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Anchorage Bar Association Welcomes the 1982 State Bar Convention

by Stan Howitt

On behalf of the entire Board of Directors of the Anchorage Bar Association, we want to make a special point of welcoming the troops to the 1982 State Bar Convention which will be held in Anchorage May 19-22, 1982. Once again there has been considerable enthusiasm and intellectual understanding among the Alaska Bar Association's President & Board as to the need to provide two basic ingredients to attract other members of the legal profession to Anchorage.

Good CLE

First factor is a good program of CLE Sessions, which are going to be held Thursday, May 20, 1982. Second ingredient is to try and provide something in the way of nostalgia and continuity in this way of life which we call a "Law Profession."

Good Old Days

There has been so much commentary by the younger members of the Bar as to the "Good Old Days" and what really transpired in the territory and fledgling State of Alaska that the Anchorage Bar Association provided the primary funding of a history of the Alaska Bar through examination of old records and live interviews with the still spritely members of the Bar on that subject. The Convention will feature a historical presentation by **Pamela Cravez.**

Good Libel

We also know that there has been a tremendous effort to inject some humor and wit by a Libel Show which will be free to all registrants. However, in keeping with true dilatory tactics the Association expects to have enough skits and wits to make it a memorable evening when the Libel Show commences on May 20, 1982 at 7:30 p.m. at the Sheraton.

We are also playing host to a Racquet Ball Club contest on Friday and will be providing bus service to the Anchorage Racquet Ball Club as well as plenty of refreshments when you get there.

Good Hospitality

As you will note, we have named the hospitality room the Ditus, Gucker and Williams Memorial Suite in hope of making certain that the true spirit of the occasion will be felt by all. We also wish to fully disclaim as to any of the doings and carryings on in that room.

We have watched the activities in the Alaska Bar Association Office and its a pretty hard working staff that has really devoted the time and effort to this State Bar Convention which we have not seen to the same degree as in prior years. It is a magnificent effort.

Finally, we wish to say that we hope that the Anchorage Bar is going to do its bit in supporting the Convention by having its members in attendance.

Prof. Carol S. Bruch, UC, Davis

Dean, Leroy Tornquist, Willamette College of Law

Alaska Lawyer Legends of Basketball

by James C. Hornaday

Return with us now to those thrilling days of yesteryear, when Alaska lawyers were true men of the Frontier. Before they had been reduced to the sissy, simpering, sophomoric sport of slow pitch soft ball. Yes, those were the days and in 1965 (or was it 1966), the lawyers plus ringers, those heroes of the hardwood, won the first Anchorage Fur Rendezvous Basketball Tournament. The following is a recollection of those fading days of glory.

John Ghrames contacted the author about entering a lawyer team in the newly formed Metro League. The first reaction was negative — lawyers are old, out of shape, non-athletic, etc. John persevered with assurances it was just going to be a fun league. **Charley Tulin** served as player-manager and lined up a sponsor — Superior Motors. **Wendell Kay** served as coach. The call went out for lawyer jocks who wanted to play roundball.

With only lawyers playing, Superior Motors proceeded to lose game after game, several by over 50 points. The Metro League held a special meeting and strongly suggested we obtain the services of some non-lawyers. Rising to the occasion, at the next game Charley and Wendell recruited a graduate of the Fort Richardson basketball program from the stands — **Paul Mitchell.** Someone found **John Heller,** an engineer who had played for Texas.

Bob Libbey played until his knee gave out and then picked up Ts yelling at the refs. **John Conway** and **Jerry Wade** ran and slapped in proper Southeastern style. **Ken Jarvi** and **Bill Schluter** were drafted from the Armed Forces JAG. The author, fresh from basketball-crazy Iowa, played captain and point guard, with two responsibilities — get the ball to Mitchell and get the ball to Heller. **Dennis Lazerus** remembered some moves from his Kansas days. **John Hendrickson,** with his New York background, served as chief arguer. **Ed Reasor** gave his all by breaking an elbow in the big game against the Anchorage Police Department. (**Brian Porter** stuffed him.) **Jay Hodges** injured his leg while displaying his ski tan. **Andy Hoge** and **Dick Kerns** provided meat under the boards. **Warren Matthews** and **Sidney Bixler** contributed the Ivy League touch.

Mitchell and Heller appearing too late, the team finished dead last in the Metro League. For some reason, we entered the First Fur Rendezvous Basketball Classic. To this day, no one really knows what happened in the tournament. Rumors ranged from pay offs to the other teams to Wendell's hiring a sorceress. In any event, the lawyers plus ringers mowed down Palmer, Nome FAA (Anchorage Merchants) and finally overcame Bethel in the championship game to capture first place. Even though the team members were old, overweight, and losing hair, there was a feeling of pride as we were presented our championship medals and took our place among Alaska Lawyer Legends of Basketball.

C.L.E. Speakers Highlight 1982 Convention

This year the Alaska Bar Association Convention features a C.L.E. seminar for everyone. Thursday, May 20th will be C.L.E. day, and will feature six programs to be held in concurrent sessions from 9:00 a.m. to 12:00 noon, and from 2:00 to 5:00 p.m. All the sessions will be held at the Sheraton Anchorage Hotel.

Corporation

Daniel W. Fessler, Professor of Law at the University of California, Davis, will present a seminar on "Corporations" from 9:00 a.m. to 12:00 noon in a section of the Howard Rock Ballroom. The program, which is aimed at the general practitioner, will cover two areas: "When not to Incorporate," and "The Proposed Alaska Corporations Code." The first portion will examine alternatives to the corporate vehicle for the conduct of business in Alaska, and the second will review highlights of the proposed Alaska for profit corporations code.

