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The Alaska BAR RAG

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Dana Fabe and Bud Carpeneti Top Bar Surveys

The Alaska Judicial Council's survey of attorneys for the Juneau superior court judgeship and the Public Defender position showed Ms. **Dana Fabe**, Acting Public Defender, as the top choice for the Public Defender position and **Walter (Bud) Carpeneti**, a Juneau attorney in private practice, top-ranked for the Juneau superior court vacancy. Both received consistently high scores from attorneys throughout the state.

The Public Defender survey gave second place to **Rene Gonzalez**, Acting U.S. District Attorney, and third to **Nancy Shaw**, an Assistant Public Defender. Other applicants for the position are **David Berry** (assistant municipal attorney, Anchorage), **Ben Esch** (private practice, Anchorage), and **Roy Williams**, (committing magistrate, Alaska Court System).

Ms. Fabe was ranked first on each scale used, her highest scores coming in knowledge of criminal law, willingness to work, and integrity. In addition 51.1% of the 649 respondents rated her "Excellent" on the question, "How good a Public Defender would this person make?" The most interesting variation in Ms. Fabe's scores came with types of cases handled. Although she was rated at the top by lawyers who handled primarily criminal cases, civil cases, or a mixture, her ranking from those who were primarily involved with prosecution fell to third. The prosecution choices were Rene Gonzalez (first) and David Berry (second).

The survey for the Juneau superior court showed a similar consistency in the choice of Bud Carpeneti for highest ratings by every measurement. He was the top choice of every type of practitioner, regardless of types of cases handled, years of residency or practice of law, or scale used. Other candidates for the position are **Linn Asper, Douglas Gregg, Peter Page, Rodger Pegues, Richard Svobodny,** and **Robin Taylor.**

The second grouping of candidates for the Juneau superior court vacancy included Rodger Pegues, Peter Page, Douglas Gregg, and Linn Asper. Among this grouping, candidates shifted their relative positions depending on the type of analysis. Those in private practice, for example, ranked Gregg second, Pegues third, Page fourth, and Asper fifth. Attorneys who were government employees ranked them as Pegues, Asper, Page, with Page, Douglas, and Taylor following.

The overall rankings for each can-

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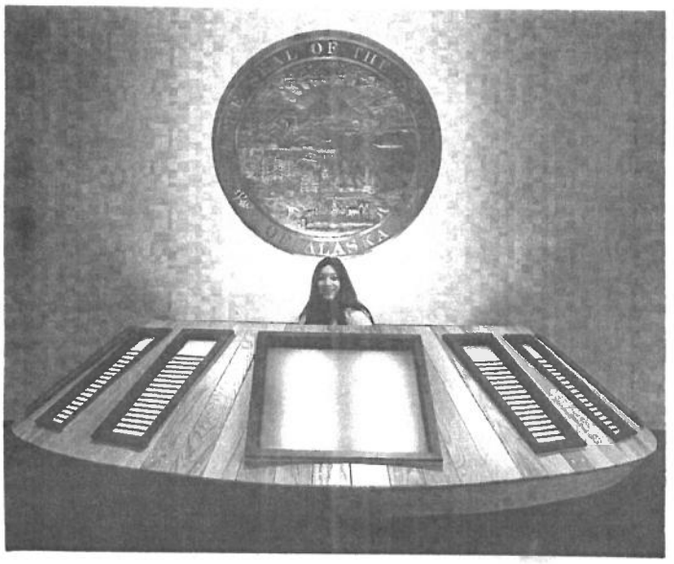
INSIDE



UFO Sighted at Courthouse

It's a what? Does it fly? Reactions to the new information module in the Anchorage Court house lobby have been varied, but generally enthusiastic. And the futuristic oak and bronze construction has become the centerpiece of the court building since it was installed in March 1981.

A central information area has long been needed to guide litigants, jurors and new attorneys through the labyrinthian passageways of the court. Directions to the IRS, Attorney General, Public Defender, Federal Court and other offices are also provided, as well as the answers to a thousand other questions. And the number of obviously lost persons wandering the courthouse corridors has declined noticeably.

Solid, Artistic and a Bargain

The unit was designed by Court System architect **Mike Wong** of Space Management Consultants, a Honolulu-based firm. **Ken Ragsdale** of Northern Wood Mill, Wasilla, was the low bidder and builder on the project. According to Court Planner **Gerry Dubie**, six bids were received ranging from just under $18,000 to almost $80,000. Considering the quality of construction, he believes the court system got good value for its money. The unit is still not quite complete: built-in directories and court maps are still to be added.

Patsy Hernandez

Patsy Hernandez, 22, court switchboard operator, is the commander of the module. She continues to receive incoming calls through the court's general number 274-8611. (Frequent callers are encouraged to dial departments directly. A list of direct dial extensions is in the phone book.) Ms. Hernandez is a 3½-year veteran with the court system, until recently worked the old switchboard in a district court basement room, variously called the closet, the dungeon, or the pits. She takes her added duties in stride, finds it refreshing to be of help to so many people.

Most of the questions are directional: Where's the library? the clerk's office? Where do I pay a traffic fine? Go for jury duty? Get a 'dissillusionment?' She also gets the unanswerable: Who's the best lawyer in town? How do I fill out these forms? What will **Judge Moody** do to me? And the inevitable: When is blast-off time?

Most Reaction Favorable

Many people who come by are simply curious and desire to talk. A few have complained: "In the way," said one unsteady man. Another attempted to order a drink. (Sorry. I doesn't revolve, either.) But most reaction has been favorable. "Much needed, should have been built years ago."

A long-time Alaskan, Patsy was born in Tucson, Arizona, and lived for several years in California. Her father, an administrator for the FAA, moved the family to Bethel in 1967, to Anchorage in 1970, and then on to Delta Junction, where Patsy began high school. "I enjoyed Delta Junction. It's a friendly place, everybody knows one another, and the wind blows all the time."

In 1974, the Hernandez family moved to Molokai, Hawaii, for nine months before her father transferred back to Anchorage. "We enjoyed the sun, but missed Alaska," she recalls. She graduated from high school in Glennallen, where she managed the wrestling team. In her senior years she enrolled in RSVP (Rural Student Vocational Program) obtaining a temporary switchboard position with the court system in Anchorage, her first job. She liked the work and was eventually offered a permanent post which she accepted.

She hopes eventually to work for the FAA, like her father, but for the present she is pleased to be developing skills in her present position and happy "at last to be able to see the sun and sky."

[More pictures on page 8]

Return of: "Riders Into the Sunset"

by Randall P. Burns

As of the end of March the Alaska Legislature has held three hearings dealing with the question of Sunset of the Alaska Bar Association. The first two hearings were held jointly before the House and Senate Judiciary Committees on February 16 and February 23. President **Bart Rozell** testified at the first hearing and gave a brief verbal description of the Alaska Bar, its responsibilities and activities, and a short history of the Sunset Review process to date. Mr. Rozell concluded his remarks with a brief statement on the proposed settlement of the litigation brought by the Legislative Budget and Audit Committee.

Council Maligned

The major subject of discussion during the first hearing turned out *not* to be the Bar Association and SB 11 (which provides a simple extension of the Bar in its present form through 1985), but rather the Judicial Council and the process for selection and retention of judges. Senator **Bill Ray** led the questioning on that topic, which eventually became a point of contention between the Senate and House members in attendance at the hearing. **Senator Parr** asked whether the Alaska Bar continued to dispute the question of whether it was a state agency subject to Sunset review. President Rozell explained that there were legal authorities on both sides of that question but that the Bar had decided to participate in the Sunset process and not to seek Court resolution of that question. Senator Parr insisted that he had asked a simple "yes" or "no" question, and seemed more interested in fighting about the respective powers of the legislative and judicial branches than in having the opportunity to review Bar records or its performance.

Brown Abdicates

At the opening of the first hearing, Representative **Fred Brown** of Fairbanks, Chairman of the House Judiciary Committee, explained that he felt that both he and his Vice-Chairman, **Don Clocksin** of Anchorage, because they were lawyers, had a conflict of interest and should not chair House Judiciciary proceedings concerning sunset of the Bar. He invited Senator **Pat Rodey** of Anchorage, also a lawyer, to comment. Senator Rodey indicated that he did not agree and continued to chair the Senate Judiciary Committee. Representative Brown turned the chair over to **Mike Miller**, but then proceeded to direct the Representatives' discussion from a chair along the side of the hearing table.

Focus Pocus

At the second joint hearing on February 23, **Mike Miller** was absent and Representative **Joe Chuckwuk** was appointed the temporary chairman. Mr. Rozell again appeared and attempted to answer general questions on Bar activities. **Vince Vitale**, President of the Anchorage Bar Associa-

[continued on back page]

Alaska Bar Association Has New CLE and LRE Coordinator

Jennifer Ortiz has been appointed continuing legal education and law related education coordinator for the Alaska Bar Association. The announcement was made by **Randall P. Burns**, executive director of the Alaska Bar.

In this newly created position Ortiz will be coordinating CLE seminars and programs, and developing projects and publications in the law-related education field.

Ortiz recently returned to Alaska after a two-year absence during which she pursued graduate studies with a fellowship at Cornell University in Ithaca, New York. She holds a master's of professional studies degree in communication arts from Cornell, and a bachelor's degree in journalism from the University of Alaska, Fairbanks.

Before leaving for New York, Ortiz worked as public affairs coordinator for the Chancellor's Office of Public Affairs at the U of A, in Fairbanks. Previous to that appointment she worked with KUAC TV & FM (Fairbanks) as an announcer, radio promotion/production assistant, and later as TV production assistant.

Ortiz, 28, was born in Neiva, Columbia and lived in seven Latin American countries before moving to Fairbanks in 1974 to attend the U of A. She is single, holds a private pilot certificate, and is fluent in Spanish and Portuguese.

New Judicial Council Created

Officials of the federal and state court systems have formed a committee to resolve joint problems that develop in the administration of the separate court systems here in Alaska. Members of the Alaska Federal Judicial Council hope this cooperation will lead to improved access to the courts. They include Chief Justice **Jay A. Rabinowitz** of the Supreme Court of the State of Alaska, Judge **Robert A. Boochever** of the Ninth Circuit Court of Appeals, Judge **James A. von der Heydt** of the Federal District Court for Alaska, **R. Everett Harris**, a member of the Alaska Bar Association, and **Arthur H. Snowden, II**, the Administrative Director of the Alaska Court System.

As the result of the Council's first meeting, changes have been ordered to eliminate the possibility of dual jury service, for citizens called to serve simultaneously in both the state and federal courts. The Council unanimously agreed that such dual service is unduly burdensome, and should be eliminated. In the future no person will be required to serve as a juror in both the federal and state courts during the same year.

Citizens who show that they have been called to serve as jurors in the federal court system, will thereby be excused from state jury duty, if requested to serve in the same year. Since federal law prevents the federal court system from providing a list of jurors it has called to the state court system, state jury questionnaires will still be mailed to these persons. Citizens should simply indicate on the questionnaire that they have already been called for federal jury service during that given year, and return the questionnaire to the state court system. They will thereby be excused from state jury duty.

The existing federal jury service procedures will remain in effect. Under federal law a citizen that has actually served as a juror anytime during the previous two years from the time he or she is called for federal jury service, can be excused from that duty. The citizen must so notify the Clerk of the U.S. District Court serving that area. Furthermore federal law requires that citizens must have actually served on a jury. Simply having been called for jury service in either the state or federal courts is not enough to be excused from federal jury service.

The Alaska State Federal Judicial Council has also recommended that the federal courtroom located in the Old Federal Building at 4th and F streets in Anchorage be preserved for historical purposes. The Council decided that the courtroom which served as the Territorial Courtroom, and which was used at the time of transition to statehood, should be used to display articles of historical importance. The Council decided that it should also be used for ceremonial purposes and as a working courtroom, if necessary.

Following past procedures of cooperation in putting unutilized court space to good use, the Council decided that the Alaska Court System could also use the remaining courtrooms there, along with related facilities comprising a total of about 21,000 square feet. The Council decided that further requests for the use of the area should be arranged by Arthur H. Snowden, and U.S. District Court Judge James von der Heydt. Both state and federal personnel, with specialized technical skills, could be assigned to cooperative projects in the future, if necessary.

The Council also agreed that federal district court opinions, having important consequences for the state courts, will be sent to the state court administrator's office, for publication and distribution.

In the future the Council will consider the possibility of holding joint state-federal trials and discovery matters, where particular actions have common questions of law or fact, and require trials in both federal and state court. Judge Robert Boochever of the Ninth Circuit Court of Appeals said his court could provide staff on projects the court committee undertook.

The Council will meet again this summer when the State Judicial Conference is held on June 7, 8 and 9 in Ketchikan.

Ninth Circuit Announces Litigation Priorities

TO: Lawyer Representatives to the Ninth Circuit Judicial Conference

FROM: Eric Neisser, Director, Office of Staff Attorneys
United States Court of Appeals for the Ninth Circuit

RE: Inventory and Calendaring Procedures in the United States Court of Appeals

When the Clerk of Court, **Richard Deane**, and I addressed the lawyer representatives at the Ninth Circuit Judicial Conference in Monterey this past July, several inquiries were made about the inventory and calendaring processes in the Court of Appeals. In an effort to assist the bar and facilitate your understanding of Court procedures, I have been asked by the Court to provide a written response.

More than 3,700 appeals were filed last year in the Court of Appeals. To insure proper processing, the Court has developed extensive procedures for case management, from the filing of the notice of appeal through the issuance of the mandate. The instructional letter and time charts issued by the Clerk's Office to every litigant upon the docketing of an appeal in this Court provide information about many of these procedures, primarily those affecting the process through the briefing stage. However, lawyers are frequently interested in learning what occurs within the Court between the time briefs are filed and the case is submitted to a panel of judges for decision. There are two distinct stages: a procedure for cataloguing the briefs, known as "inventory," and a procedure for scheduling cases for argument or submission, known as "calendaring."

