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# The Alaska BAR RAG

Volume 7, Numbers 1, 2 & 3      Dignitas. Sempex Dignitas      It might as well be Spring Edition      \$1.00

## Justice Connor Retires After 15 Years Service

Ending fifteen years of service on the State's Highest Court, Justice Roger G. Connor has retired effective May 1, 1983. The unexpected departure was precipitated by injuries suffered in an automobile accident on November 5, 1982.

Appointed to the Supreme Court by Governor Hickel in 1968, Justice Connor participated in the disposition of some 5,000 appeals and petitions for review during his tenure. He authored 430 majority opinions and approximately 70 concurring and dissenting opinions.

Although born in New York, Justice Connor lived in Juneau from 6 years of age and attended public school in that area. High School Graduation was attained from Western Reserve Academy, Hudson, Ohio, in 1944. From 1944 until 1946, when he was honorably discharged, Justice Connor served in the United States Navy.

After one year at the University of British Columbia in Vancouver, B.C.,



and three years at the University of Washington, Justice Connor matricu-

lated with a Bachelor of Arts Degree in Political Science in 1951. He received the degree of Doctor of Jurisprudence from the University of Michigan in 1954.

Between 1940 and 1954 Justice Connor served periodically as a merchant mariner, obtaining his Mate's License in 1948. After law school graduation, he was admitted to the practice of law in Alaska.

In 1956, Justice Connor was appointed United States Attorney for the First Judicial Division, a position which he held until 1959 when he became an executive assistant in the criminal division of the United States Department of Justice in Washington D.C.

### Back to Alaska

In 1961, Justice Connor returned to Alaska and the private practice of law. During the 7 years prior to his appointment to the bench, Justice Connor was a member of the Board of Governors of the Alaska Bar Association and

served as President in 1967-1968. Other professional and public service activities in which he participated included the State of Alaska's Alcoholism Advisory Board from 1967-1969, and the American Bar Association's Committee on the Law of the Sea from 1963 until 1964. Justice Connor was also a member of the Fisheries Law Committee of the World Peace through Law Center from 1966 until 1970 and the counsel of State Court Representatives of the National Center for State Court from 1973 until 1980.

His publications include: *Maritime Lien Priorities*; *Cross-Currents of Theory*, 54 Michigan Law Review 777 (1956); *The Legal Framework for Sentencing*, 26 Federal Rules Decisions 258 (1960); and *Memorial Tribute to Senator Ernest Gruening*, 4 U.C.L.A.—Alaska Law Review 3 (1974).

Justice Connor's recreational activities have included alpine skiing, mountain climbing, hiking, and coaching and refereeing in the Anchorage Soccer Program for Women.

## Thirteen Apply for Supreme Court Seat

Three out of the last three Alaska Bar Presidents, five other attorneys in private practice, two-thirds of the members of the Court of Appeals and three Superior Court Judges have applied for appointment to the Supreme Court Seat left vacant by the retirement of Justice Roger Connor. The Alaska Judicial Council introduced the field of candi-

dates on Friday, March 25, 1983. The applicants, in alphabetical order, are as follows:

### Alexander O. Bryner

Judge Bryner is currently an appellate court judge in Anchorage. He is 39 years old. Judge Bryner has been an Alaskan resident for 11 years and en-

gaged in the practice of law for 13 years. He is a 1969 graduate of Stanford University School of Law. Judge Bryner was a law clerk for the late Chief Justice Boney, assistant public defender for two years, district court judge in Anchorage for two years, U.S. Attorney in Anchorage for three years. He is a member of the Alaska Bar Association, California Bar Association, Federal Bar Association and the American Bar Association.

### William J. Donohue

Mr. Donohue is 37 years old, an Alaskan resident for over 11 years and engaged in the practice of law for over 10 years. He is a 1971 graduate of Cornell Law School. Mr. Donohue has been in private practice in Alaska since 1972 and is currently a partner in the law firm of Kennelly, Azar & Donohue in Anchorage. He is a member of the Alaska Bar Association and the New York State Bar Association. His practice is

limited primarily to trial and appellate work.

### Karen L. Hunt

Ms. Hunt is 44 years old, an Alaskan resident for nine years and engaged in the practice of law for nine years. She is a 1973 graduate of the University of Southern California Law School. Ms. Hunt has been in private practice in Alaska since 1973 and is currently a partner in an Anchorage law firm. She is a former president of the Alaska Bar Association. She is a member of the American Bar Association and the Anchorage Association of Women Lawyers.

### Millard F. Ingraham

Mr. Ingraham is 49 years old, an Alaskan resident for 22 years and engaged in the practice of law for over 21 years. He is a 1958 graduate of the University of Colorado, Boulder Law School. Mr. Ingraham was a corporate attorney in Colorado for two years and in private practice in Alaska since 1961 and is currently in private practice in Fairbanks. He is a member of the Alaska Bar Association.

### Kenneth P. Jacobus

Mr. Jacobus is 41 years old, an Alaskan resident for 14 years and engaged in the practice of law for 14 years. He is a 1968 graduate of the University of Wisconsin Law School. Mr. Jacobus was a law clerk for Justice Rabinowitz, and has been in private practice in Alas-

## Anchorage Bar Plans Grand Soiree

The Anchorage Bar Association Public Affairs Committee has announced a Spring Dance at the Sheraton Anchorage Hotel on the evening of April 16, 1983 from 6:30 p.m. until 1:00 a.m. The Committee plans a roast duck dinner with lots of champagne and other wines. The Anchorage Jazz Ensemble will play from 8:00 p.m. onward. Three no host bars will be open during the evening.

### —An Elegant Evening—

"It should be an elegant evening" said one highly placed and more or less reliable member of the committee. "Despite the printed invitation that states 'shoes and shirts mandatory' we think Anchorage lawyers are fast becoming a pretty sophisticated lot. We would not be surprised to see an occasional tuxedo or a beautiful ball gown at the dance. We even have avoided the usual wines like Thunderbird, Ripple, and In Hock Signo Vince's and have chosen a good French champagne, as well as some first rate

### —The Beautiful People—

The Jazz Ensemble will play the sort of music the beautiful people like to dance to. "And why not" said another committee member who along with 8 million other Americans was recently offered a subscription to Vanity Fair. "We're just as beautiful as they are—maybe not as skinny, but just as good looking."

Tickets to this swell affair cost \$30.00 per person or \$60.00 a couple if you are bothered by the idea of dancing alone in a crowd.

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# Poems

## Kansas Minatures Four Poems by Elizabeth Cuadra

Fireflies must zoom in zigzags as  
they blink,  
For each next flash will not be  
where you think!

Small rubies shining, hidden  
in the green:  
Ripe wild strawberries try  
not to be seen.

## Double Sleeping Bag

Attuned to every move of yours  
I wake  
To sounds your lashes on the  
fabric make.

## Seagulls Over Kansas

Each year they come, at the  
same time:  
When we are planting corn.  
How do they know the time,  
the way?  
Seagulls in gray-white flocks  
of hundreds  
Swirl through the air,  
Alight on fresh-turned furrows,  
Follow the tractor.

What do they want? Seed corn?  
Earthworms?  
Strange travelers coming from  
a shore  
That we have never seen.

In Utah there's a legend, and  
Seagulls are revered.  
They say the Mormons' crops  
were saved  
In that first year  
From a plague of locusts  
When the seagulls came.

We have no locusts here.

## To a Silent Father

Here and there those  
Limestone walls around your mind  
Let out a ray of light  
Through the chinks  
A year or so apart.

Like thunderbolts they fell  
Upon my listening mind.  
"Sit down, be still, the  
Birds and squirrels will show  
themselves,"  
As you led me by the hand to  
that old log  
In the clearing by the creek  
And left me there.

Another day you said to me,  
"Ride her, you can do it,

She's yours now," as you led the  
Sorrel mare I'd never seen before,  
Lifted me to her bare back  
And handed me the reins.

Or, thinking of a better farm  
to rent:  
The bottomland, the pastureland,  
the soil.  
What factors settled it for you?  
"Too close to town," or  
"I'll never live where I can't  
hear the  
Birds sing every dawn."

Brusque, silent, stern.  
No hugs nor loving glances.  
And when you died,  
Who mourned you?

A few of us there, in that  
Isolated prairie graveyard  
You had chosen.

We mourned the narrow  
Limits of your life  
More than we did  
Your passing.

## Where Were You Born?

First there flowed the mighty  
ice field;  
White men called it the Wisconsin:  
Glacial creeping, grinding, crushing,  
Never seeing, never caring  
For the soil it was creating:  
Sandy loam for richest farmland.  
Then the ice retreated northward.

Next the bison, brown and shaggy  
Swarmed in thousands through  
the grasses.  
Bluestem tickled hairy bellies,  
Swayed and whispered to  
the southwind,  
Flowed in crests and troughs  
of wavelets  
Like a landlocked inland ocean.

Came the rumble of the wagons;  
Wheels of oak with spokes  
like sunbursts:  
Crushing down the waving bluestem,  
Digging ruts across the prairies,  
Bearing west the sturdy Quakers.  
Ruddy faces, calloused fingers—  
Sandy loam their farmers' Mecca.

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# Thirteen Apply for Supreme Court Seat

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ka since 1969 and is currently a partner in the Anchorage law firm of Hughes, Thorsness, Gantz, Powell and Brundin. He is a member of the Alaska Bar Association and the American Bar Association. His practice is primarily devoted to appellate work.

Paul B. Jones

Judge Jones is currently a superior court judge in Kotzebue. He has been an Alaskan resident for 17 years and engaged in the practice of law for 17 years. Judge Jones is a graduate of the University of Texas at Austin. He was an Assistant Attorney General for over one year, house counsel for public corporation for two years, district court judge in third judicial district for five years, and a private practitioner since 1974 until his appointment to the bench in 1980. Judge Jones is a member of the Alaska Bar Association, Hawaii Bar Association and the Texas Bar Association.

Andrew J. Kleinfeld

Mr. Kleinfeld is 37 years old, an Alaskan resident for 14 years, and engaged in the practice of law for 12 years. He is a 1969 law graduate of Harvard Law School. Mr. Kleinfeld was a law clerk for Justice Rabinowitz, and in private practice for over 12 years and is currently in private practice in Fairbanks. He is presently serving as president of the Alaska Bar Association.

Daniel A. Moore, Jr.

Judge Moore is currently a superior court judge in Anchorage. He is 49 years old, an Alaskan resident for 26 years, and engaged in the practice of law for 22 years. Judge Moore is a 1961 graduate of the University of Denver Law School. He was a District Magistrate in Anchorage for one year; and in private practice for 18 years until his appointment to the bench in 1981. Judge Moore is a member

of the Anchorage Bar Association, Alaska Bar Association and the American Bar Association.

Sandra K. Saville

Ms. Saville is 35 years old, an Alaskan resident for over 10 years and engaged in the practice of law for over 10 years. She is a 1972 graduate of Georgetown University Law Center. Ms. Saville has been in private practice in Alaska since 1972 and is currently a partner in the Anchorage law firm of Kay, Christie, Fued, Saville and Coffey. She is a member of the American Bar Association and Alaska Bar Association. She has served as secretary-treasurer of the Alaska Bar Foundation and as a member of the Northern 9th Circuit Judicial Nominating Commission.

Douglas J. Serdahely

Judge Serdahely is currently a superior court judge in Anchorage. He is 36 years old, an Alaskan resident for over seven years and engaged in the practice of law for over 10 years. Judge Serdahely is a 1972 graduate of Harvard Law School. He worked as a law clerk for the late Chief Justice Boney, and former Chief Justice Rabinowitz; in private practice in Washington, D.C. for two years; and in private practice in Alaska since 1975 until his appointment to the bench in 1980. Judge Serdahely is a member of Alaska Bar Association, District of Columbia Bar Association, Federal Communications Bar Association, Anchorage Bar Association, Alaska Academy of Trial Lawyers, State Conference of Judges, and Association of American Trial Lawyers.

James K. Singleton, Jr.

Judge Singleton is currently an appellate court judge in Anchorage. He is 44 years old. Judge Singleton has been an Alaskan resident for 18 years old and engaged in the practice of law for over

17 years. He is a graduate of the University of California, at Berkeley Law School. Judge Singleton was in private practice for seven years and a superior court judge for 10 years until his appointment as an appellate court judge in 1980. He is a member of the Alaska Bar Association, Anchorage Bar Association and the California State Bar Association.

Michael Tracy Thomas

Mr. Thomas is 41 years old, an Alaskan resident for over 11 years and engaged in the practice of law for over 16 years. He is a 1966 graduate of Harvard Law School. Mr. Thomas was an attorney in the U.S. Army for eight years and in private practice in Alaska since 1971 and is currently with an Anchorage law firm. He is a member of the Virginia State Bar Association and the Alaska Bar Association.

Donna C. Willard

Ms. Willard is 39 years old. She has been an Alaskan resident for 18 years and engaged in the practice of law for over 12 years. Ms. Willard is a 1970 graduate of the University of Oregon Law School. She has been in private practice since 1971 and is currently a partner in an Anchorage law firm. She is a former president of the Alaska Bar Association, and a member of the American Bar Association and the American Trial Lawyers Association. She is also the first Alaskan to be elected president of the Western States Bar Conference.

Each of the applicants must undergo an ordeal by Bar Association poll and Judicial Council interview and cut before the governor makes his decision. He must make his selection within 45 days of the date of submission of names by the council.

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# ABA's House of Delegates Holds Marathon Session

In a session which lasted three days and included one evening of work, the House of Delegates considered the black letter law provisions of the proposed Model Rules of Professional Responsibility. Because of the complexity of the issues involved, no attempt to synopsize the House's action on the myriad provisions will be undertaken. However, copies can be obtained either from Alaska's delegates Dick Gantz, Keith Brown or Donna Willard or by writing direct to the American Bar Association.

It is expected that the House will address the preamble and commentary to the proposed rules at its annual meeting in Atlanta, Georgia, July 28-August 3, 1983. Final action either adopting or rejecting the Rules is slated for February 1984 in Las Vegas.

Another hotly debated topic was a

proposal to support federal products liability legislation. By a vote of 185-113 the House voted to oppose enactment of broad federal legislation that would codify the tort laws of the states as they relate to products liability. In a series of related votes, the delegates:

—voted to support federal legislation which would address the issues of liability and damages with respect to claims by those who contract an occupational disease where (a) there has been a long latency period between exposure and manifestation; (b) the number of such claims and liability therefore threaten the solvency of significant numbers of manufacturers engaged in interstate commerce; and (c) the number of such claims have become a clearly excessive burden upon the state and federal judicial systems.