Professor Fessler is author of the highly regarded textbook *Alternatives to Incorporation for Persons in Quest of Profit* (West 1980), which is used in 38 law schools across the nation. He has been Visiting Professor of Law at Trinity College of Law in Dublin, Ireland; at the University of Virginia, and at the University of Texas. This spring he received the William Rutter Distinguished Professor of Law Award at Davis. Fessler, a most dynamic and entertaining speaker, also teaches a Bar Review course on contracts. He is no newcomer to Alaska, since he has served as consultant to the Alaska Code Revision Commission since 1980, helping draft legislation for the new for profit and not for profit corporations code.

Trial Advocacy

"Trial Advocacy," a C.L.E. program aimed at the general practitioner, will be presented by **John Strait,** Associate Professor of Law at the University of Puget Sound, Seattle. This program to be held 9:00 a.m. till 12:00 noon, will cover trial preparation, developing the theory of the case, voir dire, and

[continued on page 16]

New Board Members

Here are the results of the recent Alaska Bar elections:

1. For the Board of Governors:

First Judicial District: **Ron Lorensen,** unopposed

Second and Fourth: **Niesje Steinkruger,** unopposed

Third Judicial District: **Bruce Gagnon** defeated **Pat Kennedy** in a run-off election.

2. For the Alaska Legal Services Board of Directors:

Second Judicial District: **Ed Welch** defeated **Jon Larson**

Third Judicial District: **Donn Wonnell** defeated **Steve Conn** in a run-off election. **Rick Brown** was unopposed for the alternate seat

3. For the Alaska Bar Delegate to the American Bar Association's House of Delegates: **Donna Willard,** unopposed

4. In the advisory poll for the Alaska Bar's representative to the Ninth Circuit Judicial Conference, **Everett Harris** was the top vote getter followed by **Olof Hellen.**

ABA Frontier Showdown at the Sheraton Corral!

Responding to the challenge of the Tanana Valley Bar Association that the Anchorage bar try not to give another boring convention, this year's annual convention will quite literally end with a bang when Alaska's lawyers gather for an oldtime frontier party.

The theme will be a western one reminiscent of Alaska's territorial days. The frontier saloon, otherwise known as the Howard Rock Ballroom, will feature such irreverance as music by the **Statutory Grapes**, a caricature artist, lawyer war stories by six old lawyer warhorses, a no-host bar and dancing. Special features in the saloon will include silent movies of old Alaska ("Skagway, Soapy Smith and the White Pass," "Early Juneau," "The Valdez to Fairbanks Trail," "Dyea and the Chilkoot Pass," "The Serum Race to Nome"), and silent movies of the unforgettable **Robert Service, Klondike Kate, Captain Barnette, Molly Walsh, Harriett "Ma" Pullen** and more. **Stan Ditus** will preside over a benefit auction of items donated by today's colorful legal figures. For those who cannot live on fantasy alone, ease up to the Sourdough Table for BBQ chicken, chili, cornbread, a side of beef, beer, wine and a taco stand.

Next door to the saloon will be the gambling hall where Alaska's lawyers and their guests, using "play" money, can try their luck at blackjack, twenty-one, Klondike poker, chuck-a-luck, the wheel of fortune, craps and the high-low table. It will be an unparalled opportunity to "gamble" for high "stakes" without the risk of losing the old homestead. Your opportunity to be the financial magnate of the convention ends at midnight, however, when all the play money turns into play money.

Several picturesque members of the bar, more at home in the annual hospitality room than in the CLE seminars, have already volunteered to serve as pit bosses and dealers, *e.g.*, **Ken Jensen, Paul Paslay, Stan Howitt, Donna Willard, Barbara Herman, Rick Helm, Dave Call, Hal Brown** and **Andy Hoge.** Others, who prefer to be remembered for their courtroom skills but who have consented to "deal" anyway are **Maryann Foley, Mary Hughes, Larri Spengler, Pat Kennedy, Elaine Andrews** and **Kathleen McGuire.** Brass spittoons are *de rigeur!*

The price of this event will include a starter sack of play money and is so reasonable that we hate to even set a fee but will accept $15 or your grubstake. All proceeds of the evening will go to the Alaska Bar Foundation. (Somewhere within the cost of your ticket lurks a tax deduction!)

Dress up or dress down, but get set for a wild northwester evening! (cowboys and cowgirls welcome!)

BOG Proposes Bylaw Changes

At its December, 1981 meeting, the Board of Governors voted to propose changes to the Bylaws of the Alaska Bar Association. The changes are to increase the specific responsibilities of the President-Elect, the Vice President and the Secretary. Added to the responsibilities of the President-Elect will be an obligation to act as liaison with all local bar associations. The Vice-President, who has in the past been responsible for the operation of all the Committees, will now have responsibility for the operation of the Executive Committees of the Substantive

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Resolutions Regarding Judicial Dues

RESOLUTION

Be It Resolved, That the Alaska Bar Association supports enactment by Congress of H.R. 3974 (97th Congress), or similar legislation to establish a judicial retirement system for bankruptcy judges and to bring incumbent judges into the system on an equitable basis.

William D Astes

James B Bulwinkle

John B. B. C

Barry W. Jackson

Raymond Matthews III

James S Crane

Raymond E Plummer Jr.

Sections Meet Substantive Law Updates Included

ADMINISTRATIVE LAW SECTION AGENDA

Chairperson: **Andrew E. Hoge**

Update Presentation: *"Recent Developments in Administrative Law"*

Panelists: **Robert T. Shoaf**
Paul S. Wilcox
Donn T. Wonnell

Discussion Presentations: *"The Appealability of Remand Orders of the Superior Court in its Appellate Capacity"*
Millard F. Ingraham

"The New Model Administrative Procedures Act"
Arthur H. Peterson

★ ★ ★

BUSINESS LAW SECTION AGENDA

Chairperson: **Wayne C. Booth, Jr.**

Update Topics: *"Legislative Review"*
Richard L. Block

"Supreme Court Cases"
Walter H. Garretson

"Alaska Bankruptcy Cases"
The Honorable **J. Douglas Williams**

Discussion Topic: *"Secured Creditor in Bankruptcy"*

Panelists: **David M. Bendell**
Mark A. Ertischek
Mary Louise Molenda

★ ★ ★

CRIMINAL LAW SECTION AGENDA

Chairperson: **Rhonda F. Butterfield**

Update Topic: *"What Our Legislature Did and Didn't Do"*
Rhonda H. Butterfield
William P. Bryson

Discussion Topics: *"Analysis of the Court of Appeals"*
John E. Havelock

"Update on the Drunk Driving Law"
Allen M. Bailey

★ ★ ★

ENVIRONMENTAL LAW SECTION AGENDA

Chairperson: **Durwood J. Zaelke**

Update/Discussion Presentation: *"Wetlands"*
Clifton H. Eames, Jr.

