

The Alaska BAR RAG

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Kauai CLE is Wild Success

By Mark Sandberg

Even without the presence of Stan Ditus, the Alaska Bar Association managed to raise the roof at its mid-winter meeting which was recently held at Kauai, Hawaii. In fact, several roofs were raised as a waterspout raced across Nawiliwili Bay and smashed a number of cabanas occupied by Alaskan attorneys.

The meeting, which lasted from January 31 through February 3 and featured interesting and informative CLE presentations, was highlighted by an address by newspaper columnist Art Buchwald. One of the primary themes of Mr. Buchwald's speech was that it's difficult for a political satirist to make up anything as wild as what routinely appears on the front page of any daily newspaper. Other remarks included:

Speaking about the Lee Marvin alimony case, Mr. Buchwald asked,



Typical CLE Gathering

"What's the Statute of Limitations on I love you?"

Recalling an address given to insurance defense attorneys, Mr. Buchwald said that he had been assured that their job was to, "protect poor helpless insurance companies against ruthless widows and orphans who try to collect on their policies."

On lawyer advertising, Mr. Buchwald said that he'd like to see a television ad featuring a nattily dressed man standing in front of the Atlanta Federal Penitentiary saying, "I'd be in there right now if it wasn't for Boyko & Associates. If you've committed a white-collar crime or are even thinking about committing a white-collar crime, call this toll-free number."

Finally, on D-2, Mr. Buchwald explained, "I thought it was an answer to Preparation H."

The continuing legal education session began on February 1 and the first day's program concerned consumer protection and unfair practices. The speakers were Donald Mullins and Frederick C. Townsend of the law firm of Schwepp, Doolittle, Krug, Townsend and Beaser of Seattle, Washington and Connie Sipe of the Consumer Protection Agency. Ms. Sipe, by the way, gained some local notoriety by relating a story of being awakened at 2:30 a.m. one morning by a voracious hoard of fleas. A goodly number of registrants became well acquainted with this little insect before the meeting was over.

The second and third days of the continuing legal education sessions concerned products liability litigation. The speakers were Russ Dunn, Bernie Kelly, Joe Young, Roger Holmes and Justice Matthews. The sessions were uniformly excellent both in their preparation and presentation and both the speakers and President Jarvi de-

serve a vote of thanks from those in attendance.

Another session was presented by Dr. Robert Grover, the acting Dean of the University of Oregon Health Sciences Center and Dr. George Rhyner, an Anchorage cardiologist, on recognizing the effects of stress and attempting to cope with them. Dr. Grover, an expert on the subject, confessed that one way he copes with stress is to have three shots of Canadian Club on the rocks. One suspects that many lawyers have had a handle on this technique for quite some time.

Saturday was the day of the waterspout and the tales that grew out of that experience will doubtless circulate around the bar for years to come. Bernie Dougherty related a tale of diving under a bed in a corner of his room just before the walls and the roof disappeared. Fairbanks attorney, and former bar president, Dick Madson tried to leave his unit at the time that the waterspout struck. As Dick raced out his front door to try to get



Dick and Margo Saville

to his car and safety, a section of roof blew off and landed atop his vehicle.

Fortunately, no one was seriously hurt, although Anchorage attorneys Bob Mahoney and Ted Locke were taken to the hospital briefly.

"We're sure that somewhere in the rubble lies a products case," Bernie Kelly advised this reporter. "After all, the technology already exists to build cabanas underground."

Ninth Circuit Applicants

Alaska Supreme Court Justices Robert Boochever and Warren Matthews, U.S. District Court Judges James Von Der Heydt and James Fitzgerald, and Anchorage attorneys Carolyn Jones and A. Lee Peterson have requested questionnaires and application for seats on the Ninth Circuit Court of Appeals in San Francisco.

The Ninth District includes Alaska, Hawaii, California, Washington, Oregon, Idaho, Nevada, Montana, Arizona and Guam. The Court is being expanded from thirteen to twenty-three judges. It is expected that the northern states will be given at least three of the ten seats, and perhaps four.

Sandra Saville, an Anchorage attorney, has been appointed as a member of the Commission which is reviewing and recommending applications for the northern seats. Ms. Sa-

ville indicated satisfaction with the caliber of the Alaska applicants, and said that she was sure that Alaskans would be among the twelve finalists and possibly one would be appointed to one of the judgeships.

Of the six Alaskans mentioned, two have completed and returned their questionnaires. Ms. Saville says that she hopes that the others will follow through as well. The questionnaires must be returned to the committee by February 19 in order for an applicant to be considered. Ms. Saville indicated that the committee expects approximately fifty persons to apply before the deadline.

Twenty finalists will be interviewed by the committee on March 23, 24 and 25. From this group, twelve names will be selected by the committee and sent to President Carter for his nomination.

Hawaii Disaster Winds Up Saturday

By John Norman

" 'Tis an ill wind that blows no one any good," or so the saying goes. It was just such a wind swept across Kalapaki Bay, past the Kauai Surf Hotel and slammed into the cottages overlooking the hotel on Saturday, February 3, the last day of the Alaska Mid-Winter Bar Meeting on the Hawaiian island of Kauai.

Many later speculated that this sudden and destructive wind was the Almighty's way of equalizing things between those who remained in Alaska and those who had traveled to Hawaii for a brief bit of sunshine, fellowship and continuing legal education.

The day itself started out uneventfully. The last of the CLE seminars concluded shortly after noon, and most of us were taking advantage of the remainder of the afternoon for last-minute recreation and sightseeing before preparing to return to Anchorage the next day. The morning was windy, and this seemed to increase as the day progressed. From the tennis courts overlooking the bay and hotel, I could see dark storm clouds gathering in the west. As the afternoon went on the clouds grew blacker and more

ominous, and the wind picked up. About 3:30, large raindrops began to sprinkle down, and several in our party commented that it was time to seek shelter. The wind was gusting and we knew by that time that we were in

for a real tropical downpour. Before we could decide which way to run the rain began to blow down hard upon us. To get out of the blowing rain, our group turned and ran around

(continued on next page)



After the storm (more pictures on p. 3)

Don Young speaks to Anchorage Bar Alaska Land Issue

There is going to be a piece of Alaska land legislation this year, promised Congressman Don Young in a speech to the Anchorage Bar Association at its weekly Monday luncheon at the Anchorage Westward Hotel on February 12, 1979. Young warned his audience that they were not going to like some of the things that would be in this new D-2 bill.

He urged his audience to get involved and join in the effort to make the bill as "palatable" as possible to all Alaskans.

Young discussed President Carter's action in invoking the Antiquities Act recently, which created some 56,000,000 acres of national monuments in Alaska. He analyzed the State's lawsuit in the United States District Court in Alaska seeking to have the national monument designations declared void, but offered little hope of success for the suit with respect to a finding that the President acted illegally. In previous cases involving the use of the Antiquities Act, the Federal

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the corner of the tennis courts toward the cottages about fifty yards away. We didn't know it then, but this choice of routes took us squarely into the path of the oncoming tornado.

While we had been nervously eyeing the weather from the tennis courts the mass of black clouds in the sky had turned into a solid sheet of rain extending to the ground. Observers later told us that, as the squall passed the jetty across from the hotel and moved out into the Bay, a huge funnel cloud descended into the water. When it hit the water it seemed to broaden out and a spout of water shot hundreds of feet into the air. The water spout moved first north and then east across the beach in front of the Hotel scattering everything in its path. Fixed umbrella stands were uprooted, tree limbs were snapped off and recliners and chairs were tossed high into the air. We saw none of this from where we stood on the tennis court and only knew that a violent storm must be coming.

As we ran around the corner of the tennis court, toward the cabins, we were utterly amazed to see the roofs begin to peel off the buildings directly ahead of us. We stood for a moment, frozen and fascinated by the unreal sight. Several of the buildings literally exploded before our eyes. Huge plate glass doors and windows popped out in all directions. Chairs, shingles and whole roof sections were moving about in the air as though a giant vacuum cleaner had been turned on a row of dollhouses. The dark sky, the pounding rain, the roar of the wind and the scene before us had a temporary mesmerizing effect on all who were there.

We saw the building next to our cabin blow apart and my wife screamed that she had to get to our children who were in our cabin with a babysitter. By that time the air was full of flying debris, and the wind force made it virtually impossible to get across the street. I pulled her back and several others grabbed her and then everyone began scattering in various directions for whatever small bit of shelter they could find. Bob Mahoney, who was across the street from us, dove under a parked car. Ted Locke leaped back into the bushes against the tennis court fence and was grazed by a several thousand pound-roof section which had been ripped from one of the buildings. The roof flew past him scraping his leg and then suddenly lifted up over the tennis court fence and plopped down in the center of the tennis court where we had been standing a few minutes before.

Off to my left I could see another

huge section of roof with beams dangling from it spiral into a thick coconut palm and slice the tree off at the base as though it had been a twig. Glass was everywhere. The noise—the roar of the wind—flying debris and the heavy rainfall almost overwhelmed the senses. I stood up to start a run toward the cabin where our children were, when I felt a sharp blow to my head. I raised my hand to the side of my face and could feel that my eye socket was full of blood. My first thought was that I had been struck in the eye. As I wiped away the blood and blinked my eye, I remember being surprised that I could still see. I was carrying a towel in my hand and instinctively held this to the side of my head and continued to run toward our cabin.

