

Formation of the Alaska Court System

by Russ Arnett

During Territorial days, Alaska had its own courts...sort of. Judges of the District Court for the Territory of Alaska were political appointees of the President for a four year term, one judge for each of the four judicial divisions. In the early days nearly all the District Judges came from Outside. One newly appointed judge who had previously held an administrative job in the Midwest surprised everybody by showing up at a Lincoln Day Dinner in his American Legion cap and giving a rousing Republican speech.

Appeals from the District Court were to the Ninth Circuit. Strict rules for printed brief plus the cost of going to San Francisco for oral argument made appeals costly and uncommon. The appellate judges disliked deciding local law questions. One of the judges said condescendingly of the Alaskan Lawyer that "They come here in their big shoes." Do our young lawyers today in hiking boots and duffel coats follow in this tradition?

Law West of Pecos

The District Judges appointed United States Commissioners who were ex-officio judges for misdemeanors, civil litigation involving less than \$1,000.00, probate, and generally Law West of the Pecos. Some Commissioners were much beloved, like Rose Walsh in Anchorage, but few were legally trained. Once defense counsel argued to Rose that she should not accept an assertion of the prosecutor. "Why not," she replied. "He's on our side," isn't he?"

House Republicans

For lawyers statehood means above all that we would have our own courts. In the first state election Democrats were elected Governor, Secretary of State, both U.S. Senators and U.S. Representative, and to 51 of 60 legislative seats. Alaska Constitution provides judicial appointments are to be "without regard to political affiliation." Republicans argued that this required that at least some Republicans be appointed. Democrats countered that the provision did not mean that appointments should be "bipartisan" but that they should be "nonpartisan." "Nonpartisan" means that one must be blind to the appointee's politics. Therefore, the Democrats argued, if

Anchorage Bar

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a monthly column to advise members of activities of the Anchorage Bar.

The schedule for the month of September is as follows:

Sept. 3	No luncheon (Labor Day)
Sept. 10	Mini-CLE, Speaker John Reese on uniform jurisdiction of Child Custody Act and similar related child custody issues
Sept. 17	Speaker Attorney General, Avrum Gross
Sept. 24	Municipal Information Officer addressing the various bond proposals to be submitted to the voters in Anchorage.

Each of these luncheons will be held at the Anchorage Westward Hotel at noon. The price of the luncheon is \$6.50.

only Democrats were appointed it could neither be perceived nor criticized. Governor Egan appointed **Walter Hodge** as house Republican on a three judge Supreme Court. He chafed in this role and after a year resigned to become in 1960 the first true Federal District Judge in Alaska. Governor Egan's later judicial appointments and those of most succeeding governors were of the governor's party.

Trial Courts in Anchorage

Lawyers, particularly in Anchorage, were dying to get state trial courts, in part because one District Judge could not possibly handle the case load. Section 18 of the Statehood Enabling Act provided that the Territorial Courts might continue in existence up to three years after statehood. Lawyers feared that Governor Egan might not create trial courts for two or three years to let the Feds pay for the trial courts. When the bar realized Governor Egan indeed had no present intention of creating trial courts it first raged, then pondered what could be done. **Baisey Lee Kilpatrick** had been charged with the Federal crime of white slavery. Her trial was set after statehood before a hold-over Territorial judge whose four year term had long since expired. In April 1959 a petition in her behalf for writs of prohibition and mandamus was filed with the U.S. Supreme Court, and a comparable petition was filed with the Ninth Circuit in behalf of another Federal defendant.

Petition Denied

The Statehood Act had struck various references in the U.S. Code to the Territorial court and to appeals from it to the Ninth Circuit. The constitutional questions posed were whether a Federal legislative court after statehood could try Federal cases normally tried by an Article III U.S. District Court and whether a right of appeal was a fundamental right. The U.S. Supreme Court denied our petition for leave to file the petition. We got zip from the Ninth Circuit. In 1961 the Alaska Supreme Court held that it had appellate jurisdiction over state cases brought in the Territorial court after statehood. I don't recall if any Federal appeals from the interim court were attempted after statehood.

Rader Ripped

The main item of business at the 1959 bar convention in Fairbanks was to climb all over Attorney General **John Rader** who supported Governor Egan's delay in appointing judges.

Had the bar not brought this pressure the trial courts might not have been established until much later than they were, which still was more than a year after statehood. The Superior Court assumed jurisdiction February 20, 1960. The first judges of the Superior Court included **James von der Heydt** in Juneau, **Walter Walsh** in Ketchikan, and **Hugh Gilbert** in Nome. **Ed Davis**, **Earl Cooper** and **James Fitzgerald** were appointed for Anchorage and **Everett Hepp** and **Harry Arend** in Fairbanks. When the Superior Court opened for business we knew our troubles were over.