—supported enactment of federal legislation allocating product liability risks between the federal government and its contractors and providing, in certain instances, indemnity against such risks.

—defeated a proposal to support enactment of federal legislation which would accomplish the following:

(1) when a product liability against the seller is successful, the defendant would be entitled to deduct from the judgment any amount of compensation benefits paid or payable regardless of the employer's negligence.

(2) abolish the employer's right of subrogation or compensation lien making the employer ultimately liable for the amount of the benefits payable to the worker; and

(3) foreclose an action for contribu-

tion or indemnity by the liable seller against the employer.

—by a vote of 141 to 127 defeated a proposal urging that attention be given to the problems inherent in awarding punitive damage in product liability claims resting on the same operative facts such as the MER/13 cases. The proposal embodied the concept of a single trial to resolve the issue of whether punitives would be awarded, the total amount to be awarded all claimants and the method of distribution to be utilized.

In other action, the House of Delegates voted to support gun control, approved a new, limited insanity defense which would abolish the volitional or control test and defeated a resolution which would have supported Article III status for bankruptcy judges.

gladly assist any such person in that respect. In the interim it is seeking CLE credits from those bar associations requiring it. For more information contact Thomas A. Lemly, committee chairper-

son, at (206) 622-3150, or Janet Davenport at the University of Washington at (206) 543-5280.

Note: For publication information contact Jon Rosen (206) 682-6711.

## Labor Law Conference Set

The Labor Law Section of the Seattle-King County Bar Association in conjunction with the University of Washington is holding its Sixteenth Annual Pacific Coast Labor law conference on May 5 and 6, 1983, in Seattle. The panels of speakers, comprised of representatives from both the union and management sides of the table, as well as from academia and government, will present papers and answer questions on the most pressing issues facing union/management officials and practitioners in the labor relations field.

The two-day conference will focus on the major issues before the National Labor Relations Board and on collective bargaining problems facing unions and management during times of world economic upheaval and corporate financial crises, including bankruptcy. Recent developments and new directions in employment discrimination will be discussed in depth by the authors of the most widely respected and cited text in the field. The effect of the erosion of the termination at will concept will be explored and practical suggestions will be made for dealing with this topic which effects both employers and unions alike. Public sector topics will include the scope of the duty to bargain, employee first amendment rights and balancing responsibilities during interest arbitration.

The speakers will include Joseph E. Mayer, Assistant General Counsel of the NLRB; John S. Irving, former NLRB General Counsel, currently in private practice representing management; and

Duane Beeson, a widely known and respected union attorney from the Bay Area. Professor Stephen Goldberg of Northwestern University School of law will propose new approaches to labor dispute resolution and Susan Katz Hoffman, a practitioner from Boston, will impart ERISA advice to non-specialists. Leon Marcus will comment on creditor committees and other bankruptcy matters affecting both unions and employers. Paul Grossman and Barbara Lindman Schlei, authors of Employment Discrimination Law, will describe the recent developments in that still evolving field and prognosticate on new directions the law will take in the coming decade. Charles G. Bakaly, former chairman of the Labor and Employment Law Section of the ABA, will speak on the erosion of the termination at will concept. The public sector topics will be addressed by Professor Theodore St. Antoine of the University of Michigan Law School, Linda Hirschman, a union practitioner from Chicago and Professor Donald H. Wollett of the McGeorge School of Law in Sacramento.

Nationally known and respected mediator and arbitrator Sam Kagel will be the luncheon speaker on May 5. His topic will be "Trends in Negotiation and Mediation."

The Washington State Bar has indicated that it will allow participants 11.75 CLE credits. Attorneys attending the conference from states other than Washington should check with their local bar association to determine the procedure for receiving CLE credits, if desired. The Labor Law Section will

## Apology

A regrettable incident occurred during the Alaska Bar Association Convention in mid-May and an apology is in order. During the convention's Libel Show, a brief story was told by the Master of Ceremonies, Bill Harpin, as a filler between acts of the show. The story was about John Gissberg, a member of the Association, and his family who were not present at the show. The story about them had been told to Mr. Harpin by Karen Hunt, Pat Kennedy and Randall Burns as the account of a true event, and it was repeated to those present at the Libel Show that evening as also being a true story. No one had sought to verify the truth of the story with Dr. Gissberg or his family. It was later learned, however, that the story was not true in any particular, and it has unfortunately considerably embarrassed Dr. Gissberg and his family. We have privately expressed regret for any pain to him and his family that this insensitivity caused, and wish now to publicly express those same

regrets and our apologies for this most unfortunate incident. It must be said additionally that the story was told in a light vein, and certainly with no intention of harming anyone, including Dr. Gissberg and his family.

Board of Governors  
Alaska Bar Association

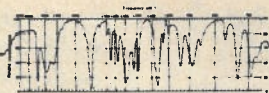


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## Guest Editorial

by Martin Friedman

Having attended the tightly organized and controlled public meeting sponsored by the Committee to Save Judge Hornaday, I feel compelled to place some perspective on what I feel are the most important, although publicly abused, issues aired at that meeting.

First of all, as a lawyer, which does not necessarily exclude me from the rest of humanity, although that was not apparent by the tone of the statements and the public's response to those statements I recognize that the actions and reputations of lawyers are at times, questionable. I doubt, however, that as a group they have more nefarious characters than other professions or avocations. I do know that the meeting seemed to focus on not what the problem was, but rather who the problem was. The answer unanimously came down to "a handful of pipsqueak lawyers."

The name calling on the one-to-one basis is of no concern. However, the vocal and enthusiastic reception to the public disparagement was disconcerting and potentially dangerous. Anyhow, personal sensitivities and sensibilities aside, the real issues have been lumped together almost irrevocably. I agree that there are definitely overlaps but they are also three relevant and separate issues with which I have intimate and long experience.

The first issue which concerned most of the vocal participants was the transfer of Judge Hornaday from Homer to Anchorage. Professionally, I have no strong opinion either way. Judge Hornaday can move or stay.

In my opinion, he is not particularly unqualified to sit as a District Court Judge, even though I have and do perempt him in the majority of criminal cases to which he has been assigned. I have been doing this on a case by case basis since Judge Hornaday came to Homer seven years ago. I represent about 25 criminal defendants a year; 95 percent are misdemeanants and half of those are DWI offenses.

Judge Hornaday is a well-paid state employee with a good retirement and benefit program. The Judge can move, quit, or fight if he thinks his boss is acting illegally. The job requires some legal experience and admission to the Bar of the State of Alaska. Judges, irrespective of which Court they sit on, are comprised of mere lawyers. Most of them aspire to the position, and some of them are selected because of their desire to be a judge coupled with a history minimally void of scandal or questions of impropriety. Some have arrived through political connections, and as a group are comprised of the same proportion of dolts to diamonds as any other category of persons.

Judge Rowland indicated at the meeting that were it not for the peremptory challenges, Judge Hornaday would not be reassigned. When Judge Hornaday took the job, the peremptory challenge went with the turf and one would be naive to believe that if he were practicing law, whether civilly or criminally, he would not be exercising the peremptory disqualification to the same extent that it is being exercised against him. Although the reassignment of Judge Hornaday involves the peremptory challenge, the challenge has a life and importance much more significant than the reassignment. Judge Hornaday is not being challenged because I want him to be reassigned. He is being challenged because I feel that in certain types of cases my clients can be more uniformly and fairly treated by exercising a challenge.

When Jim Hornaday, as a judge of the District Court, issued press releases setting out his presumptive sentences, he was in fact pre-judging all the cases that come before him, irrespective of the particular circumstances of the case. There would have been no criticism of his behavior if he were employed as a politician, legislator or lobbyist for MADD (Mothers Against Drunk Drivers). However, as a judge he was acting injudiciously, which I believe he has ultimately acknowledged. This one act does not in any way make him unqualified to sit as a District Court Judge. In fact, Judge Hornaday, outside of certain types of cases, competently performs his job.

The next separate, yet overlapping issue, is the question of peremptory challenges. A peremptory challenge is valuable to both sides in any controversy, whether criminal or civil. It allows an attorney or his client, without any stated cause, to have another judge assigned to the case. The new judge is not known to either side and you also take the risk that you may be worse off with the new judge. The Prosecutor's Office, as well as the Public Defender's Office, uses the challenge. Although the number of attorneys practicing law in the Homer District Court is relatively small, they do represent approximately 500 individuals over a year. The purpose of the peremptory challenge is not for the attorneys, although the attorneys are the person exercising the right. It is solely a right of and benefit to the class, individual, business, or corporation involved in the court system. Having been involved in a number of cases dealing with public interest issues, I found it desirable and important to ask for change of judge in several significant cases because I felt that the judge was not sensitive to the issue or the rights of the people that I was representing. Contrarily, in some of those cases, the State of Alaska has sought to disqualify peremptorily whenever they could, judges they felt were negatively disposed to the state. The reasons to disqualify could be because of prior decisions of the judge in similar areas, the general reputation the judge has for ruling against one or another class of litigants, perhaps because the judge worked with the other attorney for many years or for reasons unamenable but viscerally clear. A great many cases, especially in the civil area, whether personal injury, political or public interest cases, contract disputes, or motions, involve judgment and discretion calls on the part of the judge. These are areas in which the law allows the judge, within the acceptable parameters of legal precedent, to rule either way as long as he can find some reason in the body of the case to support his ruling. It is a rare judge who can and will recognize and admit bias. It is also a difficult situation to come before a judge representing a litigant knowing that the judge, for some reason, doesn't like you or your client's appearance, style, religion or positions. Generally, a judge will not admit, nor is there a way to demonstrate or even verbalize, bias. The peremptory challenge, as crude and inefficient as it may be in many circumstances, is the only tool available for approaching the goal of a fair, unbiased and impartial tribunal for those unlucky enough to need judicial relief. The point being made is that the challenges in the cases involving Judge Hornaday from Homer are not particularly aimed at removing Judge Hornaday from Homer. Judge Rowland made it clear that he was not approached by any attorneys, and probably most attorneys personally would like Judge Hornaday to stay in Homer if they had any choice or would be neutral in the matter. It was an administrative decision, one which someone had to make and it should be evaluated on that level.

The third separate issue is the question of keeping drunks from driving cars. Since "pipsqueak lawyers" are apparently capable of procreating, we can assume they will have the same percentage of offspring as any other profession or occupational grouping and will also have the same concerns about the safety and lives of

their progeny, family, personal friends, and community. Therefore, one could assume that they are not out to litter the roads with drunk drivers.

To focus on what happens to someone convicted of DWI, the law requires that for the first offense, there is a mandatory minimum 72 hours in Homer's concrete dungeon, and I do not say that critically, only as a matter of reality. The driver's license is suspended for at least 30 days and there is a fine of about \$300.00 to \$500.00. They are required to go through an alcohol screening program, and educational program, and in many cases, contribute hours of community service. Additionally, the law has been changed to require a person arrested for DWI to take a breathalyzer examination. A refusal results in an additional 72 hours in jail and 90 days loss of license, plus fines. It is estimated that at least 90 percent of the persons arrested for DWI are ultimately determined to be guilty of the offense and do suffer the consequences. Many of the judges replacing Judge Hornaday give more time than the minimum and there are many circumstances in addition to the drunkenness such as markedly erratic driving, high speed, or breathalyzers, which will cause the jail sentence and other sanctions to be generally higher for the first offense. Second and third time offenders have cumulatively higher penalties by statute. Based on my experience, the first conviction deters those convicted. Ninety percent of the offenders are first time offenders. The repeat offenders usually have alcohol problems and the sanctions are either irrelevant to them, or desired as self-punishment.

I submit that Judge Hornaday's original policy of presumptive sentencing of 15 days, although well-intentioned, did not work as a solution in and of itself. A first time offender is not easily deterred even with a mandatory minimum 30 days in jail. The focus of the effort has to start early and be aimed at teaching that one is more popular, healthy, and intelligent if you do not drive while drinking and if you do, the consequences are serious, which they are. Whether more serious sanctions will deter more people is a legitimate inquiry for lawmakers, it is no reason to morally and righteously condemn lawyers for violating the new commandment "Ye shall not disqualify our Judge", nor is it any reason to attempt to strike the peremptory challenge, which is a useful and valuable, although imperfect, tool for all kinds and types of litigants seeking fair, unbiased and equal treatment before the law.

Taken from the Homer News  
Thursday, January 13, 1983

## President's Column

by Andrew J. Kleinfeld

March 20, 1983

At the board of governors meeting March 18-19, we selected Duke University to publish the Alaska Law Review. The decision between Duke and University of Washington was extremely difficult, since both schools are excellent, and both presented extremely attractive proposals.

Our action grew out of the resolution adopted at the 1982 convention, in which the membership instructed the board to seek proposals from law schools with a view toward changing publishers. The board solicited proposals from all the law schools in the United States, received six, and narrowed the field to two.

We then solicited comments from the bar and from local bar associations. The Tanana Valley Bar Association recommended Duke. Of 13 individual letters distributed to the board, 11 favored Washington. On instructions of the board, I contacted the deans of both schools, after consultation with a committee, and advised them of board concerns so that they could prepare for their March presentations. Dean Carrington of Duke and Dean Price of Washington appeared at our meeting, made extensive presentations, and answered questions.

### Why a Law Review?

Before discussing the reasons for our choice, I'll deal with the threshold issue of why we fund a law review at all. We have budgeted \$20,000 per year for the law review. This is about 2.5% of our budget, a manageable but not insignificant sum. Every lawyer in the state pays a little over \$11 per year for the law review.

We have two purposes for this expenditure. First, we want to provide the bar with useful scholarly material. Second, we want to provide the Supreme Court with a continuing scholarly critique of its work product.

### Service Articles

The service function for the bar has run into difficulties in the past. Many law students and professors do not think that the daily work of most practicing lawyers is interesting enough to justify

major scholarly efforts. Lawyers complained that the UCLA-Alaska law review concentrated too much on the Alaska law practiced by a few dozen lawyers in Washington, D.C., not by most of our bar. Attention to outer continental shelf development, Native land claims, federal lands, and other important topics runs into the problem that few lawyers in Alaska find it necessary actually to read articles on these topics in the course of their practices.

Perhaps the most read, used and cited UCLA-Alaska Law Review article was Bob Irwin's 1975 survey of criminal sentencing doctrine and practice in Alaska. This was indispensable to any practitioner who handled a criminal case, and extremely persuasive as a citation. It is a model of the kind of article which performs a service to the bar, and is appropriate to a law review. We would like more articles like this.