The street which runs along the hill in front of the cabins had the appearance of an urban area in the midst of guerrilla warfare. The air was full of flying missiles and the few people I could see were crouched or lying prone in sheltered positions with arms covering their heads. I continued to run down the street, with one hand holding the towel to my head and with my other arm held in front of my face to protect against the glass and boards that were flying through the air.

As I passed Bob Mahoney lying under one of the cars, he tried to wave me in, but I shouted that I had to get to the cabin where the children were. Bob crawled out from under the car and ran down the street with me. Not knowing what I would find, I pushed on the door of our cabin and could feel resistance created by the air pressure, making it difficult to open the door. When we got inside I saw the Hawaiian girl who was babysitting for us crouched in the corner holding both of our children, with a blanket over all of their heads. One of the patio doors was open and the wind had blown the curtains back. A bathroom window had blown out, and inside the cabin things were scattered around, but, to my relief, no one was injured.

Outside the wind was still howling and there was considerable confusion. Broken glass was everywhere. I grabbed the phone and tried to call the tennis clubhouse to see if I could locate my wife and others in our group, but the circuits were jammed. Bob got a towel and mopped the blood off my forehead and we were surprised to find out that all of the bleeding was from just one cut high up on my scalp. About that time, personnel from the hotel came running down the street, yelling at everyone to evacuate the buildings. I went back out in the street and could see that the building

next to us had been totally destroyed. Its roof was resting over against our building with very little left of what had been there a few moments before. A man who had been in the building was standing on the street with a dazed look on his face, bleeding from multiple cuts. Further down the street people were climbing out from the wreckage while others were running about with frantic looks on their faces, searching for personal belongings and friends who were staying in the cabins. The rain continued to fall down, and in a few minutes a fire engine and another rescue vehicle made their way up the street, which was littered with debris.

The wreckage was searched and those injured were taken to the hospital in Lihue. Along with other occupants of the cottages, we evacuated the area and moved down to the main Kauai Surf Hotel. Everyone at the hotel kept repeating that nothing like this had ever happened before. I learned the next day, however, that the same thing had happened to one or more of the cottages about ten years before, and that about five years before another funnel cloud had come through the small boat harbor across the bay.

As good fortune would have it, there were no really serious injuries. Most people had been out sightseeing at the time, so only a few of the cabins were occupied. The Partnows' cabin was completely destroyed, and a heavy board had fallen into the crib where the infant would normally have been taking a nap. In the cabin, immediately below Partnows, Bernie Dougherty had been taking an afternoon siesta when he was awakened by the sound of the roof being ripped off. Bernie managed to assemble his things and get to shelter, but most of the Partnows' personal belongings were damaged by the storm and they returned to Anchorage with only the clothes on their backs.

The hospital emergency room was overwhelmed by the storm casualties. One individual was in his automobile which was thrown off the road by the force of the wind. Heavy golf carts had blown over on two other people. Others had various sprains, cuts and lacerations. Out on the golf course, the wind had picked up everything on the ground and hurled it skyward. Bill Mackey was later heard to remark that it was "raining golf balls the size of hail."

At the hospital waiting room one young couple told me they had just checked into the cabins a short time before the storm hit. As the storm front came through and the windows in their cabin began to rattle the hus-

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Don Young

[continued from preceding page]
Courts never overturned the act of a president. Young added that he didn't think the courts would ever face the problem directly.

History of Act

He gave the Anchorage lawyers a brief history of the Antiquities Act, pointing out that its original purpose was to preserve Indian burial grounds and that the intent of the Congressmen who passed the bill was to allow for only the smallest acreage available. Unfortunately, Congress left the Act open and there was no specific mention of acreage size. Because Congress was silent on this point, Young stated that he believes that the Court will find that only Congress can determine limitations on the amount of acreage that the President could reserve under the Act.

Young said that he felt that the lawsuit should be pursued, however, so that it would not appear that Alaskans would condone what the President has done. He said that he is convinced that the State will win ten to eleven million acres of State-selected lands that are included in the national monuments. One danger that Young foresaw in the suit was that once the Courts ruled in support of the President's action, the Secretary of the Interior could put anything he wants to into the Antiquities Act.

Congressional Deadline

Young stated that Speaker O'Neill has demanded of the representative that an Alaska Lands bill be reported out of the House by March 19, 1979. Young said that State lobbying could effect the final vote. He thought there would be 100 votes against the bill. "and more of the Iranian situation gets worse." Young said that he was certain that individuals would be guaranteed access to all Federal lands included in the bill. He said that he believed that the bill would contain provisions giving the State access to the 104,000,000 acres promised under the Statehood Act with provisions for crossing the Federal lands.

Young warned his audience that the powerful environmentalist lobby may attempt to kill the bill because they might prefer the Antiquities Act to a new D-2 bill.

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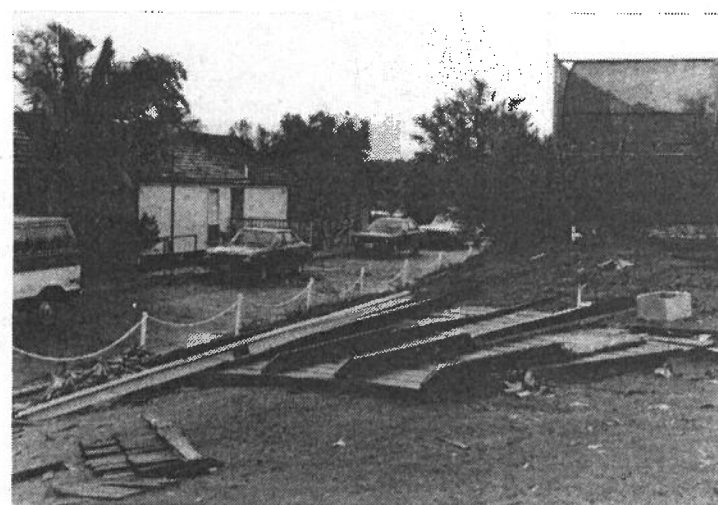
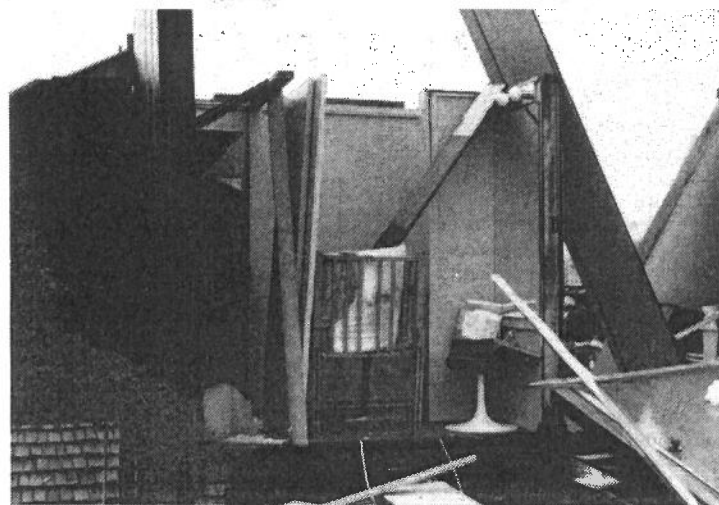
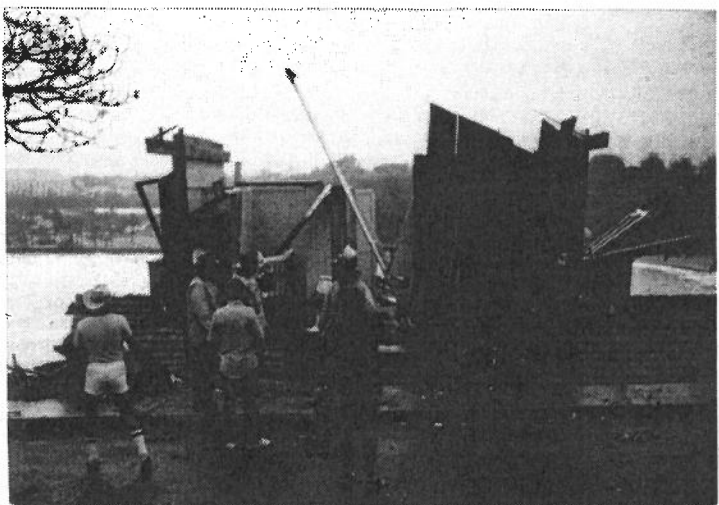
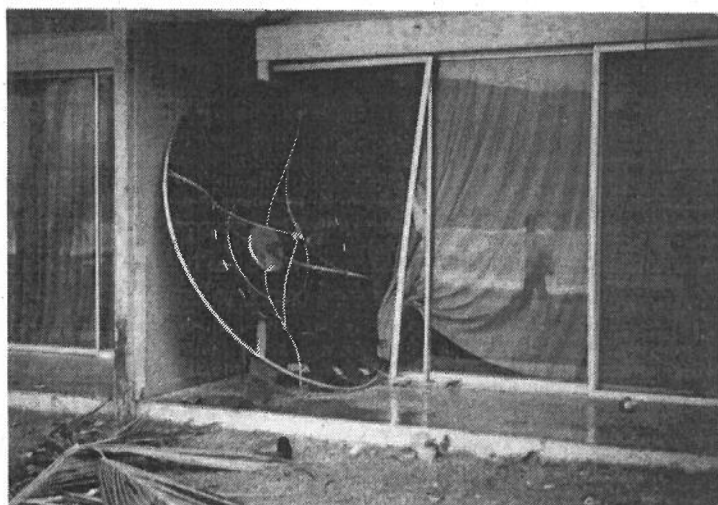
NITA IN THE NORTHWEST



March 18-25 and May 20-27, 1979

The National Institute for Trial Advocacy announces an intensive program designed primarily for young lawyers with one to five years of experience in trial practice. Student lawyers will perform as trial counsel under the guidance of a teaching team that includes an experienced trial judge, experienced trial lawyers and a law teacher. Members of the teaching team will also demonstrate various trial skills. For a detailed brochure, write Professor Barbara A. Caulfield, University of Oregon School of Law, Eugene, Oregon 97403 or call (503) 686-3831.