Inventory

For several years, the Court has reviewed all cases upon completion of briefing in order to obtain accurate and current information about its caseload for calendaring and related case management purposes. The inventory process provides the Court with relevant legal and administrative data about pending cases that permit the Court to provide each panel of three

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Alaska Legal Services Threatened

The avowed intention of **President Reagan's** Office of Management and Budget to eliminate the Legal Services Corporation has caused great concern in Alaska over the future of the Alaska Legal Services Corporation. The 40-lawyer organization provides free legal representation to low-income persons in Alaska and in fact provides the only legal representation available to anyone in large parts of the state.

Fearing the long-term results of the dismantlement of the agency, both lawyer groups and groups eligible for legal services are rallying support in Congress to keep the organization operating at its present level.

Alaska Legal Services presently operates eleven offices around the state, in Anchorage, Barrow, Bethel, Dillingham, Fairbanks, Juneau, Ketchikan, Kodiak, Kotzebue, Nome and Unalaska. With its staff of 40 lawyers, it also serves the legal needs of numerous local villages from each of these offices. Over 70% of the clientele of ALSC is Native Alaskan, and the majority of the legal work done by the firm is on behalf of Natives and the Native groups.

Native Rights

The expansion of Native rights generated by ALSC has provoked some criticism and made the organization some enemies, but, according to ALSC Executive Director **Ralph Knoohuizen,** this is an inevitable result of the group's work. "Our job is to represent our clients in an adversarial system, and if we do this effectively, we are bound to step on some toes," Knoohuizen said. "Hopefully, the American ideal that all citizens should have access to the courts is more important in the long run than is disagreement with our stand in particular cases."

While President Reagan talks economy as a reason for eliminating Legal Services, it is widely circulated that his primary objection is a political one. When he was Governor of California, he tried unsuccessfully to abolish Legal Services there because the organization brought suits to forestall policies of his administration that affected the poor. The national budget of the Legal Services Corporation for 1981 is $321 million. Approximately $1.6 million of thos goes to ALSC and constitutes about 73% of the group's budget.

High Profile Litigation

According to **Robert Hickerson,** Chief Counsel, ALSC receives most of its attention in the media for such highly-publicized suits as the *Hootch* case, which required the state to build numerous high schools in the bush, and the suit presently pending to postpone drilling for oil in the Beaufort Sea. Hickerson said, "It's a shame that these cases get all the publicity. The great bulk of our work involves domestic relations, consumer protection, housing, wills and estates, and other routine legal matters. I think even those who quarrel with our stand in the publicized cases would agree that we perform a valuable function in our day-to-day work."

National Legal Services Corporation officials are optimistic that Legal Services will prevail even in the budget-cutting atmosphere pervading Capitol Hill. **William McCalpin,** a Republican lawyer from St. Louis who is Chairman of the Legal Services Corporation Board, says: "We will survive because what we do is right and the way we do it is generally good .... The preamble to the Constitution of the United States."

Self Determination

Knoohuizen points out that the idea of Legal Services is consistent with many conservative goals. "President Reagan and other conservatives stress the importance of self-determination for all and particularly for Natives. It is hard to imagine meaningful self-determination for people who don't even have access to the courts." Hickerson adds that ALSC, by handling virtually all the Native allotment cases in the state, is carrying out a function dear to the hearts of the most conservative Alaskans — that of putting Alaska lands into the hands of Alaskans. The total acreage represented by all allotment claims represented by ALSC is over a million acres.

Law School Enrollment of Women and Minorities Increases

CHICAGO, March 16 — Law school enrollment of 125,397 students during Fall, 1980 included 42,045 women and 10,642 minority students. This represents an increase of 3,418 women, who now comprise 33.53 percent of the total enrollment compared to 31.45 percent in 1979. Minorities added 634 students to the total enrollment and increased their representation from 8.15 percent in 1979 to 8.49 percent.

The total number of men declined from 84,174 in 1979 to 83,352 in 1980.

The findings were made by the annual survey of the American Bar Association Section of Legal Education and Admissions to the Bar. The survey covers the country's 171 ABA-accredited law schools.

The survey also found that first year enrollments for female students rose from 13,490 in 1979 to 15,267 in 1980, or from 33.13 percent of the 1979 first year class to 33.53 percent of the 1980 entering class.

According to **James P. White,** Indiana University School of Law and consultant to the ABA Section, these figures follow the 12-year pattern of substantial growth in the number of women students. In 1968, the total law school enrollment of 62,779 included 3,704 women.

The number of minority students in the first year class also increased in 1980, from 3,822 in 1979, or 9.39 percent of the total number of first year students, to 4,112, or 9.72 percent of the total number of first year students.

Hispanic Americans other than Puerto Ricans accounted for the largest increase in first-year enrollment of the minority groups, from 267 to 378. Blacks increased from 2,002 to 2,144.

Dean White concludes that the enrollment of minorities has not been significantly affected by the 1978 *Bakke* decision, which barred racial quotas in university admissions programs.

The total enrollment figure of men and women represents a 2.11 percent growth over 1979. Dean White noted that part of this growth is attributable to the addition of two provisionally approved law schools to the ABA list, Mississippi College and George Mason University. Exclusive of these two schools, total enrollment increased from 122,801 in 1979 to 124,680 in 1980.

Willard Elected

For the first time in its 15-year participation in the Western States Bar Conference, the Alaska Bar will have a representative among the officers of the Conference.

At its recent annual meeting in Tucson, Arizona, **Donna Willard,** immediate past president of the Alaska Bar was elected Vice-President of the Conference. In accordance with tradition, the officers annually succeed to the next higher position and thus, in 1983-84 Donna will serve as President.

The Western States Bar Conference is composed of bar association representatives from Alaska, Washington, Oregon, California, Idaho, Utah, Nevada, Arizona, New Mexico, Montana, Wyoming, Colorado and North Dakota.

It meets once a year for three days to provide a forum in which western bar leaders can discuss mutual problems and seek solutions from one another.

Bar BOG and ALSC BOD Candidates Announced

Ballots will be mailed April 10th so that Association members can elect new members to the Board of Governors of the Alaska Bar Association and to the ALSC Board of Directors. The candidates nominated are as follows:

First Judicial District

BOG Candidates:
Harold M. Brown (Ketchikan)
Richard M. Burnham (Juneau)
Fred W. Triem (Petersburg)

ALSC BOD Candidates:
Sarah T. Kavasharov (Juneau)
Dennis L. McCarty (Ketchikan)

Second & Fourth Judicial Districts

Andrew J. Kleinfeld's nomination to the Board of Governors was unopposed in the Second and Fourth Districts, hence he assumes the seat currently held by **Jon Link.** In addition, **Mary (Meg) E. Greene,** also of Fairbanks, was the only person from the Fourth District to be nominated to the ALSC Board from that district, and so she automatically assumes that seat. As in Juneau, no alternate was nominated and the Board will make an appointment to fill the vacancy.

Third Judicial District

BOG Candidates:
Bruce A. Bookman (Anchorage)
Mary K. Hughes (Anchorage)
Ivan Lawner (Anchorage)
Andrew R. Sarisky (Soldotna)

ALSC BOD Candidates:
Richard A. Brown (Anchorage)
Karla L. Forsythe (Anchorage)
Max F. Gruenberg, Jr. (Anchorage)

Keven F. McCoy was the only attorney nominated to the alternate's position for the Third District and therefore assumes that seat in July.

Random Potshots

by John E. Havelock

"Title by Larceny"

Is theft legitimized by time? If so, why? A recent Anchorage news item recounted a woman's rediscovery of an automobile, stolen from her some eight years earlier, in the possession of an apparent innocent purchaser. She was said to have been advised that, despite the fact that the Division of Motor Vehicles recently listed the title in her name, the statute of limitations (presumably AS 9.10.050 action for recovery of personal property set at six years) barred an action on her part to recover the vehicle. The present possessor, presumably motivated by sheer sympathy, offered her a refund of her original purchase price (nothing said about interest) an act of charity presumably made easier by the present substantial classic value of the vehicle.

Assuming that her understanding of the application of black letter law is correct and that no argument on the Statute of Anne tolls the running of the limitation, and assuming further that no argument based on constructive trust would avoid the bar, does the law reflect sound social policy?

Adverse Possession Against Native Lands

A person who, with larceny in his heart, enters upon the land of another and treats it as his own can successfully defend title to it against all comers after 10 years. Is this sound social policy? With the conveyance of large tracts of land in Alaska to village and regional corporations, vast estates of wilderness will become susceptible to trespass and loss of title in part because of the limited capacity of the new landlords to defend their possession. What the White Man used to take fair and square by appropriation under color of law against Native possessory rights, he will now take by appropriation without color (or sometimes with a tint) of law through ripening possessory rights. Is this good social policy?

Balance of Interests

In modern application, it would seem that the historical rationale of dispute respose has lost its original vitality but lingers on spreading injustice in its wake. The principle of limitations on actions enjoys no absolute sway but is weighable against a variety of other social circumstances. The principle has rarely been troublesome, for example, to government authority. No prescriptive title may be established against the land conveyed to the village of Kake, as a municipal corporation, though such a taking can be secured against the village of Kake, the ANCSA corporation.

If the unfortunate victim of the car theft had been 15 years old or mentally incompetent, she could recover the vehicle in court. Ironically, if she had gone out and stolen a substitute vehicle and been jailed for her misguided effort, she would likewise be aided by the court upon rediscovering her own auto since AS 09.10.140, by tolling the statute, protects infants, incompetents and jailbirds with equal fervor from the predations of thievery.

The Rationale of Dispute Repose

In the seventeenth century, when records were scarce and precise statutory design scarcer, it made some sense to let the veils of time close tight on old disputes no matter how egrigious. Where memory is the only test of truth, the judges will ponder liar's contests. In such cases it may not make much difference whether the property transferred by error of law or fact of larceny. In fact, the baser the motive the more important to seal the matter to avoid loss of a person's freedom or, in those days, life on a charge made

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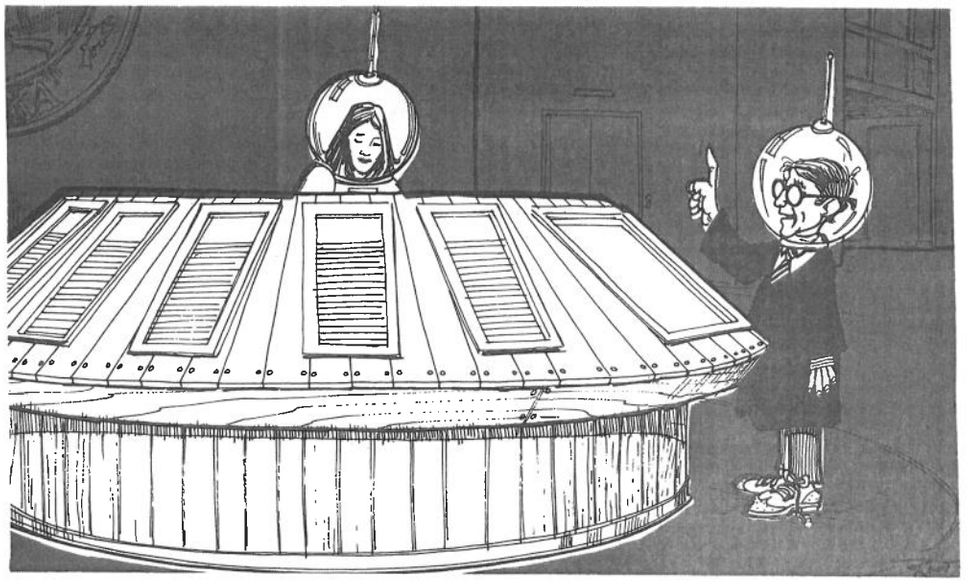

"YOUNG LADY, PLEASE BEAM ME UP TO JUSTICE BACON'S CHAMBERS."

EDITORIAL:

Alaska Legal Services

Alaska Legal Services is in imminent danger of losing all of its federal support if President Reagan's proposed elimination of the National Legal Services Corporation passes Congress. This "unkindest cut" is one of the few, if not the only budget measures which actually kills an existing program. Certainly, reducing federal spending appears to be an idea whose time has come. Across the board spending cuts in all areas of government expenditures has a popular mandate these days. Congress appears likely to pass measures in this session which will significantly affect social programs instituted by previous administrations.

Given the President's track record with the California Legal Services program during his years in office as Governor of California, when he attempted, unsuccessfully to eliminate that program, we suspect that the elimination of federal support for all legal services programs is not so much a budgetary as a score settling measure by the president.

The Price

If Legal Services programs all over the nation are closed down, a significant proportion of our population will be denied access to any legal service in civil matters. People living on welfare or marginal incomes will not be able to effectively seek regress for civil wrongs in court. In otherwords, the poor will not be able to afford justice.

The quality of legal services they presently receive may vary from program to program. There have been complaints that legal service offices ignore people they are supposed to serve and instead of processing their divorces, writing simple wills and handling one on one tenant-landlord matters, Legal Services attorneys frequently opt for class actions and high social impact litigation. This choice has occasionally irritated politicians, bureaucrats, corporation executives and some attorneys who are willing to endorse a basic legal aid program but question Legal Services' role as an instrument of social change.

Alaska Legal Services

Most legal services programs, particularly the one in Alaska, attempt to satisfy both the demands of individual clients and at the same time pursue litigation offering the greatest benefit to the largest number of their clients. From its track record before the Alaska Supreme Court, it is evident that Alaska Legal Services has been very effective in the area of high social impact litigation. In addition they have brought Legal Services to areas of the State where few if any attorneys have gone before. In more than a decade of service to Alaskans, they have handled many thousands of minor matters in the courts offering a service which as a practical matter may not have existed before they came on the scene. Although most attorneys handle pro bono work now and then, it is practically impossible to sustain a practice and handle free cases in the large numbers that Legal Services attorneys do.

