendation regarding retention or rejection for each judge. It was further complicated by the Judicial Council accepting the suggestion of recommending retention or rejection as the primary direction rather than the compulsory mandate providing information to the public. The attempted evaluation has been an attempt frought with much subjective responses that does not really provide information from a proper source. The last questionnaire I received I returned without completion and included a letter to all of the council members suggesting a different and more objective format for evaluating judges, and presenting the objective format for the public. Alaskans don't want *anyone* to tell them *how* to vote, and this message has been very clear to the Council in the past. However, they have not appeared to have understood what the public wants. I believe that all of the judges that have been opposed by the Council have not only been re-elected, but in most instances have polled a greater number of retention votes than others supported by the Council.

My suggestion may not be the only solution, but I sincerely hope the Council can see the legislature's request not as a mandate to tell Alaskans how to vote, but to actually give the public objective information that could be compiled easily and submitted to the public so they can make up their own minds as to whether a judge should be retained or not.

Incidentally, my letter to the Judicial Council, dated July 10, 1978, a copy of which I am enclosing, has never been acknowledged so I don't actually know if it has been received much less considered, in view of Mike Rubenstein's appeal for suggestions.

Sincerely,
C.J. Occhipinti

Letter to Judicial Council

Gentlemen:

I am enclosing the questionnaire provided, but have not completed nor forwarded the evaluation pamphlet. I find the questions ambiguous and certainly unfair in arriving at what is called an "evaluation." The conclusions which one would make are lacking in facts and information necessary to substantiate those conclusions, and at best, most of the questions address a subjective basis for what should be an objective observation.

In reviewing the questions, I doubt if ten percent of the attorneys that attempt to respond, can do so honestly. As an example, very few attorneys practice criminal law in the various judicial districts. Thus, the ratings that appear to questions 5, 6, 7, 9, 10, 11 and 14 would be at best conjecture, based on the rankest of hearsay, or at the worst, based on some reported isolated criminal case and sentencing.

The balance of the questions also address themselves to limited observations, at best, and certainly an unfair basis for the conclusions which will be presented to a voting public, who will be no more informed than those that attempt to complete the evaluation.

What the judicial council should better attempt is to formulate a method of bringing facts or objective observations before th public, so that they can have an informed basis to make *their own* decision. Some breakdown as to the total number of cases a judge may have tried, with the total appealed and reversal rate may be a more objective guideline to a judge's legal reasoning and ability. Also, in the area of criminal cases, a total of the various cases tried, the categories of crimes, and the actual sentences given, as well as possibly the average sentence in the various categories may indicate a certain consistency in sentencing as well as familiarity with correctional programs.

A breakdown as to the sentences for similar crimes committed by various ethnic groups may give a better indication of fairness or prejudice. But the questionnaire provided fails in arriving at the goals sought, and should be discontinued.

Sincerely,
C.J. Occhipinti
Judge - Retired

Alaska Bar News

E&O Self-Insurance Committee Update

A special committee to investigate malpractive self-insurance by the Alaska Bar Association has been appointed in conformance with Resolution 3 passed by the membership at the annual business meeting in June. The committee members are **Karen Hunt**, Chairperson, **Keith Brown**, **Charles Flynn**, **Loyette Goodell**, **Roger Holmes** and **Ken Jarvi**.

At Committee's request and with Board of Governor's approval, the Committee has expanded its investigation to include not only a self-insurance program, but also the costs and availability of coverage from insurance carriers who are willing to write in the Alaska market. A third alternative being investigated is coverage costs and availability from carriers who are willing to write in the Alaska market and cooperate with the Alaska Bar Association in an aggressive loss prevention/loss control program.

The Committee is looking closely at the Oregon Professional Liability Fund which is a self-insuring program started by the Oregon Bar Association in July, 1978. **Les Rawls**, past insurance commissioner for Oregon and present executor director of the PLF, has made available to the Committee detailed information on the Oregon program. In addition, **Karen Hunt** has conferred in Oregon with Rawls, his staff and attorneys instrumental in originiating, planning and effectuating the PLF.

The Committee is also looking at the North Carolina Bar program which is a mutual insurance company set up under the insurance laws of North Carolina and operated as an adjunct to the North Carolina Bar Association.

The third alternative being investigated by the Committee is very similar to the Colorado Bar Association's approach to availability and costs of E & O coverage. Colorado is attempting to stay with the private insurance market for coverage but effecuate an aggressive loss prevention/loss control program through its continuing legal education activities and disciplinary rules.

The Committee has met with **Peter Norman**, consultant hired by the Board of Governors to make a preliminary study on the feasibility of a self-insurance program for the Bar. Under Mr. Norman's direction, the membership was asked and did respond to a questionnaire in May, 1978. The purpose of the questionnaire was to accumulate past claims data experienced by Alaska attorneys. The Committee has also received claims data information from Nationa Union Fire, the Bar endorsed E & O carrier since 1977. Norman has also submitted to the Committee a broad outline of a policy as well as a report to be used to attempt to secure insurance coverage for attorneys in the amount of $26,000-100,000.

The Committee conferred with **Dick Block**, Alaska State Insurance Commissioner. He advised the Committee that the Bar Association would have to meet the requirements imposed upon insurance companies under the insurance code in Alaska if a self-insurance plan was adopted by the membership. Block indicated that legislative action would be necessary to exempt the Association in whole or in part from the present insurance code requirements. In Block's opinion, the Association could not be exempted from the law by court rule. He further indicated that his office would probably be compelled to seek court determination of the constitutionality of a Bar Association self-insurance program unless the insurance code requirements were either met or the Association received a legislative exemption.

The Committee has also conferred with the present broker who places the requests for E & O coverage with the Bar sponsored carrier. The broker has agreed to cooperate with the Committee to begin a dialogue with the present carrier on the possibility of Association/carrier cooperation to effectuate a loss prevention/loss control program.