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From The Editor Hawaii Success Story

From all reports, the Alaska Bar Association's Second Annual Mid-Winter CLE in Hawaii appears to have been a great success, notwithstanding the violent storm that tore up part of the Kuauai resort and endangered some of the attorneys and their families. Fortunately, very fortunately, no one was seriously hurt.

Attendance at the program was significantly higher than that of last year, and so was the participation. Returning participants described the quality of the programs as very professional and comparable to the programs running outside Alaska.

The Products Liability seminar was especially popular with its audience, which packed the hall for both days the program ran. Although lawyers and stress was not a conventional CLE "bread and butter" topic, the three hour seminar given by Doctors Ryneer and Grover had something of vital importance to say to every attorney in the audience. Coping with stress and anxiety is a common problem for all professionals and certainly for all lawyers. This seminar might well be worth repeating at some future meeting. It might not make any of us richer, but it could save or prolong some lawyers' lives.

The Alaska Bar Association CLE Committee and the Alaska attorneys who participated in its lectures deserve great credit for what they have done. We shall look forward to next year's meeting.

Ninth Circuit Applicants

It is extremely gratifying to note the high caliber of the Alaskan jurists applying for a position on the Ninth Circuit Court of Appeals. Bench, bar and public alike have reason to be proud for their distinguished service on the Alaska Supreme Court and the United States District Court. Each of these men is exceptionally qualified for the position he is seeking.

Disaster

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band tried to calm his wife by telling her that "I'm sure they've had worse storms than this before." About that time the building shook violently and the roof lifted off. She looked at him and all she could say was "Worse than this?" When I talked with them he was waiting in line ahead of me at the emergency room to have a small piece of glass removed from his eye.

The heavy downpour continued until well after dark. When we all finally got back to the hotel, we were pleased to see that assistance had been given in relocating the occupants of the cabins. All involved were given a free room and the offer of a free meal that evening. Later on many of us who had been caught in the storm gathered to talk over the events of the day and remarked over how lucky we had been. There were no serious injuries—I had stitches in my head and others were treated for cuts and lacerations and given tetanus shots, but there were no injuries that a little time would not cure.

A water spout, I am told, is a tornado which forms out over the ocean. Usually, it results in nothing more than a spectacular column of water extending skyward before it dissipates. In this instance, however, the water spout moved on shore, and its devastating force was unleashed upon the hotel area. Whatever it was that hit us, however—water spout, tornado, typhoon or hurricane, we all agreed that it was an experience we would never forget, but also something that we would just as soon not have to go through again.

Letters to the Editor

Ketchikan

Sir: Enclosed is an appraised version of my two part essay on the Ketchikan Bar Association.

It has received preliminary editing by the Association which voted 7 to publish as edited, 4 not to publish, 3 to abstain and 1 to adjourn the meeting.

Richard Whittaker
The Ketchikan Bar Association
Its Geography and Philosophy
2nd of a two part dissertation
By Richard Whittaker

To understand the Ketchikan Bar Association, one must understand/contemplate Ketchikan's tunnel to nowhere.

tioner prospered and Naturally, this early practi-

Ketchikan's lawyers are a

and took a strong stand on the integrated bar. It was later learned, however,

Non-Lawyer Lecture Series

A series of lectures for non-lawyers on basic legal subjects will be offered beginning Feb. 20 by the Alaska Bar Association in cooperation with Alaska Pacific University.

The series will be held at Alaska Pacific University in Anchorage. One lecture will be offered each week for nine weeks.

If this pilot project proves successful, course outlines for use in other parts of the state will be offered to local Bar associations.

Speakers for the APU sessions, all Anchorage attorneys, and their subjects are Timothy Stone, the Legal Process; Henry Camarot, Contracts; William Bryson, Criminal Law; T.W. Patch, Business Law; Douglas Serdahley, Torts; Paul Paslay, Wills and Estate Planning; Hoyt Cole, Real Property; Carol Johnson, Family Law, and Connie Sipe, Consumer Protection.

Anchorage Bar Speakers

Carol Johnson, vice-president of the Anchorage Bar Association, has announced the Association's noon luncheon meeting speaker schedule for the remainder of the month of February and the first week in March.

On February 19, there will be a joint meeting with the Anchorage Chamber of Commerce, with Senator Mike Gravel as the scheduled speaker. The meeting will be held at the Captain Cook Hotel ballroom. Senator Gravel will be discussing the D-2 issue, as well as other legislative issues of interest to the Association and the

Dear Editor:

We appreciate the effort you and other members of the Bar Rag staff are making to upgrade the quality of bar communication. However, we were disturbed to see the "Nose" column in your January issue.

As women lawyers, we were offended by the reference in the column to the physical appearance of the new women law clerks. Would you ever have considered reporting on the physical appearance of their male counterparts?

We feel the Bar Rag, as a publication for both male and female members of the bar, should be aware that some of us are offended by such sexist comments. Please convey our thoughts to your staff.

Very truly yours,
Stephanie Cole
Susan Miller

(Editor: Certainly. No offense was intended.)

Sexism

Alaska Law Symposium

To All Alaskan Attorneys:

California Western School of Law is seeking submissions of articles relating to Alaskan law. We expect to publish a symposium volume in 1980, with lead articles written by Alaskan attorneys, and notes and comments written by Alaskan oriented members of the Law Review staff. The subject matter may cover any topic.

If you are interested, or if you know of anyone who would be interested in writing a scholastic article for our Alaskan Symposium, please write to:
Mr. Michael Furman
Lead Articles Editor of Law Review
California Western School of Law
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or call Ms. Lottie Wolfe (staff writer) in Anchorage at 277-8622 or 349-5086. Thank you.

"Random Potshots"

By John Havelock

"The consequences of more lawyers"

The bar's memorial service for Joe Rudd offered, in part, an occasion to ruminate about the changing character of the legal profession in Alaska, and perhaps the country.

First thoughts had to do with the changing self-image of lawyering the second with the social and economic consequences of disproportionate growth in the size of the bar.

In the early sixties I attended maybe four or five similar ceremonies some of them for brethren of rather modest accomplishment or talent. But on each occasion the courtroom was packed. It was considered both a professional obligation and a learning process to attend these functions. Firms, large and small, would simply close their doors for an hour or so. Younger members of the bar, who usually had little occasion to know the departed member, would, from the back benches, share (and envy) the eloquence of some of the bar's most able orators. In the recitations of both high and common points of the decedent's career, there was much to be learned about the legal profession as a calling. These ceremonies were stage for emotion—touched reminder not only of the way the departed had met his obligations to his peers and to the community, but also of the brotherhood of the bar.

GOOD OLD DAYS? Admission to the bar in those days also approached being performances of obligatory tendence and carried similar ceremonial affirmations. While weekly luncheons of the Anchorage association were not socially mandatory, most members of the bar attended. In fact much business was transacted also in a daily luncheon gathering place. There was good-natured banter and companionship among the table even though, as might be expected in an internally combative profession many members carried a list of hierarchical preferences for their colleagues in their hearts and nourished fantasies of vengeance or comeuppance. Unalloyed admiration was rare, a least prior to a member's final departure. But holding the company together was the acknowledgement (unspoken except on ceremonial occasions) that we were of a community based on calling as surely as any monastic order if more lively.

THE DECLINE OF LAWYER INTEREST IN THE BAR. Well, we no longer seem to view ourselves the way. In the last few years rarely have ten percent of the bar been gathered in one place, even at conventions. Ceremonies of admission are attended only by peers and close friends. Members of the bar senior enough to note these differences attribute the change most frequently to the great growth in size of the bar. The number passing each bar exam these last few years exceeds the total number engaged in the private practice of law in Anchorage in 1955. Under such circumstances there is a way to recreate the level of interpersonal contact which characterized the bar in the sixties.

While size may explain a fall in off by proportion, it does not explain the shrinkage in gross attendance. Fifteen years ago more people attended the weekly bar luncheon than last week, despite a several fold increase in the size of the bar.

The increase in the bar's size alone then, does not provide an adequate explanation of the decline in common associations. In fact as reflected in legal education, in lawyer professional tasks and in their social performance, the role of the lawyer in Alaska and in American society generally is changing and with it the

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concept of lawyering as a communal calling.