"Regulatory Reform"
Jonathan K. Tillinghast

"Environmental Legislation"
David L. Allison

"Alaska Lands Act"
Robert E. Price

Panel Moderator: **John W. Sedwick**

★ ★ ★

FAMILY LAW SECTION AGENDA

Chairperson: **John E. Reese**

Topic: "Recent Developments in the Field of Family Law"
Max F. Gruenberg, Jr.

Discussion will focus on extensive legislation in Alaska concerning domestic relations matters, including the child custody bill

★ ★ ★

NATURAL RESOURCES LAW SECTION AGENDA

Chairperson: **Carl J.D. Bauman**

Update Topics: *"General Introduction & Brief Update on Oil & Gas Matters"*
Carl J.D. Bauman

"Developments in the Fishing Industry: Limited Entry Issues & Fish Tax Relief; Proposals re: Botulism Problems"
A. Cameron Sharick

"Report of the Subcommittee on Section 6(i) of the Statehood Act & Other Mining Law Developments"
Harris Saxon

"Developments in the Coal Industry"
Jeffrey B. Lowenfels

"Report on the Subcommittee on Petrochemical, Natural Gas, & Natural Gas Liquids"
John K. Norman

"Report on Alaska Legislative Developments Affecting Natural Resources Law"
Steven W. Silver

The Natural Resources Law Section will also secure a keynote speaker to address the Section members. Alaska State Department of Natural Resources Commissioner **John Katz** or **Bill Horn** are possible speakers.

★ ★ ★

PROBATE LAW SECTION AGENDA

Chairperson: **Paul W. Paslay**

"Update and Review of Pending Legislation"
Paul W. Paslay

★ ★ ★

REAL ESTATE LAW SECTION AGENDA

Chairperson: **Peter A. Lekisch**

"Recent Developments in the Field of Real Estate Law"

Presentations will be made by various members of the Real Estate Law Section

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NOTICE

The State of Alaska, Department of Commerce and Economic Development, Division of Occupational Licensing, is soliciting the services of qualified attorneys in Alaska, under professional services contract basis, to perform duties as hearing officers under appointment by the Governor. Duties include presiding over and rendering decisions in professional licensing violation hearings in accordance with the Administrative Procedure Act (AS 44.62. 330—44.62.630). The minimum qualification for appointment is admission to practice law for at least two years (AS 44.62.350(c)). A desirable additional qualification is prior experience as a hearing officer, administrative law judge, or judge. At present, the department's maximum allowed contractual rate for hearing officers is $75/hour plus limited expenses. Persons interested in providing the above mentioned contractual service or desiring additional information should contact:

Harry D. Treager, *Director*
Department of Commerce and Economic Development
Division of Occupational Licensing
Pouch D
Juneau, Alaska 99811-0800
(907) 465-2534

President's Final Column

by Karen Hunt

In this, my last column, it is real tempting to reminisce about the past in the Alaska Bar Association — at least the past that I have been involved in as a Board Member. However, reminiscing is usually boring and mostly a waste of time. Besides, I think it is inappropriate at this point in the development of the Alaska Bar Association to reminisce about anything. Where we have been seems to have been appropriate for who we were and what we were trying to do. It does not seem appropriate at this time when the Bar is rapidly approaching the 2000-member mark. We are no longer the smallest bar in the United States, there are, in fact, about four smaller than we are. We are also rapidly approaching that point where the "wheat is separable from the chaff." By that I mean, that there is recognizable in the Bar Association a hard core of attorneys who want to have and appreciate having a professional organization that gives them the opportunity to work with their colleagues on matters of common interest. That is a group that we can count on to lead the Sections and serve on Committees, put on the CLE programs, attend functions and generally support Bar activities. Believe me, this group of people are very appreciated by those of us who volunteer to stick our heads into the noose and take on the responsibility for "governing" the Bar Association.

We particularly appreciate it because since members raised the bar dues to $300, it seems to me that we have seen an attitude develop in the legal profession in this state which basically says:

"I pay you $300. Therefore, do not bug me about anything — and everything that the Bar Association does should be free to me."

From a budget point of view, unfortunately, those expectations cannot be met by the Association. The costs of admissions and discipline alone eat up a most significant portion of our bar dues. Given those costs and realizing that there is no source of income other than for lawyers to support those activities, I sometimes wonder if we would not be better off to be a voluntary bar and give discipline and admissions to the Supreme Court. The activities are, after all, public functions. I realize that this comes from someone who during the recent Sunset Review vigorously supported the point of view that it was in the best interests of the profession and of the public for the attorneys to be self-regulatory via a mandatory bar. If I should have a future change of attitude and commit instead to the idea of a voluntary bar, I realize that it will be because of the costs and the perceived attitudes discussed above.