The Committee plans to make presentations of their findings and possible recommendation to local bar associations during the months of March and April, 1979. It hopes to have a ballot proposition for distribution to the membership by May, 1979.

Poet's Corner

Haiku

High court sits alert
in quiet desperation
like philosophers.

R. Connor

Owed To A Nightengirl

I used to know a nightengirl.
Her name was Mary Lou.
Her life was all a tilt-a-whirl.
My fascination daily grew.

She taught me all of love and lust
And that which lies between,
She took from me a mother's trust
And left me grinned, but lean.

I used to know a nightengirl.
Her name was Mary Lou.
I lost her in another world
I left when I met you.

Harry Branson

Bar Director Resigns

Loyette Goodell, Executive Director of the Alaska Bar Association has resigned. She was retained by the Board on March 11, 1978, as acting Executive Director and thereafter received the permanent position on May 26, 1978.

During the seven months that Ms. Goodell has served the Association, she has accomplished dramatic improvements in both the physical appearance of the offices and in the public image of the Bar throughout the State. As a result of her leadership, a well-organized staff and system, upon which both the Board and members can depend, is now in existence.

The Board, in particular, has benefited from her efforts. Not only has Ms. Goodell kept them informed of continuing developments in the profession on a national level, but she has also contributed innovative concepts for new programs, including public education with respect to the legal profession. Her departure, for personal reasons, will leave a void which will not be readily filled.

Bar Presidents Meet

Ken Jarvi, President, and **Donna Willard**, President-Elect, represented the Alaska Bar Association at the National Conference of Bar Presidents held in New York City in conjunction with the annual convention of the American Bar Association.

Of immediate interest to the Alaska Bar were the following programs:

(1) Can interest earned on clients' trust accounts be used to support programs to improve the profession and the justice system?
(2) Non-litigious alternatives to dispute resolution and the role of the bar association
(3) The Bar's new majority—the problems of young lawyers and their impact on the Bar
(4) Has the unified/integrated Bar lost its vitality?
(5) The ultilization of legal assistants-the role of the organized bar
(6) Lawyer Referral Service at the Crossroads—time for a new era?
(7) The Myth of Lawyer Incompetence—Let's Expose the real villain.

All of these subjects will be addressed by the Board or the Committees in the forthcoming year.

During the roll call of the states, President Jarvi reported on Alaska's progress in developing a self-insurance program.

Legal Opportunities Committee Appointed

Carolyn Jones, Assistant Attorney General working with the Human Rights Commission, has been appointed chairperson of the newly created Alaska Bar Association Committee on Legal Educational Opportunities. Serving on the committee are Chief Justice **Jay A. Rabinowitz**, **Robert Erwin**, **John Hedland** and **Ken Jensen**. The purpose of the committee is to reinstate Law as a WICHE choice; propose both utilization and growth possibilities for the Boney Memorial Foundation Fund; and to development of a program for the Alaska Bar Association which will encourage, counsel and aid Alaska's minority citizens to investigate and pursue law as a profession.

The committee was formed when the Board of Governors learned that the legislature last session eliminated law school as a choice for Alaskan students seeking graduate education in law under the Western Interstate Compact for Higher Education program. The Board also felt that the Boney Memorial Foundation Fund which presently totals approximately $5,000.000 was intended to be used for educational purposes and that it would be worthwhile for the committee to consider how the funds might best be used in accordance with its purpose. The committee is also to propose means of increasing the funds.

The committee has been asked to submit its proposals and reports to the Board of Governors by the March, 1979, Juneau meeting of the Board.

Ketchikan And Its Bar

part one of a two-part expose

by Richard Whittaker
Ketchikan Bar Association Historian

Every four years or so the people in the urban areas of Alaska discover Ketchikan, particularly those in politics. They wonder why they didn't spend more time garnering votes in our community, and, indeed, where it is.

Because there have been some bar conventions in Ketchikan, there is at least a modicum of understanding in the bar as to the general location of the community, but because of the two-fisted drinking which goes on at most of those soirees very few members of the bar have too clear an idea of either Ketchikan or the identity of the Ketchikan Bar Association. I have been asked to address myself to those questions.

Oldtimers will remember, in the mid-sixties, that the Supreme Court put the State association in the hands of a receiver. Leader ship during these trying times, for the bar, came from Ketchikan. The resulting upset alienated the Ketchikan Bar Association for a number of years from the Supreme Court. We forgive, when we forgive, slowly.

Still, all in all, in the early seventies, the Ketchikan Bar Association (KBA) determined that it would bury the hatchet and attempt to meet the Supreme Court on its own terms.

Accordingly, this writer took the opportunity of addressing the Supreme Court on the issue on the occasion of the investiture of **Justice William Irvin**. I informed the Court at that time that although almost every case in Ketchikan for a number of years, had been resolved by negotiation, (not necessarily because of the opposition by the Bar to the Supreme Court) the leaders of the Ketchikan Bar Association had determined to make its peace with the Supreme Court by actually appealing a case, thrusting ourselves, as it were, into the mainstream of the Alaska legal system. Up to that time we had continued to use the common law as enunciated by Black's Law Dictionary, and some of the early Federal cases arising out of the Territorial days, as remembered by senior members of our bar.

But the first dilemma came when we realized that you can't appeal cases without trying some, so once again the leadership of the KBA met and determined that as a matter of policy we would commence trying cases. One member was directed to subscribe to the advance sheets of the Supreme Court, and report back to the bar if he ever saw anything of particular interest. In spite of the fact that the reports of that day were 98% dicta, an interest in the Supreme Court's view of what Alaska law was, began to tickle the local fancy and we threw ourselves into litigation with abandon.

During the ensuing period of time since my report to the Court, we have noted a number of interesting things. The first which intrigued us, was that the Supreme Court had a whole set of rules and forms for conducting the business in the Courts of Alaska. This seemed at first a charming idea, but it now has fanned into a monster. It is very apparent now, at least to those of us in Ketchikan who study the matter, that the Supreme Court is more interested in providing work for the Xerox Corporation and the International Business Machines Corporation that it is in having legal problems resolved. Nevertheless, we consume our share of unrecycled paper here in Ketchikan.