Changing Nature of Lawyer Performance

What have been the principal changes in the function of Anchorage attorneys over the past fifteen or twenty years? During these years, the bar has grown steadily as a proportion of state population. Thus (for better or worse) the bar now gives more than twice as much "legal services" as occurred in the earlier period or the definition of "legal services" has changed to encompass more work.

This change is, in part, reflected in the enormous increase in trial and appellate workloads. The work has expanded either because many more classes of disputes have been dragged into the "legal" adjudicative arena or we have brought services to many more people who previously resolved their disputes other ways. A third possibility is that we have taken the same basic disputes and have made their resolution more expensive by transactional additions. More of this work expansion in a minute.

Socialization of Lawyer Roles

A second characteristic of the bar's change in this period is reflected in the establishment of the Public Defender Agency and Alaska Legal Services Corporation. The creation and growth of these agencies has allowed lawyers to disclaim interest in non-remunerative or low remunerative work in criminal defense and the problems of the poor. In one of the few substantial divisions by specialization, we now have split the civil law and criminal law bar. One result: a real shrinkage in the number of lawyers who give much of a damn about the quality of criminal justice, a fact reflected, to take one example, in the particularly low attendance at bar lunches focusing on issues in the new state criminal code.

Service to the Poor in the Good Old Days

It may be that prior to the creation of these agencies, many of the poor were getting bad service or endless runarounds. But this was surely not ordinarily true. Lawyers performed substantially more *pro bono* work in those days because there was no excuse.

Interestingly enough, despite the growth of these agencies, the proportion of public lawyers in the state is approximately the same: one third. The socialization of legal services to the poor and, as a practical matter, much of criminal defense, would seem to negate the hypothesis that the flood of new lawyers is reaching a great sea of economically deprived persons who previously suffered [helplessly] affront to their legal rights without lawyers.

Emergence of the Large Firm

A third aspect of change over the last 15 years has been the emergence of the large law firm. When Ely, Guess, Rudd & Havelock opened its doors in the summer of 1963, there was, if memory serves, only one other four man firm in Anchorage. While specialization is rare in small firms, the clear attraction of the larger firm is the foundation it provides for specialization. A large firm assigns cases and provides for profit sharing without the awkward ethical questions raised by the referral fee among non-associated lawyers.

Effects of Specialization

Specialization has clearly resulted in the increased proficiency of a growing number of lawyers positioned to specialize. At the same time, sole practitioners and small firms can no longer afford to specialize now than before. They must hang on to what

ever comes through the door. Accordingly, without arguing whether lawyers today are "better" or "worse" than their precursors of the 60's, in Anchorage, there is today more of a spread, and certainly a much larger number of very good attorneys practice today than then. The non-proficient lawyers are always with us.

Influence of Economic Competition

The practice of law has become more economically competitive. There is some indication, in comparing older and more recent salary surveys, that attorneys' incomes may have failed to keep pace with inflation. This is in keeping with the theoretical economic expectations when a labor force is expanded faster than the supply of work.

The Contemporary Professional Self-Image

Anchorage lawyering in 1979 consists of hundreds of small businessmen competing for access to a proportionately shrunken number of clients. These small businessmen have slightly less income by median than their predecessors. The spread in income among the more and less fortunate or skillful members of the bar, adjusting for years in practice, is much greater than it once was. The fact that the same or less income is forthcoming, despite release from *pro bono* obligations taxing the individual lawyer's time, reinforces the likelihood of a comparative decline in remuneration per unit of charged work. *Pro bono* work is now more likely token.

In an increasingly fragmented and perhaps dog-eat-dog professional world, the concept that lawyers collectively handle the collective legal work of the community is dead. Thus there should be no great surprise if lawyers no longer think or act as a collective brethren. That self-image is gone.

The Effect of More Lawyers on Legal Services

Return now to consider the observation that work has expanded to feed more lawyers than could be expected from normal community economic growth. Two hypothesis are possible. First, that the public is being asked to hire more judges and expand the courts because more lawyers have chosen to make Anchorage their home. They are doing it either by making life more complicated, by "legalizing" transactions which previously escaped professional scrutiny, or by making the transactions they handled before more complicated. Since we have delegatized a number of transactions such as domestic relations, the focus of our attention might be on the proposition that we have expanded the cost of handling the kinds of transactions which lawyers have pretty much always handled. We are going to court more often than settling without litigation. We are using more legal processes all along the line.

The second hypothesis, exculpating the lawyers, is that Anchorage economic and social life suffered serious deficiencies including inadequate legal services for the last two decades. In the latter case, we must assume a major social loss occurred because of the inaccessibility of legal services even to those who could afford to pay. The problem with this argument is the absence of major complaints—such as we now hear for example about shortages in the medical profession in pediatrics and obstetrics.

So the first possibility, that legal work and the judicial system are expanding to meet the employment needs of lawyers, remains a viable hypothesis with some very discomfiting implications for public policy. For instance, if the problem is too many lawyers, why meet the problem by expanding the system to accommodate them?

Pattern Jury Instructions Underway

Professors Stephen A. Saltzburg and Harvey S. Perlman of the University of Virginia School of Law have been commissioned by the Alaska Court System to develop pattern civil jury instructions.

The project, which has just commenced, is scheduled for completion in one year. At the appropriate time, a Committee composed of representatives of both bench and bar will be formed to consider the proposed instructions which will ultimately be published under the auspices of the Supreme Court.

Professor Saltzburg clerked for Justice Thurgood Marshall after his graduation from the University of Pennsylvania in 1970. He was instrumental in the formulation of the Federal Rules of Evidence and served as Reporter for the proposed Alaska Rules of Evidence.

Coming Events

- Feb. 27-March 1—Alaska Bar Examination, Anchorage, Fairbanks, Juneau and Ketchikan.
- March 29-31—Meeting of the Board of Governors, Juneau.
- May 10—Institute on the New Rules of Evidence, Juneau.
- May 11—Institute on the New Rules of Evidence, Anchorage.
- May 12—Institute on the New Rules of Evidence, Fairbanks.
- May 17-19—Meeting of the Board of Governors, Anchorage.
- June 1—Institute on Basic Estate Planning, Ketchikan.
- June 2—Institute on Basic Estate Planning, Anchorage.
- June 4-6—Meeting of the Board of Governors, Sitka.
- June 6-9—Annual Meeting, Alaska Bar Association, Sitka.
- Sept. 8—Institute on the New Bankruptcy Act, Anchorage.

Bills & Notes

By Norman C. Gorsuch, Legislative Counsel

The 11th Legislature convened in Juneau on January 15th. The Senate, consisting of 11 Republicans and 9 Democrats was promptly organized and elected Senator Clem Tillion (R-Halibut Cove) as President. Senator Bob Ziegler (D-Ketchikan) was selected as Chairman of the Judiciary Committee. This Committee is one that will have jurisdiction over many bills which effect the Bar and judicial system.

In the House, after a nine day organizational caucus, the Democrats elected Rep. Terry Gardiner (D-Ketchikan) as Speaker of the House. The House consists of 25 Democrats, 14 Republicans and one Libertarian. Rep. Charlie Parr (D-Fairbanks) was chosen as Chairman of the House Judiciary Committee.

The general theme of the Legislature this year seems to be one of fiscal austerity. The House Democratic caucus recently adopted a pledge to reduce current state spending by some 15 percent. Some observers believe that this pledge, while evidence of good intent, is an unrealistic one.

The Judiciary asked for a substantial increase in its budget, the establishment of an intermediate level appellate court and a judicial pay raise. It is believed by observers that the judiciary request will be subjected to close scrutiny by the House and Senate Finance Committees.

An interesting concept has been advanced by Reps. Oral Freeman (D-Ketchikan) and Parr (D-Fairbanks). Both have introduced bills to provide for a legal defense fund to pay the costs of defending individuals accused of violations of federal statutes and regulations applicable to the newly designated national monuments. The Department of Law has opposed the bills because it questions their constitutionality and it believes that a newly established federal-state coordinating committee consisting of federal and state police and prosecuting officials will minimize the conflict between the state and federal jurisdictions. The Legislators still believe that some additional action must be taken in order to adequately protect many Alaskans from federal prosecution.

House Bill 85, introduced by Rep. Joe McKinnon (D-Anchorage) amends the Bar examination grading procedures contained in Alaska Bar Rule 7, Section 1 by requiring that an applicant for admission who fails the examination must be granted a hearing in all cases where the score of the applicant is within five points of a passing grade. The applicant is to be given access to his answers to the examination questions and the model

answers for the questions together with a representative sampling of the examination papers of other applicants who received overall passing and overall failing grades.

The Senate Judiciary Committee, by request, introduced a Bill which amends the law clerk provisions of the Bar statutes. Under the current law, the applicant must be a bona fide resident of the state and must present satisfactory proof that he has been granted a bachelor's degree (other than a bachelor of laws) by a college or university offering the degree on the basis of a four-year course of study and has successfully completed his first year of studies at a law school. The proposed bill would delete the language (*Other than bachelor of laws*). At present no hearing has been scheduled by the Senate Judiciary Committee to which it was referred.

The Alaska Code Revision Commission has submitted bills revising some Alaska statutes. One bill relates to commercial transactions and makes many technical and some substantive changes to the existing UCC. The Commission also introduced a bill relating to the uniform disposition of community property rights at death and an act relating to international wills under the uniform probate code.