Bush Justice

Alaska natives have benefited significantly from the presence of Alaska Legal Service at least in part because of the willingness of this agency to take its practice to the bush communities rather than simply locating in Anchorage where the native population is less significant. As a result, Alaska Legal Services attorneys have become aware of problems and injustices peculiar to these areas and to their credit have been willing to expend time, energy, effort and legal resources to attempt to remedy these injustices.

The Alaska Bar Association Board of Governors has endorsed continued federal support of this program. Recently, President-elect **Karen Hunt** went to Washington with Bar leaders from other states to lobby Congress for continuing support of these programs.

We believe that Alaska Legal Services has served Alaska and its citizens well in its short history. We would like to see them continue their work. Alaska needs Alaska Legal Services. This organization deserves the Bar's support.

—Harry Branson

Letters to the Editor

Fraties Column

Dear Editor:

I was just sitting around the squad room here wiping down my chrome plated .357 when one of the guys gave me a tuna fish sandwich. As I was crumpling the wrapper, the column "All My Trials" caught my eye. After removing several adherent gobs of tuna, I read the article and was able to determine that it had appeared in your November-December 1980 issue. Frankly, I was amazed that you guys even give a shit what the public thinks. I'm surprised.

Listen, before I go any further, I want you to understand that I have to write this on the Q.T. If any of the other guys around here find out I have even the most infinitesimal shred of humanity or compassion, I'm washed up as a cop. It's just that I can't bear to see a bunch of highly educated guys stumbling all over themselves trying to look good.

Anyway, do you people even have a public relations man? The only public relations I've seen you guys involved in usually occurs on a midnight to eight shift in the back seat of a Ford Elite parked on Upper O'Malley. Incidentally, I carry a bucket of cold water for such occasions. It serves double duty in that "Chainsaw," my K-9, likes to drink out of it.

The best way to address this problem is a point-by-point discussion of the comments offered by **Mr. Fraties.**

I wholeheartedly agree with his assessment of the "Weidner Ratio" as applied to review boards. We find similar problems with lay people on police review boards when the offending officer, in a moment of mental collapse, lapses into police jargon while trying to extricate himself from the jaws of prejudice, police brutality, genocide or some other misdeed performed in the line of duty. As an example, a response like "I went Code 3 on a 10-81 Charlie with two 10-69's" generally leaves them with a glazed look in their eyes.

The secret to scoring high in the public eye is the media. On this point, Mr. Fraties and I differ. Don't get me wrong. I'm not suggesting that you guys come on with some stuffed animal character like "Barrister Bear" or "Legal Lizard" to travel around to the schools passing out free legal advice. The kids don't give a fare-thee-well about what the jerk in the bear suit is saying anyway; all they know is that they don't have to screw with Elemen-

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All My Trials

by Gail Roy Fraties

"Gail, do you remember that Martinez kid we saw last year at the country hospital?"

I was chatting with **Bob Ames**, an old friend and school mate who had dropped in to see me at the District Attorney's office in Salinas. A distinguished California trial lawyer, he is a partner in the same firm as the sardonic **William F. Bryan** (first introduced to readers of this column in the October, 1980 issue). Bob had been retained by a Mexican family, all of whom had been badly injured in a head-on collision with a reckless but heavily insured driver, and I had gone along as an interpreter.

"Sure, how is he?"

"Oh, he's fine, for Christ's sake. Can you believe that after we spent over $1,500 for neurological examinations, the son-of-a-bitch doesn't even have brain damage?"

I could understand his chagrin. The impact had been awful, and all of the occupants of the Martinez car had been brutally injured — the individual in question having gone through the windshield, head first. I tried to suggest that the family must be grateful for the reassuring news, but he was too preoccupied by the fact that Bryan — as a result of the firm's fruitless expenditure — had taken to referring to him as "Mother Cabrini." However, it seemed to me that there had to be some redeeming features to the situation.

Injuries And Other Complications

"The mother and father were both hurt pretty badly, weren't they, Bob?" I recalled severe spinal damage to Mr. Martinez, Sr., and that his wife had a shattered pelvis as well as other complications. Both of them, when I first saw them, looked like they had just gone fifteen rounds with Vlad the Impaler.

"I don't think we're going to be able to show any serious permanent injuries. She just got pregnant again," he said. "They're never too sick for *that*," he added, darkly.

I continued trying to cheer him up. "Didn't you guys get that young doctor and his wife that were burned to death when their parked car was hit by a Greyhound bus? That ought to make you well."

Bob refused to be consoled. "With my luck, they'll probably rise from the dead," he replied.

Baxter's Law

The trial bar will have recognized that Mr. Ames, a plaintiff's attorney, was discussing potential damages in a case where liability was clear, and insurance adequate. Although one of the kindest men in Monterey County — he was simply expressing the bias of a master craftsman at his trade. All of us have been thwarted, at times, by the mysterious operation of Baxter's law (permanent and disfiguring injuries have a tendency to occur in inverse ratio to the certainty of liability and amount of insurance).

The converse is, of course, true of members of the defense bar — who, as **Jon Link** once observed, have a resistance to empathy with the pain felt by others second only to orthopedic surgeons and Alpac claims adjusters. All of us have had occasion to congratulate one of them on some rousing victory or another, as follows:

You: "I hear you really dumped them in that drunken school bus driver case. How many infant quadriplegics were plaintiffs?"

Him (with quiet pride): "Twelve of them — and I zeroed every one of the little bastards out."

You: "It's unbelievable — how in the hell did you manage that with all those baby crips sitting around the courtroom?"

Him: "It wasn't easy — but we managed to find seventeen expert witnesses who testified that the accident was caused by an act of God (sun spot caused space warp which diverted carefully driven bus into the side of

[continued from page 11]

Letters to the Editor

[continued from page 4]

tary Mathematics for an hour or so.

Look, you guys are dealing with the mainstream of American consciousness which finds the public attention focused on such burning social issues as lady mud wrestlers and mechanical rodeo bulls. You're going to have to come down out of the ivory tower, climb into a Chevy 4x4 with a rifle rack in the back window and turn *right*, if you get my drift.

True, television has had a tremendous impact on the public perception of the police. However, anyone possessed of the most rudimentary ability to reason will recognize the fallacy of attempting to "seal off the entire Island of Hawaii, Dan-O'"..."Freeze, scumbag, or I'll put your brains all over the wall," is good for a two-day suspension without pay in the real world.

My point is guys, is not what's real, but what people believe. (I should be telling *you* this??)

Look at all the positive things we have going for us...the public provides us with an automobile which will go supersonic with the slightest provocation. We have nifty uniforms with lots of pretty patches and brass and buckles and black leather and a large service revolver to which some schools of thought ascribe a phallic significance.

In spite of the good guy image, from time to time we encounter the typical dope-crazed martial arts expert who causes us to ingest anally all of the above, supersonic automobile inclusive. If several of our comrades reduce him to so much smouldering rubble, we rise from the ashes like the legendary Phoenix...because we have the "image."

You guys take your lumps when you defend the typical dope-crazed martial arts expert with the night stick protruding from his ear.

Try defending this guy or any other unpopular defendant at a grass roots level, i.e. "It was an accident; he just washed his hands and couldn't do a thing with them," or some such that the public can relate to. Dissociative Reaction with Compounded Neurotoxic Angina does not fly on a juror who has trouble with instant oatmeal instructions.

Clean up your act a little...get rid of the Mercedes Benz and buy a Bronco ...move to North Mt. View...donate to the Home for Disabled Cowboys.

Listen, it's probably like pissing into a hurricane to pass this bit of insight along to you guys, but take it for what it's worth.

It's like I said at the beginning of this; I'm taking quite a risk writing to you and I have a real problem trying to understand the compulsion I had to do it. I thought at one time I may have been a distant relative of **Warren Burger** and thereby the victim of some horrible genetic practical joke but mom told me that all of our liberal relatives were shot just before we emigrated from Germany. Well—that's my problem.

Sincerely,
Officer Jack Boots
Anytown P.D., Alaska

Fraties' Mom

To: **Gail Fraties**
c/o *The Bar Rag*

Dear Son:

You know that through these many years I have supported you and your efforts, and that in doing so, I have often stood alone. So, too, I have been a fan of the articles you have submitted to *The Bar Rag* as part of the requirement of your creative writing course at Bell Island Community College.

Your last article embarrassed me and went beyond the bounds of good taste that I taught you. I won't read your articles anymore.

Love,
Mom

Sandberg Attacks

Dear Editor:

Perhaps the time has come for the sun to set on the Bar Association. When two people (the Zobels) can be savaged for merely filing a lawsuit and the Bar Association takes no public position on their right to a day in Court, it is hard to see what it is dedicated to or good for except collecting dues.

Sincerely,
Camarot, Sandberg & Hunter, Inc.
By **Mark A. Sandberg, Esq.**

Rozell Assuages

Dear Mark:

Although your letter concerning the Zobel case was addressed to the *Bar Rag* for publication rather than to the officers or staff of the bar association, the editor referred your letter to us and I will attempt to address your concerns.

First, the premise of your letter is incorrect. The Alaska Bar has publicly defended the important right of your clients to their day in court by press release, in press interviews and in response to private complaints made to the association. I and others have personally talked to the press on this issue. The question was referred to the Bar Bench press committee, chaired in Anchorage by **Chancy Croft**, when publicity on the case first started. The issue was addressed at length by **Randall Burns** in a memorandum to the membership and in response to numerous telephone calls received at the bar office. President-elect **Karen Hunt** discussed the question at a Rotary meeting. The November-December, 1980 issue of the *Bar Rag* devoted nearly two pages and a large photograph to an interview with your clients.

Perhaps your complaint is that the Bar Association hasn't involved itself more directly with the merits of your case. I would strongly object to the involvement of any bar association, particularly an integrated bar, on such a basis. The right of your clients to their day in court does not entitle them to the dubious benefit of an endorsement by the Alaska Bar.

Very truly yours,
ALASKA BAR ASSOCIATION
William B. Rozell, President

Sandberg Unmollified

Dear Mr. Branson:

In response to Mr. Rozell's letter, my clients don't want the dubious benefit of Bar endorsement of their legal position.

I'd simply note that the Bar's response to what I view as an attack on the rule of law was so "public" that I'd never heard of it.

Sincerely,
Camarot, Sandberg & Hunter, Inc.
By **Mark Sandberg, Esq.**

CLEO Thanked

Ms. Carolyn E. Jones, Chairperson
Committee on Legal Educational Opportunities

Dear Carolyn:

I am now in my final semester at the University of Wisconsin Law School and looking for a job as a lawyer in Alaska. The Alaska Bar Association helped make my legal education possible by offering me a $1,000 scholarship last year. I want to thank each local bar association and each individual attorney who contributed to the scholarship fund.

I especially want to thank you and the other members of the Committee on Legal Educational Opportunities who spent time and effort soliciting contributions, publicizing the scholarships, and evaluating the applications. I hope that in the future I'll be able to help others as you all have helped me.

Sincerely,
Thomas E. Wagner

Inside/Outside

Observations/Comments

by Karen L. Hunt

Direct Mail Solicitation is Okay

New York's highest court recently approved direct mail ads by attorneys saying that such solicitation was "constitutionally protected commercial speech which may be regulated but not prescribed." The court reversed a five to zero intermediate appellate court decision. The high court stated, "To outlaw the use the letters...addressed to those most likely to be in need of legal services, because in addition to single 'advertising'... the letters implicitly or explicitly suggest employment of the writer...ignores the strong societal and individual interest in the free dissemination of truthful price information."

The president of the New York State Bar Association labeled the ruling a "natural evolution from the *Bates* decision." He reasoned that where there is no personal contact, the risk of undue pressure on a potential client possible from in-person solitication is avoided.

The Kentucky Supreme Court over two years ago okayed direct mail ads. However, the Louisiana Supreme Court has ruled that direct mail ads are improper solicitation.

Age Criteria Dropped

The American Bar Association has ended a policy first adopted in the 1950's which excluded persons over 60 from being considered qualified in most cases for appointment to federal judgeships. The ABA announced, however, that it will continue to consider age as factor "if it effects professional qualifications."

ABA officials who supported the end of the age policy claimed it was more difficult to apply than professional qualifications such as temperament, character and confidence. The house of representatives in November passed a resolution urging the ABA to end discrimination solely based upon arbitrary age barriers.

Judges Help Attorneys

Concern over competency of the trial bar by Los Angeles Superior Court judges resulted in a program called "Walk Through Program for Attorneys." The local bars recommended ten (10) trial judges who they felt would be the best instructors. The programs were conducted on Saturdays, from 9:00 o'clock 'til noon at no charge to the attorneys. Fifty (50) attorneys were registered in each courtroom.

The program was restricted to training for civil trial and consisted of three parts: (1) walk through a jury trial with dos and don'ts; (2) walk through a civil mandatory/voluntary settlement conference with dos and don'ts; and (3) question-and-answer period as time permitted. The judges took the group step-by-step through a civil jury trial, but did not discuss the law. Teaching centered on the mechanical and physical procedures needed to be taken from the moment counsel enters into the courtroom until trial is completed.

The attorneys were given 50 pages of materials which the judges had prepared including a step-by-step explanation of the civil jury trial. The instructor-judges on Saturday mornings went through the procedures, giving practical tips from experience on the bench. The judges also provided a list of trial "dos" and "don'ts" which the judges then explained. The materials also included *voir dire* scripts, a sheet to be used during jury selection and a sample of general and special jury verdict forms.