Another thing which struck us immediately and continues to bother us is that the Court System seemed oriented toward communities whose population exceeds 60,000. We keep having our heads and feet cut off to fit the legal bed.

And although we like to think ourselves country lawyers and have manure shipped in on occasion to spread on our boots, we are pretty well caught up in the modern day practice of law as it has surfaced in Alaska.

We find we have lost our negotiating skills, but we have learned one great and significant thing, much to our joy. The old case wherein justice could be provided the client by negotiation for a couple of hundred dollars now enriches our coffers to the amount of five and ten thousand dollars, through the use of the court system.

For those who are not aware of it, the Ketchikan Bar Association for years, 15 at least, has met at coffee every morning, not as some have put it in years past to divide up the pie, but rather to provide ourselves with a few moments of ha, ha, ho, ho, and professional contact which we might not otherwise experience due to the pressure of practice. Thus the lion lies down with the lamb, the Democrat with the Republican, and the radical with radical.

We recently gave a dinner for three senior members of the bar who had announced plans to reitre. Our spirit is such that when the senior member of the Juneau Bar Association told us that no such honor was to be given him by the Juneau Bar, that we included him as well, and much to our honor buried our long-standing animosity with the Juneau Bar Association and bid him welcome.

The KBA consists of twenty or thirty lawyers, depending on who does the counting, and his standard. At least 1/3 of the Bar at all times is out of the office, hunting or fishing, whilst another 1/3 are in transit.

(Next issue, a few words about the relationship of the KBA to Ketchikan and the rest of Canada.)

The Selection of a Jury

by Wendall Kay

Condensing suggestions on the selection of a trial jury to the length of this article is a little like inscribing the text of *Gone With The Wind* on the head of a pin.

We all talk about selecting a "fair and impartial jury." Realistically, we hope to find jurors who have a philosophical or personal tilt toward us, our client, or our side of the case. We try to discover such a tilt or inclination by questions. So, first, try to discover everything possible about the members of the panel. Get the jury list and questionnaires (Rule 26.02) as soon as the jury clerk will hand them over. Go over the list with your associates, secretaries, friends, bartenders and barbers. One established fact about a juror is worth a dozen theories or hunches. Time in Alaska, prior jury duty, occupation and the residential area of town where the juror lives may be significant. (In Federal Court you will not receive the jury list or any information concerning the jurors until you walk into court on the day of trial. This silly rule apparently is to keep you from rushing out and bribing members of the panel.)

Go down to court early and carefully study the jurors as they arrive and mingle. Note the gregarious ones and the loners, the ones that seem to be leaders and the formation of any especially friendly little groups. The members of a clique may resent a challenge to one of the other members.

Appearances are deceptive. The fact is that you cannot tell how a particular juror will react at the end of a trial merely by looking at him. But observation is important. Is he or she wearing a hearing aid? Is the lady with a squint too vain to wear her glasses? Why is that gentleman yawning and nodding? Does he work nights?

What are we looking for as we start asking questions:

1) Occupational inclinations: one laborer may love another;

2) Associational or fraternal inclinations: membership in the same church or lodge;

3) Philosophical or general inclincations such as "liberal" or "conservative;"

4) Inclinations affecting the personalities of yourself, your client, or the issues.

5) Bias or prejudice affecting any of the personalities or the issues.

It is probably basic to have a general idea in mind as to "ideal" jurors before a particular case. You might call this doing a "profile" of the ideal juror. This involves deciding such basic questions as, old or young, male or female, white collar or manual worker, liberal or conservative, smart or dumb, among others, setting a tentative number value on each attribute. Then keep score. When you get down to the last few peremptory challenges, it may help if you have figured Mrs. Jones as a "strong 4," while Mr. Smith adds up to a "solid 6." Anything that will make your final guess a little more educated helps.

Watch for potentially dangerous jurors:

1. The man with an occupational prejudice, such as the shopkeeper in a bad check case;

2. The pseudo expert; the practical nurse, or former paramedic in a case involving medical issues;

3. The amateur lawyer; the person with one year law school, or some public spirited citizen who is constantly in court;

4. The very dominant personality who may end up as a "1-man jury."

Let's talk about some general rules.

1) Be generous, courteous, gentle and tactful. According to the statistics, the people in the box are accustomed to watching television an average of six hours a day. Television deals in images; the "good guys" versus the "bad guys." Good guys are polite, fair and honest and usually smile a lot. Bad guys are mean, rude, devious and tricky, and often scowl a lot. So try to be a good guy. Many people are not particularly happy about being questioned. Do not dig for unnecessary information. Try to avoid asking a single woman how many children she has.

2) Stand up. You are being courteous by standing, you can think and see better, and you are more dominant. You want to dominate the court room as much as possible. Move around a little. Try to make gestures and facial expressions interesting.

3) In the beginning, prepare your questions in advance; later just an outline will suffice. Use simple and easily understood questions. Avoid a complex, technical display of erudition.

4) In phrasing your questions avoid demeaning the juror; credit him with knowledge and understanding even though you are reasonably sure he does not have it. Use lots of phrases such as "I am sure you understand that...;" "As you probably know...;" "I know you understand that...;" "Of course, you realize that...."

5) Some jurors tend to try the lawyers, so remember that you are the center of attention at all times. Many jurors tend to watch the defendant during a criminal trial. They apparently believe they can tell whether he is guilty or not by expressions on his face and his movements. Warn your client to be cool, calm and interested at all times, but to avoid flinching and grimacing.

6) Get rid of any juror whom you do not like. The chances are that if you don't like them, they don't like you either.