### Restrain Supreme Court

Speaking for myself and not necessarily for the whole board, I think there is a second function, criticism of the Alaska Supreme Court, which can only be performed effectively by an academic other political institutions, while essential to its proper functioning, creates an unavoidable risk of irresponsibility. A small group of persons operating unchecked by competing institutions can be a little frightening. For the \$20,000 we spend on a law review, the bar creates an appropriate restraint on the power of the Alaska Supreme Court.

Traditionally state supreme courts are reined in by their own scholarship and sense of responsibility to doctrine and precedent. But if scholarly standards slip, law clerks are used inappropriately, or justices do not feel obligated to deal seriously with precedent, then a state risks result-oriented jurisprudence or random jurisprudence.

Lack of scholarly criticism can also make the court's duties more onerous, by depriving it of scholarly synthesis of doctrine in difficult areas, and by increasing its caseload. If a supreme court becomes less predictable, then it inevitably suffers from an increased caseload, as lawyers feel compelled to "roll the

[continued on page 5]



# All My Trials

by Gail Roy Fraties

In response to those kind readers and friends who have inquired concerning my health, I am happy to attribute my recent dramatic weight loss to the efforts of the Nutri-System organization of this city. How I came to apply to that group for assistance is another story, however—and, as with many traumas in my life, the story begins in Courtroom F, care of Superior Court Judge Ralph E. Moody. In my years of practice before him, I've given the old darling [to use Rumpel of the Bailey's expression] a good many hours of innocent amusement—and this occasion was no exception.

## High Cockalorum

It was during a preliminary hearing last fall in which the central issue seemed to be the identification of the assailant. The problem, from the prosecution point of view, was that the victim had identified her attacker as having a "high pot belly," whereas my defendant was, and is, an athletic looking man with no trace of such an appendage, high or otherwise. The chief investigator, APD Officer William E. Gallop, is a competent and professional policeman who candidly admitted to this discrepancy, and a few others as well. An hour's searching cross examination left him unbowed, but somewhat bloodied nonetheless.

Judge Moody, who had been listening to all of this with uncharacteristic restraint, intervened with a question. "What," he asked Officer Gallop in his soft drawl, "is a high pot belly?" The harried policeman glanced about the courtroom, nodding slightly as his eye fell upon defense counsel. "It's like the one on Mr. Fraties," he replied calmly.

Judge Moody was delighted. "Show me a profile on that, would you, counsel?" he requested, playing up to his mixed audience of attorneys, police and other courtroom personages. I complied, and signed up for an intensive diet and appetite control course immediately upon leaving the courtroom. Today, forty pounds lighter, all I have to do is think about Courtroom F and its genial proprietor and whatever appetite I have left disappears completely.

## Street Smarts

My faithful readers are familiar with the training methods employed by Anchorage investigator Gary Veres when he was on duty with the Los Angeles sheriff's office in the Watts district, some years ago (See Bar Rag, November-December, 1982). We were trying a homicide together in Juneau last Christmas, and Gary—during one of our numerous drinks together—recalled more incidents in his life as a training instructor in Watts. Many of you will recall that he spent six years there in that capacity, mostly on the night shift. Gary honestly liked a lot of the local denizens and got on well with them. However, his various trainees were a constant source of frustration.

"The dumbest son of a bitch I ever trained," said Gary, "had to be a redneck by the name of Eddie Joe Hunt." He shuddered at the memory and added, "He damn near got us both killed one night."

"We responded to a fight call at about 2:00 a.m.," Gary recalled, "and here was this black dude lying on the ground surrounded by two or three hundred of the brothers. He had been stabbed several times in the abdomen, and I was afraid that we might lose him. Eddie Joe was with me that night and as I interviewed various people in the crowd to attempt to identify the victim's assailant, I instructed Officer Hunt to take a statement from the injured man. It looked like it might turn out to be a

dying declaration."

Eddie Joe knelt beside the victim and attempted to communicate with him, without much success. Severe injuries had rendered him nearly unconscious, and the young trainee was having difficulty getting his attention.

"This was a tough crowd," Gary continued, "and I wasn't getting much help from them. I could hear Eddie Joe shouting at the victim, trying to get his attention. He wasn't getting anywhere, though, and the mob was getting ugly."

This went on for some time with the victim becoming increasingly weak and unresponsive. He didn't seem to be able to recall anything about his attacker's size, age, weight, clothing or other identifying characteristics. "You better get some kind of description," shouted Gary to the frantic trainee, who was obviously anxious to make a breakthrough on his first major felony case. Gary and the angry crowd became aware of a new line of questioning at the same electrifying instant. "WAS IT A (A STREET EXPRESSION IN SIX LETTERS, MEANING 'BLACK')," Eddie Joe wanted to know. Gary sighed heavily at the memory.

"I still don't know how I got us out of that one alive," he stated ruefully.

## The Night of the Jackal

Not all the trainees were as dangerous as Eddie Joe, but almost all of them suffered from cultural shock to one degree or another. Mike Miltimore was one such—being a young white gentleman, of liberal persuasion, from a rich family. Apparently, having taken a degree in sociology, he had joined the cops as a logical vehicle for his training in dealing with diverse cultures. He was not, however, very well equipped by his university education to deal with some of the basic facts of life in this notorious ghetto area.

"I had told Mike a dozen times never to sit down in Watts," Gary reminisced, "and to keep his feet shuffling even while standing up in someone's habitation."

I was mystified, and wanted to know why.

"The cockroaches, man," was Gary's rejoinder and, of course, a story went with it. "We were in this little old lady's apartment one night," said Gary. Apparently, someone had burglarized the place and taken all her shoes—and she wished to make a report. Trainee Miltimore, forgetting all of Gary's advice, sat down at the kitchen table and prepared to make an entry in his notebook.

"I wasn't going to warn him again," Gary recalled, "so I just stood there shuffling my feet, knowing what was going to happen." Mike soon faltered and gazed in horrified fascination as a four-inch cockroach began to emerge from under the lazy susan. It looked, according to Gary, like the warhorse mentioned in the Old Testament that says to itself "Ha, Ha!" among the trumpets, and it appeared to have designs on Officer Miltimore's notebook.

The complaining witness continued with her description in a quiet and long suffering monotone, "They took my green shoes, my red shoes, my yellow shoes, my black shoes," here without breaking her recitation, she reached for a frying pan which was lying on the counter—"my purple shoes, my white shoes"—

Without so much as interrupting her description, the little old lady—obviously an experienced Watts homemaker—swung the frying pan with terrific force, severely injuring the offending insect, and nearly frightening trainee Miltimore to death in the process.

"I can't believe she did that," he complained weakly on the way to the station. "I thought I had been shot."

## In Search of Pen Pals

On the subject of the police, most of you are aware that Juneau District Court Judge Gerald O. Williams used to

be a member of that fraternity before he went to law school. He was a contemporary of Pat Wellington, Bill Houston and Chief "Swede" Seiverson, all known to readers of my former columns. While still a member of the State Troopers, Judge Williams sent a request, in the Chief's name, to the personal column of the National Enquirer [which, in its former incarnation, was somewhat of a scandal sheet] with a request that the writer be sent a picture of a "virile male," and for the next three years Chief Seiverson arrived at the office early to intercept the mail before it was opened by his secretary.

## Ciraulo's Success Story

As readers of the Bar Rag who have enjoyed his articles are aware, Judge Williams is a historian of no mean ability. In that role, he told me recently how the present Chief of Police in Juneau, Joseph Ciraulo, first went on the force. "Swede Seiverson had been using a prisoner by the name of Virgil Cox for his executive assistant," said the Judge. "About the time Mr. Cox was to be released, Joe Ciraulo's father-in-law approached the Chief and asked whether or not a position would be opening up in the near future. Somehow, Swede had managed to keep his useful inmate in custody in the local jail for about three years, although he normally would have

been sent out to spend his time in the federal system."

An agreement was reached that Joe could have the clerk's job if his father-in-law would locate Mr. Cox a job on the outside with the municipal government. "And that is how," the judge reminisced, "the City of Juneau got a new policeman, and the airport got a burglar." It wasn't very long, either, before Mr. Cox was back at his old duties and Joe—having been released from clerical assignment—went out on the streets to lay the foundation for an eminently successful career in police work.

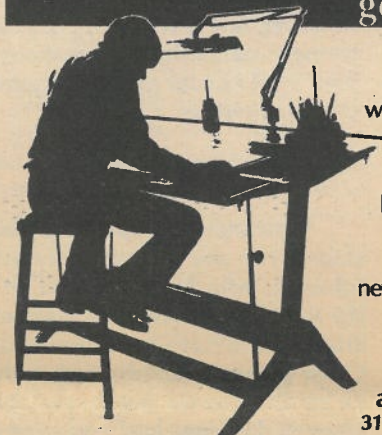
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## Leon Jaworski Fund Established

The Board of Governors of the American Bar Association has established the first named operating fund in the Association's history. Named in honor of the late Leon Jaworski, a past President of the American Bar and Watergate Special Prosecutor, the fund will be used for high priority public service projects, the first of which will be a Symposium on the Public Understanding of Law in Houston this fall.

As Chairman of the Second Century Fund, Jaworski was responsible for raising \$10.5 million for the public service work of the Association. Of that amount \$250,000.00 is being used to initiate the Leon Jaworski Fund for Public Service. In addition, the Jaworski law firm has requested that its Second Century pledge of \$150,000.00 be committed and the Anderson Foun-

ation of Houston has pledged \$100,000.00.

It is contemplated that the principal will remain intact with the interest being utilized for high priority public service projects.

## President's Column

[continued from page 4]

dice" on any significant trial court defeat.

Law review criticism meets a court on scholarly grounds. When a law review comment demonstrates that a court overlooked an important precedent or doctrine, or misunderstood a critical principle, it is the functional equivalent for purposes of intellectual responsibility of a reversal for a trial court.

I do not mean to exaggerate the value of student analysis. Felix Frankfurter said that he did not mind when the Harvard Law Review criticized him, but he thought it awfully pompous of them to tell him that he was correct. Student work can be pompous and silly, especially on topics requiring practical experience for adequate understanding. On topics not requiring practical experience so much as library scholarship, however, law review criticism can be extremely valuable, and justices cannot pass it off as sour grapes or tainted with clients' interests.

### Washington

Washington proposed a traditional student-run law review. Professor Ralph Johnson, who has published on law of the seas, Indian law, and high seas fisheries, would have been faculty advisor. Other interested faculty included experts on environmental law, law of the ocean sciences, Japanese law, and international land reform. We liked Washington's proposal to integrate the Alaska Law Review and Washington Law Review staff, so that we would be drawing talent from the first cut.

We were worried about Washington's budget problems. Dean Price stated in the Washington Bar Bulletin that budget restrictions had prevented the law school from replacing with visiting faculty four members of its own faculty teaching as visitors in other schools, and compelled it to leave two faculty vacancies unfilled. The school has only six secretaries for 35 faculty. Since Washington is a state school subject to legislative control, we thought there might be sensitivity in Olympia if its state law school appeared to be subsidizing Alaska.

We were also concerned about topic selection at Washington. The interests of participating faculty members are pretty far removed from the practices of most Alaska lawyers, and the students on the law review have consciously left Washington state law to other law reviews so that they could focus on topics of national importance. We do not want to spend \$20,000 of your dues without obtaining a scholarly product focused on the work of Alaska lawyers and courts.

### Duke

Duke plans a faculty-managed review, not the traditional student-run journal. It has used this approach since 1934 for Law and Contemporary Problems. A salaried individual would serve as General Editor (Duke pays the salary, and our expenditure will not be affected by this). The school is heavily endowed, and unburdened by financial problems. It is prepared to spend more than we send it on the Alaska Law Review.

Staff will be selected from the top half of the class on faculty recommendations. The bar will reimburse \$50 per page of published material, up to 400 pages per year. We do not pay until publication.

Duke will regularly solicit manuscripts by Alaska authors. It will also receive and consider on equal terms manuscripts prepared by students at other law schools, which I believe would include students under the supervision of the law faculty at the University of Alaska. If an Alaska author writes a useful article on an appropriate topic, but the pressures of practice have prevented it from attaining an adequate scholarly level, the law review will arrange for employment of research assistants at \$5/per hour from among students not on the review, to bring the article into publishable form.

### Duke Faculty

Five faculty members will participate on the Alaska Law Review board. Professor Walter Dellinger will be president. He has represented the state of Alaska in litigation against several oil companies, and published on constitutional, criminal, and labor law. Professor Richard Maxwell has published on secured transactions, oil and gas law, adoption, damages, and property. Professor William Reppy has published on property, comparative negligence, community property and family law. Associate Professor Katherine Bartlett has published on custody and on constitutional law. Associate Professor Christopher Schroeder has published on energy and the environment.

Duke's faculty has a substantial involvement and level of interest in matters governed by state rather than federal law, such as property, workers' compensation, family law, contracts and commercial law, and criminal law.

Dean Carrington takes the view that these subjects are best treated by students in the context of a particular locale, and a clearly defined audience of the lawyers and judges of that state. He wishes to avoid what he calls "tenure writing," long articles not intended for actual reading by any audience except an associate professor's tenure committee.

### Problems and Risks

We found the choice difficult, because both schools offered so much. We selected Duke after considerable debate, by a close vote. I think some board members changed positions (both ways) as a result of the presentations made by Deans Carrington and Price, and different members had different reasons for their preferences.

For me, the budget and topic selection issues seemed quite important. I was concerned that Washington might

be squeezed by its legislature, and compelled to squeeze us. I also was worried about the difference between the interests of faculty there and the practices of most Alaska lawyers.

Dean Price emphasized the service his faculty could render to our bar by publication of articles on such subjects as trade with the Orient. This may have been partly in response to the concern we had raised with both deans about relevance of topics to Alaska lawyers. While trade with the Orient is of great importance to Alaska, as are outer continental shelf development and the other faculty interests described above, I wondered whether a substantial percentage of our bar would purchase material on these subjects voluntarily, were they not compelled to do so through an integrated bar.

Duke's obvious problem is geographic and cultural distance from Alaska (though some letters and calls to the board suggested that the past "colonial" relationship of Seattle to Alaska cut in favor of Duke). Dean Carrington responded to this by proposing that immediately after exams each spring, the students on the Alaska Law Review would be sent by Duke at its expense to Alaska in a van, to gain familiarity with the state and to meet with Alaska lawyers and gain understanding of their audience. He emphatically intends that the audience for the review be us, not an amorphous body of academic opinion. The geographic issue bears only on the service function, of course, not on the function of review of supreme court decisions.