Lawyering May Be Hazardous To Your Health

According to a Harvard medical school study which compares health habits among attorneys and physicians in Massachusetts, lawyers drink and smoke more; more lawyers have high

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Bradbury, Holmes & Bradley

by Randall P. Burns

Together, the names would look good at the top of any firm's letterhead; it has a nice ring: Bradbury, Holmes & Bradley. Besides that, they'd make a very talented and impressive partnership, their combined legal skills creating an awesome threesome. But **John H. Bradbury** of Anchorage, and **Michael M. Holmes** and **James B. Bradley** of Juneau aren't forming a partnership. What they have been is appointed to a Conference, a Commission and a Council, respectively. The Board of Governors of the Alaska Bar, as a result of two advisory statewide polls and one Southeastern advisory poll announced the appointment of John Bradbury to the Ninth Circuit Judicial Conference (replacing **Ev Harris**), Mike Holmes to the Alaska Judicial Qualifications Commission (replacing Judge **Daniel Moore**), and Jim Bradley to the Alaska Judicial Council (replacing Superior Court judgeship candidate **Bud Carpeneti**).

U.S. District Court Chief Judge **James A. von der Heydt** said yesterday that he had approved the Board's recommendation that Mr. Bradbury, who garnered the highest number of votes on the advisory poll, be appointed as the attorney representative for the Ninth Circuit Conference from Alaska; Mr. Bradbury has been invited and will attend the Conference's annual meeting. This year's meeting will be held in late June in Jackson Hole, Wyoming. The other lawyer representative is **Ken Jarvi. Karen Hunt**, who will have assumed the Presidency of the Bar by then, will also attend that meeting.

Mike Holmes was appointed by the Alaska Bar Association to fill the vacancy on the Judicial Qualifications Commission created by the appointment of Daniel Moore to the Superior Court bench in Anchorage. Although Mr. Holmes did not receive the most votes on the advisory poll (John Reese of Anchorage was the top vote getter), the Board made the appointment because Mr. Holmes was obviously qualified — as were all 10 of the attorneys nominated — and out of a concern for the viability of the poll. If the Board adopts the position that the poll is only advisory, but always appoints the individual receiving the most votes, only Anchorage attorneys can be expected to win such polls.

Jim Bradley's appointment to the Alaska Judicial Council was handled expeditiously so that the Council,

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Yes, Jamie, he was a bad man, but he might have been worse; he was Irishman, but he might have been a Scotchman; he was a priest, but he might have been a lawyer.

(Samuel Parr: Said of James O'Coighy, hanged for treason on June 7, 1798.)

—From the Day Books of Richard Weinig

Oh No, Not Again or Don't Tell It Again, Sam

by Karen L. Hunt

Whatever else one may learn from such conferences as National Bar Presidents, Western States, and Bar Leadership whereby the American Bar Association attempts to instill leadership qualities into newly-elected Bar leaders, one quickly learns that a joke told at one meeting is sure to be repeated at each of the subsequent meetings that one attends. The more casual the meeting (Western States Bar Conference) the more certain one can be that each joke told at a previous conference will be retold at least once. And if one is really "lucky" one will have the opportunity to hear it repeated several times. Thus, for the first time in my life, I recently became grateful for my total lack of ability to remember any joke that I have been told if I heard it more than five minutes before the present conversation. Therefore, I was amazed when after returning from the Western States Conference in Tucson I realized that I had heard one joke so often that I could even remember it. Thus, in furtherance of my belief that your elected representatives to the Board of Governors should at all times be accountable and diligent in their communication to the membership of what is "happening" in the organized bar, I pass on to you the one joke that I have now heard so often that I can actually remember it.

Never Felt Better

Farmer Jones sued for damages resulting from injuries he received in a collision between his farm wagon and the defendant's automobile. During the plaintiff's case, when the defense attorney had his first opportunity to cross-examine Farmer Jones, he began his questioning by inquiring as to whether Farmer Jones remembered speaking to **Sergeant Blippo** at the scene of the accident. Farmer Jones replied, that of course, he did. Pressing further, the defense attorney inquired as to whether Farmer Jones remembered saying to Sergeant Blippo, at the scene of the accident, that he had never felt better in his life. Farmer Jones replied, that he did remember saying exactly that. The defense attorney then rested his cross-examination.

The plaintiff's attorney stepped immediately to the podium and said: "Farmer Jones, you have just told this court that at the scene of the accident you told Sergeant Blippo that you had never felt better in your life. Will you please explain the circumstances of that comment to the ladies and gentlemen of the jury?" Farmer Jones then testified:

"You see, I was driving down the road in my wagon which was pulled by my mule, **Betsy**, when the defendant's car came up the road behind me going over 90 miles an hour and ran smack into the rear end of my wagon. It broke my wagon into smitherines and knocked my mule, Betsy, into the ditch. I flipped up into the air, turned many somersaults and landed on the hard gravel road about 50 yards ahead. While I was laying there with every bone in my body broken, Sargeant Blippo arrived. He walked over to the ditch and looked down at my mule Betsy and said, "Oh my, Betsy, you don't look too good." Whereupon he took out his gun and he shot my mule, Betsy.

Sargeant Blippo then walked over to me and said, "Farmer Jones, how do

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Judge Avery Resigns

Dear Fellow Members:

I have a twofold purpose in writing this open letter: first, to express my sincere appreciation to the Bar and Bench for making my time as District Court Judge enjoyable and, secondly to explain my departure.

My decision was purely personal and in no way reflects dissatisfaction with anything or anyone. I am convinced the Alaska legal community (both Bench and Bar) is one of the best in the Nation. As a "Cheechako," I was unknown to most of you when appointed and will always be appreciative of the acceptance and assistance I received when I took the position. As most of you know, however, the Anchorage District Court is by and large a high volume misdemeanor court and, frankly, I miss civil work and feel that I should re-enter that area in some fashion.

At present I am considering private practice as well as a possible appointment as a Federal Administrative Law Judge; however, the latter would involve relocation beyond the State and I have not reconciled with myself that I could leave Alaska, its people or lifestyle. In any event, I plan to remain until an orderly transition can be made with my successor and regardless of my ultimate choice, I thank each of you for your courtesies.

Sincerely,
Richard Avery

Lawyers use the law as shoemakers use leather; rubbing it, pressing it, and stretching it with their teeth, all to the end of making it fit their purposes.

(Ascribed to Louis XII of France)

—From the Day Books of Richard Weinig

NINTH CIRCUIT...

[continued from page 2]

judges with a roughly equal caseload at each oral argument session and to group cases by related issues for calendaring, statistical or other purposes.

Some review and classification of cases is undertaken in all circuit courts. However, the Ninth Circuit's process is more sophisticated than most.

Each week, the briefs, excerpts of record, and docket sheets in all cases in which briefing was completed the prior week are forwarded by the Clerk to the Staff Attorneys Office. One of the court law clerks in this office will review these materials, complete a form by entering basic administrative data—name, docket number, district of origin, nature of judgment (*e.g.*, summary judgment), bail status, etc.—and prepare a brief narrative description of the issues presented by the parties. The issues are also classified according to the Court's issue code system. The codes, like the West key number system, are subject matter outlines of all federal law that were prepared several years ago by the staff and are periodically reviewed and updated. The court law clerks classify the issues as presented by the parties; all issues are listed, even if the parties present 8 or 10. The only time a court law clerk may list an issue not presented by the parties is when the clerk perceives a jurisdictional question in reading the briefs and excerpt of record. If there appears to be a clear jurisdictional defect, the staff will refer the case immediately to a regular motions panel for consideration of dismissal.

Several inquiries were made about the issue classification system at the Judicial Conference. To increase the bar's understanding of this process, the Court has asked me to place a copy of our issue codes in each of the Circuit's libraries and at the counter of each of the three Clerk's Offices in the Circuit (San Francisco, Seattle, and Los Angeles).

In addition to noting administrative data and classifying the issues, the staff assigns a numerical "weight" to each case. The Court uses five categories—1, 3, 5, 7, or 10, in order of increasing complexity. The weight is designed as an estimate of the relative judicial effort required to resolve the case, considering the number, complexity, and novelty of the issues and the size of the record. It is neither an estimate of the likelihood of affirmance or reversal nor a recommendation as to the result.

In order to assure that the staff is correctly predicting the complexity of cases, we solicit after each oral argument the judges' views on the weight of each case and regularly compare the weights assigned by the judges to those assigned by the staff. These weight surveys repeatedly show a close correlation between the judges' and the staff's weighting.

It must be emphasized that ours is a descriptive, not an analytical, inventory—it simply tells the Court what kinds of legal goods are sitting in the Clerk's warehouse. The weight is used only to insure that each panel of three judges gets a roughly equal load of cases; at present, and during the past three years, each panel has received cases with a total of 16 points. The inventory process does not deprive parties of any rights; it is not determinative of whether oral argument is granted or whether the opinion will be published. Indeed, a recent survey showed that approximately one-half of the Court's published opinions were in the 1 and 3 weight categories.

Calendaring

The administrative data, issue codes, and weight are entered into our computer data base. This information is used for several purposes, including long-term Court planning and statistical reports on the nature of the Court's caseload. The primary use of the data, however, is in calendaring cases before panels of judges.

Internal calendar preparation begins 10 weeks before the hearing date. First, the Circuit Executive informs the staff how many three-judge panels can be anticipated in the month being calendared. The computer than calculates how many of those panels should be assigned to each of the three administrative regions of the Court, in order to insure both that all ready criminal cases are heard and that the age of civil cases in the backlog remains roughly equal throughout the Circuit. Next, "case clusters," groups of cases with various weights adding up to 16 weight points, are generated by the computer for the designated number of panels in each region.

Cases are placed on the calendar in order of age, except that direct criminal appeals are always placed on the next available calendar and cases arising under statutes containing express Congressional directives for calendar preference are given priority over other civil cases. The Federal Judicial Center has compiled these statutes in a document entitled "Priorities for Handling Litigation in the United States Court of Appeals" (FJC R 77-1) (May 1977). A copy of the entire document and of an updated two-page summary has now been placed in each of the Circuit's libraries and at the counter of each Clerk's Office. Although the staff takes great care to identify cases with statutory priority, it is the responsibility of counsel to specify in their briefs if the case is entitled to such priority. Of course, quite apart from general statutory and judicial policy priorities, the Court may also order, upon a party's motion or *sua sponte*, that a particular case be expedited for calendaring, based on specific compelling factors in the case.

The Court does not calendar cases together before a single panel by board subject matter category, such as criminal or labor cases. However, the Court has directed the staff to search the backlog each month to determine whether an issue identical to one presented in a case ready for calendaring is also presented in some other fully briefed case. In such instances, the latter case may be accelerated and the two cases placed on the calendar before a single panel. The purpose of this procedure is to avoid having two panels work on the same issue with the attendant inefficiency and potential for intra-Circuit conflict. Only one or two cases each month are advanced on calendar because of issue-relationship. The Court has recently directed the Clerk to indicate on the motices of argument issued to counsel when two or more cases have been calendared together because they present related issues. This will permit counsel to confer in advance of argument and should help to make the oral arguments less redundant and more productive.

It is important to note that, when generating case clusters, the Staff Attorneys Office does not know the names of the judges who will be hearing the cases. Only the Circuit Executive, who prepares the judge panels, knows the composition of the panels and where each judge will sit. Conversely, when preparing the panel lists, the Circuit Executive does not know which cases are being used to generate the case clusters. The case clusters and judge panels are delivered by these two offices to the Clerk's Office, which then randomly combines the two. Only then are the judges informed by the Clerk of their case assignments and sent case materials. Within a week, counsel are notified by the Clerk's Office of the date and time of argument. This complex system is designed to avoid any possible manipulation, or appearance of manipulation, of calendars by any staff member or judge, while assuring an equal caseload among judges and proper implementation of statutory and judicial calendaring priorities.

Under an experimental program commenced in June 1980, some cases otherwise ready for calendaring are submitted to a panel of three judges to consider whether the cases are suitable for disposition without oral argument. Although only cases weighted "1" and "3" are considered for this program, 66 percent of the cases in the court's backlog have such weights and only approximately 12 percent of the cases calendared each month are submitted without argument under this program.

When the panel determines, pursuant to Rule 34(a) of the Federal Rules of Appellate Procedure, that oral argument would not significantly aid the decisional process, because the issues are frivolous, directly controlled by authoritative precedent, or adequately presented in the briefs and record, the Clerk's Office sends letters to counsel, pursuant to Ninth Circuit Rule 3(a), informing them of the panel's tentative decision to submit the case without oral argument and permitting the parties to file objections. If any one of the three judges deems an objection sound, oral argument must be held. Of the cases considered by the court to date for this program, 28 percent were criminal cases. In 10 percent of all cases considered for the program, the judges refused to consider the cases on submission and ordered oral argument. The Court is closely monitoring the program to prevent any erosion of the existing safeguards preserving the parties' rights to oral argument and will review the program in its entirety at the conclusion of the six-month experiment.

I trust this memo answers the questions and concerns raised at the Judicial Conference. Please feel free to write me for further clarification or additional information on these points. We also invite you and other lawyers to write the Clerk or myself with general questions that could appropriately be answered in a brief article in the Lawyer's Informational Bulletin which is now published by the Clerk's Office on a regular basis and distributed to all lawyer representatives. In addition, the Court is presently in the process of revising its Internal Operating Procedures manual, first published and distributed to the bar in 1977. For an even more detailed perspective, I refer you to my predecessor's recently published article on the Ninth Circuit's central staff operation: Hellman, *Central Staff in Appellate Courts: The Experience of the Ninth Circuit*, 68 Calif.L.Rev. 937 (1980). These steps have been taken as part of the Court's continuing effort to increase communication with the bar and enhance public understanding of the Court's procedures.