In the really big case, where ample funds are available, you might think about employing professional help to assist you in the exercise of your peremptory challenges. The use of a psychiatrist or psychologist has apparently been of real help in some of the major "political" type cases.

Occasionally you may face a situation where it is dangerous to conduct voir dire questioning in front of the entire panel. Examples might be where you want to explore the extent of unfavorable publicity concerning your client, or the existence of bias against your client (an environmental group, Native corporation, or small loan association). This situation can be handled by persuading the judge to examine each juror on *this narrow* issue out of the presence of the others. This can be done by bringing the juror individually into chambers. This does not take an excess amount of time and does result in a much better testing of the real feelings that you should explore.

One final admonition. In discussing *how* to select a jury wisely, we should note that it is vital to maintain the right to participate in the process at all. Some judges, in some courts, are steadily usurping the job of jury selection and trying to eliminate the function of trial counsel. This tendency must be resisted at all costs. If you are really prepared, it is no substitute to have the judge question the panel. Supposedly, having the judge select the jury, is the way to go because:

1) the British do it that way;

2) most federal judges do it that way, and

3) it saves time.

None of these reasons are valid. Jury selection in England and some federal courts is so limited as to substantially impair the right of the parties to secure a fair jury through their own efforts. Most of our judges have enough to do if they concentrate on presiding impartially, without straining themselves with any extra functions.

Alaska's New Lien Law

by Barbara L. Schuhmann

On July 18, 1978, sweeping amendments to Alaska's mechanic's and materialmen's lien laws (AS 34.35.005 et seq) became effective as 1978 S.L.A. Chapter 175. Changes include:

- modification of priorities of lien claims against other encumbrances and against other lien claims,
- the necessity of giving notice of one's right to lien in most situations to secure a right to lien;
- a stop payment provision that can be used against construction lenders;
- a new time provision relating to notices of completion;
- special provisions relating to condominiums; and
- new protections for employee benefit trusts.

Known in Fairbanks as the "Banker's Relief Act," the new law makes the filing and recovery under liens more restrictive than previously was the case. Only the strictest adherence to the notice, timing and working requirements of the amendments will prevent not only the loss of security for payment a lien can provide, but also the new penalty provisions for mistakes. (AS 34.35.119. Se also §485, 1978 S.L.A. Chap. 2.)

Chapter 175 was intended to protect owners (and their creditors) from unknown lien claimants filing liens when the contractor on the job has been paid. The new provisions apply mainly in the homebuilding field, but other commercial building will also be affected. Government contrcts where substantial bonding remains to protect subcontractors and materialmen will likely be unaffected.

Although Chapter 175 became effective July 18, certain grace periods are allowed temporarily and should be checked before following the new provisions.

At a lien law seminar held in Fairbanks on October 6, the following advice was given on how to protect potential lien claimants and oneself from malpractice.

NOTICE OF LIEN

As soon as a contract is made to furnish services or materials for a construction job, a notice of lien should be given (§120(9)) to the owner and construction lender with the information required by §64. Services or materials provided more than ten days prior to the giving of this notice are not recoverable by lien. Potential claimants should record this notice, to obtain priority over later recorded encumbrances, and possibly to secure the right to lien in the first instance.

Of necessity, all information necessary to prepare this notice and perfect one's lien rights must be obtained by potential claimants at the time they contract. Otherwise, it may be too late. Only prime contractors (§120(14)) and individuals defined in §120(10) are exempt from the requirement to give notice of right to lien in order to secure lien rights.

LIEN CLAIM

Once a notice of right to lien has been given by those required to do so, a lien may be recorded for the contract price by persons performing labor or services, furnishing materials or equipment, or by trustees of an employee benefit trust for laborers, or the general contractor. The amount of the lien is the contract price, minus claims of others hired but unpaid by the claimant, and minus those amounts furnished prior to ten days before the notice of right to lien was given by those so required.

Nothing is stated in the new sections about claiming interest, costs and attorneys fees in the lien, but §110(b) remains to allow recovery of such costs after judgment.

The timing of the lien claim is similar to previous law, the earlier of 90 days: after the materials, or services were last furnished to the premises, or after completion of the notice of completion is recorded by the owner. Information required to be set out in the lien claim is contained in §70, and of course the claim must be verified, not merely acknowledged.

NOTICE OF COMPLETION

Because the owner has received notices of right to claim of lien from potential lien claimants, he can and should give actual notice to such persons five days prior to recording a notice of completion of the construction. If a claimant receives the five-day warning from the owner according to §71, his lien claims are barred unless filed within 10 days of the recording of the notice of completion. Otherwise the ninety day period applies. A notice is ineffective if recorded prior to "completion," defined in §210(3) as the cessation of the furnishing of labor, services or materials to the improvement.

PRIORITIES

Previously, labor and materialmen's liens for original construction took precedence over a prior recorded deed of trust or encumbrance upon the land. Now the only persons who can obtain such priority are "individuals" actually performing labor upon an improvement in its original construction, or a trustee of an employee benefit trust for such individuals, under §60(c). By recording a notice of right to lien, one can obtain priority over a later encumbrance under §60(a).

However, priority of recording of liens does not create priorities among lien claimants. Instead the type of claim establishes the priority, and, upon foreclosure, everyone in a class is paid in full or pro rata before anyone in the next class is paid. The classes are designated in §112 in the following order of priority:

1) Persons (not individuals), other than prime contractors, performing labor upon the real property, at the request of the owner/agent, for construction, alteration or repair of an improvement;

2) Trustees of employment benefit trusts for persons described above; (presumably, prior recorded encumbrances would follow here in priority as to "individuals" described in 1, above, but would have priority over "persons" in 1.)

3) All materialmen other than prime contractors or subcontractors;

4) Subcontractors, including prime contractors providing design services; and

5) The general contractor.

"Prime contractors" don't exactly fit the definition of "subcontractors" or of the "general contractor," but a reasonable interpretation might be to place them under 4).