Another problem with the Duke proposal is that the Duke Law Journal and Law and Contemporary Problems will probably have greater prestige among the students than the Alaska Law Review, at least for a time, so we risk getting the third cut. The quality of the student body at Duke is high enough, however, so that faculty selection, which will be limited to the top half of the class, should suffice to give us a highly competent staff.

### Our Decision

Since the alternatives were so attractive, the decision was especially difficult for the board to make. I think that we probably would have been happy with either outcome. Some of the letters to us, on both sides, were strongly worded, but I do not think our choice was between a bad and a good alternative. Since neither alternative was bad, this should not be an issue about which people develop hostilities or maintain continuing objection. Our best course now is to unify behind the Alaska Law Review published by Duke and help make it a success.

I am especially eager to make this work, and shall serve personally as a liaison with Duke. I plan to consult especially on topic selection. We shall provide the law review with names and addresses of section chairpersons, and suggest consultation with them about topic selection and development. I would be helpful if a broad range of lawyers would volunteer to host students at their homes on the summer trips, both to minimize expenditure and to educate the students on the practices and concerns of Alaska lawyers.

## Alaska Meeting for ABA Committee

The ABA's standing committee on the Unauthorized Practice of Law, chaired by Donna Willard of Anchorage, will hold its next meeting in Anchorage at the Sheraton on May 14, 1983.

Anyone interested in meeting with the Committee should contact either Willard or Elizabeth Michaelman, Staff Counsel, 33 W. Monroe, 7th Floor, Chicago, Illinois 60603, telephone number (312) 621-9200.

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by W. Stephen Scott

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# Letters

Dear Editor:

The Justice Center, University of Alaska, Anchorage is looking for two persons for appointment as Assistant or Associate Professor in the \$37,000-up range.

One of these appointments is for a person with a background in criminology—to replace Professor Endell while he is on extended leave to manage the state Division of Corrections.

The other position is for a person with a background in law or justice administration and electronic media production, particularly television, to take charge of the public education functions of the Justice Center. This position is permanent.

Detailed job descriptions and qualifications are available from the University of Alaska employment office and from the Center Director, John Angell.

Sincerely,  
John E. Havelock  
Director of Legal Studies

Bar Rag  
Box 279  
Anchorage, AK 99510

Dear Editors, Staff and Contributors:

With the gratitude of an overweight sinner in a sweatbox, I thank your for the breath of glacial air I receive with each new Bar Rag. My much filched Rag is an ineffable contrast to the slick pages of the ponderous local Bar magazine. Among fellow practitioners outside it is of course unseemly to be seen with the irreverent Rag, but it is frequently "lost", meaning, it is covertly clutched and carried into dark corners where frenetically pawed. From the gales of laughter, not wind, which issue from the executive throne room it would appear that franchising or at least a foreign throne room it would appear that franchising or at least a foreign distributorship would do well and I hereby make application.

Even after the print is faded and smeared by mayonnaise and tears, the paper carries on the tradition of Alaskan utilitarianism (jury-rigging doesn't seem to fit the context) by blotting puppy puddles and starting fires.

Again, from the outside, populated by the Frank Burns of the profession, to the Hawkeyes of the North, thanks for the engaging repartee, frank discussions and refreshing invective.

semper faitous,  
Gerritt J. VanKommer

P.S. Foreign correspondents and contributors should be sent CARE packages of smoked salmon, canned air and a fireweed in bloom.

March 4, 1983

Gentlemen:

Last year I went hunting with some of my buddies, Jerry Wade, Dr. Voke, Dr. Dietrich and Dr. Sutherland. They demonstrated how cheap it was to re-

load their own shells and how super their reloads were. I was so impressed that I bought myself an Ithaca Mag. 10, a 10 gauge reloader.

All winter long I reloaded and practiced shooting my big gun until I became very proficient at long, long range shooting. I was very impressed by the fact that I could reload my own super-duper shells that had killing patterns at very long ranges.

It, therefore, came as no surprise to myself that I spent a very restless night prior to the opening of spring goose season. I imagined myself making tremendous shots at giant Honkers almost out of eye sight. The falling geese filled my dreams all night long.

I was in the blind an hour before daylight, my Ithaca Mag. 10 at my side loaded with 2 1/4 oz. of copper no. 2's. Some copper no. 4's lying to one side for closer range shooting, some BB's to the other for those far out of range shots.

Anxiously waiting for the time to pass until opening I drank my 1/2 gallon of Brandy, smoked a pack of cigarettes and chewed off my nails while trying to calm Wade's nervous dog who was chasing dragon flies.

Shortly before daylight a skein of huge Honkers appeared out of the Northwest heading straight for my blind. I reached for my goose call but found that Wade's dog had eaten it. As a result the geese avoided my decoys and landed 500 yards away, just slightly out of range.

The area they landed in made it very easy for me to sneak within 400 yards of them in the mud. I was able to count 378 giant Honkers with the aid of my empty Brandy bottle.

I was bursting with pride as I rose from amongst the logs with my shiny new Mag. 10 shouting "I've got a Mag. 10 Ithaca with Federal, once fired hulls in this gun. Each is loaded with 2 1/4 oz. of buffered copper no. 2's using a BPD wad, a 1/4" 20 GA. felt filler and a .125 nitro card. All hand loaded by me . . ."

With that pronouncement echoing across the flat all 378 geese surrendered without a single shot being fired; at a range of 400 yards.

I know there may be one or two readers out there that may find this story hard to believe but that's the truth and that my friends, is truly cheap shooting.

Sincerely,  
R. STANLEY DITUS

P.S. Being a good sport I let all of the geese free except one that died of fright, I think it was a weak hearted Swan . . .

March 3, 1983

Dear Dr. and Mrs. Gissberg:

I want to apologize by this letter for any embarrassment or discomfort that my telling of the story at the Mid-May Libel Show of the Bar Convention may have caused you or your family. I certainly did not mean to cause any harm or embarrassment to your family. At the time

I told the story, I believed it was true, as I had been told the story as if it were true. I was extremely upset to learn that, in fact, the story was not true in any particular. I not only regret having told the story, but also regret I first told the story without having sought to verify whether the story was true with you or your family. I have privately apologized previously, and wish to do so now publicly to ensure that anyone who has heard the story will know that there is no truth to it.

Sincerely,  
William Harpin

Dear Harry:

While organizing a pile of dusty papers, I happened upon a copy of "The Lawyer's Prayer," authored by, or at least publicized by, the late George Boney:

## THE LAWYER'S PRAYER

Oh, Lord, let strife and turmoil reign amongst Thy people lest Thy servant perish.

Sincerely,  
KAY, CHRISTIE, FULD,  
SAVILLE and COFFEY  
Reginald J. Christie, Jr.

## You Can Have It All! Word Processors, Success, Sex, Money

by Russ Arnett

The Young Lawyers

If a young lawyer desires wealth, the best advice that can be given to him is he's more likely to acquire it through investments than from law practice. Dr. O'Malley—long a friend to Anchorage lawyers—described his medical career as "just a little practice on the corner". He added, "Of course I own the corner". One very rich lawyer operated a funeral parlor, a probate practice, and a real estate practice, all at the same time. Today's young lawyers have only themselves to blame for not exercising the same ingenuity.

Warren Cuddy, who acquired a controlling interest in the First National Bank of Anchorage in the 1940's, also had a busy law practice. It was said that he could hear whether all the typewriters were being operated. If one went silent he would go see what was the matter.

As a young lawyer I was turned down for a raise but instead rewarded with the admonition that "You make money when your generation does."

One of my friends' first jobs as a lawyer was in Texas during the Depres-

sion. He received \$50 a month and was required to sign a yellow dog contract providing that he would not later represent any of the clients. He decided to join the Army.

## Tricks of the Trade

A lawyer representing the young wife in a complicated divorce involving shopping centers obtained a handsome settlement for her. He had earned a large fee but had not been paid. When the lawyer announced his success to his client she consummated the attorney-client relationship on the sofa in his office. As she got up she said "That's your fee and if you don't like it I'll call your wife". No fee.

A part-time law professor of mine came to class directly from a grievance hearing about a fee he had charged but which he had never been paid. He was very angry. "Get the money while the tears are flowing" was his mordant advice that day.

One Anchorage lawyer was unable to enforce a judgment because the debtor had no job. The lawyer found him a job. When the debtor didn't show up for work, the lawyer had a taxi pick him

[continued on page 8]



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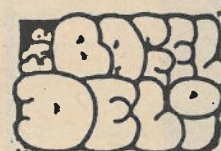
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### Tanana Valley Bar Association Friday, January 14, 1983

The meeting was called to order by president Jim DeWitt at 12:31 p.m. Joe Darnell, legislative counsel for Senator Stevens in Washington, D.C., and Dan Mellow, Judge Van Hoomissen's clerk, were introduced as guests.

It was reported that we had \$5,109.58 and two payables in the treasury and Dave Call announced that the nominating committee for the 1983 slate of officers would meet immediately after this meeting.

King Arthur reported for the Fourth of July party committee and two places were suggested: one being the Castle where a meal would be served at \$15.75 plus tip or, alternatively a buffet for \$14.75. Chena Hot Springs was mentioned as one of the locations and \$13.50 was given as the bottom price. Sunday brunch can be had for \$5.50 and the overnight rental for cabins is \$50.00. Bob Groseclose moved and the motion was seconded to have the Fourth of July party at the Castle. The motion was passed. The original motion setting the date for February 12 was amended and it was decided since Friday is a holiday, the Fourth of July party would be at the Castle on Friday, February 11th.

Andy Kleinfeld reported for the Alaska Bar Association saying that a number of proposals had been received for publication of the Alaska Law Review. The two principal universities in contention were Duke University and the University of Washington. There was considerable discussion and following the discussion it was moved and seconded and passed that Duke University would be recommended to the bar association to be affiliated with us. Barbara Schuhmann reported for the judicial counsel.

Jim DeWitt reported for the West Law committee and said that he now had the target number of subscribers and that very shortly a contract would be forthcoming.

Judge Blair moved to adjourn. This motion was seconded and the meeting was adjourned at 1:01 p.m. on January 14, 1983.

Respectfully submitted,  
R. Dryden Burke

### Minutes of the January 21, 1983 Tanana Valley Bar Association Meeting

The meeting was called to order by Vice President Art Robson. Richard Burke's minutes of the previous meeting were read and approved.

Members introduced Justice Robert

Bacon and Anchorage attorney Penny Zobel.

Dave Call reported on behalf of the Nominating Committee that the following people had been nominated and agreed to serve as next year's TVBA officers:

Art Robson: President  
Richard Dryden Burke: Vice President  
Mary Nordale: Treasurer  
John Franich: Secretary

A motion was made, seconded and passed to close nominations. The election will be held at the January 28, 1983 meeting.

Andy Kleinfeld reported that twenty five (25) people attended the CLE program on microcomputers at Jim DeWitt's office on Thursday, January 20th.

Art Robson reported that VHS tapes on Workers Compensation and Real Estate had arrived and would be available for the next month.

Andy Kleinfeld reported for the Board of Governors that during their recent telephone conference the Governors narrowed the field for sponsor of the *Alaska Law Review* to the University of Washington and Duke University law schools. The Deans from the two law schools will appear at the next Board meeting to answer questions.

In response to Ralph Beistline's report on the State Bar Convention, the acting president appointed Dave Call, Dick Savell and Judge Van Hoomissen to the Exotic Affairs Committee to find a substitute for the libel show. One judge offered to conduct a public commitment hearing for the Court of Appeals.

Harry Davis announced a seminar on the Toxymeter 3000, the time yet to be set, and an opening in the Department of Law in Barrow.

Dave Call and Bill Satterberg were appointed to compose a "Usual Courtesies" form letter for vacationing attorneys.

The membership will vote at the January 28th meeting on the proposed rescheduling of the Christmas party to February 10th to accommodate Jim "Blues" Bell's schedule.

The meeting ended without adjournment.

Submitted,  
William B. Schendel  
Acting Secretary

### Minutes of the Tanana Valley Bar Association Friday, January 28, 1983

The meeting was called to order at 12:31 p.m. by President Jim DeWitt. Bob Groseclose introduced Ron Benkert of Anchorage as his guest and Beth Parrish, and Shannon Brawell from McKees

Port, Oregon, were introduced as guests as well as Mary Louise Malinda of Lynch Farney et al. Treasurer Paul Canarsky announced that there were \$1,517.47 in the treasury and Fred Brown interjected that not only had he paid his 1982 dues but had already paid his 1983 dues and was "working hard for his clients". Prior to the reading of the minutes, the secretary announced that Judge Van for some unknown reason had attempted to pay off a bet he made with the secretary prior to the bet falling due. The bet is now due. And the secretary asked Paul Canarsky to read his "Ode to a Frozen Moose" again since many in the rather large gathering had not heard it the first time.

Hugh Connelly reported that Wendell Kay, a well-known attorney in Anchorage had sat on a criminal case and upon finding the defendant not guilty in a jury trial allegedly said to him "go and sin no more". It was then rumored by someone that Lloyd Hoppner had recently sat on a criminal case jury and allegedly had told Harry Davis to "go and sin no more".

Bob Groseclose reported for the judicial counsel and Barbara Schuhmann's absence—Barbara allegedly being in conference on the commission on the status of women. I later verified this when I saw Barbara on TV reporting for the commission.

King Arthur reported for the Fourth of July picnic committee and it was moved and seconded and passed that the picnic be held at the Castle on the evening of Thursday, February 10, 1983. There was some discussion as to whether separate entrees were to be offered or a buffet for all. The separate entree motion was seconded and passed with the sole dissent of the secretary. Drinking is to commence at 7:00 p.m. and the consumption of food is to com-

## You Can Have It All

[continued from page 7]

up each morning and added the fare to the judgment.

Another lawyer, who claimed he could make collections profitable, summoned the tipstaff when he recognized a debtor at Christmastide dressed as Santa and collecting money in a tin bucket.

An extremely successful Anchorage lawyer uses a law-medicine approach when he concludes his client has a badly swollen wallet in need of being lanced.

### Bishop Pike in Alaska

In the mid '60s Bishop Pike, legal scholar turned liberal ecclesiastic, addressed the Anchorage Bar. Dave Talbot, who had known him in New York, introduced him. Dave inaccurately gave the title of his recent book, which was entitled *Beyond the Law*, as *Above the Law*.