The Bar Rag
Thanks
its Advertisers

DANA FABE...

[continued from page 1]

didate were achieved by combining the scores from each table to determine relative positions. It should be noted that all candidates received scores that were at least acceptable, and the rankings are only relative.

The 649 respondents to the survey represented 46.3 percent of those to whom surveys were sent, the third highest response rate of the six surveys which have been conducted. Of the 649 surveys, 49 were unsigned, resulting in their lack of inclusion in the final analysis. Of the respondents, 28.4% were employed by government agencies (for comparison, the survey conducted in August of 1980 showed 21.5% as government employees), while 63.5% were in private practice, 5.8% were judges or judicial officers, and 2.4% were employed by private corporations.

New Directions for Lost Lawyers

The Keyboard is across the street

Patsy Redux

Patsy Hernandez

You can get out through that door.

The old and the new.

Cat

She muses, while sitting
with game share
clearly hers.

She stretches, and touch brushes
your feelings
with artful abandon
and studied grace.

You touch her back, and find she's
fair softness
all gathered up
for love's nestling..

And then she turns and
becomes
suddenly beyond
the fragile reach of reason.

—Les Miller

MEMORANDUM

TO: Goldeen Goodfellow
AACA/Clerk of Court

FROM: **Ralph E. Moody**
Presiding Judge

SUBJECT: Preparation of Appeals to Superior Court

This is to advise you that I have reviewed and wish to continue the policy of March 31, 1976 regarding preparation of appeals to superior court. That policy is as follows:

1. Unless otherwise ordered by the court, the practice of transcript preparation of district court matters on appeal to superior court is hereby discontinued.
2. Effective immediately, counsel for parties on appeal, shall, by identifying the appropriate log notes and related tape footage indicators, specify that portion of the trial court record which is relevant to the appeal.
3. These noted portions of the trial court record shall be reproduced from the original tape to cassette and forwarded to the appropriate superior court judge for audio review.

OH NO, NOT AGAIN...

[continued from page 6]

you feel?" And I replied, "Sargeant Blippo, I have never felt better in my life."

Multistate Bar Exam

Lest you conclude from reading the above, that the conferences are a frivolous waste of time and energy, let me assure you that the conferences provide a valuable source of information and exchange of data to assist the Alaska Bar Association in being more effective in the services it performs for the membership and for the public and to be aware of those programs now functioning in comparable Bar Associations which would give additional benefits to our members and to the public.

For example, at the National Conference of Bar Presidents and again at the Western States Conference, **President Rozell** and I learned of the Bar exam approach being tried by the State of Utah. We were able to get material about this bar exam approach at Western States. Utah has conducted a survey which indicates that the top twenty percent (20%) of the applicants on the MBE almost always pass the essay portion of the exam. Therefore, although Utah will continue to give the MBE and an essay exam, they will not read the essays of the applicants who score in the top twenty percent (20%) on the MBE. Likewise, Utah will not grade the essays of the applicants who are in the bottom twenty percent (20%) of the MBE because their survey indicated that those applicants almost always fail the essay portion of the exam as well. Therefore, Utah will grade the essay exams only of the applicants who score in the middle sixty percent (60%) on the MBE. The final determination as to pass or fail (no grades are assigned) will be a combination of the applicant's MBE score and the essay pass/fail results. Needless to say, being aware of the details of that alternative, and monitoring its success is important to the Alaska Bar Association and its present on-going complete review of the Alaska Bar exam.

Integrated Bar Activities

A further example of important information gathered from the conferences is our opportunity to learn the historical background and context of in the present lawsuit against the Washington, D.C. integrated Bar Assoc. The Board of Directors of the Washington DC Unified Bar recently attempted to double the dues. The survey that the Board of Directors conducted prior to taking such action resoundingly discouraged such a dues increase. The justification for the dues increase was to conduct activities in the areas of CLE and other membership benefits. However, historically, apparently, the integrated bar in Washington, D.C. was chartered by various voluntary bar associations in D.C. and was chartered solely for the purpose of giving the bar exam and conducting discipline. All other association activities such as CLE, group insurance rates, etc. were conducted by the voluntary associations and they continue those activities. Therefore, suit was brought against the integrated D.C. bar on grounds that it had exceeded its charter powers by getting into areas such as CLE.

Other State Bars

Without the additional explanation and information about the historical context of that suit, integrated bars (which includes most of the Western States) have been concerned about the litigation in Washington, D.C. because on its face, it appears to be an effort to severely curtail the opportunity of the integrated bar to offer such services as continuing legal education to its members.

Additionally, one is able at these conferences to get printed materials, pamphlets, booklets, etc., which are used by the various bar associations across the country. These provide information about such programs as lawyer referral, Tel-Law discipline, admissions, CLE and law-related projects.

Finally, President Rozell was invited to participate in a seminar adjunct to the National Conference of Bar Presidents in Houston in February. The seminar brought together deans of prominent law schools, bar leaders and judges for presentation of information and extensive discussion on how the organized bar can assist its lawyer members in their efforts to maintain competency. The inter-relationship between CLE, discipline, malpractice and admissions was explored by the participants of the seminar.

Such an exchange of information not only keeps the Alaska Bar Association aware of efforts that are going on throughout this profession across the country, it also provides the otherwise not available opportunity for face-to-face discussion and exploration of the problems encountered in various projects. This exchange permits Alaska to avoid many of the trial and error approaches that otherwise occur if Alaska has to "re-invent the wheel."

BAR RAG Statewide Directory of Services

Anchorage

A & J Business Services
Professional Secretarial Services
Dependable — Accurate
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419 Atlantis Avenue, Anchorage, Alaska 99502
Alice W. Hazel 274-5764

Pat Kling
Court Reporting Service
Suite 430, 1016 West Sixth Avenue
Anchorage, Alaska 99501
Telephones: 907-272-8445;272-1060
Depositions • Hearings
Deposition room available
Xerox for copying exhibits

World Wide Travel, Inc.
The BAR's CLE agent
277-9571
P.O. Box 2305
4011 Arctic Boulevard
Suite 203
Anchorage, Alaska 99510

McHENRY
DETECTIVE AGENCY
D. Michael McHenry
3302 Strawberry Rd. Telephone:
Anchorage, AK 99502 (907) 243-1226

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SR/WA CRA
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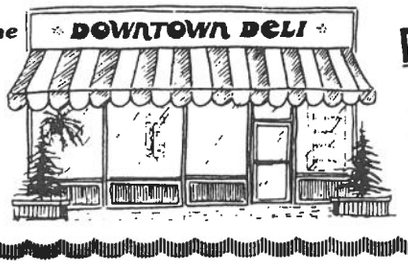
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American Bar Meets in Midwinter Session

by Donna C. Willard

On February 9 and 10, 1981, the House of Delegates of the American Bar Association met at Houston, Texas. In one of the strongest actions taken the delegates almost unanimously opposed imposition of a federal model products liability law such as that embodied in H.R. 7921.

Approval was given by the House to the Uniform Determination of Death Act, the Uniform Extradition and Rendition Act, the Uniform Planned Community Act and the Uniform Post-Conviction Procedures Act. Also adopted was the following definition of death which is supported by the American Medical Association and the National Conference of Commissioners on Uniform State Laws:

> "An individual who has sustained either (1) irreversible cessation of circulatory and respiratory function, or (2) irreversible cessation of all functions of the entire brain, including the brain stem, is dead. Determination of death must be made in accordance with accepted medical standards."

Dues Increase

For the first time in six years, the dues of the American Bar Association will be increased. Effective July 1, 1981, members in practice less than two years will pay $15.00 (a $5.00 increase), members in practice more than two but less than five years will be billed $30.00 (a raise of $10.00) and those practicing more than five but less than ten years will pay $65.00 (a $25.00 increase). Dues for lawyers in practice more than 10 years but less than fifteen will be increased by $30.00 to $110.00 a year and those in practice more than 15 years will pay $140.00, an increase of $40.00 per year.

Although no action was deferred, concern was expressed with respect to the quality and scope of legal education. There was substantial support for inclusion, in the law school curriculum, of trial advocacy, negotiations, analysis of legal problems, writing, oral communications, interviewing, fact gathering and counseling.

Rule Amendments

Recommended as amendments to Federal Rule of Civil Procedure 74(a) and Federal Rule of Criminal Procedure 24(a) were provisions allowing counsel the right to reasonable voir dire. One cogent argument used in support of the resolution was the fact that 560 federal judges try 7,300 cases per year or an average of 15 each. Thus, it was reasoned, the need for speed is not so overwhelming that the right to voir dire the jury should be denied.

Also adopted was a recommendation to amend Rule 6(c)(3)(a)(1) of the Federal Criminal Rules, which would place a limitation on disclosure of grand jury information to government attorneys. If the provision were adopted by the Judicial Conference of the United States, there would be no disclosure of such information except for use in performance of a federal attorney's duty to enforce federal criminal law.

Single-Member Districts

It was urged that single member districting be adopted by state legislatures. A state having such districts is one in which the number of districts is equal to the number of representatives; i.e. one representative will be elected in each district.

The advantages enumerated were closer contact between the representative and his or her constituency, greater accountability to the electorate, a decrease in the cost of campaigning allowing more people to run and an increased opportunity for minorities to be elected.

The House resolved to support legislation to amend the Administrative Procedures Act to establish uniform rules for compulsory process in agency investigations including a requirement that before compulsory process can be issued, an order of investigation, specifically delineating the nature and purpose of the inquiry, must be entered.

Code Revision

In the face of mounting criticism, it was reported that the Kutak Commission will place its proposed amendments to the Rules of Professional Responsibility in the format currently utilized in the Code of Professional Responsibility. The alternative presentation is currently being drafted and should be ready for circulation by May.

Overwhelmingly approved was a resolution to the effect that offering military service as an alternative to prosecution or punishment for criminal offenses is contrary to the best interests of the United States and its Armed Forces.

Grand Jury Principles

In other action, the House approved relocation of the American Bar Center to a new building on the campus of Northwestern University in downtown Chicago, adopted Standards on the Legal Status of Prisoners as Chapter 23 of the A.B.A. Standards for Criminal Justice, approved the Uniform Information Practices Code which is in effect a uniform freedom of information act, urged the appropriate government agencies to approve and ratify the Convention on Civil Appeals of International Child Abduction, and adopted the following ABA Grand Jury Principles:

> "No. 29. No attorney, his agent or employee, shall be questioned by the grand jury concerning matters he has learned in the legitimate investigation, preparation or representation of his client's cause or be subpoenaed to produce before the grand jury private notes, memoranda, and the like constituting his professional work product."
>
> "No. 30. The grand jury should be provided separate voting forms for each defendant in a proposed indictment, and each count in an indictment should be the subject of a separate vote."

Action Deferred

Also approved was a resolution to make the National Law Library a separate, independent department of the Library of Congress in order to ensure its continuance.

Deferred until the annual meeting at New Orleans in August was the Uniform Information Practices Code, law school curriculum and judicial pension plans. Also, at that time, the Young Lawyers Section will present for consideration a pro hac vice resolution providing that any attorney practicing for 3 years or more shall be admitted to practice in any state without examination.

Representing Alaska at the mid-year meeting of the House of Delegates were **Dick Gantz**, HUGHES, THORSNESS, GANTZ, POWELL & BRUNDIN, a member of the American Bar's Board of Governors, **Keith Brown**, HAGANS, GIBBS & BROWN, State Delegate, and **Donna Willard**, RICHMOND, WILLOUGHBY & WILLARD, State Bar Delegate.

Court of Appeals

To: ALASKA PUBLIC DEFENDER AGENCY
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
ANCHORAGE MUNICIPAL PROSECUTOR'S OFFICE
ALASKA BAR RAG

Re: Oral Argument Before the Court of Appeals.

Pursuant to Appellate Rule 505(e), **Chief Judge Bryner** has directed that oral argument before the Court of Appeals be limited to 15 minutes per side in all cases which originated in the District Court, whether or not they have previously had appellate review in the Superior Court.

Robert D. Bacon

Anchorage Association of Women Lawyers

Minutes

The March meeting of AAWL was held on March 4, 1981 at noon at the Tea Leaf Restaurant. Vice-president, **Kathleen McGuire**, presided over the meeting.

1. **Iditarod. Carolyn Jones** called for donations to support **Susan Butcher**'s Iditarod race. Approximately $170 was collected at the meeting.
2. **Legislative Report. Julie Simons** gave a report of bills pending in the legislature which included some pertaining to privacy, freedom of information, displaced homemakers, new domestic violence legislation, and bills calling for the election of judges and attorneys general.
3. **Criteria Committee. Karen Hunt** reported that the time limit was too short to deal with the public defender selection, however, the committee will work on criteria and procedures for AAWL approval/endorsement of candidates for judgeships or other appointments in the future.
4. **STAR.** Motion (Rivers/Short) carried that **Karla Huntington**, on behalf of AAWL, write a letter of support for STAR.
5. **June Bar Meeting. Pat Kennedy** reported that three women speakers are already picked for the June meeting of the Anchorage Bar Association and asked whether AAWL would want to sponsor one of the speakers. The three are: **Shirley Hufstedler**, former ninth circuit judge and former Secretary of Education; **Ann Gorsuch**, a Denver lawyer with the Environmental Protection Agency; and **Jane Barrett**, the first woman member of the American Bar Association's Board of Governors.
6. **Civil Rape Cases. Sylvia Short** made a plea for lawyers who are willing to prosecute rape tort cases. Some funds for costs are available. Lists of such lawyers will be provided to STAR.
7. **Announcements.** A) Feminist Fly-In, March 21, 22, Juneau. B) **Betty Harrigan** speaking at Performing Arts Center, March 10th at 8 p.m. C) Human Rights Commission is looking for a staff attorney. D) ABA is looking for Bar Counsel E) AAWL directories are available. F) A delegation of officers has selected **Dorothy Haaland** as AAWL nominee for the soroptomists' Women Helping Women Award.
8. **Program.** Program at the March meeting was a video tape of the **Sylvia Short** vs. **Phyllis Schlafly** debate recorded by channel 13 last fall. Subject of the debate was the Equal Rights Amendment. Applause to Sylvia Short for a fine debate. Thanks to Dorothy Haaland for providing the video tape.