STOP PAYMENT

A new provision was added following claimants described in §50 (in cases where there is no payment bond of 50% of construction financing) to stop payment by the construction lender by giving a stop payment notice to the lender and owner within the time periods prescribed in §62. The timing periods are important as §118 prescribes penalties for premature notices.

The amount to be claimed as owing is identical to the amount which may be claimed under a claim of lien and notice of right to claim of lien, except up to 50% of claimed amount may be added as interest, reasonable costs and attorney's fees.

Upon receipt of such notice, the construction lender must, for 30 days, withhold payment of sufficient funds to pay the claim, or be liable to the claimant in the amount wrongfully disbursed or adjudged to be due claimant, whichever is less. (A signed agreement by the claimant, owner and general contractor, or order of the court, may allow the lender to disburse the funds withheld sooner.) After 30 days, the lender is free to disburse the funds unless the claimant files an action to recover the sums claimed, together with a bond in the amount claimed, with sufficient sureties approved by the court. The claimant must not only file the action and bond, but give notice of the action and a copy of the bond to the construction lender within the thirty day period. or he cannot hold the construction lender liable for disbursement.

The timing restraints may make this provision too difficult a tool for most claimants to use, but the intent appears to be to encourage settlement and payment of claims before a lawsuit becomes necessary.

CONTRACTOR LIABILITY

Although a prime contractor (contracting with owner) need not give notice of his right to lien the property, he is responsible to his subcontractors and must deduct their claims from the amount of his lien. When sued for non-payment of his subcontractors, the prime must defend at his own expense and may be required to reimburse an owner for amounts paid by the owner to such subcontractor which exceed the contract price. Under §100, that is the case even when the owner settles with such subcontractors.

Where do these changes leave practicing attorneys? With increased potential for malpractice, with more deadlines to advise of and meet, more notices to give, more information needed from clients to prepare more complex forms, to secure the client's lien rights.

Bar Rag Classified

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Mag I Typewriter, 2½ yrs. old, good condition. One set of CCH Federal Tax Reports. One set of USCS. One set of AM JUR Legal Forms. Call 279-7431.

HELP WANTED

Anchorage branch office of large Seattle law firm seeks attorney willing to work initially on a variety of civil litigation and business law matters. Office is presently staffed by three attorneys. Will consider resumes from persons with excellent academic records and less than thre years experience. Salary is negotiable, depending upon experience. All responses kept confidential. Send resumes to Perkins, Cole, Stone, Olsen and Williams, 540 L Street, Suite 307, Anchorage, Alaska 99501.

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* Law office furniture and library *

Secretarial and executive office furniture, USCA, Corpus Juris, and many other items. 277-2681.

Alaska Bar News

Committee Appointments

Ken Jarvi, President of the Alaska Bar Association has made the following Committee Appointments:

Administrative Law:
Jim Grandjean, Chairman—1 year term
Richard Brown—1 year term
Bruce Botelho—1 year term
Geroge Weiss—2 year term
Tom Boedeker—2 year term
Roger Kemppel—2 year term
David Marquez—3 year term
Mary Patch—3 year term
Andy Hoge—3 year term
Stan Fischer—Board Liaison Member

Bar Polls & Elections:
Peter Ginder, Chairman—1 year term
Judge John Mason—1 year term
Karen Hunt—Board Liaison Member

Bar-Bench Press:
Anchorage
Everett Harris, Chairman—1 year term
Robert Libbey—2 year term
Charles Tunley—3 year term
Southeastern:
Judge Robin Taylor, Chairman—1 year term
Bart Rozell—2 year term
Mike Thomas—3 year term
Fairbanks:
Dick Savell, Chairman—1 year term
Mary Green—2 year term
Judge James Blair—3 year term

Karen Hunt—Board Liaison Member

Business Law:
Wayne Booth, Chairman—1 year term
Hoyt Cole—1 year term
Robert Stoller—1 year term
Donn Wonnell—2 year term
Pete Bartlett—2 year term
Ken Eggers—2 year term
Stan Reitman—3 year term
Steve Hillard—3 year term
Walt Garretson—3 year term
Ken Jarvi—Board Liaison Member

Civil Rules:
Don Clocksin, Chairman—1 year term
George Skladal—1 year term
John Hellenthal—2 year term
Susan Burke—2 year term
Dave Thorsness—3 year term
Donna Willard—Board Liaison Member

Continuing Legal Education:
Southcentral:
Terry Fleischer, Chairman—1 year term
Ben Hancock—1 year term
Sandra Saville—2 year term
Michael Arruda—2 year term
Nancy Gordon—3 year term
Brad Owens—3 year term
Southeastern:
Ed Stahla, Chairman—1 year term
Dennis L. McCarty—2 year term
Jim Douglas—3 year term
Interior:
Dick L. Madson, Chairman—1 year term
Rita Allee—2 year term
Niesje Steinkruger—3 year term
Harry Branson—Board Liaison Member

Criminal Law:
Mike Rubenstein, Chairman—1 year term
John Havelock—1 year term
Edgar Paul Boyko—1 year term
Bill Bryson—2 year term
Joe Balfe—2 year term
Judge John Mason—2 year term
Joe Palmier—3 year term
Jim Gilmore—3 year term
Rhonda Butterfield—3 year term
Bart Rozell—Board Liaison Member

Environmental Law:
John Norman, Chairman—1 year term
John Gissberg—1 year term
D. Elizabeth Cuadra—1 year term
Steve Volker—2 year term
John Reeder—2 year term
Robert E. Mintz—2 year term
W.J. Bonner—3 year term
Paul Grant—3 year term
Jane Pearia—3 year term
Bart Rozell—Board Liaison Member

Ethics:
Chuck Flynn, Chairman—1 year term
Gail Fraties—1 year term
Hugh Fleischer—1 year term
Dave Shimek—2 year term
Robert Mahoney—2 year term
Dennis Hopewell—2 year term
Bill Bittner—3 year term
Alex Bryner—3 year term
Carol Johnson—3 year term
Ted King—Board Liaison Member