Finally, it seems to me that it is the legal profession and not the Bar Association which is a most important thing in an attorney's life. By that I mean that whatever structure (i.e. a Bar Association, mandatory or otherwise) which the legal profession selects to organize itself into, it is the underlying health and well-being of the profession which is crucial. Whether we like it or not, this profession is unique in that a branch of the government depends upon our competency in order to function. That is a kind of public service and a kind of responsibility that I believe is shared by no other profession in this country. It is also something that should be zealously guarded at the same time that the profession is consistently on the alert to be competent and ethical. Thus, the question for the

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Editorial:

The Pleasure of Our Company

It is time once again to remind ourselves that we belong to a profession; and to gather together in riotous good humor to deliberate on matters great and small. In other words, the **Alaska Bar Association** is once again staging its *annual convention* — this time in *Anchorage on May 19 through the 22nd at the Hotel Sheraton* and as many of us as possible ought to be there.

After attending several of these conventions, we find that (as with a good party) we remember not so much detail, as feeling. It doesn't really matter much whether at a previous convention the American Bar Association President thrilled us with his timely speech "New Directions for the 300 Man Law Firm," or that the Board of Governors once again resurrected compulsory CLE and specialization. We don't recall how much money the irrelevant headliner was paid for his thirty minute speech. We don't remember what he said, either. We didn't take notes during the various worthwhile and important CLE presentations and most of what was said at those meetings we have long since forgotten. It doesn't matter. We had a good time. We remember the goofy things that happened. We remember the horseplay with our friends across the State. We remember our intense feelings of outrage at the annual business meeting over the usual appalling resolutions. We made some good connections. We thought, argued and fought over some things that seemed important at the time. We reminded ourselves that we are all lawyers together and that a lawyer is not such a bad thing to be — not bad at all. Let's do it again.

by Harry Branson

Letters to the Editor

Fraties Angers

To The Editor:

As an attorney and a prospective member of the Alaska Bar Association I feel compelled to express my disappointment and anger at the article written by **Gail Roy Fraties** in the January/February issue of the *Alaska Bar Rag*. I am angered by the insensitive, sexist, and discriminatory 'anecdotes' in Mr. Fraties' column. More importantly, I am disappointed that the editorial staff of the *Alaska Bar Rag* should choose to publish an article of such low calibre and poor taste. The presentation of an article of this nature in what is supposedly a professional publication is in my opinion improper and inexcusable.

Though I am somewhat unfamiliar with the format of the *Alaska Bar Rag* I assume that the "All My Trials" feature is supposed to be a collection of 'war stories' from veteran attorneys. While I am not advocating any form of censorship (I have no desire to limit the discretion of the editorial staff) I suggest that if Mr. Fraties' article is the best the *Bar Rag* could come up with, why bother printing anything at all. I fail to see what anyone could gain from reading this article other than a sense of disgust for the attitudes which are expressed therein.

In conclusion I would direct a comment to Mr. Fraties. If the "narcotic addict" had been one of your friends or relatives I wonder if you would still think that everything "ended happily." Evidently your office had greater concern for the sexual assault of an animal than it did for the rape of a human being (what the hell, it was only a drug addict, right?). I wonder if you spent half as much time investigating the violation of that person's rights as you did trying to come up with a charge against the individual who had sex with a horse?

Sincerely,

Gary M. Guarino

Criticize Judges

Dear Editor:

Your policy of printing in the *Bar Rag* excerpts of letters of informal admonitions to members of the bar is, I think, a commendable service to the bar and to the community.

Not only do we now know that the substantial increase in our dues is producing worthwhile results but, more importantly, these wanderers and miscreants have had their deeds exposed to provide guidance for all other potential deviationists.

It would be good to print the names as well. If that had been done, we would know the name of that attorney who had the termerity to write a letter to a judge, criticizing him (her). Apparently this attorney forgot that the First Amendment stops at the judge's chambers. Not only that, but this undeserving member of the bar forgot that once a person becomes a judge,

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Random Potshots

by John E. Havelock

World Peace Through Law

A few years ago, the Alaska Bar Association had a formal "World Peace Through Law" Committee, a national venture lead for years by former American Bar President **Charles Rhine.** As far as I know, Alaska's commitment to this kind of thing is now dead, at a time, ironically, when the development of a world legal order, more effective in managing dispute resolution and reducing international tension, is the only hope for avoiding holocaust. As I shall explain, the issue has a special urgency this year that should cause any thoughtful person to consider what he or she might do to promote the cause of world peace through law.

This spring convention would be an appropriate time and place for the Alaska Bar to recommit to the search for negotiated settlement of international disputes. Lawyers should take the leadership role in the development of forums, processes, institutions, skills and attitudes which will bind the world in a legal order.

No Imperium

This does not, of course, necessarily entail some world imperium. In fact, lawyers should participate in crafting arrangements which accomplish the essential without impairing the many advantages for freedom of our decentralized and pluralistic world. What is both essential and immediate to world law is that which can contain and reduce the possibilities of nuclear war.

As a first step we need to rethink a number of American policies which have been made obsolete by technological developments in nuclear armament. Foremost among these is our need to redirect the (already faltering) commitment of the national administration to a massive buildup of new, nuclear weapon delivery systems. This commitment is logically joined with an abandonment of the arms limitations negotiation process which was carried out under Ford and Nixon as well as Carter and Johnson.

Negotiate From Strength

The prevailing faction in the Reagan administration proposes that one can only negotiate from strength and thus bargaining is useless until we have achieved "superiority," by some chosen measure, in arms systems. Particularly in a world where the measures of superiority are so varied and uncertain, this is a dangerous doctrine and certainly unlawyerly.

The technological changes which now so urgently require a change in national security strategy are neither complex nor seriously disputed. Simply put, within the past two or three years, increases in the accuracy of strategic missiles and the introduction by both sides of multiple warheads on each missile which are independently targeted mean that both sides have greatly increased their capability to destroy the ability of the other side to strike back if it undertakes a first strike. (In addition, the destructiveness of this potential onslaught on the earth and its people has been increased several fold.) Thus a credible deterrent requires the adoption of a policy of getting everything off the ground, once any type of threat seems imminent. All forces go on a hair trigger.