Bishop Pike recounted an American Bar Association meeting where he had posed a situation of a young associate in a large firm who concluded that the project on which he was working, though legal and not in violation of the canons of ethics, was essentially a gyp and harmful to legitimate interests and to persons. The associate mused that if eventually he became a partner perhaps he could positively influence such ethical matters within the firm, or would he by then have become anesthetized to such

mence at 8:30 p.m. King Arthur suggested that staffs be invited but there never was any definition forthcoming of who or what were staffs.

Hugh Connelly reported for the legislative committee and announced in a jubilant tone that there was a bill before the legislature to provide for confiscation of motor vehicles of first offense and subsequent offenders of the DWI statute.

Bob Groseclose announced that he had been in touch with Debra O'Reagan and that it was proposed to bring the off the record bar-bench seminar to Fairbanks at some later date.

Dave Call presented a slate for 1983 which were as follows:

King Arthur - President;  
Dick Burke - Vice President  
Mary Nordale - Treasurer;  
John Frannich - Secretary

Since the nominations were still open, Dick Savell proposed an alternate slate nominating Lloyd Hoppner for President, Bill Satterberg for Vice President, Irwin Ravin for Secretary, and Clem Stephenson "was to handle all the money". Dave Call objected to the nominating procedure and ultimately, after he had made his point, Savell withdrew the nomination of the entire slate and nominations were closed. It was announced that installation of the new officers would take place some time, some where at the fourth of July picnic as has been done traditionally in the past. Dick Savell announced that he had the CLE tapes on workmans compensation—these being the tapes that King Arthur promised us the day after the Lord's crucifixion. Allegedly Larry Wood has the tapes now.

That's 30 for this term.

Respectfully submitted,  
R. Dryden Burke

concerns? A distinguished pillar of the Bar in attendance, himself a partner in a leading firm, rose and said: "But there is no question." Bishop Pike interrupted to say, "I have no answer to propose, but I think there is at least a question". The partner replied: "A young man is supposed to do what he is paid for!" Bishop Pike answered, "I had not realized how close our profession is to the world's oldest profession."

Pike's thesis was that there is an all-embracing claim upon a lawyer that far transcends his explicit professional obligations. He asserted that self-acceptance is important to lawyers and that they want not only to feel that they are good lawyers (in the sense of technical proficiency) but that they are of impeccable integrity. However, the essence of law practice is to be faced with ethically mixed situations, of choices between shades of gray. The lawyer should give conscious and mature study to his own world view, in the broadest sense, that is, his perspective on life and reality. If he does, his general outlook will be more operative in terms of his particular decision-making, causing him to become less fragmented and more whole as a person. It should incidentally make the lawyer a more effective and attractive person and doubtless increase his clientele and income. All is spoiled, however, if he conceives of this approach as primarily a means to prosperity.

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# Stray Bills

IN THE HOUSE  
BY THE JUDICIARY COMMITTEE  
CS FOR SPONSOR SUBSTITUTE FOR  
HOUSE JOINT RESOLUTION NO. 7  
(Judiciary)

IN THE LEGISLATURE OF THE  
STATE OF ALASKA  
THIRTEENTH LEGISLATURE-  
FIRST SESSION

Proposing amendments to the Constitution of the State of Alaska relating to the election of the attorney general and to procedures governing the election and term for state offices to be elected under the constitution.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

\*Section 1. Article III, sec. 23, Constitution of the State of Alaska is amended to read:

SECTION 23. REORGANIZATION.  
(a) *Except as provided in (b) of this section, the [THE] governor may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders. The legislature shall have sixty days of a regular session, or a full session if of shorter duration, to disapprove these executive orders. Unless disapproved by resolution concurred in by a majority of the members in joint session, these orders become effective at a date thereafter to be designated by the governor.*

(b) *The governor shall make no change in the organization or function of any unit of the executive branch which is headed by the attorney general.*

\*Sec. 2. Article III, sec. 24, Constitution of the State of Alaska is amended to read:

SECTION 24. SUPERVISION. *Except for any unit of the executive branch which is headed by the attorney general, each [EACH] principal department shall be under the supervision of the governor.*

\*Sec. 3. Article III, sec. 25, Constitution of the State of Alaska is amended to read:

SECTION 28. ATTORNEY GENERAL: QUALIFICATIONS. There shall be an attorney general. He shall be at least thirty years of age and a qualified voter of the State. He shall have been a resident of Alaska at least five years immediately preceding his filing for office, and he shall have been a citizen of the United States for at least seven years. He shall be licensed to practice law in the State and shall possess additional qualifications prescribed by law.

SECTION 29. ELECTION OF ATTORNEY GENERAL. The attorney general shall be chosen by the qualified voters of the State on nonpartisan ballots. Candidates for attorney general shall file for the office as prescribed by law. The candidates receiving the greatest and the second greatest number of votes on a nonpartisan ballot at the primary election shall be candidates in the general election. The candidate receiving the greatest number of votes on a nonpartisan ballot at the general election shall be attorney general.

SECTION 30. LIMIT ON TENURE. No person who has been elected attorney general for two full successive terms shall be again eligible to hold that office until one full term has intervened.

SECTION 31. VACANCY. In case of a vacancy in the office of attorney general for any reason, a successor shall be elected for the remainder of the unexpired term at the first general election occurring not less than six months after the office becomes vacant. The governor may appoint a

qualified person to fill the office between the date it becomes vacant and the date it is filled by election.

SECTION 32. COMPENSATION. The compensation of the attorney general shall be prescribed by law and shall not be diminished during his term of office, unless by general law applying to all salaried officers of the State.

SECTION 33. DUTIES. The attorney general shall be the legal adviser of the state officers, and shall perform other duties prescribed by law.

SECTION 34. ELECTION AND TERM OF NEWLY ESTABLISHED ELECTED STATE OFFICES. The first election for a state office required by the constitution to be elected shall occur at the first general election occurring after the office is established under the constitution. If a vacancy occurs in the office before the first general election held after the office is established under the constitution, the office shall be filled under the law as it existed before the office was established under the constitution. Except as otherwise provided in the constitution, the term of office of a state office required by the constitution to be elected begins at noon on the first Monday in December following the general election for that office and it expires at noon on the first Monday in December four years later.

\*Sec. 5. The amendments proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

IN THE HOUSE  
BY BUSSELL, UEHLING, LISKA  
AND SCHULTZ

HOUSE BILL NO. 235  
IN THE LEGISLATURE OF THE  
STATE OF ALASKA  
THIRTEENTH LEGISLATURE-  
FIRST SESSION

## A BILL

For an Act entitled: "An Act relating to authorizing an advisory vote by the qualified voters of the state on instituting capital punishment for first degree murder; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

\*Section 1. The lieutenant governor shall place before the qualified voters of the state at the next general or special election a question advisory to the legislature of whether the legislature should enact laws that would institute capital punishment for first degree murder. The question shall appear on the ballot in the following form:

QQQQQQQQQ

Shall the Legislature of the State of Alaska enact laws instituting capital punishment for first degree murder?

Yes [ ] No [ ]

\*Sec. 2. This Act takes effect immediately in accordance with AS 01.10.070(c).

IN THE SENATE  
BY P. FISCHER

SENATE BILL NO. 100  
IN THE LEGISLATURE OF THE  
STATE OF ALASKA  
THIRTEENTH LEGISLATURE-  
FIRST SESSION

## A BILL

For an Act entitled: "An Act relating to peremptory disqualification of a judge and changing Rule 10(c) and Rule 25(d), Rules of Criminal Procedure and Rule 42(c), Rules of Civil Procedure; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

\*Section 1. AS 22.20.022(a) is amended to read:

(a) If a party or a party's attorney in a district court action or a superior court action, civil or criminal, files an affidavit alleging under oath the belief that a fair and impartial trial cannot be obtained, the presiding district court or superior court judge, respectively, shall at once, and without requiring proof, assign the action to another judge of the appropriate court in that district *who resides in the municipality where the disqualified judge presides.* [ , OR IF THERE IS NONE, THE CHIEF JUSTICE OF THE SUPREME COURT SHALL ASSIGN A JUDGE FOR THE HEARING OR TRIAL OF THE ACTION]. The affidavit shall contain a statement that it is made in good faith and not for the purpose of delay.

\*Sec. 2. AS 22.20.022 as amended by sec. 1 of this Act has the effect of changing Rule 10(c) and Rule 25(d), Rules of Criminal Procedure, and Rule 42(c), Rules of Civil Procedure, by eliminating peremptory disqualification of a judge in a municipality in a district with only one resident district court judge or one resident superior court judge.

\*Sec. 3. AS 22.20.020 is amended by adding a new subsection to read:

(d) A judicial officer in a municipality with only one resident district court judge or one resident superior court judge may be disqualified only under this section or AS 22.30.070.

\*Sec. 4. This Act takes effect immediately in accordance with AS 01.10.070(c).

IN THE SENATE  
BY PETTYJOHN, KELLY,  
P. FISCHER AND FAIKS

SENATE BILL NO. 121  
IN THE LEGISLATURE OF THE  
STATE OF ALASKA  
THIRTEENTH LEGISLATURE-  
FIRST SESSION

## A BILL

For an Act entitled: "An Act authorizing capital punishment, classifying murder in the first degree as a capital felony, and establishing sentencing procedures for capital felonies."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

\*Section 1. AS 11.41.100(b) is amended to read:

(b) Murder in the first degree is a capital [AN UNCLASSIFIED] felony and is punishable as provided in AS 12.55.125(a) [AS 12.55].

\*Sec. 2. AS 12.55.125(a) is amended to read:

(a) A defendant convicted of a capital felony [MURDER IN THE FIRST DEGREE] shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years or shall be sentenced to death.

\*Sec. 3. AS 12.55 is amended by adding a new section to read:

Sec. 12.55.115. REVIEW OF JUDGMENT AND SENTENCE OF DEATH. (a) A judgment of conviction of a capital felony for which a sentence of death is imposed is subject to automatic review by the supreme court within 60 days after imposition of the sentence. This time limit may be extended by the supreme court. A review under this section has priority over all other cases and the case shall be heard in accordance with rules adopted by the supreme court. On review, the court shall determine if

(1) the sentence was imposed under the influence of passion, prejudice, or other arbitrary factor;

(2) the evidence supports the finding of an aggravating factor under AS 12.55.180; and

(3) the sentence is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.

(b) If the supreme court upholds a judgment of conviction and sentence of death, the court shall specify the time, place, and manner of execution.

\*Sec. 4. AS 12.55 is amended by adding new sections to read:

Sec. 12.55.177. SENTENCING PROCEDURE FOR CAPITAL FELONY. (a) When, after a trial by jury, a defendant is convicted of a capital felony, the court shall conduct a separate sentencing proceeding before the trial jury as soon as practicable. If a jury trial has been waived, or if the defendant pled guilty, the sentencing proceeding shall be held before a jury impaneled for the purpose.

(b) In the sentencing proceeding evidence may be presented as to any aggravating or mitigating factor that the court considers to have probative value regardless of the admissibility of the evidence under the exclusionary rules of evidence, provided the defendant has an opportunity to rebut hearsay statements. The state and the defendant or the defendant's counsel shall be permitted to present oral argument. This subsection does not authorize the introduction of evidence secured in violation of the Constitution of the State of Alaska or the Constitution of the United States.

Sec. 12.55.179. SENTENCE FOR CAPITAL FELONY. (a) The jury, after considering the evidence shall enter a sentence of death or a term of imprisonment in accordance with AS 12.55.125(a). If the jury enters a sentence of death, it shall make written findings of

(1) aggravating factors that exist to justify the sentence; and

(2) mitigating factors considered by the jury.

(b) A judgment of conviction for which a sentence of death is imposed is subject to automatic review under AS 12.55.115.

Sec. 12.55.180. AGGRAVATING FACTORS. The death sentence may not be imposed unless at least one of the following aggravating factors is found to exist and is not outweighed by mitigating factors:

(1) the defendant's conduct during the commission of the offense manifested deliberate cruelty to another person in that it involved torture or an aggravated battery;

(2) the defendant's conduct created a risk of imminent physical injury to three or more persons, other than accomplices;

(3) the defendant has a prior conviction for a felony that involved the use of violence to a person;

(4) the defendant committed the offense pursuant to an agreement that the defendant either pay or be paid for the commission of the offense, or for other pecuniary gain;

(5) the defendant was on release for another felony charge or conviction having assault as a necessary element;

(6) the defendant knowingly directed the conduct constituting the offense at an active officer of the court or at an active or former judicial officer, prosecuting attorney, law enforcement officer, correctional employee, or fireman during or because of the exercise of official duties;

(7) the defendant was a member of an organized group of five or more persons, and the offense was committed to further the criminal objectives of the group.

Sec. 12.55.181. MITIGATING FACTORS. The death sentence may not be imposed if mitigating factors are found to outweigh aggravating factors. All mitigating factors shall be considered including the following:

(1) the defendant committed the offense under some degree of duress, coercion, threat, or compulsion insufficient to constitute a defense, but which significantly affected the de-

[continued on page 16]



## Golden Gate Law School Legal Externship Program

For the past few years, the Golden Gate University School of Law has had many of its students work in the State courts and State agencies in Alaska. This has been possible due to the excellent programs for law students available through these courts and agencies and due to the fact that Golden Gate allows its students to earn academic credit for these types of programs.

Located in the heart of the Financial District in downtown San Francisco, Golden Gate University School of Law was established in 1901 and has been approved by the American Bar Association since 1956. The enrollment of the school hovers around 800 students each year, two-thirds of whom are enrolled in a three-year day program and one-third of whom are in a four-year evening program. This coming fall, the Law School will also be offering a four-year day program.

The student body at Golden Gate is as diverse as its curriculum. The average age of the student body is 30, which means many of the students already have had some type of professional experience. Nearly one-half are women and about fifteen percent are from a minority ethnic background. At any one time, there may be eight to 15 students from Alaska.

In addition to the traditional law school courses, Golden Gate has developed one of the most varied litigation-oriented programs in the country. Year-long programs are offered in civil litigation, criminal litigation, family law litigation, immigration law litigation, and international business litigation. All of the litigation programs are taught by faculty members who also practice in the particular area being taught in order to ensure that students are truly receiving a practical training. Perhaps it is the result of this emphasis on litigation and practical experience that so many Golden Gate students then develop an interest in pursuing a legal externship.

As funding for public sector activities becomes increasingly scarce, law students at Golden Gate and other law schools have become more aware of the potential for developing these types of externships in private law firms. Therefore, Golden Gate is currently undertaking a major effort to familiarize the private bar in Alaska of its school and its students.