Family Law:
John Reese, Chairman—1 year term
Max Gruenberg—1 year term
Pat Kennedy—1 year term
Drew Peterson—2 year term
Mel Evans—2 year term
Bob Rehbock—2 year term
Bruce Tennant—3 year term
Tim Lynch—3 year term
Bob Frenz—3 year term
Ken Jarvi—Board Liaison Member

Natural Resources:
Joe Rudd, Chairman—1 year term
Joe Josephson—1 year term
Ron Birch—1 year term
Carl Bauman—2 year term
Garritt VonKommer—2 year term
William Moses—2 year term
Joseph Henri—3 year term
Harris Saxon—3 year term
Cameron Sharick—3 year term
Stan Fischer—Borad Lisison Member

Para-Legal:
Steve Conn, Chairman—1 year term
Bonnie Lembo—1 year term
Michael Jeffrey—2 year term
Irene Jackson—2 year term
Sylvia Short—2 year term
Steve Branchflower—3 year term
Eric Olson—3 year term
Chuck Dunnagan—3 year term
Dick Savell—Board Liaison Member

Probate:
Trigg Davis, Chairman—1 year term
Marvin Frankel—1 year term
Matt Jamin—2 year term
Doris Loennig—2 year term
Edward Garnett—2 year term
John Hughes—3 year term
Peter Ginder—3 year term
Donna Willard—Board Liaison Member

Real Estate:
Frank Nosek, Chairman—1 year term
Peter Lekisch—1 year term
Paul Jones—1 year term
Rick Huffman—2 year term
Paul Robison—2 year term
Ed Burton—2 year term
Dan Coffey—3 year term
Michael W. Price—3 year term
Tim Petumenos—3 year term
Donna Willard—Board Liaison Member

Statutes, By-Laws & Rules:
David Bundy, Chairman—1 year term
Bruce Horowitz—1 year term
Tom Keever—1 year term
Michael Flanigan—2 year term
Judith Bazeley—2 year term
Peter Michalski—2 year term
Robert Downs—3 year term
Dick Savell—Board Liaison Member

Tort:
Bernie Kelly, Chairman—1 year term
William Council—1 year term
Len Kelley—1 year term
William Pauzauskie—2 year term
Julie Clark—2 year term
John Hendrickson—2 year term
Mark Sandberg—3 year term
Wev Shea—3 year term
Jon Link—Board Liaison Member

The following committees still have vacancies and anyone not yet appointed to a committee who wishes to serve should immediately contact Ken Jarvi:
Bar Polls and Elections—1 vacancy
Civil Rules—4 vacancies
Probate—2 vacancies
Statutes, By-Laws and Rules—2 vacancies
Para-Legal—1 vacancy

At its meeting on Oct. 26, 1978, the Board approved the formation of a new standing committee to be known as the Tax Committee. Anyone interested in service immediately contact President Jarvi.

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Law Library Notes

by Bill Ford
State Law Librarian

The Anchorage Law Library has added a Reference Librarian to its staff and beginning in November will provide full-time reference assistance from 8:00 AM until 8:00 PM through the week (8-6 on Friday).

Ms. **Cynthia Quinn**, Reference Librarian, is a graduate of Wellesley College and Simmons College School of Library Science in Boston and has held professional appointments in the libraries of Syracuse University, Northeastern University and American International College. An Alaska resident since 1970, Ms. Quinn worked for two years as a Reference Librarian at the Z.J. Loussac Public Library (Anchorage). For the past 2½ years she has operated BiblioSearch, an information and research consulting partnership, based in Anchorage. She claims a special interest in on-line information retrieval systems and their application to legal research.

Outside the library, Ms. Quinn's major interest is in music. She studied piano for eight years at Eastman School of Music in Rochester, New York, and has been active in the performance of medieval, renaissance and baroque music, playing the viola de gamba and recorder with the Twelfth Night Consort.

Assisting Ms. Quinn on the Reference desk will be **Bill Ford**, State Law Librarian, **Aimee Ruzicka**, Assistant Law Librarian, and Library Assistants, **Paula Hughes** and **Jan Sosnowski**.

Cynthia Quinn

The Bar Review

By Bernard Trink

What with all the confusion, speculation, and near hysteria created by the indecision surrounding our gubernatorial race it is a treat indeed to withdraw to the relative sanity of a respectible grog shop. At least conscientious pub crawlers abide by the time honored rule which prohibits the mixing of politics, religion and potable spirits.

With this in mind I stopped in to see my old partner **Deke Burnett**. Deke owns the **Mecca** at 549 W. 2nd, Fairbanks.

The **Mecca**, although it has been remodeled several times, has been situated at the same location since 1939. In the old days, when it was still legal to run a bar tab, every young attorney, upon establishing his practice in Fairbanks, was taken down to the **Mecca** where an account was forthwith established in his name. It was felt that this procedure encouraged communication amongst the brethern.

Those of you familiar with the watering holes in Fairbanks will recall that the basement of the **Mecca** housed the old Tiki Cove at which specialized in Cantonese cuisine. With the demise of the Petroleum Club the Tiki Cove was removed to the top floor of the Polaris Hotel. The bar, however, is still alive and well! It is presently operated by **Sarah Karr**. I don't know what it's presently called, however, the locals refer to it as "Sarah's." Very frankly I can't think of a better name. It's a very pleasant, quiet little bar, favored by Fairbanks attorneys. The oriental decor has been retained which tends to lend an atmosphere of tranquility and wellbeing. All of this is complimented by Sarah's presence behind the plank. A very attractive young lady, it is sometimes difficult to keep your mind on the business at hand.

One of my favorite bars in Fairbanks is the **Gold Rush** situated on First Avenue across from the Chamber of Commerce Building. It's been around so long nobody seems to remember what it's original name was. It was formerly the old, old River Side and did operate for a while as The Dreamland. It is depicted in pictures of Fairbanks dating back to the 20s. Word has it that it served as the Court House during the gold strike.