The Governor has submitted to the Legislature an executive order transferring the administration of the recording function and the Uniform Commercial Code filing function from the Department of Administration to the Department of Commerce and Economic Development. This order will become effective in 60 days unless the legislature specifically disapproves.

Senate Joint Resolutions 3 and 4 which propose amendments to the Constitution requiring the election of supreme Court justices, superior court judges and the attorney general have been introduced by Senator Brad Bradley of Anchorage. These resolutions were referred to the Senate Judiciary Committee. Rep. Terry Martin (R-Anchorage) introduced companion House Resolution the same topics. Both of these amendments were brought to a vote in the Senate last session, but neither one obtained the necessary 2/3 majority (14 votes) required for passage of constitutional amendment.

Rep. Martin has also introduced a bill tightening up the law relating to the possession or control of marijuana. Rep. Fred Brown (D-Fairbanks) has introduced legislation revising the mechanics and materialism's lien act which passed last session.

Senator Ed Dankworth, (R-Anchorage) has introduced a new drug control bill. This promises to be one of the most controversial bills discussed in this session.

Safe Havens for Battered Women

by Kit Evans

We hear a great deal about crime in the streets, and even more about the sanctity of the home, yet police statistics show that on any given day in Anchorage, at least three women may be beaten in their homes. Beaten, not by strangers who break and enter that home, but by a person actually living there, most often by the husband or companion upon whom, society says, she may depend for support, strength and protection.

National statistics indicate that as many as ten times the number of reported batterings may occur in any given area and are never a matter of record with the police. For far too long, battering has been considered a private family matter, a family secret politely ignored by those who stumble across it.

Many women, deeply ashamed to have "failed" as a wife, and terrified of provoking more violence against themselves, have never revealed their situation to anyone. Others may have mentioned it to a relative or a doctor, only to hear "I can't believe it, Ed's such a nice guy," or to be sent home with some hefty tranquilizers. A generalized premise behind the basic response of society to the battered woman is that "good women" aren't

beaten, that if they were behaving properly, they would not be struck, and that, if they don't like it, they can change their behavior or leave their home.

Recent information has emerged that challenges such assumptions. Women are beaten for dressing up, (or not dressing up) when his friends come over; for being asleep (or waiting up) when the husband comes home; for making (or not making) a doctor's appointment. They are beaten for crying, laughing, being depressed, being "too happy" because the husband has lost his job, or drinks too much, or he has low self esteem. Yet even when a woman finally discovered that she could seldom predict the "reason" for the next beating, there still seemed no recourse other than to try harder to appease the batterer. Without funds, most often with children, there was no place they could go for sanctuary.

In Alaska, this has changed. Alaska is a forerunner in the establishment of safe havens for battered women and their children. Shelter programs have been established in Anchorage, Juneau, Bethel, Nome and Fairbanks. In other cities, such as Ketchikan, Kenai and Kodiak, there are women's groups organized to assist women within that community or in arranging safe transportation to a Shelter. The Shelters provide a

physically safe space for the battered woman to assess her situation, analyze her resources and make some decisions about how she wants to live. The majority of women coming to a Shelter have no information about battering relationships other than their own, little idea of what the community provides in terms of services and support, and have ceased to perceive themselves as a person who can have power over their own life. It is part of the work of the staff and volunteers to provide information and feedback in those areas.

When you have, as a client, a woman has been battered, you too can call upon the Shelter or organizations in your town for assistance. You may wish to place the first call to find out what is available in your community. At the A.W.A.I.C. Shelter in Anchorage, we would then ask you to please have the woman contact us herself. If your client then wished to come, we would meet her at a mutually designated spot and then proceed to the Shelter.

Upon arrival, she would find a facility that can house 34 women and children, with staff present 24 hours a day. All staff are trained in crisis intervention counseling and in active, non-judgmental listening. We are committed to the belief that every person has choices, and is responsible for her decisions. We also believe that every person has a right to live free of fear and that for one human to dominate another through the use of violence is wrong. These beliefs govern life at the Shelter. Women residents share the housekeeping tasks; they take turns cooking, cleaning, and each does her own laundry. Women care for their own children, although baby-sitting for each other is a common assistance given. No form of physical violence or the threat of violence is allowed, and this includes the disciplining of children. Alternatives are thoroughly discussed and each mother is actively supported in rebuilding the parent/child role without the use of violence. Additionally, we do not accept women who have drinking problems, or who abuse drugs. Confidentiality regarding the location of the Shelter or who may be living there is mandatory; women who break confidentiality are asked to leave and may not return.

Women may stay at the Anchorage Shelter for 30 days. Extensions are available depending upon circumstances. Residents may come and go as they please during the day and use the phone freely. Staff will not take

messages, or in any way reveal that a woman is using the Shelter services, although each woman may tell anyone she chooses. Because we believe in paying one's own way as much as possible, we ask each woman to contribute a minimal amount on a daily basis to the Women's Assistance Fund. This money is used only for the direct needs of other battered women.

Battering is real. Since the Anchorage Shelter opened in the fall of 1977, two residents have been murdered by their batterers. One was killed at work while she was living at the Shelter, the other was followed out-of-state and murdered in her new household. In every case of spousal homicide investigated by the Anchorage Police Department, there was a record of previous household disturbance call to the police. While murder is most often taken seriously, the violence toward women which may lead to it seldom is treated as such, by either the helping professions, the legal system or the man on the street. Lawyers are in an excellent position to contribute to the changing of society's attitudes and can also provide a valuable link in the referral system.

The following are the names and numbers of organizations in communities around the state which are involved in assisting battered women.

A.W.A.I.C., Inc.
Shelter 274-4561
Anchorage

AWARE
Shelter 586-6624
Juneau

WIC-CA
Shelter 452-7273
Fairbanks

Tundra Women's Coalition
Shelter 543-2419
Bethel

Kenai Women's Resource Center
262-9376
Kenai

Ketchikan Women in Safe Homes
274-6537

Bering Sea Women's Group
Shelter 443-5444
Nome

Kodiak Women's Resource Center
486-5675
Kodiak

Kit Evans is Executive Director of AWAIC, Inc. Shelter.

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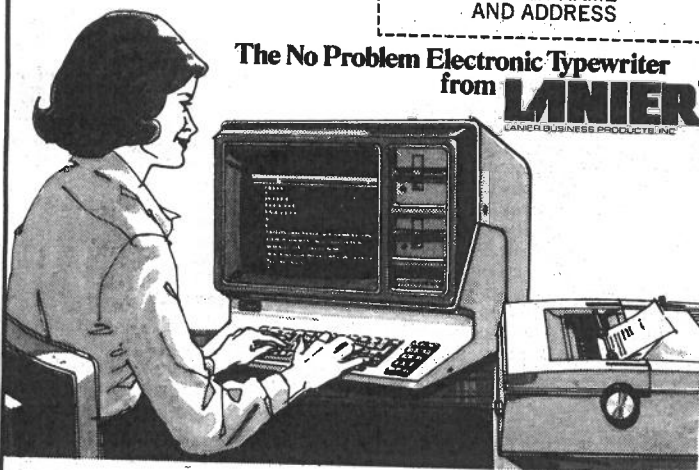
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Emmonak Trial

By Chris Cooke

In a recent trial in the Bethel Service Area the jury returned a verdict at 4:00 a.m. The late hour, however, was not the only unusual aspect of this trial. The case, *State of Alaska v. Walter K. Joe*, was the first felony jury trial ever conducted in the remote village of Emmonak.

Emmonak is a predominately Eskimo community of approximately 450 people located near the mouth of the Yukon River just a few miles from the Bering Sea. It is approximately 150 miles from Bethel, which is the seat of the Court and the place where cases arising in the Bethel Service Area are normally tried. The special

session in Emmonak was held at the request of the defendant who had been indicted for Assault with Intent to Commit Rape and Assault and Battery.

Prospective jurors were called from Emmonak and the nearby villages of Kotlic, Sheldon's Point, and Alakanuk. Those from the other villages traveled to Emmonak by snowmachining and bush plane. After a full day of jury selection a trial jury of seven men and five women was impaneled. All of the jurors spoke Eskimo and English.

The trial was conducted in the multi-purpose room of the Emmonak Community Complex, a multi-purpose building which also contains the

Health Clinic, the Village Office and hotel rooms. There was considerable local interest and the large room provided adequate space for the attendance of many non-jurors from the community. Many of the prospective jurors not selected for the trial panel stayed to hear the case. Also, many students from the Emmonak High School observed the trial. [Emmonak is the hometown of at least one famous Alaskan: Molly Hootch. See *Hootch v. Alaska State-Operated School System*, 536 P.2d 793 (Alaska 1975).]

The bilingual jury was a unique attribute of this trial. The three principal witnesses spoke only Eskimo. While interpreters were used for the benefit of the lawyers, the Court, and the record, the jurors were able to understand the testimony in the original Eskimo. At one point the jurors were even able to call the Court's attention to certain translation difficulties.

Testimony was completed the afternoon of the second day of trial. It was decided that the trial would continue into the evening for final argument, instruction and deliberation. However, the Court had to move from the Community Complex to the school to avoid conflict with a scheduled Bingo game. With the assistance of Emmonak magistrate Dorothy Kameroff, jury instructions were given in Eskimo as well as English. Then the jury deliberated for eight hours.