Random Potshots

by John Havelock

"What's Going On Out At The University?"

The current era of concern for legal education at the University of Alaska began when two sets of concerns converged back in 1975. First, state criminal justice administrators and the courts wanted a center for education, research and continuing professional development to meet institutional manpower development and applied research needs. Secondly, the Regents of the University were again being pressed to respond to requests that they consider starting a law school.

Studies were commissioned as a result of each of these concerns. A report known informally as the "Stretcher Report" addressed the criminal justice needs. A broader synopsis of general legal educational needs of the state was incorporated in the report "Legal Education for a Frontier Society." The latter report suggested that while the establishment of a law school was technically feasible from the perspective of student demand, the production of conventionally trained lawyers ranked low among priorities of state needs. Legal Education was important, but more JD's were not.

Priorities of Legal Education

Among objectives given a higher priority than the establishment of a JD program were: (1) the establishment of a third year law school extern program in association with established Outside law schools; (2) the establishment of programs of legal education for persons entering law-related occupations but who were not necessarily interested in doing a three year graduate degree. Such professions included careers in law enforcement and corrections but also law-related emerging professions such as court administration, paralegal and legal assistant jobs and fields such as banking, land title administration, public entitlement administration and adjudication (welfare, health, unemployment and education) and insurance, which have a high law content. (3) A general program of law-related public policy research would serve important state interests with or without an educational component. (4) Education in legal process independent of any vocational emphasis is an important ingredient in general education for a society of liberties ordered under law. (5) Assistance to Alaska Natives in pre-law educational enrichment would, over the long run, help to increase the percentage of Alaska Natives making up the Alaska bar. The list goes on.

The Requirements of Undergraduate Education

Today's Random Potshot will address the question of how the University, since the report, has responded to identified needs for undergraduate education in law. The Criminal Justice Center of the University of Alaska and the Office of the Director of Legal Studies for the University system were established at the direction of the President to give overall direction and coordination to the University's efforts to meet these responsibilities. Since the initial funding push, however, came from the Law Enforcement Assistance Administration in the original undergraduate curriculum, a priority was given to establishing educational

support for the criminal justice vocations first. Serious problems were evident in the Division of Corrections resulting from under-education of personnel in that area. The Police Standards Council was moving towards establishing educational criteria for promotion and advancement in law enforcement careers in Alaska, in keeping with national trends. Accordingly, the first curriculum emphasis was on addressing these needs.

However, as the Stretcher Report recommended, the curriculum was developed in the context of an overall commitment to liberal arts education. Before a final curriculum was established, a careful study was completed by a statewide University committee and a report submitted by Dr. **John Angell** of UAA, "Justice Higher Education at the University of Alaska." The curriculum adopted was not a narrow training curriculum and the University has, at least so far, stayed clear of training type curricula. The overall discipline was identified as "Justice," the administration of justice in its broadest context, civil and criminal, formal and informal systems. Within that discipline, emphasis areas were designated for law enforcement, corrections, judicial administration and legal studies, the last emphasis area intended to include the emerging paralegal professions.

The Attitudes of Lawyers

In the late 70's two separate surveys of lawyer attitudes towards and needs for paralegal services and education were undertaken, one by the Paralegal Committee of the bar and one by the Criminal Justice Center. These studies laid a foundation for the designation of the particulars of a legal emphasis area curriculum within the Justice degree. They also confirmed that the majority of the members of the Alaska bar wanted paralegal persons to achieve their paralegal educational qualifications through a four year degree. Some lawyers were willing to consider even graduate education in law as appropriate to paralegal practice. A small number also thought that a two year curriculum for paralegal training would be adequate, but the majority opted for a four year program within the context of a general liberal arts education.

The University, in those earlier years when the primary presence in Anchorage was a community college, had established a program of "legal studies" which attempted to address a paralegal constituency. Anchorage bar member **Sylvia Short** was a dynamic force in putting such a program together at a time before general recognition of the utility of such education had emerged. However, there had been no formal preliminary curriculum study and course content was left pretty much to the taste of individual instructors. Also the course topics followed the traditional law school format and law school texts were used which were inappropriate to the student constituency involved. Whether appropriate or not, practicing lawyers were skeptical of the abilities of students who had taken "torts," "contracts" and "civil procedure" to do paralegal work in the areas involved.

Legal Studies Established

In 1979, at the Criminal Justice Center, using the curriculum studies and surveys of attorneys, a legal studies emphasis area curriculum was established which was intended to take a new approach in preparing students for paralegal operations. The curriculum requires that the student meet all the usual requirements for the baccalaureate degree, the requirements for the Justice discipline, four core courses in the legal studies emphasis area and nine legal studies electives. A tentative multi-year schedule has been established so that

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