The building which houses the **Gold Rush** is as originally constructed. Presently operated by **Juan Aincirburu** it has retained the frontier tavern atmosphere which is so difficult to experience in this day and age of plastic chrome. The Gold Rush boasts an original picture of Felix Pedro, the gentleman to whom the discovery of gold in the Fairbanks area is attributed. Of interest also is a huge chandelier which originally graced the old Union Station in Seattle.

One cannot talk about the **Gold Rush** without mentioning its proprietor. Juan is a Basque born and bred in the Pyrenees. I mention this as many people are of the impression that Juan is of Mexican extraction having migrated to the United States via an amphibious route without the benefit of passing through immigration. In fact, Juan spent his childhood herding sheep and came to the United States 20 years ago after amassing a small fortune from his business dealings in cigarettes, cameras and watches.

One other point of interest: the **Gold Rush** has probably the best selection of imported and domestic beer in Alaska. Juan presently stocks 42 different brands from all over the world.

Tips for the Month

I have been catching flack from some folks due to the fact that they have been unable to find a bottle shop that stocks **Bombay Gin**. I suggest that those interested try the liquor store located at the south end of **Longs Drug Store** or the **Brown Jug Warehouse** across from the University Mall on the Old Seward Highway.

My liquor suggestion for the month features a fantastic imported vodka from Turkey. Very little, other than the bottle and proof, distinguishes domestic vodka. There are some Russian and Polish vodkas on the market, however, they are only meant to be drank straight from the freezer and by the shot. There is a product from Finland presently available, however, I place it in the same category as Finnish swiss cheese. **Izmira** now, is something else. Distilled from white beets it has a flavor all it's own. Superb in a vodka martini it also imparts a little something special to a screwdriver or vodka tonic. If you experience some difficulty in running this one down check the **Brown Jug.**

John Manders Remembered

By Ken Jensen

This column was commissioned by the editors to be "something about the Anchorage Bar Association." Perhaps that is what it is. It is about an Anchorage lawyer who is dead and whose memory is worthwhile keeping.

When John Manders held forth at the Oyster Loaf Cafe where Woolworth's store now stands at 4th and H, it never entered my teenage mind that I was watching an institution. What my 15 or 16 year old eyes were seeing when they first saw John was what I presumed you had to look like to really be a lawyer. That first impression of John stuck. It remains vivid today, some 25 years later.

In those days as now, I wanted to be a lawyer and though he and I had never exchanged a single word, there was no possibility of doubt that a lawyer was the only thing this man could be. Atop a portly frame, immaculately attired in dark suit with elegant gold watch chain spanning the substantial expanse between its vest pockets, there resided an amazing, bristly bearded, and bespectacled face.

It would be gross understatement to say John looked every inch a lawyer. The fact is that if the profession had not by that time come into existence, it most surely would have been invented if for no other reason than to provide this man an occupation suitable to his manner, demeanor and appearance.

At the Oyster Loaf, an uneasy truce existed between the lawyer clientele among whom John's presence stood out so notably, and the handful of high school kids of which I was an undistinguishable part. With hindsight, I now wonder whether the demise of that notable establishment was not an inevitable result of its attraction to a clientele composed largely of noisy, impecunious kids and lawyers who occupied otherwise profitable booths sipping free refills of coffee for endless hours. Be that as it may, this unlikely mutual affinity for the place by my group and his afforded the grandest opportunities for eavesdropping: and I having been somehow previously afflicted with an attraction to the law, did so whenever the opportunity arose.

I will offer no recital of those bits and shreds of gossip which survived the din to reach my listening post at the counter stool nearest the lawyer's booth. I remember some of it still, but that which I remember seems even now particularly scandalous material embarrassing to the living or the survivors of the recently departed. As little sense as it made to me at that time and now, I was then confident that the words were pieces of some mysterious puzzle which would fall into place miraculously on the day of my own admission to the Bar, should that day ever occur.

John, in those days and until he passed away in 1973, addressed every issue, public or private, with the utmost confidence and authority. If ever in his life he doubted the absolute accuracy of his convictions on whatever subject, no trace of that doubt could be detected by the listener or the observer. John was not given to stating opinions, his personally-held viewpoint being delivered to his audience with an authority which conjured up images of Moses carrying the tablets from the mountain. An expressive face lurking behind the bristly beard accentuated each point, and the *coup de grace* was delivered to any douter by a sudden flash issuing from otherwise gentle eyes. Hence it was that there could exist no debate as to some of his more frequent and most forceful declarations—often uttered even gratuitously: "Herbert Hoover was the best president the United States ever had." Or, upon a more topical subject, "Alaska must not be a state; just wait until the honeymoon is over and the taxes arrive."

Of course, a decade and more later, after I had mumbled my way through a law school and a bar examination, what had been a school boy's impression of John Manders ripened into personal acquaintanceship.

I was not disappointed.

While age and responsibility forced me to commit the heresy of doubting the validity of some of the propositions he announced with such great authority, there never entered my mind the slightest doubt that whenever he spoke, he spoke with the certain conviction available only to an honest man.

I recall early in my own practice of law having reluctantly written a letter to John suggesting that owing to the conduct of an employe of his, I would be forced to name him as a party in litigation then planned to be filed for a client. The letter I received in return was enough to chill the heart:

> "Dear Mr. Jensen:
>
> I have received yours of the 16th inst. I shall not be named a defendant in any lawsuit commenced by you.
>
> Respectfully,
> John Manders"

Other events fortuitously intervened and, in fact, John was never named a defendant in any lawsuit commenced by me.

And who is to say Herbert Hoover was not the best president the United States ever had or that the honeymoon is not over and the taxes have not arrived.

John Manders passed from this world on February 18, 1973. He was not a man without faults, but he was a man of great virtue.