Meaningful War

This development in turn has underlined the essential nihilism of "all out" nuclear war. It is increasingly clear

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All My Trials

by Gail Roy Fraties

Students of the Alaska judicial system, of whom I count myself one, have noted that the immense pressure of the Anchorage case load has had a startling and pervasive impact on motion practice in this city. The ever-present pessimists are fond of pointing to those sociological experiments which indicate that rats, trapped and overcrowded in a maze, tend to attack one another. As observed by Court Administrator **Arthur H. Snowden**, "Those that the Court System would destroy, it first makes mad."

Fill It To The Rim

For example, I can never watch Anchorage Superior Court Judge **Ralph E. Moody** at arraignments without thinking what a marvelous decaffeinated coffee ad the world is missing. The scene opens with Judge Moody, attended by his staff, fidgeting in his chambers after an unusually heavy session. Actor **Robert Young** enters and speaks.

Robert Young: "Wow, Ralph, you were a bit tough on old **Gail** today, weren't you ---?"

In-Court Deputy **Leila Breaux:** "It's his coffee, he just loves it — but it's the caffeine he can't stand."

However, more enlightened observers have noted that the Judge's seemingly testy approach toward his duties is really a highly sophisticated form of communication, developed through necessity by the volume of motions submitted by the Public Defender's Office, the prosecutors, and private bar. The spiel of the tobacco auctioneer, and the subtle signals of an art auction are also unintelligible to the uninitiated — they too having evolved because of the necessity of the participants to communicate in a highly charged, noisy and disorderly atmosphere.

Power Motion Practice

To watch Judge Moody in concert with former Public Defender **John M. Murtagh** is a study in speedy and effective resolution of complex legal issues. It only requires interpretation to become understandable.

Attorney Murtagh (having briefly stated his legal position): "--- Therefore, your Honor, it is our belief that the defendant, although an indigent, an itinerant, and a recidivist escapee, should be granted release on his own recognizance."

Judge Moody: "-- Nighed." (Sometimes pronounced "denied.")

Translation: "Counsel, your motion has been carefully considered, and although you present your position cogently and I am impressed by the authorities you have cited, I must accede to the position of the District Attorney's office that — barring an opportunity to put your client to death painlessly as soon as possible — the protection of the public would seem to indicate that a high bail is necessary."

Attorney Murtagh: "But, your Honor --"

Translation: "I wonder if the Court has had the opportunity to consider the subtler implications of the most recent Supreme Court cases cited in our brief? If so, and upon mature reflection, is it not possible that the Court may reconsider?"

Judge Moody (raises right hand, and jabs index finger toward ceiling).

Translation: "Counsel, your position is thoughtfully expressed, but this forum declines to reassess the matter. The Supreme Court of the State of Alaska, however, which sits on the fifth floor of this building, may embrace your legal reasoning. I urge you to present the problem there without delay."

Attorney Murtagh: "Your Honor, may I --"

Translation: "I deeply appreciate this Court's patience, but would urge your Honor to grant my client immediate relief. An appeal to a higher tribunal, at this juncture, would sadly inconvenience him — since their own crowded calendar precludes speedy resolution of this vexing problem."

Judge Moody: "Push five when you get on the elevator."

Translation: "I thank counsel for his observations, but must reiterate my original position — and urge recourse to the Appellate Courts as a viable alternative to further debate."

The difference, of course, is in judicial economy. What would ordinarily require fifteen to twenty minutes of colloquy is reduced to a matter of seconds, due to the technical mastery of the individuals involved.

Yin and Yang

Some of my readers are in prison — I'm sorry to say (sorry for them, that is — I sure as hell tried to avoid it) and others are in police circles. Since I have friends in both camps, I sometimes have difficulty in exlaining their divergent views to each other. You know how it is when you give a dinner party and invite a mixed bag of your favorite people — hoping that the chemistry will be right. Since these two groups spend most of their professional lives raising hell with each other, it's somehow difficult to achieve a meld.

Any high ranking policeman can tell you that the line of demarcation between the two factions is a thin one, particularly when dealing with members of the Detective Division. In the jungle habitat where investigators and the criminal element alike ply their trade, the essential differences between the hunter and the hunted are not all that apparent — and the general craziness that pervades the streets seems to affect everyone equally.

An Irresistible Impulse

Former Public Safety Commissioner **James P. "Pat" Wellington** needs no introduction to the criminal bar, or to anybody else in the criminal justice system for that matter. The *cognizetti*, however, are aware that Pat's close personal friend Captain **William Houston** — former Director of the Division of Adult Corrections and presently the Superintendent of the Lemon Creek Correctional Facility at Juneau — is easily as twisted as Pat is, and probably worse. A war story from their past will illustrate my point.

Twenty years ago, both of them were serving on the Juneau Police Department — Pat as a lieutenant, and Captain Houston as a detective sergeant. In those days, the police department was located on the top floor of the old court building — high on a hill in Juneau. It has since been replaced by a modern State office building.

Anyway, the bathroom which had been provided for the officers in the station was a small and narrow cell-like affair at the top of the stairs. It had a toilet, and a wash basin — otherwise, there was barely room to turn around. The building was old and shabby, and the door to the john — being ill-fitted and badly hung — had at least an inch of space under it.

Apocalypse Now

Chief of Police **T. L. "Swede" Severson** — a large and dignified individual with little patience for frivolity — outfitted himself one winter morning in his full regalia, prepatory to attending a city council meeting. He put on his dress uniform, replete with stars on the shoulder, and was altogether an imposing presence. As he prepared to leave the building, however, he answered a call of nature in the small cubicle I have described, and was apparently seated there when Detective Sergeant Houston returned from a burglary investigation. At the top of the stairs, next to the bathroom, his superior officer — Lt. Wellington — was waiting. For some reason, he had a fifteen-pound CO_2 fire extinguisher in his hands.