Respectfully submitted,
Susan A. Vaillancourt
Recording Secretary

Announcement

Judicial Council is accepting applications for a district court judge position in Anchorage until April 3. Candidates who meet the three-year practice and five-year residency requirements are urged to apply.

Next Meeting

The next AAWL meeting will be Wednesday, April 1, 1981 at noon at the Tea Leaf Restaurant. The guest speaker will be Iditarod musher, Susan Butcher. Subject to final confirmation.

Elections

New AAWL officers will be elected at the May meeting, May 6, 1981, noon, Tea Leaf Restaurant.

ALL MY TRIALS...

[continued from page 5]

building). One of them was from Pakistan, three of them were from East Germany and the rest from Singapore, Dutch East Antilles, and Inner Mongolia."

You: "Oh, wow! The company must have spent a bundle on that defense."

Him: "Over three million dollars — but it was worth it."

The above examples are, of course, only reflective of the fact that lawyers generally identify with the aims and views of their clients. Whereas the plaintiff's attorney can invariably make a compelling argument for proximate causation, his defense counterpart is equally adept at theorizing. The fact that his client has dropped a safe on yours doesn't necessarily imply responsibility — there are plenty of intervening forces to consider, as well as your man's assumption of the risk for being on the same planet.

The Lawyer Fish

None of this diminishes the general trepidation with which lawyers are regarded by members of the lay public. While browsing through my copy of *Alaska Fishing Guide* (Alaska N.W. Publishing Co. of Anchorage), I recently came across a description of the fresh water ling (*Lota lota)* "also called the lawyer, fresh-water cusk, eelpout, lush, or burbot," which, the author went on to explain, is found in most Alaskan drainages from the Copper River in Southcentral Alaska north and west to the Bering Sea and the Arctic Ocean (page 79). Subsequently, I discussed this information with Claude St. Amand — former supervisor of Fish & Game for Southeast Alaska, and a cherished fishing companion.

"Why do they call it a lawyer?" I asked him.

"Well," he replied, "I guess it's because they're ugly as sin — eat up all the other fish in the lake, have big sharp teeth, and aren't worth a damn."

I was somewhat taken aback by his candor, but inquired further. "Then why do they call it a lush?" Claude just smiled, and I dropped the subject.

This attitude toward members of the Bar is reflected in the Spanish language as well, where the curse, "May you fall among lawyers," is easily as popular as the more traditional "I this and that myself in the milk of your father."

Another Point of View

Of course, people in other professions startle attorneys occasionally, too — at least they upset me. I was visiting my Army buddy (Medical Corps, Korea vintage) **Ford Van Hagen** recently in Springfield, Illinois, where he is now an eminent surgeon. I had given him the benefit of my views on the general callousness of the medical profession — and he replied — with some spirit — that I didn't know what I was talking about, representing himself and his colleagues as being not only maligned, but sensitive and concerned as well. He then invited me to accompany him on his rounds, which I was proud to do — and took the opportunity to demonstrate the magnificent facilities of the hospital in which he works and teaches.

In the intensive care unit, Dr. Van Hagen showed me how every individual patient was monitored in such a way that their vital signs — including heartbeat — reflected on a series of screens set in a large panel, which was constantly observed. As we gazed at it, one of the monitors showed a sudden and violent disruption — following which the heart indicator flattened out completely and proceeded in a straight line, rather than making a series of crests and indentations, as before.

"Look at that one, Ford," I exclaimed — "Does it mean what I think it does?"

He glanced at the offending screen calmly. "I really don't know, Gail," he replied. "It's not one of my patients." And we continued on.

I didn't dare ask him anything else, but I've thought about it a lot since then.

In fairness, all professions which deal heavily in human misery have a propensity for instilling in their members a certain ennui regarding the problems of others. Nevertheless, it frequently happens that the dignity of the human spirit rises above the general atmosphere of crushing indifference, and communicates itself even to the members of the oppressor class.

Bailing Out

Revisiting Salinas for the moment, I was waiting to speak to the Chief of Detectives one afternoon, and was enjoying the late autumn sunshine — standing near the doorway of the police station in order to do so. I was interested to observe that the "drunk wagon," which had pulled up nearby to transport its cargo to the holding cells, was — by its defective design — causing considerable difficulty for its befuddled passengers.

It was a large, van-like affair, with a sliding door opening approximately three feet above the sidewalk. As each occupant emerged, he automatically fell from the doorway to the concrete, staggered to his feet, stumbled over the parking rail, and arose again only to plunge over the steps into the police station. I was fascinated by this unique choreography, and watched for several minutes — accompanied by a bored policemen.

The last "347-F" (California Penal Code — drunk in public), however, riveted my attention even as the Ancient Mariner who stoppeth one of three. Grasping the sides of the doorway desperately with both hands, he stared down as if into an abyss. Then he looked up and spoke directly to my conscience and my heart.

"What do they think I am," he inquired in a quavering voice, "a gawdamn paratrooper?"

Dozen Candidates for District Court Position

The Alaska Judicial Council has received 12 applications for the position of district court judge, Third Judicial District at Anchorage. This position was created by the resignation of Judge **Richard C. Avery.**

The applicants are:

Elaine M. Andrews Ms. Andrews is currently an associate in general civil practice with Lane, Powell, Puskin, Barker, & Hicks. She has been a resident of Alaska for the last five years and is 29 years old. Ms. Andrews has practiced law for the past five years. She was the staff attorney for the Alaska Judicial Council doing writing and research in the area of criminal law and was an assistant public defender for the Alaska Public Defender Agency. Ms. Andrews is an inactive member of the California State Bar Association, a member of the American Bar Association, and past President of the Anchorage Association of Women Lawyers (1979-1980).

Thomas R. Boedeker Mr. Boedeker is presently in private practice in Anchorage. He has been a resident of Alaska for the past 5½ years and is 30 years old. Mr. Boedeker was an intern for a private law firm and has been in private practice for the last five years. He served as a member of the Administrative Law Committee of the Alaska Bar Association, is currently a Director and was a past President of the Anchorage Bar Association, andis head of the Bar Bench Relations Committee of the Anchorage Bar Association.

Stephanie J. Cole Ms. Cole is currently an assistant attorney general for the State of Alaska, Human Services Section. She has been a resident of Alaska for the past 5½ years and is 31 years old. Ms. Cole has practiced law for the past five years. She has been the Director of Legal Education and Information for the Alaska Court System for three years, an associate in private practice, a master/court attorney for the Alaska Court System, an appeals law clerk for the office of the Attorney General. Ms. Cole is a member of the California Bar Association, Anchorage Association of Women Lawyers, and of State Judicial Educators Association.

James V. Gould Mr. Gould serves as an assistant district attorney for the State of Alaska. He has been a resident of Alaska for the past seven years and is 41 years of age. Mr. Gould has practiced law for the last six years. He has held his current position with the State since 1974. Mr. Gould has been involved with the justice system for 20 years; as a police officer, college professor and trial attorney.

Brigitte McBride Ms. McBride acts as Standing Master for the Alaska Court System in Kodiak. She has been an Alaskan resident for the last 25½ years and is 59 years of age. Ms. McBride has been a practicing magistrate in excess of seven years. She served as the acting magistrate and deputy clerk of court in Kodiak and as a magistrate in Seldovia. Ms. McBride is a member of the Kodiak Bar Association, a Judicial Associate of the American Bar Association, a member of the Alaska Magistrates Association, a member of the National Association of Women Judges, and a member of the Forms Committee of the Alaska Court System.

Jess H. Nicholas Mr. Nicholas is currently the magistrate in Kenai. He has been a resident of Alaska for the last 36 years and is 56 years of age. Mr. Nicholas has been the magistrate for Kenai for the last 21 years. He is an honorary member of the Kenai Peninsula Bar Association.

Robert A. Rehbock Mr. Rehbock practices law with a private firm. He has been a resident of Alaska for the past 28 years and is 28 years of age. Mr. Rehbock has practiced law for the past three years. He is a member of the Real Property and Family Law Committees of the Alaska Bar Association.

John A. Scukanec Mr. Scukanec is currently an assistant attorney general, office of Special Prosecutions and Appeals. Mr. Scukanec has been a resident of Alaska for the past 30 years and is 30 years of age. Mr. Scukanec has practiced law for the last 4½ years. He was an assistant district attorney for three years and in private practice.

Arthur D. Talbot Mr. Talbot is currently in private practice. He has been a resident for the past 28 years and is 55 years of age. He has been practicing law for the last 31 years. Mr. Talbot was an assistant district attorney and an assistant U.S. attorney. Mr. Talbot is a member of the New York State Bar Association, Chairman of the Grievance Committee for the Third Judicial District and a member of the Rules Committee for the Alaska Bar Association.

Thomas B. Turnbull Mr. Turnbull is currently in private practice in Kenai. He has been a resident for the last seven years and is 34 years of age. Mr. Turnbull has practiced law for the past six years. He was an assistant attorney general for the State of Alaska, House Judiciary Committee Administrative Assistant, and a legal aid. Mr. Turnbull is an inactive member of the California State Bar Association.

Ronald T. West Mr. West is currently in private practice. He has been a resident of Alaska for the last 10 years and is 40 years of age. He has been practicing law for the past 9½ years. Mr. West was an assistant public defender, and an assistant city attorney for the City of Anchorage. Mr. West is a member of the State Bar in Michigan and the Anchorage Bar Association.

James F. Wolf Mr. Wolf is currently an assistant municipal prosecutor. He has been a resident of Alaska for the last 16 years and is 38 years of age. Mr. Wolf has practiced law for the last five years. He was a court attorney for the Alaska Court System and a legal intern with the State district attorney's office. Mr. Wolf is a member of the American Bar Association.

Who Makes the Money?

Public Defender Agency

Beiswenger, Allan D., $51,852.
Fabe, Dana A., Anchorage, $50,040.
Kauvar, Jane F., Fairbanks, $59,952.
McGowan, James W., Fairbanks, $55,776.
Oswald, James D., Anchorage, $50,040.
Shortell, Brian C., Anchorage $64,452.
Welch, Edward J., Kotzebue, $57,828.
Yospin, Richard L., Ketchikan, $50,040.

Department of Law

Adams, Charles G., Juneau, $69,240.
Ashburn, Mark E., Anchorage, $62,208.
Athens, Everett J., Fairbanks, $59,952.
Botelho, Bruce M., Juneau, $51,852.
Branchflower, Stephen E., Anchorage, $57,828.
Bundy, Robert C., Anchorage, $62,208.
Burke, Susan A., Juneau, $62,208.
Butterfield, Rhonda F., Anchorage, $50,040.
Call, Steven J., Fairbanks, $66,900.
Carpeneti, Anne D., Juneau, $57,828.
Cole, Stephanie, Anchorage, $50,040.
Condon, Wilson L., Juneau, $66,900.
Cyrus, Eugene B., Anchorage, $50,040.
Davis, Harry L., Fairbanks, $74,196.
Doogan, James P., Fairbanks, $66;900.
Edwards, George W., Anchorage, $55,776.
Fussner, Sarah E., Anchorage, $51,852.
Gazaway, Hal P., Anchorage, $62,208.
Gould, James V., Anchorage, $57,828.
Greene, Mary E., Fairbanks, $57,828.
Guaneli, Dean J., Juneau, $55,776.
Gullufsen, Patrick J., Juneau, $59,952.
Hanley, James L., Kenai, $57,828.
Hawley, William H., Anchorage, $66,900.
Hayes, James C., Fairbanks, $50,040.
Henry, Mary A., Anchorage, $53,796.
Hickey, Daniel W., Juneau, $69,240.
Higgins, Shelley, Anchorage, $51,852.
Hutchings, Stephen H., $69,240.
Joahnke, Thomas M., Juneau, $51,852.
Jones, Carolyn E., Anchorage, $62,852.
Kennedy, Elizabeth, Anchorage, $55,776.
Kerns, Richard P., Anchorage, $69,240.
Koester, G. Thomas, Juneau, $55,776.
Kopperud, Ross A., Anchorage, $62,208.
Krumm, Victor C., Ketchikan, $53,796.
Leblond, David T., Anchorage, $62,208.
Lorensen, Ronald W., Juneau, $62,208.
Lowenfels, Jeffrey B., Anchorage, $53,796.
Mackey, William L., Fairbanks, $71,664.
Mannheimer, David, Fairbanks, $59,952.
Maynard, Robert M., Juneau, $53,796.
McGee, Jack B., Juneau, $59,952.
McConnell, Dwayne W., $55,776.
Meacham, Thomas E., Anchorage, $62,208.
Mellow, William G., Juneau, $66,900.
Merriner, Charles M., Anchorage, $66,900.
Mertz, Douglas K., Juneau, $59,952.
Michalsi, Peter A., Anchorage, $64,452.
Mills, Martha T., Anchorage, $51,852.
Miracle, Barbara J., Anchorage, $55,776.
Murphee, Bill D., Fairbanks, $64,452.
Murphy, Eugene P., Anchorage, $57,828.
Olsen, Randy M., Fairbanks, $55,776.
Pegues, Rodger W., Juneau, $62,208.
Peterson, Arthur H., Juneau, $69,240.
Petumenos, Timothy J., Anchorage, $53,796.
Ross, Elisabeth, Anchorage, $50,040.
Rubinstein, Michael L., Anchorage, $50,040.
Schmidt, George C., Anchorage, $51,852.
Sewright, Michael W., Anchorage, $55,776.
Sipe, Connie J., Anchorage, $59,952.
Stark, Michael J., Juneau, $55,776.
Steinkruger, Niesje J., Fairbanks, $55,776.
Stern, Barry J., Anchorage, $57,828.
Stewart, David C., $62,208.
Svobodny, Richard, Juneau, $51,852.
Tennant, Richard B., Anchorage, $57,828.
Thompson, Michael A., Ketchikan, $53,796.
Tillinghast, Jonathon K., Juneau, $59,952.
Walton, Linda L., Fairbanks, $55,776.
Wardell, Thomas M., Kenai, $74,196.
Weeks, Larry R., Anchorage, $62,208.
White, Michael N., Nome, $66,900.
Wickwire, Thomas M., Fairbanks, $71,664.
Wood, Larry D., Fairbanks, $66,900.
Wood, Mark I., Fairbanks, $57,828.
Zervos, Larry C., Fairbanks, $51,852.