He was an Anchorage lawyer.

photo by Jim Erickson

What Sort of Person Reads The Bar Rag?

Young, athletic, a lover of the outdoors. And she knows how to enjoy every aspect of modern living. When away from her busy practice she knows how to find fun and enjoyment. Join her as she makes the discovery, monthly, in the pages of the **Bar Rag**, *her favorite newspaper.*

The Little Buffalo

By Wayne Anthony Ross

Back in the days when sex was dirty and the air was clean, I came to the realization that my father was a criminal.

It's a very traumatic experience to come to that conclusion, let me tell you.

My friends, of course, knew my father was a criminal long before I did, despite the fact we all watched the same movies on the Westinghouse TV after school. The movies clearly demonstrated my father's guilt, beyond a reasonable doubt, to every kid in the neighborhood but me. After all, in every Johnny Mack Brown and Randolph Scott movie, the villain invariably had a **black mustache** and was usually the only one to have such a mustache. Oh, there were other mustaches on some of the old time cowboys or the hero's comical sidekick (like Gabby Hayes), but those were grey mustaches and didn't count.

Once a guy with a black mustache appeared on the screen, we kids knew that guy was **the one** who would eventually be exposed for his villainous deeds.

Black mustaches weren't the only giveaway. The villain also always wore a black hat. It could be a big hat or it could be a small hat, but if it was black, without fail, by the end of the picture, the wearer would come to a bad end.

My father work a black homburg.

The kids told me not to trust him, but I was loyal and defended my Dad as long as I could. I defended Dad until I became convinced of his criminal tendencies. I became convinced when I saw Dad's gun after climbing surreptitiously up on a chair and peeking in his bureau.

In those long ago days, there were only two kinds of people who owned small black automatic pistols like the one I saw that day in Dad's dresser:

1. Detectives.
2. Criminals.

I knew my Dad wasn't a Detective.

I also knew he and my Mom had at one time lived in Chicago. Al Capone had lived in Chicago, too. The gun combined with the black hat and black mustache caused me to keep a wary eye on poor Dad for a long time. I don't worry about Dad anymore, however. His mustache is grey now like Gabby Hayes, and I now own the small black automatic.

The pistol is Spanish and is patterned after the early Browning 6.35 mm and the Colt Model 1908 .25 caliber Pocket Automatic. It is still in its original box. The red cover of the box reads Bufalo Pistola Calibre 6.35. The original price of $20.00 is still visible on the bottom of the box.

Inside the box beside the pistol itself is the original instruction manual (in Spanish, of course) with photographs illustrating its use.

The little pistol has three safeties: a side lever safety above the trigger guard on the left side, a grip safety and a magazine disconnector safety which prevents the weapon from being fired when the clip is removed. The gun retains 95% of its original blue finish. The grips appear to be greyish black hard rubber or plastic with the manufacturer's initials and a buffalo head on each panel.

I learned later that the pistol was acquired by my grandfather during the First World War. As the story was told to me, Grandfather travelled throughout the United States for the Allis Chalmers Manufacturing Company, repairing steam turbines. He met a Texan who had an old Colt that needed repair and Grandda agreed to take the Colt to a Milwaukee gunsmith. While the Colt was at the gunshop, the shop was burglarized and the Colt was one of the weapons stolen (not by Grandfather). Because of the War scare (people were convinced it was only a matter of time until the Germans decided to invade the United States) firearms were in great demand and short supply. The owner of the shop was only able to get a small supply of Spanish automatic pistols to replace the firearms that were stolen and he gave one to my Grandfather to replace the Colt. The Texan was a revolver man, however, and declined to take the little automatic from my Grandfather, telling him to keep the pistol. Grandfather kept the pistol and carried it from time to time, especially when he traveled to Mexico during the early thirties. He apparently never shot the gun. He later gave it to my Dad who kept it in his dresser drawer where I spotted it. Dad never shot the little automatic either, but gave it to me when I reached the age of 18.

Though not particularly useful because of its small impotent cartridge, it remains an interesting token from another time.

Some people would call the pistol a Saturday Night Special and would have the Federal Government prohibit me from owning it. So long as they are unsuccessful in legislating away my firearms, it is my intention to one day give it to my son and tell him the story of the little automatic pistol owned by his "criminal, black mustached" Grandfather.

Wayne Anthony Ross is an attorney licensed to practice in Alaska and Wisconsin. He is an avid gun collector, charter member and past-president of the Alaska Gun Collectors Association, member of the Smith and Wesson Collectors Association, endowment member of the National Rifle Association, and has been qualified as an expert witness on firearms in both the Alaska Superior Court and the Federal District Court of the District of Alaska.

ERA

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vices. The United States Supreme Court dealt a major blow to poor women by denying them the right to obtain abortions funded by Medicaid.

Title IX of the Education Amendments Act of 1972 purports to equalize the educational opportunities available to men and women by prohibiting discrimination based on sex in the allocation of scholarships, aid grants, and other forms of financial assistance administered by institutions within the act's coverage. The recent implementation of regulations under this Title could result in increased enforcement of this provision. The recent *Bakke* decision adds a new twist in the admissions standards many schools were using in an effort to admit a larger number of women and minority students.

It is unquestioned that there has been a great deal of progress toward sexual equality in the past 60 years. However, most of these advances have been obtained by piecemeal Federal or state legislation and case law, which is largely uncertain and inconsistent. Lacking a universal definition of sexual equality, however, it is unlikely that a consistent determination of equal sexual treatment will be made without a Constitutional amendment.

The prevalent mood in the United States, despite Ms. Shafley and her supporters' contentions to the contrary, is for sexual equality. The United States Supreme Court is apparently not prepared to make a commitment to this principle, and without their decision to make sexual discrimination practices a suspect criterion, as they have race and national origin, the people of the United States will continue to founder in uncertainty with *ad hoc* legislation and judicial mandates.