Though the deliberations went through the night, interest in the outcome remained high. Several of the townspeople waited for the verdict in another room at the school. A dozen high school students also maintained a vigil there under the supervision of village policeman Fred Moore who was serving as Bailiff. Since, among other things, Emmonak lacks local telephone service, the students acted as runners to contact the judge and

the attorneys when the jury had a question and when they reached a verdict. The long evening also provided the attorneys and judges with an opportunity to discuss the trial process with the students and to answer other questions about the legal system. The jury found the defendant guilty of Assault with Intent to Commit Rape and not guilty of Assault and Battery (the two counts concerned different victims.)

Having this trial in the village necessarily involved certain sacrifices and compromises. The attorneys and the Court lacked a law library and secretarial help to aid in the preparation and disposition of motions and instructions. The facilities were makeshift and did not provide as much privacy for the jury during the trial or for bench conferences as would normally be available.

There are also calendaring difficulties in holding a village trial. A date certain must be set far enough in advance to summon jurors and arrange for use of local facilities. The court calendar in Bethel must be kept open to facilitate that travel. Bad weather and changes of plea can disrupt the schedule. Also, village trials are expensive. Transportation, per diem and jury fees for this short trial exceeded \$4,000.

Despite these problems, the Emmonak trial was a positive experience. The benefits and advantages could not have been duplicated in any other location. The testimony of witnesses who spoke only the Eskimo language was heard and understood in its original form by the bilingual jury. The facts, circumstances and legal implications of a community incident were tried before and by the people of that community.

Chris Cooke is Superior Court Judge in Bethel.

Anchorage District Court

By Laurel Peterson

Calendaring management and file flow through the courts has to be one of the greatest unsolved mysteries of the decade. With mounting vocal frustration, the District Court has once again reviewed its procedures and hopefully made some important changes. Strict judicial intervention and pre-filing complaint screening are the most obvious changes.

Beginning from a basic premise that the court should function with at least a modicum of efficiency, the court reviewed its 1978 experience and concluded simply that judicial involvement in calendaring is absolutely essential. Lack of strict judicial supervision resulted in criminal backlog increase of 233 percent in the first nine months over what it was for the same period in 1977. Judicial efficiency declined and cases remained open for greater periods of time.

Judicial Intervention

Faced with a mounting problem we re-established judicial control of criminal filings. Judicial intervention can be best described as constant and consistent monitoring and setting of all case files by the court. Misdemeanor cases are being set for future hearings and court action on what some might consider a rather rigorous schedule.

From the date of filing a criminal case is monitored through disposition. Court control is most visible in the form of consistent date certain settings. All cases continuing after arraignment are set for call of the calendar three weeks subsequent. Call of the Calendar provides the first decision date for

both attorney and client, as well as prosecution. Depending on the posture of the case, date certain settings follow for trial, change of plea, motion filing and argument.

If there is one identifiable key element of calendar control, it has to be the integrity of all party participants. This includes the court (ability to hear cases as set), prosecution (defeating the prosecutable case), and defense (meeting schedules as set). Judicial supervision provides controlled maintenance and adherence to the settings.

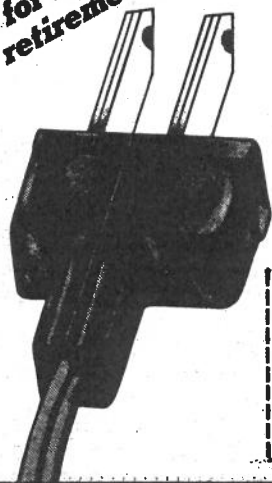
Pre-Filing Screening

As a result of a memo dated in December, I got the immediate attention of a vast segment of the criminal justice community. Its substance merely stated that the court would no longer accept direct misdemeanor filings by police officers nor would we accept multi-complaint filings for one defendant. The purpose of this policy was to require prosecutorial review of complaints as to form and substance. Hopefully a prosecutorial quality review will be given to the complaint prior to its reaching the courts.

Multi-court complaints, rather than multi-complaint filings not only reduces number of files, but also minimizes clerical time in file preparation. The court's interest here was to identify superfluous paperwork which impacts an already overloaded staff.

Beyond creating a bedlam of activity, we have already experienced a degree of success; 1978 backlog is quickly diminishing, the January filings reduced 17 percent, and trial settings are within 60 days of charge.

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Limited Entry: Apokedak vs. Commercial Fisheries Entry Commission—Part II

By Loren Domke

Considerations of Jurisprudence

The most troubling part of *Apokedak* is not its reliance upon *obiter dicta* in *Isakson* for the holding in that case of the ill-defined rule of law fashioned by the superior court. The most fundamental issues are those raised by the absence of judicial craftsmanship in the drafting of the opinion.

The case was not ripe for consideration on the merits of the issue of Appellant's economic dependence on the Bristol Bay drift gill net fishery. The Commission never had an opportunity to review his point claims because of the eligibility issue. When the court decided the economic dependence issue thereby invalidating the entire regulatory system it decided on an issue that was not ready for judicial review, as there has been no showing that Appellant would not qualify for sufficient points for a permanent entry permit under existing regulations. After the finding of eligibility the better procedure would have been to remand the case to the Commission for determination of Appellant's points classification. At this stage in the proceedings there was no justification for the court to take pot shots at the economic dependence provisions in the regulations.

The opinion's sparse reasoning can be seen in the way in which the court handled the issue of Appellant's failure to perfect a timely appeal to the courts, after the rejection of his application on July 9, 1975. Although jurisdiction arguably existed pursuant to Appellant Rule 45, Alaska Rules of Court, because of the Com-

mission's July 20, 1977 letter exhausting Appellant's administrative remedies, there is no satisfactory explanation of what factor or combination thereof excused his failure to appeal the commission's July 9 determination until 1977. The finding that the commission did not inform Apokedak of his right to apply for an entry permit entered into consideration. (Memorandum at page 2). But this factor is not germane to the question of notice consistent with standards of procedural due process. In fact, the commission advised Appellant in writing, as it does all unsuccessful applicants, by the eligibility notice of July 9, 1975 that he was ineligible for an entry permit and had 45 days in which to request an administrative hearing or to contest the determination. There has been no satisfactory explanation of why Appellant should not have been held to this notice or why due process requires that the commission should make greater efforts to communicate the significance of its notice. On its face, Appellant's indifference to the assertion of his rights after receipt of the eligibility notice suggests application of the laches doctrine.

The equitable consideration which apparently entered into this decision and motivated the court to go to extraordinary length in affording relief clearly were not appropriate on the facts. An affidavit given by Apokedak's employer in 1972 states that he had been employed at the Kakanak Hospital on a full-time basis between May 2, 1972 and April 3, 1975. He did not commercially fish in any capacity after taking this job until the 1974 season, as indicated by licensing records. His shift to non-

fishing employment during the formative years of limited entry suggests that on January 1, 1973, the date for freezing a fisherman's qualifications under the dual hardship standards, he no longer considered himself a fisherman. In view of legislative intent to assist only active fishermen, these facts imply Appellant had little to lose by being denied a permit and was clearly a poor candidate for equitable relief.

One of the ironies of the case is that the court went to great lengths for an individual who retired from commercial fishing a year before enactment of the limited entry statute. One wonders how such an applicant could suffer any hardship by being denied a permit, even abstractly apart from the act or regulations.

Impact on the Fisheries

The ambiguous ruling in *Apokedak* will create a number of problems for the state in its management of the salmon fisheries and may threaten the viability of the entire limited entry system. Public statements by the Commission indicate that the decision may eventually be the stimulus for an additional 20,000 applications. These estimates are not far-fetched. If *Apokedak* is given an expansive interpretation, the past participation and economic dependence regulations will eventually fall in other fisheries, as they too afford special consideration to status as a gear license holder. Even if the opinion is given a literal interpretation, it will cause havoc in the first nineteen fisheries limited

by invalidating the point system in 20 AAC 05.630.

The most immediate effect will be to encourage new entrants, especially in those areas such as Bristol Bay where the costs of entry are relatively low in relation to potential earnings.

For example, Bristol Bay drift gill netters will face many new vessel operators in an already overcrowded area where there is at least fifty percent more gear than is necessary to harvest the salmon runs. The entry costs for new operators once they have acquired permits are no more than \$10-\$15,000, the cost of a vessel and gear. With forecasts of the largest two annual runs of the decade in 1979-80 and the possibility of grossing over \$100,000 for a six week fishing season it is not unreasonable to expect an influx of outsiders. The pattern has already been established since the fishery has traditionally attracted many new participants during bonanza years.

Since Appellant drift gill nets in Bristol Bay there is a good possibility that the addition of new gear in the water may well dilute this new vessel operator's income potential to the extent he would have realized greater earnings as a crewman in a fishery without the superabundance of new gear. If this occurs, Apokedak and many other fishermen in the Bay will unfortunately find themselves exactly where they were before limited entry—unable to earn a reasonable income from their efforts and mortgaged to the cannery store at the end of the fishing season.

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That intellect, not fear, would rule the land.
That courage, truth, and freedom all would flow,
As one, with tribute to no flag or man.
But then the cry of those who shun the light,
Rang out, and the day of the fool was close at hand.
For now the court sang songs of woe and fright;
Found comfort in the lie, and in the sand.
Time was the court would sing and men would cheer,
With joy at the sound of a voice that knew no age.
But now they spin their cloth and old men sneer,
And the young cry out with hate, and pain, and rage.
Time was the court would play and the people dance,
To a hymn of hope, and peace, and love, and rest.
Time soon the court will fall upon their lance,
With the final hand of guns, and blood, and death.