"Bill," said the Lieutenant in a quiet but commanding voice, "the Chief's in the biffy. Give him a little shot," he continued, handing over the fire extinguisher. Sgt. Houston, the product of many years of disciplinary drill in the Marine Corps, complied instantly — inserting the nozzle of the extinguisher under the door, and pulling the lever. Startled by the Chief's bellow of rage, he dropped the heavy equipment — which jammed under the door, and couldn't be shut off.

By this time, Chief Severson was making sounds like a water buffalo trapped in a broom closet, and the terrified officers — afraid to face his wrath — did the only sensible thing and ran away. Eyewitnesses have described his appearance, when he finally emerged, as looking like Frosty the Snowman dressed up for a part in the "Pirates of Penzance." A few tracks, and a small half-moon on the toilet seat were the only areas of the bathroom not thickly coated with foam. His uniform was in sad disarray, he was late for his meeting with the Council, his dignity was compromised, his day had been ruined, and he was looking for raw meat.

Guilty, With Mitigating Circumstances

Pat Wellington, whom nobody has ever accused of being nonpolitical, managed to stay out of sight for two hours before the Chief caught up with him. Sgt. Houston had driven to the airport, and was contemplating taking a flight for Seattle, when cooler heads reached him on the radio and urged him to turn himself in, which he eventually did.

If I remember correctly, Pat pleaded temporary insanity and Sgt. Houston took the position that he was only following the direct order of a superior officer. Chief Severson didn't think any more of that excuse than the Nuremberg Court did, but finally relented — accepting a sacrifice of two days annual leave from each individual in atonement. Both, from the vantage point of the many years that have passed since that electrifying moment, agree today that it was worth it.

Suspicions Confirmed Department

My stringers around the state have supplid me with this week's quotable quotes from the judiciary, as follows:

Anchorage Superior Court Judge Ralph E. Moody to District Attorney **Larry R. Weeks** after defense attorney **Michael J. Keenan** cited the latest Alaska Supreme Court case, supporting his position on all fours: "I think we're in trouble."

Ketchikan Superior Court Judge **Thomas E. Schulz,** upon being alerted by his clerk that it was time for a ruling, after having "rested his eyes" during a late Friday afternoon adoption hearing: "I find sufficient basis to establish incompatibility of temperament, the property settlement is reasonable and ---."

Cameras in the Courtroom

Amendments to the Judicial Canons will make it easier for the media to broadcast state court proceedings. An order of the supreme court, effective February 1, 1982, reduces the number of participants who can bar cameras from the courtroom.

Under the new provisions, civil proceedings can be covered with the consent of the judge. Permission from the parties' lawyers is no longer required. Cameras may be allowed in all proceedings except family and juvenile matters. Criminal cases will be open to media coverage as long as the judge and defendant agree. In cases dealing with sexual offenses, the permission of the victim is also needed. Arguments before the supreme court and the court of appeals can be broadcast with the consent of the court. A witness or party cannot be photographed if he/she objects. A trial participant can also preclude broadcasting of his/her testimony.

To encourage media coverage of court proceedings, every major court construction project will now include one courtroom specifically designed for electronic media coverage. The first remodeled courtroom will be available in Achorage later this year. Plans call for a glass enclosure at the rear of the courtroom, in which the press can set up electronic equipment without disrupting proceedings. The room will be pre-wired and direct telephone lines will be installed.

All Anchorage television and radio media personnel must contact the audio-visual staff in the Office of the Administrative Director in Anchorage at least one day in advance of the proposed coverage to insure that all equipment will be set up in accordance with the court system's media plan.

The Battle of the Hoe

All summer long the green war wages,
Day after day, year after year,
No matter what the weather is —
Raining, windy, cloudy or clear.

When it come to plants I cultivate,
My thumb's more brown than green —
But there's one so tough it needs no help,
And to die it's just too mean.

I can yank and cut and stomp and break it
Until I'm sure that it's dead —
But leave it alone for 24 hours
And up comes its yellow head.

It makes a very early appearance
As soon as the snow is gone
And outlasts everything else in sight
In the fall, including the lawn.

I mow and poison and dig and pull,
For all the good that it does —
In a matter of only a day or so
Two replace the one that was.

Though I labor daily to rout them out,
What good is my faithful guard?
When a breeze comes up, what comes my way?
Fluff from a neighbor's yard.

I've tried every trick I've read or heard —
I deserve an A for tryin',
But I'm finally convinced that nothing can kill
The invincible dandelion.

Susan Hallock

MORE LETTERS...

[continued from page 4]

that as a judge, he (or she) cannot be criticized. Apparently because their skin may be too thin!

I am sure the bar, in its infinite wisdom, considered the possible effect its admonition will have on attorney-judge communications and the courts desire to know how we may really feel about some of their decisions. [I] guess the judges just need another layer of insulation from reality.

Ronald West

Fraties Defended

Dear Harry:

Mr. Guarino writes that he "fail[s] to see what anyone could gain from reading [Gail Fraties' feature] other than a sense of disgust for the atitudes (sic) . . . " We should be thankful that others in our pluralistic and free society recognize that different people can possess a variety of tastes and ideas. I cannot presume to speak for others, but I can say that the four readers in my office turn first to read Gail's feature and enjoy it wholeheartedly.

To Mr. Guarino, I say "different strokes for different folks." To you and Gail, I say keep up the good work.

Sincerely yours,

Richard D. Savell

Fraties Responds

Richard D. Savell, Esquire
200 North Cushman Street, #209
Fairbanks, AK 99701

Dear Dick:

Thank you for my copy of your letter to Harry Branson of April 7, 1982. I don't know exactly when it arrived here — but I've been buried, as usual. In any event, I hasten to reply now.

I haven't seen Mr. Guarino's letter yet, but I hope I haven't offended him as much as I apparently did poor Dick Whittaker. Is he the one that said he wasn't going to go to bed with his wife again, on the assumption that he might produce a child which would grow up, become a lawyer in Alaska, and read my columns?