Legislative Affairs Agency

Berg, Richard G., Juneau, $62,208.
Berrier, Billy G., Juneau, $66,900.
Berry, Randolph G., Juneau, $51,852.
Bradley, Richard A., Juneau, $64,452.
Charney, Myrton R., Juneau, $66,900.
Chenoweth, John B., Juneau, $57,828.
Guthrie, Joseph A., Juneau, $50,040.
Kadow, Charity B., Anchorage, $55,776.
Keller, Edward H., Juneau, $5,852.
Kennedy, Eugene A.,$57,828.
Pegues, Donna, Juneau, $55,776.
Pekovich, Sam, Juneau, $55,776.
Read, Duncan L., Juneau, $59,952.
Vassar, Kenneth E., Juneau, $51,852.
Walker, David T., Juneau, $62,208.

Alaska Court System

Aloia, Patrick L., Fairbanks, $64,452.
Anderson, Glen C., Anchorage, $57,828.
Avery, C. Richard, Anchorage, $57,828.
Bacon, Robert D., Anchorage, $56,508.
Barrier, Richard, Anchorage, $63,120.
Bell, Marjorie D., Anchorage, $59,952.
Blair, James R., Fairbanks, $76,266.
Bosshard, John, Valdez, $67,947.
Brewer, Joseph J., Anchorage, $57,828.
Bryner, Alexander, Anchorage, $69,240.
Buckalew, Seaborn J., Anchorage, $66,900.
Burke, Edmond W., Anchorage, $74,196.
Carlson, Victor, Anchorage, $66,900.
Cline, Stephen R., Fairbanks, $65,923.
Coats, Robert G., Anchorage, $69,240.
Compton, Allen T., Juneau, $74,196.
Connelly, Hugh H., Fairbanks, $65,923.92.
Connor, Roger G., Anchorage, $74,196.
Cooke, Christopher, Bethel, $78,607.56.
Craske, Duane K., Sitka, $69,241.56.
Crutchfield, Hershel, Fairbanks, $65,923.92.
Cutler, Beverly W., Anchorage, $57,828.
Hanson, James A., Kenai, $71,853.
Hitchcock, William D., Anchorage, $51,852.
Hodges, Jay, Fairbanks, $76,266.
Hornaday, James C., Homer, $61,875.
Johnstone, Karl S., Anchorage, $66,900.
Jones, Paul B., Kotzebue, $78,607.
Keene, Henry C., Ketchikan, $57,828.
Madsen, Roy H., Kodiak, $71,583.
Martin, Merle P., Anchorage, $66,900.
Mason, John David, Anchorage, $57,828.
Matthews, Warren W., Anchorage, $74,196.
Miller, Susan C., Anchorage, $51,852.
Moody, Ralph E., Anchorage, $66,900.
Rabinowitz, Jay A., Fairbanks, $82,413
Ray, Frank, Anchorage, $57,828.
Ripley, J. Justin, Anchorage, $66,900.
Rowland, Mark, Anchorage, $66,900.
Sanders, William H., Nome, $74,166.
Schulz, Thomas E., Juneau, $66,900.
Singleton, James K., Anchorage, $69,240.
Snowden, Arthur H., Anchorage, $72,195.96.
Souter, Milton M., Anchorage, $66,900.
Stevens, Francis M., Anchorage, $50,040.
Stewart, Thomas B., Juneau, $66,900.
Szal, Albert H., Anchorage, $51,852.
Taylor, Robin L., $59,852.04.
Taylor, Warren W., Fairbanks, $76,266.
Tucker, Warren A., Anchorage, $57,828.
Van Hoomissen, Gerald, Fairbanks, $76,266.
Vochoska, Virgil D., Anchorage, $57,828.
White, Teresa J., Anchorage, $50,004.
Williams, Gerald O., Juneau, $57,828.

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when it met in late March to select the nominations to the Superior Court Bench in the First Judicial District, would have a full complement of attorney representatives. The advisory poll for the seat vacated by Bud Carpeneti so he could apply for the Superior Court judgeship, was taken in two short weeks and the Board held a conference call meeting in order to act quickly on the appointment.

In the Trial Courts for the State of Alaska Third Judicial District

In the Matter of:)

WITHDRAWAL OF)
PUBLIC DEFENDER)
IN CRIMINAL CASES)
DUE TO CONFLICT)
OF INTEREST.)
)

IT IS HEREBY ORDERED that the procedure listed below be followed regarding withdrawal of public defenders in criminal cases due to conflict of interest.

A. Conflicts Arising from Joint Representation of Defendants.

When multiple defendants are charged with offenses arising from a single factual episode, the public defender agency will initially be appointed to represent all the defendants. If the Public Defender Agency determines that a conflict of interest exists in its representation of more than one of the defendants, it shall, without filing a motion to withdraw, reassign one of the defendants to the law firm of Drathman & Weidner. The Public Defender Agency shall immediately file a notice of reassignment with the trial courts, certifying that the law firm has been contacted and been made aware of the reassignment, the client's name, case number, and next court appearance. The Public Defender Agency shall additionally certify that the conflicted client knows of the reassignment and the name, address and telephone number of the law firm of Drathman & Weidner.

If more than two defendants are charged with the criminal offenses arising from the same event, the Public Defender Agency shall assign the third and subsequent defendants to the next attorneys on the court system appointment list. The public defender shall ascertain the name or names of the appropriate attorney or attorneys from the calendaring department and shall inform the calendaring department of the name and court number of the client who is to be assigned to private court-appointed counsel. The Public Defender Agency shall file a notice of reassignment with the court, certifying that the client knows the name, address and phone number of his court-appointed attorney and the date of his next court appearance.

B. All Other Conflicts of Interest Involving the Public Defender Agency.

When the Public Defender Agency is appointed to represent an indigent client and moves to withdraw due to a conflict of interest which does not involve joint representation of defendants, a motion supported by an affidavit must be filed in all cases in the office of the presiding judge in the superior court or in the office of the calendaring judge in district court. The affidavit must specify in detail:

(1) The nature of the conflict and which canon of ethics is involved.

(2) The names of the individuals and other case numbers from which the conflict arises.

(3) The date the attorney discovered the conflict.

(4) The reason why the conflict was not discovered at an earlier date if the motion to withdraw is being filed after the first calendar call in misdemeanor cases or after ten (10) days from the time of the arraignment or initial appearance in superior court.

(5) A statement as to when the conflict was discussed with the client and what position, if any, the client takes with regard to the conflict.

To preserve confidentiality, the Public Defender Agency may file the affidavit in a sealed envelope, which will be opened only by order of the court, and then ordered sealed thereafter.

A hearing is required in all felony cases whether in the superior court or district court. That hearing will automatically be scheduled before the presiding judge of the superior court at 1:30 p.m. on the day following the filing of said motion, or the hearing will be scheduled before the calendaring judge of the district court at 9:30 a.m. on the day following the filing of said motion. The defendant's prescence at said hearing is required, and it shall be the responsibility of the public defender to notify the defendant to be present at the meeting.

In a misdemeanor case, a hearing will automatically be scheduled before the calendaring judge of the district court on the next city or state motion day appropriate to that case unless the attorney certifies, in writing, to the court that he has informed his client of the conflict and of his plan to withdraw and that his client has consented to the withdrawal. If a hearing is required, the court shall require the presence of the defendant at the hearing on the motion to withdraw unless the court determines that the defendant's presence is unnecessary. It will be the responsibility of the public defender to notify the defendant to be present at the hearing.

When the Public Defender Agency files a motion to withdraw under this section, the agency shall also deliver a copy of the motion to the calendaring department to ensure the matter is timely calendared.

C. Transfer of Documents

The Public Defender Agency shall make available to subsequent assigned counsel the complete file of all reassigned clients within 24 hours of the agency's filing of a notice of reassignment and/or the granting of the agency's motion to withdraw.

Failure of the Public Defender Agency to comply with the foregoing may result in the imposition of sanctions.

DATED at Anchorage, Alaska, this 13th of March, 1981.

Victor D. Carlson
Acting Presiding Judge
Third Judicial District

RANDOM POTSHOTS...

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difficult to defend by loss of memory, witnesses or evidence.

Similarly, where a man plowed the land or herded his cattle in demonstration of ownership, and where survey was scarce or unknown and boundaries usually measured by metes and bounds in relation to migrant streams, rocks, trees and fences, actual user was a reasonable way to establish land titles. If a person had no use for land but could let another use it as his own for 10 years then the labor should make it the property of the latter. This principle could stand up well also in application to lands involved in the westward migration across the cheap lands of the early United States. Land might be settled, informally homesteaded, some claim staked and the owner move on. The population flux made it reasonable social policy to let a person following take up the same land and hold it even against the original owner returning after ten years.

Time For Some Changes

But these are not policies for late twentieth century America. Land is now scarce, records plentiful, dishonesty still all too prevalent. Our statutes can distinguish between mistake and theft whether in the taking of land or identifiable personal property. Disputes with a purely civil origin should be fought or forgotten. The suspected offender in a criminal case should not have to answer for a crime from the dim past (though he will be made to if he flees or hides). Some protection is due the bona fide purchaser. Still, there should be no encouragement in the law through unjust enrichment to the successful purloiner of property.

Doodles and the Damned:

As an Insight into the Judicial Mind

by James D. DeWitt

In an exclusive interview with the *Bar Rag*, noted psychiatrist Dr. Clyde Bushmat gives Association members a unique insight into the mental processes of the Judiciary. The *Bar Rag* was able to obtain through anonymous sources the bench doodles of a Superior Court judge. Dr. Bushmat examined those doodles, and shared his analyses with us. A transcript follows:

BR: Dr. Bushmat, I wonder if you could describe briefly your training and experience as a psychiatrist?

DR. BUSHMAT: Well, I was admitted to practice after twenty-two years' apprenticeship to a chiropractor in East Camden, New Jersey. I did special study at the Eastern Rhine Institute in Poland, after which I came to Alaska. I have been board-certified in Alaska for three days now. I have been admitted as an expert witness in all Alaska courts, and in the Polish traffic courts.

BR: Dr. Bushmat, I am handing you a doodle by an eminent jurist here in Alaska, marked as Exhibit A. This is the first of four I will show you. Based on your training and experience, can you make any conclusions about the judge?

EXHIBIT "A"

DR. BUSHMAT: I think this is a well-adjusted man, working under some tension. The rural theme unifies the doodle, and there is tranquility in the sketch of the house, but outside the house there is tension and worry. Obviously, the man enjoys the outdoors and a primitive lifestyle.

EXHIBIT "B"

BR: This is the second doodle, marked as Exhibit B. Can you draw any conclusions?

DR. BUSHMAT: Other than that the judge is bored?

BR: Other than that.

DR. BUSHMAT: There is no theme to the doodle, no pattern or structure. Many unrelated subjects in juxtaposition suggest whatever evidence he is hearing is also chaotic. There are some violent doodles, suggesting the judge is becoming angry.

BR: This is the third doodle, marked as Exhibit C, drawn on the third day of trial.

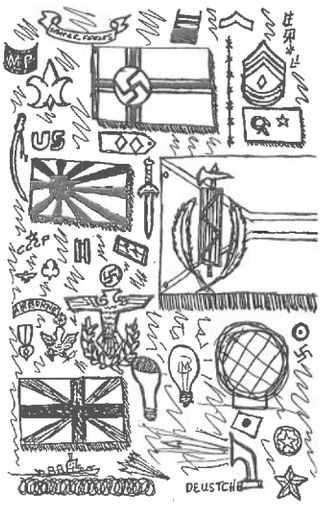

EXHIBIT "C"

DR. BUSHMAT: Oh boy! I would enjoy treating this man. Can you tell me what he did to the attorneys on this day?

BR: I'm afraid not.

DR. BUSHMAT: Much more violent. He is becoming obsessed with his anger. He is searching for some structure or order, and has settled on the artificial structure of the military. He was probably yelling at the attorneys and witnesses, and held at least two people in contempt of court.

BR: And the fourth doodle, Exhibit D?

DR. BUSHMAT: This man is sick. You must tell me who he is, I want to help him. Please, what is his name?

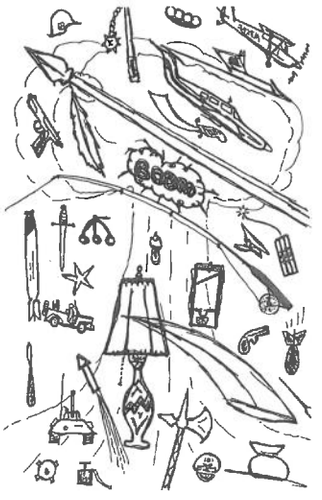

EXHIBIT "D"

BR: I'm afraid that is confidential...

DR. BUSHMAT: None of your attorney confidentiality crap, this man is going to hurt someone if we don't get to him soon...