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On the Death of Lorca

What symbols, what eternal things,
From fountainheads of wasted breath,
Assume chaotic posturing
To explicate his senseless death.

No testament in verse or prose
As monstrously assesses war's
Obliquity as that of those
Who lie about the Alcazar

While bleeding hearts, for propaganda
Extolling violence askance,
Write bloody verse from safe verandas
Or drive some rearguard ambulance;

So do not toll your bell again,
There are none left who care to hear
Its hollowness, except those men
Whose hands are gangrenous with fear.

You are too late with all your poems,
Not even Death's sententious drum
Reverberates through catacombs
Or echoes in Elysium.

W. T. Ford

Bar-endorsed E & O Coverage Provisions

By Karen Hunt

The Bar Association-endorsed malpractice insurance carrier is National Union Fire Insurance Company of Pittsburgh, a member of the American Home Insurance Group. The local broker is the Clary Insurance Agency which has offices in Anchorage, Kenai and Seward. Presently, approximately 400 Alaska lawyers are insured with this company. Clary Agency president Jack Katzenmeyer, and Karin Acuna, Account Executive, have binding authority subject to completion of the application and home office review. The Clary Agency claims sole authority in the State of Alaska for binding any E & O insurance company writing lawyer's professional liability in the State of Alaska.

As printed in the January issue of The Bar Rog, the company has announced possible premium reductions ranging from five to 15 percent for lawyer attendance at Bar-approved continuing legal education courses. This is a new feature not previously offered by any E & O carrier writing in Alaska.

One of the highlights of the coverage offered by National Union Fire includes unlimited prior acts. The company will make payments, defend and otherwise honor any claims made against the insured during the policy period for acts that occurred prior to the effective date of the policy provided that the insured does not have any other valid insurance and did not have knowledge of the claim prior to the effective date of the policy.

Premium rate in column (0) printed below is the rate charged to an insured who has no prior acts exposure. Rate (5) is charged to an insured that has at least five years or more of prior acts exposure because the insured has practiced in private practice without insurance or has practiced previously under a claims-made policy form which ceased to cover the insured when the policy expired thus leaving the insured with no recourse to the policy after the expiration/termination date of the policy even if the claim allegedly occurred during the policy period. The prior acts coverage offered by National Union Fire is not optional and cannot be deleted from the policy.

Like most carriers writing legal malpractice insurance, National Union Fire includes claims expenses in its limits of liability. Thus is the policy limit is \$100,000.00, the cost to defend a claim is deducted from the \$100,000.00 limit. "Claims expense" includes fees charged by the defense attorney designated by the company and all other fees, costs, and expenses resulting from the investigation, adjustment, defense and appeal of the claim, suit or proceeding. "Claims expense" does not include salary, charges or expenses of regular employees or officials of the company or fees and expenses of independent adjusters.

The top limits of liability offered

in Alaska by National Union Fire are \$100,000.00 per individual claim and \$100,000.00 aggregate during the policy period. In July, 1978, the company confirmed that it did not foresee providing higher limits in Alaska in the near future.

The policy requires that insurance coverage under one policy be purchased for all attorneys who share office space, secretarial help, stationary or who otherwise give an outward appearance of an existing partnership. This requirement is based upon the company's interpretation of § 116 of the Uniform Partnership Act adopted in Alaska in 1917.

The company believes that under the Act, a partnership by estoppel is not a formal business association. It is simply a legal mechanism for fixing liability on those who make it appear that they are in business association. Joint and several liability exists despite the fact that this is not a voluntary arrangement except in the sense that the alleged partners acted voluntarily when they did whatever it was that precipitated the liability. In this regard, the company feels that any act, representation or conduct on the part of a person, reasonably calculated to induce the belief that he is a partner, constitutes a holding act, with respect to whether a partnership will be held to exist as to third persons.

Most claims-made policies cease on termination/cancellation date unless the individual or firm purchases "tail coverage" which means that for an additional premium covering from 90 to 365 days, the individual or firm can continue the policy in effect for claims which are based upon an act which occurred during the policy period but which are not made or "discovered" until after the cancellation/termination date of the prior policy.

National Union guarantees in their policy form that this "discovery clause" or "tail" can be purchased by paying a premium charge either in a lump sum at a rate of 225 percent of the last premium paid or the insured may make a payment on a 50/30/20 basis over a three year period time. For the first time, the company is also making available limited "tail" coverages. An insured can get a minimum of three years of tail coverage for an amount equal to 100 percent of the last annual payment paid for three years in advance or six years of tail coverage for an amount equal to 150 percent of the last annual premium paid for six years in advance.

The "discovery clause" or "tail" coverage is important to a member of a firm who leaves private practice and works for a corporation or a governmental entity or leaves the practice of law altogether. Without the "discovery clause" or "tail" coverage, the attorney is without protection once he is either deleted from the firm's policy and/or cancels his/her individual policy.

The "discovery clause" or "tail" coverage is also important to lawyers who switch from a "claims made" policy to another "claims made" policy that does not include prior acts. National Union Fire does not offer an occurrence policy. The Alaska Bar Association Self-Risk Management Committee reports that its search has failed to discover any insurance company presenting writing occurrence-form policies.

To date, National Union has not charged a surcharge for previous claims made against the insured whether insured with National Union or any other carrier. Clary Agency can bind an applicant attorney who has had not more than three claims in prior five years. More than three claims made against an applicant attorney in the prior five years must have home office review because the company considers that more claims in

that time requires underwriting consideration. However, if the attorney-applicant is acceptable, standard rate premium rates are applicable regardless of the number of prior claims.

National Union charges one-half the annual premium for each law clerk, paralegal, investigator or abstractor which the attorney or firm seeks to cover under its policy. The National Union Fire policy does not contain an S.E.C. exclusion.

Questions regarding individual or firm policies under the National Union Fire coverage should be directed to Karin Acuna, Account Executive, Clary Insurance Agency at 805 West Fifth Avenue, Anchorage, Alaska 99501, or communicate by telephone at 276-5454. The Bar Association office cannot answer individual inquiries regarding malpractice insurance coverage under the National Union Fire Bar-endorsed policy.

Lanier gave Arnold Palmer three tips to improve his timing.



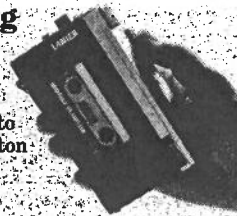
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Civil Rule 81 Amendments Under Consideration

The Board of Governors has authorized, pursuant to Bar Rule 62, circulation to the membership of proposed amendments to Civil Rule 81. Action will be taken by the Board at its Juneau meeting which commences March 29, 1979.

As proposed, Civil Rule 81 would read:

(a) Who May Practice.

(1) **Members of the Alaska Bar Association.** Subject to the provisions of paragraphs (2) and (3) of this subdivision, only attorneys who are members of the Alaska Bar Association shall be entitled to practice in the courts and before the administrative agencies of this state [.] or in any arbitration proceedings in Alaska.

(2) **Other Attorneys [.] - Courts.** A member in good standing of the bar of a court of the United States, or of the highest court of any state or any territory or insular possession of the United States, who is not a member of the Alaska Bar Association who is not otherwise disqualified from engaging in the practice of law in this state, may be permitted, upon motion, to appear and participate in a particular action or proceeding in a court of this state. The motion and notice of hearing thereon shall be served on the executive [SECRETARY] director of the Alaska Bar Association, the State Department of Revenue, the local municipal taxing authority and, unless the court directs otherwise by an order pursuant to Rule 5(c) of these Rules, on each of the parties to the action or proceeding. With his motion, the applicant must file with the court the following:

(a) The name, address and telephone number of a member of the Alaska Bar Association with whom the applicant will be associated (, WHO MAINTAINS AN OFFICE IN THE JUDICIAL DISTRICT WHERE THE ACTION OR PROCEEDING IS PENDING) and who is authorized to practice in the courts of this state.

(b) A written consent to the motion, signed by such member of the Alaska Bar Association.

(c) A certificate of the presiding judge or clerk of the court where he has been admitted to practice, executed not earlier than 60 days prior to the filing of the motion, showing that he has been so admitted in such court, that he is in good standing therein and that his professional character appears to be good.

(d) A list of each judicial, administrative or arbitration proceeding in Alaska in which he or any member of his firm is currently appearing as counsel or has appeared within the past 24 months.

(e) An affidavit in which he consents to be subject to the Disciplinary Rules of the Alaska Bar Association.