In any event, if he's studying to be a lawyer in your home town, he'd better toughen his sensibilities up a bit. I'd put the Tanana Bar minutes on a par any time with my own feeble efforts to drag the profession into disrepute.

In any event, thank you for your comments — and I'm looking forward to seeing you at the continuing education of the Ketchikan Bar in the fall.

Yours very sincerely,

JERMAIN, DUNNAGAN & OWENS
Gail Roy Fraties
Of Counsel

Judicial Election

Senator Pat Rodey
Chairperson
Senate Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: Election of Attorney General, District Attorneys and Judges

Dear Mr. Rodey:

The Board of Governors of the Alaska Bar Association limits its legislative activities to those issues which impact on the administration of justice and the delivery of legal services to the public. One set of such issues is whether the present system should be changed to provide for the election of the Attorney-General, District Attorneys and/or judges. Below is a *very* brief discussion of the results of a February poll taken of the members of the Alaska Bar Association on those issues. The Board has directed that I communicate these results to you for your information. Thirty-five percent (35%) of the attorneys responded as follows:

1) elect Attorney General:
   No-71%, Yes-29%
2) elect District Attorney:
   No-79%, Yes 21%
3) elect Judges:
   No-82½%, Yes 17½%

Each respondent was given an opportunity to comment and repeatedly the following concepts were discussed.

The judicial branch of government in Alaska was deliberately not made a representative, elected body. It is an integral part of a three-branch, checks and balance system of government. Further, judges should not interpret the law because of a temporary, single, explosive political issue: the need for predictibility and uniformity in our laws is too vital to the welfare of Alaskans. Likewise, judges should be able to uphold "unpopular laws" which safeguard the rights of individuals or groups who are not a part of the electorate who supported the people elected.

Of equal concern to the respondents was the realization that special interest groups could unduly influence court decisions and District Attorney prosecutions because of the amount of compaign contributions they could raise or the "party machinery" they could control. Likewise, concern was expressed about the backlog and system slowdown that would occur while judges and district attorneys planned for, solicited funds for and conducted an election campaign. This could be particularly harmful in small communities which have only one judge or District Attorney. Additionally, concern was expressed about the lack of uniformity of law enforcement that would result because district attorneys would be elected on different "platforms".

The concerns expressed about election of the Attorney General included possibility (in Alaska perhaps probability) of the Attorney General and Governor being of two different parties thereby introducing non-productive dissention in the administrative branch. The Attorney General's office becoming primarily a stepping stone to running for Governor was also mentioned as a disruptive possibility.

The confirmation by the legislature was viewed by some respondents as encouraging scrutiny of the Attorney General by elected representatives thereby giving the voters final say about the Governor's selection. Likewise, the retention election of judges provides voter acceptance or rejection of the performance of judges. This process was viewed as a good balance and check on the initial appointment process.

Of particular interest are the uniform comments from attorneys who have practiced law and lived in states where judges and/or district attorneys and/or the Attorney General are elected. Each respondent who so indicated such experience was opposed to changing our present system. The states of California, Illinois, Florida, Idaho and Oregon were specifically mentioned.

One example was emphasized where (in Florida) a new law school graduate entered the race for a judgeship at the last minute raising substantial campaign funds by attacking the judge's decision which had upheld a statute of the state legislature. He won thereby removing a judge with much experience and a solid reputation for fairness and efficiency on the bench. He was thereby committed to a particular interpretation of a statute regardless of the facts of the case that might come before him. This result is contrary to the genius of our Anglo-Saxon system of justice which begins with the unalterable proposition that each party before the court has an absolute right to have his case decided solely upon the facts before the court.

The most repeated concept expressed by respondents who said judges, district attorneys and the Attorney General should be elected was that governmental decision makers should be elected by the voters.

We will try to provide such additional information or further discussion you may desire to the extent that we know or can ascertain the views of our members.

Yours very truly,

Karen L. Hunt
President

Rodey Replies

Ms. Karen Hunt, *President*
Alaska Bar Association
P.O. Box 279
Anchorage, Alaska 99510

Dear Karen:

Thank you for your recent letter and for forwarding the results of the recent poll of the Alaska Bar Association regarding the election of the Attorney General, District Attorneys, and Judges.

While it appears that the majority of my colleagues and I agree on the election of District Attorneys and Judges, I do not share the sentiment of those polled on the question of electing an Attorney General.

I concede that the Attorney General's office may become a stepping stone for a higher elective office, but I feel that the office is essentially a political one now. Additionally, since I feel the Attorney General is the second most powerful public position in the state, I fail to understand how allowing citizens to determine who should hold the office is counter productive.

I do appreciate having the comments of the Association on the election of these positions, and I welcome knowing the thoughts and concerns of the Association and its Board of Governors on other proposals. Even if we don't always agree, I find the comments helpful in weighing the pros and cons.

Best wishes,

Patrick M. Rodey

Barnes Opines

Ms. Karen L. Hunt, President
Alaska Bar Association
P.O. Box 279
Anchorage, Alaska 99510

RE: *House Joint Resolution 22 — A Resolution to allow the people of Alaska to decide whether they wish to elect their Attorney General.*

Dear Ms. Hunt:

Thank you very much for your letter of March 4, 1982, which explained the results of the Alaska Bar Association poll on the election of the Attorney General, District Attorneys, and Judges. I found the information useful, and I realize from the debate on the House Floor on March 17, that other members of the House found your letter to be very useful.

First, I would like to explain to you that the resolution debated, HJR22, only pertained to the Attorney General, not any other state officials. The Resolution was to allow the people of this state to go to the polls and make their own decision about whether they would like to elect the Attorney General of the state. It is my view that at this point in time it is appropriate for the voters, as opposed to the legislators, the Bar Association, or any other special interest group, to make this decision. In any event, none of the other elected officials you mentioned in your letter were covered in that Resolution, and there is not at this time any bill or resolution before the House Judiciary Committee pertaining to the election of those officials.