What does a legal externship entail? Aside from the fact that these placements are full-time, there are five basic requirements both the student and law

firm must meet: 1) The student extern must have a carefully controlled and limited work load, e.g. assignments should be planned to further the educational process of the student and not just the needs of the office; 2) The student extern must receive continuing, and regular, quality supervision, e.g. an attorney must accept responsibility for the extern and should work with him/her on a regular basis; 3) The externship must have an educational component that will meet the mutual needs of the office and the extern, e.g. regular meetings of the extern and supervisor involving some kind of educational/instructional process; 4) The student extern should be able to develop some expertise in specific areas of the law, e.g. a student is expected to work on at least one project in a particular area of the law in depth; 5) The student extern must meet a substantial writing requirement, e.g. there must be some evidence that the student has produced written work evidencing the skills and knowledge that have been acquired.

Clearly, such externship is somewhat different from any other. And Golden Gate has historically made an effort to tailor new externships to the needs of any new prospective placement. One of the most attractive aspects

of the Golden Gate Program is that once an externship is approved, there is no requirement that a student be placed in every subsequent semester. Thus, a firm with a fluctuating work load can utilize an extern during peak times and not have an extern at other periods. There are also no regulations on minimum or maximum salary arrangements. In addition, since Golden Gate holds classes year round, students can receive academic credit for an externship in the fall, spring, or summer semesters although only one semester may be utilized even if the student works for a longer period of time.

Of the nearly 30 Golden Gate School alumni currently residing in Alaska, almost two-thirds received their first exposure to the State via an externship. It is the hope of the Law School that the number of alumni in the area will greatly increase over the next few years due to an increasing utilization of the Legal Externship Program by private practitioners in the State.

If you would like more information about this program, please call or write: Jon Pevna-Manhan, Associate Dean, Golden Gate University School of Law, 536 Mission Street, San Francisco, CA 94105; Phone (415) 442-7252.

## Winners . . . A short story

by Max Gruenberg

As he gathered his papers and stuffed them into his briefcase, the lawyer glanced at his client, who was hugging his little boy over in a corner of the now empty courtroom. The lawyer smiled to himself as the client helped the child into a warm coat and started to button it up.

He'd needed this win, the lawyer thought. Winning was like an elixir; it made bearable the otherwise depressing practice of divorce law. Both clients were good parents, but his had won. He'd done his job well and it had shown in the judge's decision.

The lawyer picked up his papers and followed client and child out of the courtroom. The mother was sitting on a hard metal chair across the hall, crying to herself softly, white handkerchief to her eyes. The child, seeing his mother, started running across the hall, shouting "Mommy, Mommy," his eyes flying wide. The father stood transfixed as his wife looked up and reflexively opened her arms to gather in the child.

Time stopped. The only motion was his client's hand, reaching to retrieve a handkerchief from his pocket

and wipe away the moisture suddenly forming in the corner of his eyes.

The lawyer blushed by and jabbed the "Down" elevator button. He did not turn back before the elevator swallowed him.

Without looking, he pressed the first floor button and, still facing the rear wall, smacked it. "Damn!" he said. It was all too complicated. There are no winners.

He felt a small hand pat his shoulder. Turning, he looked down into the same warm brown eyes that had captivated him from the start of the trial and had nearly won the case for her client. "It's always tough, isn't it?" she said.

"Yeah," he grunted, "I don't know how you do it all the time."

They said nothing further until they reached the first floor. The courthouse was empty now except for a stray clerk muffling herself against the January chill racing for the "K" Street entrance.

The two lawyers walked close together, passing through the district courthouse to Fourth Avenue. Fumbling for his gloves, the lawyer looked at his beautiful opponent and nodded towards

the Keyboard Lounge across the street.

"Buy you a drink?"

"Sorry, but my boyfriend is waiting at home. We're going out to a party tonight," she said, pulling a knitted cap over her ears.

They said their goodbyes, turning in opposite directions, he, walking up Fourth Avenue and she crossing to the Captain Cook Garage.

"Damn," he thought again, "there are no winners."

If he had turned in the other direction, the lawyer would have seen both clients leaving the "K" Street entrance together. Each had an arm around the other. Their tears were quickly dried by the wind. They were smiling. Walking in front of them, their little boy was smiling too. His words were lost to the wind and his parents. He held one large hand in each of his so tightly, his knuckles were white.

## News Release

Alaska's newest local bar association has been formed in Kotzebue, with a nucleus of eight lawyers, a judge and magistrate, which comprises the present legal community.

Their role in Kotzebue ranges from corporate lawyers, through Alaska Legal Services Corporation, to the Public Defender and includes a private practitioner.

Officers are President Beverly Bunn, Supervising Attorney for Alaska Legal Services Corporation, and Secretary-Treasurer Gayle L. Garrigues, who maintains a private practice.

Calling themselves the "Chukchi Law Society," the Northwest Arctic area group plans video tape continuing education programs in conjunction with monthly meetings.

## Donna Willard Elected Again

The Western States Bar Conference has been in existence for thirty-five years. Its membership has derived from State Bar Associations from California, Oregon, Wyoming, Idaho, Nevada, Washington, Montana, Arizona, Colorado, Utah, Hawaii, Alaska, New Mexico and North Dakota. Alaska has been a member for at least fifteen years. For the first time in the conference's history, an Alaskan, Donna Willard, has been elected to presidency. She will serve in office for the 1983, 1984 term and will preside over the next meeting in Kuai, Hawaii.

## Fairbanks to Host 1983 Bar Convention

On June 8, 9, 10, and 11, 1983, the Alaska Bar Association will hold its annual convention in Fairbanks, Alaska. This year's convention will feature a Riverboat Cruise, a Salmon Bake and a wild uninhibited evening at one of Fairbanks' premiere night spots, the Palace Saloon. Of course, there will also be the usual unforgettable Continuing Legal Education Programs, interminable business meetings, occasional cocktail parties, long- and short-winded speeches at various dignified meal-time gatherings and non-stop hospitality at the hospitality room. Finally, according to the Alaska Bar Newsletter "Behind Bars," there just may be another libel show, as well as a foot race which may involve the participants.

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# Alcohol in the Legal Profession: Does it mix?

by Trish Koehler, Dan Aidif  
and Myron Gookin  
Gavel Staff Members

Alcoholism is a progressive disease which can lead to extreme mental anxiety, insanity and even death if its momentum is not checked. Its effects on family, friends and business associates can be devastating. Very simply, it can destroy a person's career and life.

One in every 10 attorneys has an alcohol problem. This statistic applies not only to attorneys in the larger metropolitan areas of the U.S., but to local attorneys in Des Moines, Iowa.

"More lawyers go through our treatment center than any other group of professionals," said Dick McCarthy of the Powell 3 Alcohol Treatment Center in West Des Moines. "We've treated at least 40 attorneys, and not more than a half-dozen or so professionals in other areas such as dentistry or medicine. We've even treated a law student."

Iowa State Court of Appeals Judge Janet Johnson states, "Just off the top of my head, I can think of eight young lawyers—less than 10 years out of law school—with drinking problems."

What makes the legal profession prone to alcohol problems? Alcohol abuse often starts early in a lawyer's career. Drake Law School Dean Richard Calkins states that law students use alcohol as a means of relaxing and relieving the pressures of school. "Alcohol is used by law students as a crutch, whether in a social situation or any other setting. Some students are more vulnerable to the attractions of alcohol than others. The amount of alcohol one consumes does not determine his dependence. Even moderate drinkers may be controlled by their desire for alcohol."

Johnson agrees that stress plays an important role in the practicing attorney's abuse of alcohol. "The legal profession is a particularly stressful one. The pressure of time demands and being 'on stage,' like most lawyers are, leads to a high incidence of alcoholism in the profession."

Calkins points out that trial lawyers are most inclined to misuse alcohol. "They are subject to constant courtroom stress. The exhilaration of a win or the depression accompanying a loss encourage drinking. Older trial lawyers are especially predisposed to alcoholism. They have had time to develop the habit, and the amount of work they are

responsible for is staggering."

Calkins recalls being a young associate observing the behavior of a senior partner in the firm with which he was associated. "Every time we went to New York City on business, he spent the night drinking. The next morning he was always unaffected. He said he knew how to handle it. But one morning it didn't work. He showed up drunk in court. It cost the firm a big corporate client and caused him a lot of embarrassment. He was warned that if he ever took another drink he would be dropped from the firm. He was removed from all major litigation and eventually retired in disgrace."

Norman Carpenter, a partner in a large Minneapolis firm and a recovered alcoholic, agrees with Calkins' assessment. "Litigators are prime targets of alcoholism. They are generally more outgoing and more likely to join the crowd for a trip to the local bar."

Of course, the "elite" of the legal profession, judges and law professors, are not immune to alcohol abuse either. Law professors, faced with the task of obtaining and dispensing legal knowledge, are subject to stress and may turn to the "comforts" perceived to be had from the use of alcohol.

However, Johnson, a former law professor at Drake Law School, notes, "It's my perception that alcoholism is less prevalent in the academic profession, or at least not as likely as in trial practice. I don't mean that teaching is easy, but as far as meeting deadlines, it's not as stressful."

Regarding judges, Johnson commented, "Judges are just as prone to becoming alcoholics as anyone else in the legal profession. Trial court judges have enormously stressful positions; making one-person decisions day in and day out."

Other reasons for alcohol abuse in the legal profession include the social acceptability, economic accessibility, and legality of the substance. In addition to being accepted by the profession, the overconsumption of alcohol is perhaps condoned and furthered by the indulgence accorded it. What's a business lunch or dinner with a client or colleague without a drink?

The fact that a number of attorneys and judges are not subject to the employer-employee relationship allows for more latitude in their daily schedules. Drinking in the office/chambers or stepping out for a quick drink is seldom noticed.

The lawyer whose practice includes a fair amount of travel is especially susceptible to alcoholic behavior. Airlines besiege passengers with offers of alcoholic beverages. Irregular meals resulting from travel coupled with the loneliness of a night in a strange city provide further incentive for the attorney to find solace in booze.

As previously stated, the effects of alcoholism can be devastating. Carpenter's alcoholic experience began in college and continued into professional life. "I was constantly abusing alcohol. I loved my drink before dinner. I would only drink two martinis because I knew I couldn't function on more than that. I would race home from the office to have them. If I got home late, I would take the two drinks to the table and let my food get cold while I drank them. If I was really behind schedule, I would have my drinks downtown before I came home."

Carpenter mistook his chemical dependence for pleasure. His drinking became a compulsive habit. In addition to his nightly consumption, Carpenter found himself attending weekend parties every six to eight weeks with close friends. He would drink to the point of not being able to remember the previous night's party conversation.

"My work performance was not substantially affected by my drinking," relates Carpenter, "except for the fact that I usually operated at less than peak efficiency because I hadn't slept well the night before. The amount of alcohol I consumed deadened my body. My metabolism would speed up to keep my body going. As a result, I usually woke up at 3 a.m. and couldn't get back to sleep."

In 1974, Carpenter sought treatment. The incident which made him realize that he needed help occurred when he and his wife visited a marriage counselor who suggested that Carpenter was dependent on alcohol.

"My wife and I had gone to the counseling session in separate cars because I had driven there directly from

work. I got home first and was mixing a drink when my wife walked in and told me to think about what the counselor had said about my behavior with alcohol. That was the last drink I ever had."

Johnson, whose daughter has experienced an alcohol problem, relates, "The areas in which the alcoholic suffers most are in productivity and effectiveness and his attention and responsibilities, as well as his personal life. The whole family is affected. My daughter's condition interfered with my job performance in the sense that during the business day I would be upset about earlier dealings at home."

What are some of the symptoms of an alcoholic? Carpenter cites memory loss, thinking a beer tastes good in the morning, and finding yourself drinking more than anyone else. Further signs include lying to cover up your drinking, justifying your right to drink, and making excuses to drink. Only an alcoholic finds the idea of never taking another drink repulsive.

The first step in dealing with addiction to alcohol is the admission by the alcoholic that he needs help. An attorney is often reluctant to realize he can't control his drinking. His secretary may cover up for him or other lawyers in the firm will show up for him in court rather than risk embarrassment to the firm. The alcoholic lawyer is thus able to ignore the effects of his dependence on liquor.

Carpenter names social stigmas as a major hindrance to an alcoholic's realization of his problem and his seeking treatment. "Our society portrays drinkers as macho men. Look at all the TV commercials and advertisements that show the rugged working man or sports hero having a few beers with his buddies or a good-looking woman. Witness the sophisticated men and women whose evening at home in front of the fire or dinner at an elegant restaurant wouldn't be complete without a drink."

The case of Carpenter is a positive [continued on page 12]



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# Inside the System

January 14, 1983

Mr. Gerry Dubie  
Materiel Operations  
Alaska Court System  
303 K Street  
ANchorage, AK 99501

Re: Telephone System

Dear Gerry:

This letter concerns the inadequacies of our present telephone system.

I supposed that being for the most part powerless to do anything with regard to the physical plan of the court system, this letter will do nothing more than serve as an avenue to vent my frustrations. However, I request that an investigation be conducted for the purpose of determining whether we should make a change in the telephone system we presently have. My reasons are numerous and can be summed up as follows.

1. I believe the system to be unreliable. It has been totally out of order more times than I can count since I assumed my duties three years ago. During the past month I would estimate it to have been out of service over ten times.

2. Even when apparently working, automatic disconnects take place leaving both parties wondering if the other hung up.

3. I believe I am of average intelligence and mechanical aptitude, but nevertheless I have been unable to figure out how to work the damned thing. Such things I have been unable to master include such terms as "park, sys. speed, sta speed, save, repeat," and "camp on."

4. There appears to be no way my secretary can determine whether I am off the phone so she can pass a call through to me. Generally a high pitched whistle from me to her through the wall gets a call transferred. Perhaps we can make the walls a little thinner so a simple thump on my desk will get the message through.

5. A significant percentage of my calls are not completed. I would estimate that one third of the time I dial the call is not made because of some system irregularity. Lots of times I get to wait for 30 seconds or so before the strange sound on the receiver lets me know that the call did not get through.

6. Finally, I am tired of the phone ringing me and finding no one on the other end. Apparently the phone is telling me I may have hung up too fast on the last party and is accusing me of rudeness, or perhaps there is a remote possibility that it is just plain defective. In any event, always thinking there is a crisis, I answer the phone, say hello, and feel downright foolish talking to myself.