(f) Provide proof of payment of Alaska income taxes for all income earned within the preceding two years of the date of the motion and produce proof that he has paid all license taxes in the year in which the mo-

tion is made in accordance with AS and AS

An attorney thus permitted to appear may participate in a particular action or proceeding in all respects, except that all documents requiring signature of counsel for a party may not be signed solely by such attorney, but must bear the signature also of local counsel with whom he is associated. Section (a)(3) is repealed and new subsection (3) is added to read:

(3) **Other Attorneys - Administrative Agencies and Arbitration.** A member in good standing of the bar of a court of the United States, or of the highest court of any state or any territory or insular possession of the United States, who is not a member of the Alaska Bar Association, and who is not otherwise disqualified from engaging in the practice of law in this state, may be permitted, upon motion made to the Director of the Administrative agency or arbitrator before which the particular proceeding is pending, to appear and participate in a particular action or proceeding. The motion and notice of hearing thereon shall be served on the executive director of the Alaska Bar Association, the State Department of Revenue, the local municipal taxing authority and, unless the director of the agency before whom the proceeding is pending or arbitrator directs otherwise by an order pursuant to Rule 5(c) of these Rules, on each of the parties to the action or proceeding. With his motion, the applicant must file the following:

(a) The name, address and telephone number of a member of the Alaska Bar Association with whom the applicant will be associated who is authorized to practice in the courts of this state.

(b) A written consent to the motion, signed by such member of the Alaska Bar Association.

(c) A certificate of the presiding judge or clerk of the court where he has been admitted to practice, executed not earlier than 60 days prior to the filing of the motion, showing that he has been so admitted in such court, that he is in good standing therein and that his professional character appears to be good.

(d) A list of each judicial, administrative or arbitration proceeding in Alaska in which he or any member of his firm is currently appearing as counsel or has appeared within the past 24 months.

(e) An affidavit in which he consents to be subject to the Disciplinary Rules of the Alaska Bar Association.

(f) Provide proof of payment of Alaska income taxes for all income earned within the preceding two years of the date of the motion and produce proof that he is in possession of a valid business license and that he has paid all license taxes in the year in which the motion is made in accordance with A.S. and A.S.

An attorney thus permitted to appear may participate in a particular action or proceeding in all respects, except that all documents requiring signature of counsel for a party may not be signed solely by such attorney, but must bear the signature also of local counsel with whom he is associated. Section (a)(3) is renumbered as Section (a)(4) and reenacted to read:

(4) **Authority and Duties of Attorneys.** Local counsel shall be primarily responsible to the court, administrative agency or arbitrator for the conduct of all stages of the proceedings, shall be present during all proceedings before the court, administrative agency or arbitrator and their authority shall be superior to that of attorneys permitted to appear under paragraphs (2) and (3) of this subdivision.

(remainder of rule remains the same)

The Criminal Law Committee, represented by Joe Balfe, District Attorney for the State of Alaska, has recommended that the Board of Governors endorse the creation of an intermediate appellate court limited by statute to the exercise of criminal appellate jurisdiction only. The Committee viewed such a court as the least objectionable of several alternatives to solve the problem of the Supreme Court's growing caseload.

At the same time, the Criminal Law Committee voiced its opposition to the exercise of civil appellate jurisdiction by an intermediate court.

Lower Premiums Through C.L.E.

Effective January 1, 1979, a five to fifteen percent reduction in e & o insurance premiums can be obtained in return for attendance at seven hours of continuing legal education. Proof of attendance at courses offered by the following institutions have been approved by the Board of Governors as acceptable:

- Alaska Bar Association
- American Arbitration Association
- American Association for the Advancement of Science
- American Academy of Judicial Education
- American Bar Association
- American Bar Association National Institutes, Inc.
- American Civil Liberties Union
- Alabama Institute for Continuing Legal Education
- American Law Institute—American Bar Association
- Advanced Legal Studies Institute
- American Management Association
- American Planning Association
- Arkansas Institute for Continuing Legal Education
- Aspen System Corporation
- American Society of Law & Medicine
- The Bureau of National Affairs, Inc.
- Center for Advanced Legal Training
- Connecticut Bar Association
- Clark Boardman Educational Programs, Inc.
- Continuing Education of the Bar, University of California Extension
- Continuing Legal Education in Colorado, Inc.
- Computer Law Association
- Continuing Legal Education, University of Montana School of Law
- Continuing Legal Education for Wisconsin
- Court Practice Institute, Inc.
- Executive Enterprises Inc.
- Environmental Law Institute
- Emory University School of Law
- Federal Bar Association
- The Federal Judicial Center
- The Florida Bar
- Federal Publications, Inc.
- Government Contracts Program, George Washington University Law Center
- Massachusetts Continuing Legal Education - New England Law Institute, Inc.
- Institute of Continuing Legal Education, University of Michigan
- Continuing Legal Education, Minnesota State Bar Association
- The Missouri Bar Center
- National Center for Administrative Justice
- North Carolina Academy of Trial Lawyers
- North Carolina Bar Association
- Foundation, Inc.
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(continued on next page)

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[continued from preceding page]

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Full details of the program were
contained in the January 1979 issue
of *The Bar Rag*. Anyone desiring to
take advantage of the discount should

request the sponsoring institute to
report dates and hours attended direct
to the Alaska Bar Association. With
respect to courses offered by the
Alaska Bar, the Executive Director
will maintain records of those in at-
tendance at each program.

Admissions Rule Amend- ment Proposed

The Board of Governors, on
January 31, 1979, approved for circula-
tion to Association members the
following amendment to Rule 2 of the
Alaska Bar Rules:

Section 2. An applicant who meets
the requirements of (a) through (f)
of Section 1 of this Rule and

(a) Has passed a written exam-
ination required by another state,
territory or the District of Col-
umbia for admission to the
practice of law, and

(b) Has engaged as a licensed

attorney in the active practice
of law of a substantial nature
and on a regular basis in one or
more states, territories or the
District of Columbia for five of
the seven years immediately
preceding the date of his first
or subsequent applications for
admission to the practice of
law,

may, on the date of filing the appli-
cation request examination as an at-
torney applicant. An applicant qual-
ified for examination as an attorney
applicant shall be required to pass
the attorney bar examination prescribed
by the Board. Action on the proposal
will be taken at the Juneau Board
of Governors Meeting to be held March
29-31, 1979.

Law Related Education Committee Formed

During its conference call meeting
of January 18, 1979, the Board of
Governors approved creation of a new
standing Committee to be known as
the Law Related Education Committee.
Bill Choquette has been appointed
Chairman by President Ken Jarvi.

The purposes of the Committee
include education of the public with
respect to legal concepts and the ju-
dicial system. Outlines for volunteer
speakers have been prepared by the
Bar Office. Already underway are a
series of lectures for small businesses.

Anyone interested in serving on
the Committee should contact either
Ken Jarvi or Ron Kull.

Book Made Available to Bar

"How to Start and Build a Law
Practice," a handbook written by Jay
Foonberg, will be made available to
all new admittees to the Alaska Bar,
free of charge, commencing with the
February 1979 examination.

A practical guide for opening a
law office and dealing with clients, it
will also be available to admitted
attorneys at the reduced price of
\$7.50. Anyone interested in obtaining
a copy should contact Ron Kull, Execu-
tive Director.

New Definition of Practice of Law

The Board of Governors has recom-
mended for publication proposed
Rule 63 of the Alaska Bar Rules.
Defining the practice of law, it pro-
vides that Section 1. As used the
Alaska Rules of Court, the Alaska
Bar Rules, and the Integrated Bar
Act, AS 08.08.110, et seq. any person
who either is or represents himself
to be or causes any other person
reason to believe that he is a
lawyer, an attorney, or a member of
the bar of any jurisdiction, is engaged
in the practice of law while performing
any of the following acts for or on
behalf of any other person, with or
without compensation:

(a) Appearance in or conduct of
litigation or performance of any act
in connection with proceedings, pending
or prospective before a court of this

State unless otherwise provided by
court rule; or

(b) Appearance in or conduct of
litigation or performance of any act in
connection with proceedings pending
or prospective before any other body
constituted by law to settle contro-
versies; or

(c) Giving counsel as to any per-
son's legal rights or obligations; or

(d) Preparation or procurement
of instruments or other papers
creating, limiting, claiming, granting,
terminating, or otherwise securing
legal rights; or

(e) Engaging in any act or other
practice determined by the courts of
law to constitute the practice of law.
Section 2. Any person not included
in Section 1 of this rule who, for
compensation, performs any of the acts
set forth in subparagraphs (b) through
(e) of Section 1 of this rule, is engaged
in the practice of law unless such
acts are performed as part of the
regular conduct of a business the pri-
mary purpose of which is other than
the performance of any of the acts set
forth in subparagraphs (a) through (e)
of Section 1 of this rule. The practice
of law shall not include actions by
government employees in the course
of their employment within the agency
by which they are employed.

Section 3. The term "person" as
used in this definition of the practice
of law includes a corporation, company,
partnership, firm, association, organi-
zation, business trust, bank, govern-

mental entity or society, as well as a
natural person.

The Board welcomes all com-
ment and criticism which this proposal
will undoubtedly provoke. Action on
the Rule has been scheduled for the
Juneau Board meeting commencing
March 29, 1979.

Bylaw Amendments Adopted

During its conference call meeting
on January 18, 1979, the Board of
Governors adopted amendments to
Article III of the Association by-
laws. The changes, which will become
effective March 15, 1979, were pub-
lished in full in the November-Decem-
ber issue of *The Bar Rag*.

In essence, to remain an active
member of the Alaska Bar, an attorney
must either reside in the State, con-
tinuously maintain an office within its
boundaries or annually file an affi-
davit that he or she neither resides
nor conducts the practice of law in
Alaska.

Copies of the full text of Article
III are being sent to each member.

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