BR: Dr. Bushmat...

DR. BUSHMAT: I will get a commitment order without mentioning your name. You see the bomb? Do you see that? That is a sign of complete derangement....This man must be hospitalized.

BR: But Dr. Bushmat, these doodles are more than two years old; this judge has continued to sit and he doesn't act any differently than the other judges.

DR. BUSHMAT: There, you see, I told you he was sick, you can't tell him from the other judges....

Minutes of the February 6, 1981 Meeting of the Tanana Valley Bar Association

An attempt was made by President **Jon Link** to call the meeting to order. It was less than successful as the judicial division was engaged in hurtling camel feces about the room. (Judges don't bullshit.) Guests were **Jack Clark,** because he didn't know if he'd paid his dues yet, and **Joe Usibelli,** vice president of the University of Alaska Business and Management Student Association. Joe was a guest of **Jim DeWitt** and came to extricate money from a few of the more wealthy members of the TVBA. The secretary's minutes were insulted, because of a *minor* grammatical glitch involving "between he and...." There was a debate as to whether the Ketchikan Bar had actually bought $200 worth of drinks for **Judge Compton**'s ascention to Justice or, $100 or, in fact, any drinks at all. **Judge Blair,** who had consumed 30 percent of all drinks served that day, indicated that the Ketchikan Bar may say that they spent more, but he is sure that they didn't spend any more than the TVBA.

On the question of the committee to file an *amicus curiae* brief (or a letter) with the Supreme Court on confidentiality of disciplinary records, **Dick Savell** moved that we appoint a committee to apply for an extension, because the committee working on the brief didn't seem to know what they were doing. The president postponed this until next week. **Ralph Beistline** indicated that the number of rooms at the Fox Roadhouse was considerable, but the only problem was that we wouldn't have a restroom, so each person should make it a point to empty out before leaving Fairbanks. The president tried to get a more solid team than *Madams Schumann, Steinkruger* and **Walton** to move the piano for the Fourth of July picnic and finally gave up and put that over until next week along with several other matters. The president announced that the theme for Law Day would be "charters of freedom," which was supposed to mean the Declaration of Independence, the Constitution, the Bill of Rights, the Articles of Confederation, etc., but no one was interested. President Link also announced that **Vince Vitale** of Anchorage had registered as a lobbyist for the Bar, so that he could tell the legislature where to go. As the discussion progressed, it appeared that Anchorage members on the Board of Governors differ from the Anchorage Bar generally on the subject of lay persons on the Board of Governors; the board members from Anchorage being hot and heavy for lay members; the members of the Anchorage Bar not being hot and heavy for much of anything. Further announcements included the fact that the Bar Counsel had quit or just decided not to come to work one morning, and there were a bunch of people appointed to various positions, but, unfortunately, President Link got the people scrambled and the cities in which they practice scrambled. As a result of which, there was no point in writing down the announcements.

Dave Call moved and Jim DeWitt seconded a motion to have a telegram sent to **Fred Brown** congratulating him on becoming chairman of the House Judiciary Committee and reminding him that he had a bill for dues. All the debate concerned whether the telegram should be sent collect, and the motion passed 13 to nothing.

Apparently, the *Bar Rag* Editor, **Harry Branson,** solved all the problems about banning the *Bar Rag* by showing that he didn't print a three-panel cartoon on judicial retention, which cartoon was overly factual. Jim DeWitt again introduced Joe Usibelli, who made a pitch for people to go to a formal dance to get the business people acquainted with those students who are studying to become business people. It was moved, seconded and almost passed that we buy Jon Link a suit and send him, but Link himself ruled the motion out of order because the Bar didn't have enough money to buy a suit for someone his size. Ralph Beistline moved and **Niesje Steinkruger** seconded that we buy two tickets to the subject event at $25 each and give them as door prizes at the Fourth of July picnic. This motion passed ten to three.

On behalf of the nominating committee, Ralph Beistline reported that only one member of the nominating committee knew exactly which proposed nominees had accepted and would run and which had not, and therefore only that person knew what the slate of nominees was. That person, of course, was not present. It was moved by Dick Savell and seconded by Judge Blair that we unanimously adopt the slate of officers whomever they were, since it didn't really make any difference anyway. **Dick Madson** refused to be unanimous about anything suggested by Judge Blair, so **Barry Jackson** suggested unanimous approval. Madson withdrew his objections, and it was determined that the new officers, if in fact they existed, would assume the office at the Fourth of July picnic.

Jim DeWitt announced that he wanted to be able to deduct his home computer. As a result, he was having it prepare indexes to unindexed Supreme Court opinions of the Alaska Supreme Court. He indicated that this would cost $10 to subscribe to the service. It became apparent that it wasn't a matter of making the entire operation deductible, but rather paying for the computer when he indicated that the $10 was per month. At that point, Judge **Van Hoomissen** indicated that he didn't want any print-outs but he did want to get into a partnership in selling the print-outs. Ralph Beistline suggested a print-out be purchased as a door prize. Finally, Bob Groseclose moved that we buy a one-month subscription to the Alaska Advance Sheet Index (for lack of a better name) to use as a door prize. Dick Madson decided he would second it if the motion was raised to include two one-month subscriptions and then only if DeWitt got his act together and drafted up gift certificates. This motion lost two to seven. On a division of the House, it appeared it passed 17 to six. Dick Savell was caught voting two times; however, during his confession the president adjourned the meeting, so we never found out his inner reason.

By executive fiat,

King Arthur

Custody: Letting Parents Decide

CHICAGO — In most divorce cases custody of the children is decided in court. But the courts aren't necessarily the only way or the best way of deciding custody according to Dr. **Jessica Pearson** in the winter issue of *Judge's Journal.*

In her article "Child Custody: Why Not Let The Parents Decide?" Pearson discusses the advantages of using mediation. Pearson is currently director of the Denver Custody Mediation Project, a project sponsored by the Piton Foundation of Colorado and the Colorado Bar Association.

According to Pearson, mediation stresses honesty and informality, as well as direct communication between divorcing parents. It encourages expression of emotion, attention to the underlying causes of disputes, reinforcement of positive bonds and avoidance of blame.

In our current system lawyers replace rather than assist couples with negotiations. This situation, Pearson says, leads to little commitment to the agreements generated because the couples are not actively involved. Pearson states that the system is also faulted by many for being coercive, formal, costly and time-consuming.

However, one of the most persuasive reasons for rethinking the current system of resolving child custody disputes according to Pearson is that noncompliance with visitation and child support is at epidemic proportions, and family courts are being overwhelmed by this added volume.

To understand what can be accomplished with mediation, Pearson describes her work with the Denver Custody Mediation Project, a three-year experimental program begun in 1979. The goals of the project are twofold: to organize and administer a mediation service for divorcing adults who disagree about custody and visitation, and to evaluate rigorously the mediation process and its outcome.

Pearson's preliminary evaluations of the Denver mediation project reveal that both men and women are willing to mediate, regardless of socio-economic factors, and mediating couples usually choose joint or shared custody arrangements as opposed to mother-only awards. While men and women both choose mediation, they do so for different reasons according to Pearson. Men feel they have a better chance with mediation than in court and women prefer it because it is less remote and impersonal.

Another advantage to custody mediation, says Pearson, is that it is cheaper and less time-consuming than the court process. It is estimated that in 1978 the conciliation court in Los Angeles saved the state $175,044 in court costs. In Denver similar savings have been noted. Each custody case costs the state of Colorado approximately $1,080 in bench time and $528 for custody investigation. The Denver Custody Mediation Project spends approximately $135 to $270 per case.

Pearson does add the caveat that mediation is not for everyone. The Family Division of the Connecticut Superior Court has isolated four situations as not appropriate for mediation. They are 1) cases involving children who have been or are alleged to be physically abused or neglected; 2) most situations involving multiple social agency and psychiatric contacts for the adults or children; 3) post-judgment cases involving long-standing, bitter conflict and repeated court appearances; and 4) cases in which one or more of the adults has experienced serious psychological problems or has demonstrated erratic, violent, or severely antisocial behavior.

INSIDE/OUTSIDE

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blood pressure; fewer lawyers take vacations and they are generally less happy with their practices. As to physical activity, three-quarters of the attorneys and doctors responding reportedly engaged in some type of exercise with gardening being the most popular with slightly more lawyers than doctors gardening. Thirty-four per cent (34%) of the lawyers compared with thirty-one percent (31%) jogged for exercise.

However, the doctors worked more and played less than the lawyers. Thirty-three percent (33%) of the doctors said they worked 60 or more hours a week with only 10% of the lawyers saying they put in such hours.

More lawyers reported problems with drinking, 9% compared to 3% of the doctors. The survey indicated that lawyers both drink more and drink more often preferring beer, while doctors prefer wine. Lawyers reported considerable pressure in their practices with 21% of them having high blood pressure compared to only 12% of the doctors. Sixty-one percent (61%) of the doctors indicated they take four or more vacations per year with only 30% of the lawyers taking that much time. However, lawyers apparently sleep more with 38% of them saying they slept 8 or more hours per night.

Short and Sweet

My favorite one-liner dissenting opinion: "For all of the reasons stated in the majority opinion, I dissent."

RIDERS...

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tion, also testified. Mr. Vitale told the Committee that he was interested in learning what problems the legislators perceived with the Bar Association and what changes they were considering making. The discussion made it quite apparent that the legislators had not yet focused on any particular program and were still trying to acquaint themselves with the Alaska Bar Association and its activities. Questions from the legislators dealt with the bad public image of lawyers, whether lawyers would ever bring malpractice actions against one another (a question readily answered by reference to recent investigations by the Bar relating to errors and omissions insurance and by the fact that the firms of both lawyers testifying at the hearing were currently representing claimants against lawyers for malpractice) and, once again, on the subject of lawyer involvement in the appointment of judges. Again the hearing was marked by frequent and hostile exchanges between legislators.

The next hearing was held before the House Judiciary Committee alone on February 25. I appeared for the Bar Association at what was billed a working session. The committee had been advised two weeks before that both the President and the President-Elect would be out of state on that date, but the chairman found it necessary to set a meeting for that time anyway. Chairman Brown's announced purpose of this work session was to bring Representatives new to the House Judiciary Committee up-to-date on the issues raised by that Committee's review of the Bar last session. A major aspect of this work session was to be the appearance of Senator Parr, last year's House Judiciary Chair, to present his views on the Bar Association. Senator Parr appeared, and his manifesto is reprinted below, in whole (editing would serve no just purpose):

Attorneys and the Governmental System

A key feature of American government is the distribution of power among three branches, with each branch having certain checks on the other. We have enshrined this principle in our Constitution.

The Constitution is basic law and establishes a general framework of government. Going to the ultimate sovereign (the people) with amendments to the Constitution should be done only after very careful consideration, and only when statutory changes cannot do the job.

The Judicial Branch, in my mind, is the court system, and does not include attorneys (testimony from attorneys on their status as "officers of the court" indicates only that a judge can require them to defend cases).

What concerns me is the absence of any very effective way for the people, through their elective representatives, to govern the activities of the Bar. At present attorneys enjoy a privileged status given to no other profession. Judges must be attorneys, judges and attorneys control admissions, discipline, and exclusion from the profession. Judges and attorneys determine whom the Governor may consider for judgeships.

I see no reason for the privileged status. It seems that the appropriate thing to do would be to create a Board of Legal Practice (similar to the Medical Board, Dental Board, and Board of Engineers and Architects) to regulate the profession. Such a board should have sizeable lay presence as other professional boards do.

Appointments to such a board would be made by an elected representative (the Governor), and would be confirmed by elected representatives (the Legislature). The people would then have at least an indirect way of influencing the legal profession.

Absent such a solution, we should at least reduce the power of this closed corporation by taking away the requirement that an attorney belong to the Alaska Bar Association in order to practice his profession in this State.

I will make no comment, except to say that there are two errors of fact, three errors in assumption, and one gross oversight in the above.

HB 371, which is almost an exact duplicate of last year's House Judiciary bill, was introduced on March 23rd. Please note that it was not introduced at the specific request of any member of the Legislature or House Judiciary Committee. Also, please note that HB 371 parallels the bill which was passed out of House Judiciary last year, *not* the bill that eventually was passed by the entire House of Representatives late in last year's session. HB 371 amends the Bar to:

- make the Bar an *agency* of the State;
- subject the Bar to the Administrative Procedures Act (APA);
- add three non-attorneys to the Board of Governors;
- reduce to eight (8) the number of attorney members on the Board by removing the at-large seat;
- define the practice of law (while removing the Board's right to define the practice);
- require the Board to contract for bar exam administration and grading expertise; and
- remove the requirement that an applicant to the Bar be a graduate of an ABA accredited law school.

A date for the first hearing on this bill has not yet been set, but I urge each of you to get a copy of this bill from the Legislative Affairs Agency, so that you might read the amended provisions of the Bar Act (AS 08.08) for yourself. I have only briefly summarized the amendments of particular impact.

On Friday, March 27th, Senate Judiciary Chairman Pat Rodey decided to act. Senator Rodey abandoned SB 11 (the simple extension bill) and has requested his staff to draft another bill incorporating some amendments to the Bar Act. The bill will apparently make a number of housekeeping amendments similar to those contained in HB 371, but its major amendment places three (3) non-attorneys on the Board of Governors, while leaving intact, unlike the House bill, the current nine attorney members on the Board. The bill apparently will not make the Bar an agency of the State, nor will it subject the Board to the provisions of the APA. This bill, at the time this article was completed (March 30), was still being drafted and had not yet been enrolled nor had a Senate Judiciary hearing been scheduled on the bill.

Now that both the Senate and House Judiciary Committees have bills from which they may work, no doubt events will begin to speed up, the period of relative inactivity on the sunset process having ended. We will keep you informed.

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