I recognize a substantial sum was spent on this marvelous system and as a result we'll probably have it through the end of the century. However, perhaps if a sufficient number of others have had similar problems a review can be made of the adequacy of this system and some changes made.

Very truly yours,  
Karl S. Johnstone

cc: Art Snowden  
Al Szal  
Justice Burke  
Trial court judges

## MEMORANDUM

TO: Gerry Dubie  
Materiel Operations

FROM: Brian Shortell  
Superior Court Judge

RE: Telephone System  
My Toilet

Before you fix the telephone system for Karl Johnstone, please get someone down here to unstop my toilet. If you don't have enough personnel to cover this simple request, please send me one (1) no. 4 cherry bomb and I will take care of the problem myself.

Once you send me the cherry bomb

and I take care of my problem, please send me one (1) hammer and I will take care of the telephone system for Judge Johnstone.

cc: Art Snowden  
Al Szal  
Justice Burke  
Trial Court Judges

## MEMORANDUM

TO: Gerry Dubie  
Materiel Operations

FROM: Mark C. Rowland  
Presiding Judge

DATE: 1/18/83

SUBJECT: Shortell & Johnstone and  
My Sink

Shortell's toilet is probably causing the stoppage in my sink. You will recall he is directly below me.

Maybe it's causing problems as far as Coates' office since the tiles are also falling off my ceiling again.

I would have called on the phone

but for the problems Johnstone brought to your attention.

I actually believe all these problems are traceable to Shortell - somehow.

DATE: January 19, 1983

TO: Gerry Dubie  
Materiel Operations

INFO: Presiding Judge Rowland  
Judge Johnstone  
Judge Shortell

FROM: Chief Justice Burke

SUBJECT: Complaints from Judges  
Johnstone (telephone),  
Shortell (toilet), and  
Rowland (sink).

Please provide me with cost estimates on the following:

1. One (1) megaphone and six (6) carrier pigeons. (Judge Johnstone)
2. One (1) bilge pump. (Judge Rowland)
3. One (1) potty chair. (Judge Shortell)

The lack of these items appears to be causing serious problems in the trial courts.

## Alcohol in the Legal Profession

[continued from page 11]

one. In his home city of Minneapolis he underwent an extensive alcoholic treatment program. His drinking habits were evaluated, and he began attending group therapy with his wife and children each week night. He characterizes treatment as "a confrontation-intervention process. People close to the alcoholic describe his behavior when he is drunk. It really works."

The crucial period is over for Carpenter, though he admits it's a continuing effort not to drink. "There is always a large variety of drinks available but not always an alternative non-alcoholic beverage. We have arrived at the point where restaurants have adjusted their menus to accommodate diabetics. Alcoholism, like diabetes, is a disease. Instead of having trouble with sugar, an alcoholic has trouble with booze. Alcoholics should be accorded the same consideration. Society should allow people the freedom to deal with their alcohol dependency without any

bad feelings about it."

A recent survey of the National Organization of Bar Counsel found that at least 10% of all disciplinary proceedings against lawyers involve the abuse of alcohol. Luckily for alcoholic lawyers, the American Medical Association and the United States Supreme Court recognize alcoholism as a disease and see no reason to punish the sick.

Consequently, the American Bar Association developed a disciplinary alternative to disbarment. The ABA established a policy of transferring alcoholics to inactive status when such a disability is found. The attorney is put on probation and undergoes a treatment program. He is supervised by another attorney, usually a recovered alcoholic himself, to insure proper observance of the terms of probation. Several state bars have begun their own treatment programs for alcoholics within their ranks, focusing on anonymity in an effort to encourage alcoholics to come forth for help.

Although the realization that alcoholism is a disease and the establishment of treatment programs are positive steps toward curbing alcohol abuse in the legal profession, the key to its eradication is in the hands of the individual. "The problem we're fighting here is a lack of awareness on the part of the individual as to his or her own drinking habits," claims Johnson. "Our stressful profession and this lack of awareness makes for a dangerous combination."

From Iowa State Bar Association *The News Bulletin*, February 1983 issue.

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The American Bar Association also provides an informative alcohol abuse packet for local bar associations. For more information, write:

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## Crisis in the Justice System

### Part Two of a Two-Part Story by John Havelock

monitoring personnel for newly released patients and preventing easy access for the criminally insane to handguns. While I have some sympathy for the right to bear arms argument, I don't think the right extends to those convicted of homicide or those exculpated by reason of insanity. My right to buy guns without question from the classified ads should yield to my common sense interest in preventing their casual, low cost acquisition by crazies, children and hoodlums. We do not need to register guns to make them less accessible to the irresponsible.

Additional evidence of the non-rational and ideological underpinnings to these policy changes is found in the inability of the advocates of these policies to recognize what has already been done. There is no satisfying this demand. Sentence rates have soared, parole has cut off, plea bargaining has been eliminated, the jails are packed, and yet the self-annointed advocates of law and order still cry out that our Draconian judges are soft, the prosecutors are screening out too many cases, the laws are too weak, and we need to get tougher. The arrogance of certainty of those who push these policies the hardest has created a climate of intimidation in which no one dares to ask whether these policies will really accomplish what we all want—a reduction in the crime rates. We are pouring money into a war on crime without any concern for weapons evaluation, and usually ignoring clear evidence that the policies will not accomplish the implicit or explicit promise.

Before I leave this topic let me offer some clues as to the nature and effect of those policy changes which have *silently* overtaken us. I suspect there may be a real rise in crime but it is policy changes which are responsible for the current surge in activity in the criminal justice system.

The abolition of plea bargaining and the implementation of presumptive sentencing have taken much of the reason out of pleading guilty. There is nothing to lose at trial so we will see increasing trials. With respect to the abolition of plea bargaining, it is about time we evaluated this policy from a cost-benefit perspective. I suspect we will find it is a policy that if it has not com-

pletely failed, is in serious need of adjustment.

While felony filings have soared, misdemeanors have remained at the same level. That strongly suggests that what we used to treat as misdemeanors are now being charged as felonies. If a rise in criminality exists, felonies and misdemeanors should go up together. This could be either the effect of the code or charging policies.

The very high rise in sex crime convictions and the rise in murder while manslaughter has remained constant, also suggests that redefinitions of crime, not increased criminality, are involved. At least with respect to sex offenses, that is certainly a desirable result since we missed out on too much before. I'm not sure about the easier murder statute, though.

Parole figures show parole is now used to manage about a tenth of our convicted population as opposed to 25% in 1975.

From September 1980 to September 1981 the unsentenced prison population rose from 137 to 228. That's enough extra people to fill an entire Eagle River correctional facility. Excessive bail is part of the problem. There seems to be very little caring about people who do not make bail and are too ignorant to holler about it. Looking at jail population last week, we discovered two persons who were sitting in jail for lack of \$10. One had been there since last month. It is safe to say that there are several people right now sitting in jail for equivalent reasons.

One of the troubling factors with current system policies is the absence of regard for cost or cost benefit. For instance, the corrections system is already badly skewed to high- and medium-security capacity which is extremely expensive but the Division is pushing for a new maximum security facility three to four times the size of Eagle River. No one seems to care that that \$10 bail prisoner is eating up \$80 a day or better on maintenance costs. No one is telling the public what the downstream operational costs of new facilities will be. The Division of Correction has two employees for every prisoner it holds, which I mention not as featherbedding but as a reminder of the cost of 24-hour, 365-day custodial care. Despite these ratios we

have virtually no village corrections service and very limited medical or rehabilitation services.

I do not propose that I have all the answers to what to do about crime in our society. What I do suggest is that when we adopt policies, we do so knowingly, with some calculation of the proposed effects and costs and that we make a deliberate effort to come back and look at what we have done after a test period and see what has happened. I do not shrink from the advocating of "tough" policies if there is some hope they will work. But much of what passes for policy today is the result of fear and anger.

At the moment we seem to prefer to fight the irrationality of crime with the irrationality of emotional response. The results are predictable.

If you have been listening, you will note I have not been speaking consistently in an affirmative mode. There are affirmative things to do, but we are going nowhere but further down, and crime rates are going nowhere but further up with the combination of behind-covering complacency and knee-jerk, tougher-than-thou attitudes which seem to characterize most thinking about crime and justice administration today.

In terms of the order of action, revitalization of system planning and

coordination is surely a first step. There may be a role for the Court of Appeals in this. After all, the general supervisory powers of the court provide some leverage. Why the Judicial Council has never lived up to its constitutional promise is a story for another day, but certainly the council should play a role as well as the line agencies of Public Safety, prosecution, defense, Corrections and the new service agencies that have sprung up over the past decade. The new municipal government of Anchorage could act as a catalyst if the Court of Appeals demurred.

There are lots of ways we could get the system moving again towards real solutions and effective management, but we should start applying what we do know about the system and not leave the field to the invincible ignorance which lately occupies the field.

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# A Remembrance of Things Past

by Jerry Wade

Three years ago Bill Bryson and I were elected as new members of the Board of Governors. We replaced Donna Willard and Harry Branson, and joined a Board which was bitterly divided. Three of the members, Dick Savelle, Bart Rozell and Karen Hunt, were serving their second consecutive terms, a practice which I have come to believe should be discouraged. The meetings were marked by a great deal of personal hostility and by bickering over issues of little or no consequence, although there was no shortage of important issues. The Board was struggling with the "sunset" problem. It was also under considerable pressure to take some restrictive action with regard to the influx of interstate law firms.

The Members had also developed a passion for codifying their decisions by revising the Bar Rules, Bylaws, Regulations and something called "Outstanding Policies of the Board of Governors." It was a monumental effort, and the product is an impressive "blue book" which to my mind evidences a cookbook mentality—the vain Napoleonic hope that there can be a rule for every problem, that the Board can impose its concept of the proper order of things upon successor boards, and that, ultimately, perhaps the Association can be governed by computer with minimal assistance from the Bar Administrator.

The entire exercise seemed to me to be unnecessary, unwise, and completely at odds with the common law tradition of case-by-case analysis. It also produced some decisions which were to my mind ludicrous.

The agendas from that period are illustrative. Meetings were scheduled for three days. Vast periods were devoted to "Reports" from: first, the president (generally accounts of the latest visit to some conference or of conversations with American Bar functionaries, judges and legislators), next, the administrative director (always well done but at that time unnecessarily detailed), and finally, the disciplinary administrator (very short).

These reports were generally followed by a lengthy discussion of "statutes, rules and bylaws" and appearances by Alaska Legal Services, the fledgling "Conflict Resolutions Center," and similar lobbyists.

The balance of the meetings were devoted to the repetition of previously stated positions on "sunset" and/or non-resident lawyers.

During the first year and one-half of my tenure, the Board was very seldom called upon to act in its capacity as the disciplinary board of the Bar Association.

All of that is not to say that the Board of Governors was without accomplishments immediately preceding and immediately following my election. The presidents of that period,

Donna Willard, Bart Roselle and Karen Hunt, and, indeed, all of the members were extraordinarily hard-working. During their tenure, the Bar Association made enormous progress in the areas of admissions, CLE, and fee arbitration. We survived "sunset." We expanded geometrically, both in membership and activity.

I do not know who deserves credit for employing Randall Burns as the Executive Director of the Bar Association. Certainly his appointment must rank as the single most important event in recent Bar history. Randall is an extraordinarily professional and capable administrator. His processing and certification of applications for admission, administration of the examinations, treatment of and sympathy for the applicants have been invaluable. He has an enthusiasm for CLE, and more than any other single person, is responsible for the increased number and improved quality of our CLE programs.

He also has an enthusiasm, which I did not initially share, for the lawyer referral program. He has nurtured and restructured it, and turned it into a very popular and profitable Bar function. I continue to have serious reservations about lawyer referral and find the slogan, "There are hundreds of reasons why you might need a lawyer and one good way to find one," to be both inaccurate and offensive. However, there can be no question but what the service is popular with the public and the younger members of the Bar. I assume that it must be responsive to a need which I had not perceived.

It would be easy to carry on further about Randall's virtues, but I think it is more important to make a different point. Precisely because he is so good at what he does and because he has relieved the Board's concerns about the day-to-day administration of the Association, there is a real and present danger that the Board will effectively abdicate its responsibilities to him. It is a danger which is inherent in the combination of a capable administrator and a part-time governing board. To my mind those dangers are manifested by the extraordinary growth in the Bar's budget, the virtually unbridled increases in both staff and staff salaries, (this year we had both a ten percent wage increase and a new pension program), and the growth of the "Behind Bars" newsletter, conceived initially as a supplement to the "Bar Rag," which now threatens to preempt it entirely as a vehicle for communication between the institutional bar association and its members. The "Bar Rag" is out of favor, not so much because it is irreverent and potentially embarrassing as because it is not controlled.

The perceptive reader may have surmised that I did not enjoy my first year on the Board of Governors. In

fact, I abhorred the first eighteen months. The composition of the Board has now changed radically. Hal Brown, Mary Hughes, and especially Andy Kleinfeld were a breath of fresh air. They began to take hold in the winter of 1981. Perhaps I had just been a bad sport, but it was refreshing to occasionally find myself on the prevailing side of an issue. Then, successively, we had our first lay members (whom we received with some trepidation, but found to be very insightful and a positive influence) and then our newest members, Bruce Gagnon, Niesje Steinkruger and Ron Lorensen.

Under Andy Kleinfeld, the president's reports have never exceeded ten minutes. Meetings are completed in two days. He travels less and doesn't bore anyone with the details. The hostile atmosphere has disappeared. There are fewer speeches and more genuine discussion. Andy has properly focused the Board's attention on discipline. It is a disagreeable task, but has been given first priority at our meetings this year. We have increased the disciplinary staff by adding an assistant administrator and were extraordinarily fortunate to employ Eric Ostrovsky in that capacity. Dick Ray has resigned, and the Board was impressed with the quality of the applicants who sought to replace him. We selected Steven Van Goor and believe that he and Eric will complement each other.

The Board has, by rule, the obligation "To supervise the investigation of all complaints against lawyers and to supervise the Administrator..." The performance of that obligation in the ordinary sense has been viewed as inconsistent with the Board's semi-judicial as the "disciplinary board of the Alaska Bar Association" in reviewing the findings and recommendations of the hearing committees.

In response to that problem, the Board has effectively insulated itself from any information or input with regard to the investigation and processing of pending cases—that is, during the most important part of the process. Thus, in the past there has been no effective or consistent oversight of the disciplinary administrator. The effectiveness and indeed the integrity of the entire process has been dependent upon the competence and personality of the discipline administrator.

Early in my term, I suggested that

the Board appoint one of its members to serve as liaison with the administrator, basically supervising and counseling during the investigative process with the understanding that that member would not serve on the disciplinary board in those cases in which he or she had participated as liaison. That proposal was adopted, and Karen Hunt has served as liaison continuously since its adoption. I think that the procedure has been effective and should be continued. There is some division among Board members on that issue, but all of us agree that it will be extraordinarily beneficial to have two lawyers in the office who can freely exchange ideas and counsel with each other about the problems on which they are working.

I am ambivalent about my service on the Board. Certainly, my personal contribution has been rather slight. Full participation is extraordinarily time-consuming. Certainly no sole practitioner or member of a small firm can maintain that practice while concurrently putting in the kind of time and effort that characterize the presidencies of Bart Rozell and Karen Hunt. I am awed by the sacrifice which Andy Kleinfeld is currently making and which undoubtedly was made by Donna Willard. Most lawyers who are engaged in private practice cannot or will not make the sacrifices which service on the Board presently entails. In a sense we are systemically excluding from service the very group from which we most need input, that is, lawyers who are hard-pressed for time because they are struggling with a heavy workload in a small firm or because they are wrapped up in the problems of actually administering a large firm.

I have no solution to that problem. Geography and expense militate against shorter, more frequent meetings. There is an appalling apathy among the older members of the Bar.

I do think that we should have a rule against consecutive terms. We should encourage former members to return to the Board after a sabbatical. Perhaps the term of service should be extended to four years, or the present "chair" system should be re-evaluated.

It has been suggested that a separate "Disciplinary Board" might be established to alleviate the conflict which is inherent in the roles presently assigned to the Board of Governors. I believe that idea merits consideration.

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## Poems

[continued from page 2]

Where they found the cool  
spring bubbling,  
There they stopped the creaking  
wagons,  
Dug the limestone from the hillside,  
Epidermis of the planet.  
Here they'd sink their roots forever,  
Houses build to stand ten decades,  
Walls of limestone fit for castles.

Shiny metal, sloping downward,  
Slicing through the roots  
of bluestem,  
Rolled the sandy loam in furrows.  
Smell of damp earth drifting upward  
Titillated farmers' nostrils,  
Triggered dreams of lespedeza,  
Waving wheat, corn and alfalfa.

But the flame of influenza  
Running wildfire through the  
homesteads  
Burnt to ashes one whole family,  
Left the others straggling  
remnants.  
On the hillside, 'neath the bluestem  
They are sleeping where the hawk  
soars,  
Where the grasses whisper softly  
To the passing of the southwind.

Yet survivors are these Quakers.  
Those remaining, standing upright  
Dig their toes into the meadows,  
Facing eastward, greet the sun.  
There are cattle to be tended,  
Babies made and fences mended.  
Windmills whirring in the southwind,  
Births of piglets, budding lilacs  
Count the seasons as they pass.

Dreaming now, the grasses whisper  
Memories of other hoofbeats:  
Bison, wheels and spotted ponies;  
Custer's misbegotten minions,  
Messengers of devastation.  
Yet the mantle of earth-mother  
Softly hides all scars and screaming,  
Folds them under sun-eyed daisies.

Comes a creature now, two-legged:  
Teases lazing whiskered fishes,  
Wanders over limestone hillsides,  
Leaps from rock to rock (hair flying);  
Curling deep among the bluestem,  
Basks in sunlight, gazes upward,  
Dreams of flying (pinioned,  
feathered),  
Dreams of other times and places.

Wild geese veering northward, calling;  
Wind song, bee song softly merging  
While the southwind, strong  
and steady,  
Teaches strength and perseverance,  
Bathes the plain in swift cloud  
shadow,  
Sets the bluestem all awhisper.

### Smell The Flowers

by Lou Anne  
Sterbick-Nelson

Resign yourself to being happy with  
what's before you, it's abundant.

Look for joy in attentive seeing, for  
the beauty is an unwrapped gift.

Listen well to all, and in doing so  
make yourself full.

Find grace in the tiptoes and whis-  
pers, and feel yourself resound.

Be enriched in the depth of your  
silence, and escape the flurry  
of fear.

Above all, be awed by the exquisite  
other, and you can't be lonely.

Know that ecstasy is not in the  
wings, but always with you.

It's your choice.

### Ode to the Freezing Moose

by Paul Canarsky

The moose, he is so very large  
With great big horns and stuff  
I wonder, on these winter days,  
Does he eat enough?

Folks put out food for little birds,  
For dog, for cat, for goose.  
Why, pray tell does no one  
Put out food for the moose.

If we would give the moose  
some yams, some spinach and  
some beets.  
Then he'd be a happy guy,  
With happy horns and feet.

### Several Poems by David Stark

#### Whale Watch—St. Lawrence Island, Alaska

(for my brother)

We stand solstice ready,  
The sun blossoming tiny flowers  
along the graveled beach,  
around us racked salmon,  
skinned geese, the rancid odor  
of rotted seal . . .

Still, bowheads  
drift beneath the pale grey sea,  
and envying their life,  
we let ourselves enter,  
dreaming of baleen, plankton,  
clotted green ice,  
feeling not even the water  
beneath our flukes  
before the skin-boat unleashes  
the first thud  
of the coned spear.

Even here  
memory betrays us,  
malocclusions shape our spirits  
more than bone, and curved  
knives begin cutting  
squared sections  
from our flesh.

We turn from  
the sea as from our first  
black spawning,  
father billowing his heart  
into wet sheets  
in his forty-fifth year,  
and see not village lights,  
but the sequoias that spring,  
the hacked edges,  
the splintered wood,  
his tired face beside us  
as we drove through the tree  
dragging the long  
intestine of the road.

### Berry Picking

Out here, where the woods begin,  
Light smoulders in blue clusters

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Among the leaves, and I,  
I slide from shadows,  
From the skin I call my son—  
For this I fight my wars:

To drift for a moment in light  
Through this land  
Where night festers  
Ripeness  
And seeks the heart.

And at this moment,  
It is so light the berries diffuse  
And kindle,  
Branches swim in bright currents  
Of flame.  
It is so light  
The shadows  
Tremble beneath the leaves.  
I bathe in blue light.  
From far away I hear your voice.

"Daddy why can't we  
stop picking? Why can't we  
go home now?"

And if I do not answer you,  
Caught by stillness,  
Believing as I do,  
You are all and everything,

It is because last night  
You woke dreaming,  
Lost for the first time  
In the land of no moon,  
And I, who have been there  
Many times, led you home.

And because now you stand  
Aglow in a pool of darkness,  
Berries clutched in each hand,  
Face lit with a fine blue sheen.  
"Just one more bush", I say softly.  
"They're ripe now. They're ripe. This  
may be the last time. I'll take  
this bunch. And these. And  
these over here."

### If While Talking

If while talking  
you threw away a kiss  
and shouted "that kiss  
will sound forever," and smiled  
until your white throat bled,  
and if I heard you  
and let it blossom  
within me like some strange  
prickly fruit

why then, years later, you'd  
have forgotten  
the spines you'd planted in that  
unlikely pot

and if say, sometime, we  
met in a public place,  
and had a drink, and you noticed  
the spiked leaves falling from  
me past the surface  
of the bar

and if the weather was right

would you touch me  
and press my fingers to your cheek  
and could I touch your hair.

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### Tramway

. . . the pleasure of powers  
that create a truth that  
cannot be arrived at by  
reason alone . . .  
—Wallace Stevens—

That July we willed  
the oarbuckets, stiff  
and peeling rust,  
to carry silver  
into the sunken boats,  
into the blackened fires,  
while we climbed the tramway  
and hung from cables  
over the cracked earth,  
waiting for the first shrill creak  
before darkness settled  
around our shoulders  
and we trudged home.  
And once that July  
our eyes cupped starlight  
while the moon slid  
past the window  
and the headless woman  
breathed into our ears  
for us to press our hands  
gently to her breasts—for we  
were her's, her's,  
a long moan  
that echoed to the smelter's edge  
where in a black slag river  
embers glowed  
within the shadow of a hull.  
And as dawn darkened  
the horizon,  
the cable moved sharply  
flaking rust  
allowing us to tiptoe down  
the splintered stairs  
breathing again  
whispering to each other  
the difference  
between light and dark.

### Birthday

First strawberries,  
and a good May wine,  
leavings scrapped to jays  
who swirled outside the tent  
like the turntable  
that twirls in a cat's head  
as it washes  
each booted paw . . .

[continued on page 16]

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## Poems by David Stark

[continued from page 15]

Or so you said,  
curling your thumb  
down the lip  
of your jeans,  
offering a quick glimpse  
of painted hearts  
as our celebration began.

And what had  
that to do with swallows  
circling a crumbled  
bank, with rhubarb  
stiff and turning  
to stone? Or with  
skinned ferrets  
found stacked  
by a path, jaws  
clenched, claws  
tearing their one last  
bit of earth?

"A trapper,"  
I said, as we  
plunged from the smell  
to the car,  
to breathe, then held  
you as the wind  
trembled, the sun  
flared the river from  
its banks, and our  
hair lay back on our skulls  
like grass in seed.

## Changing for Winter

This summer,  
I watched through flooded birches,  
A snag bobbing in the current,  
Black and twisted against the water.  
Hardly any sound! Just a gentle  
sucking,  
A whisper of wings overhead,  
A far off cry that fell into  
Water and leaves.

Across from me a bear  
Bled the last cranberries  
of summer,  
His mask that of a raccoon,  
a poseur,  
As he tilted and swayed.  
Beside him the bank gave a  
sharp crack,  
A tree folded into the river,  
His mask turned toward me,  
His eyes widened,  
And were gone.

And I was alone with the current,  
Flicking beneath me with tiny  
tongues,  
Swirls of Froth,  
While upstream the snag  
Rose and fell  
A finger that pointed  
Now to where the bear had been  
Now toward me.

As I reached out,  
My fingers brushed the flood birch,  
Their tops snapped like bones,  
like hands,  
Hoof shaped growths stretching  
upward,  
The last remnants of mustangs,  
Who once galloped this valley.

## II

And now, the river stretches  
From my window, the ripples  
of the outboard sliding  
Into the silence of evening.  
Before the long curve I see the roots  
Of a tree grounded in spring,  
Its black arms silhouetted in the  
dark water.  
Against the cut bank, swallows  
Dart like insects in the twilight.  
Trees lean out over darkness.

And here, night quickens,  
Darkness gathers at the edge  
of the pane,

And I will a change, a turning,  
A river without currents, cut banks,  
Without silt or high-water.  
I will a glacial quiet, a  
sinking into,

As the headwaters freeze,  
As the yellow silt falls,  
As ice cuts its way into the river  
heart.

And I long for meadows and tudnra  
White beneath the arctic moon,  
The winter eye,  
As I sink into a spilled white,  
That takes me into an ocean of  
white,  
The animals—bear, porcupine,  
lemming—all white,  
As I float off the bank,  
Like a branch choked with water,  
That is white  
And cannot be distinguished  
from darkness.  
And at one moment,  
Everything on earth will fall silent  
And only the far off cry of an owl  
Will tell me I am living.

## Vasectomy

The wind hums like a Yamaha,  
my day off, bad dreams,  
and though I don't know Barbie,  
she lives next door,  
and my wife's concerned:  
"Where'd Ken move to?  
I haven't seen Charlton Heston  
over there lately. Are you  
sniffing around trying  
to get laid?" Her eyes  
turn clear glass blue;  
and though my assignation  
with Doctor X  
isn't until Tuesday  
I see my good ball  
skewered and dissected on a plate.  
I'm the first man since Hemingway  
to grip one cojone  
and explain . . .  
"The other one swelled up  
until it was six inches round,  
then shrank into a knot,  
then it was gone . . ."  
"Sure, sure", she says,  
her delicate hands  
cracking three eggs into a bowl,  
"the big one that got away . . ."

## Charlie

## I

"Charlie," I speak  
to the Minto Indian I work with  
watching  
his slick surfaced cheek  
where the bullet plowed flesh  
like an axe cut on bark.  
"Charlie, you got to be  
careful. Wrap the choker  
cable tight around the pipe  
before the crane lifts  
and we bury you."

## II

"Charlie don't care", Don's  
voice floats across the yard.  
"Not Charlie. He's heard they  
got pretty good hunting  
over there."

## III

Don, I never did like you.  
If you're a good egg  
then a hen's ass is full of them,  
as you used to say . . .

And Charlie,  
well you did it,  
left three fingers between the choker  
and a piece of sixteen inch pipe;  
caught the spurt of blood  
right above the heart . . .

Saw you later,  
at the dog races,  
half drunk, wallowing in snow,  
got up to line the Minto  
team into the chute,  
damn if you didn't trip and break  
your leg . . .

Charlie, I watched you sock  
down beer until your eye-whites  
stiffened and sank back into  
your face . . .

I wanted to say: Charlie,  
give it up. Charlie,  
you're loping too slowly across  
this newly oiled road. Charlie,  
the geese are beginning to weave  
their dark way over the Minto flats.  
Charlie, for Christ's sake, Charlie,  
go home . . .

## Stray Bills

[continued from page 9]

defendant's conduct;  
(2) the conduct of a youthful defendant was substantially influenced by another person more mature than the defendant;  
(3) the defendant acted with serious provocation from the victim;  
(4) the defendant assisted authorities to detect or apprehend other persons who committed the offense with the defendant.

\*Sec. 5. AS 22.07.020(a)(1) is amended to read:

(1) criminal prosecution, except prosecution for a capital felony for which a death sentence is imposed;

\*Sec. 6. AS 22.07.020(b) is amended to read:

(b) Except for appeals of a death

sentence, the [THE] court of appeals has jurisdiction to hear appeals of sentences of imprisonment imposed by the superior court on the grounds that the sentence is excessive or too lenient and, in the exercise of this jurisdiction, may modify the sentence as provided by law and the state constitution.

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(1) **Purpose.** The purpose of these scholarships is to encourage the study of natural resources law by well-qualified law school students who have the potential to make a significant contribution to the field of natural resources law.

(2) **Eligibility.** Second year, third year and graduate law school students are eligible to receive the scholarship; provided, however, that first year law school students who can demonstrate a commitment to study natural resources law are also eligible to receive the scholarship.

(3) **Field of Study.** In order to be eligible, a law school student must be undertaking the study of natural resources law.

(4) **Law Schools.** The scholarship can only be used in connection with a program sponsored by one of the law schools which is a Governing Member of the Rocky Mountain Mineral Law Foundation:

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