I appreciate your remarks about the original structure of the Executive Branch, as developed in the Constitutional Convention of 1956. However, I would like to assure you that I was already familiar with the history of that convention as it related to the decision to elect the Attorney General. Frankly, it appears to me that we would do well to allow the people to decide if they wish to continue the present practice of an appointed Attorney General, or be allowed to make their own decision, as is done in 44 other states.

As to the poll itself, I note that only 35% of the attorneys responded. Perhaps this indicates complacency on the part of the large majority of the Alaska Bar Association. Perhaps not. If there are approximately 1,500 members in the Alaska Bar Association — I am not aware of the exact figure — I would calculate this to be 525 responses, with the 71% against allowing the people to decide whether they wish to elect their Attorney General equating to 373 attorneys.

Although I did not see the form for the poll itself, I understand that it was mailed out to a number of attorneys very shortly before the due date and consequently, some were not able to return the poll to the Alaska Bar Association in Anchorage in time for their ballot to be counted. Also, I wonder if the poll, which I assume was answered anonymously, indicated whether the respondent was presently an attorney employed by the State of Alaska, particularly the office of the presently appointed Attorney General?

In summary, I do not feel that the opinion of 373 attorneys, more or less, should be controlling over whether the people of this state should be allowed to decide in a fair election whether they wish to elect their Attorney General. I quite agree that there is to a fortunate extent a "genius" in our Anglo-Saxon system of justice. Apparently, part of that genius, going hand in hand with our Anglo-Saxon system of democracy, is to allow the people to make their own determination as to whom they wish to be the Chief Attorney of the State, considering the overwhelming law in the other states of this nation. Perhaps it all boils down to whether or not we trust the ordinary voter in our democratic system to make these decisions.

In any event, I do appreciate your providing such information as you did in the letter to myself and the other members of the Legislature.

Sincerely,

Ramona L. Barnes
Representative, District 10

PRESIDENT'S COLUMN...

[continued from page 4]

Bar Associaiton must at all times, it seems to me, be whether the structure and activities of the Bar Association provide support and growth for the competency and integrity of the legal profession. Few activities by the Bar Association are "good" activities if they do not serve those ends.

I started out this column by saying I would not reminisce, unfortunately, for any readers who have stayed with me this long, I did not also promise that I would not "soapbox."

It has been a privilege to serve as the President of the Alaska State Bar Association. At the same time, I must admit that I am appalled at the amount of personal time and loss in lawyering time that it has demanded. It is a price that I feel should not need to be exacted, but under our present system, it appears to be a cost. My heartfelt good wishes and support go to Andy Kleinfeld as the incoming President. I urge you to help and support him also.

Avoiding Malpractice

by John H. Swanston

The following is a very general overview of various factors involved in avoiding malpractice claims. We intend to bring to your attention, on a regular basis, developments in this field together with selected cases from our claim files to illustrate the measures lawyers can take to prevent malpractice claims.

Picture, if you will, the large conference room in your law offices. This is the third day it has been occupied by a group of attorneys and a court reporter. All of the persons in that room are being paid for their time. Except one. You. Why? Because you are the defendant in a malpractice action.

While everyone recognizes that the defense of professional liability suits is expensive, most people overlook the hidden expense; the unbillable hours that must be spent by the lawyer -defendant and other members of his firm. The amount of time lawyers devote to their own defense in these cases is usually, on the average, greater than that of other professions.

It Adds Up

Files, often voluminous, must be reviewed. Then there is the initial conference with the attorney who will conduct the defense. Although not necessary, lawyers prefer to review any pleadings prepared on their behalf before they are filed. Review of documents to be produced can be very time consuming, but necessary, as questions of privilege are often present. Then come the pre-deposition conferences and the deposition of the defendant(s) itself. Many times lawyer - defendents wish to avail themselves of the right to attend the depositions of other parties in the litigation. Many times there is considerable motion practice in which the lawyer - defendant involves himself. Usually this is followed by pretrial preparations and the trial itself. Add on those many brief bits of time devoted to telephone conversations, conferences and personal research. It all adds up, doesn't it?

Anyone Can

One can practice law flawlessly and still become a defendant in a malpractice action. Any person or client who feels he has been wronged and sustained damage because of an act or omission of an attorney can seek redress in our courts. While it is true that about 70% of lawyers malpractice cases are resolved in favor of the defendant, each and every case must be defended. Once the suit is filed, that "unbillable time" clock starts running. There is nothing an attorney can do to prevent a suit from being filed; there are a number of things he can do to minimize the chances of a suite being filed.

More suits for malpractice arise from the failure to meet deadlines than any other single cause. An effective docket and calendar *system* will minimize this exposure. Different types of law practices require different types of systems.

System Fails

Every law practice has a system; it is the failure to follow the system that results in a missed deadline. Check the system periodically to be certain that all elements are functioning properly. Due dates that must be calculated should be calculated by one person and verified by another. Most of the claims in this area are not the result of erroneous dates but rather the result of a breakdown in one element of the system. Some systems can be seriously compromised if an open file is erroneously filed with the closed files. If this can occur, files should be tagged in such a way that the open file will stand out if it is misfiled.

Many malpractice claims could be prevented if lawyers adopted the proper *attitude* toward their client. A client who has been treated with respect is far less likely to assert a malpractice claim than one who believes he has been treated in an arbitrary or arrogant manner. A matter that may be very routine to the lawyer may be the most important event in the client's life at that time. The lawyer's attitude should be one of caring about his client's interest. He should give the impression that when he is working on that particular case, it is receiving his total and undivided attention. When the client asks questions, he expects answers. When he calls to talk to the lawyer, he expects his calls to be returned.

Talk is Essential

Proper *communication* with clients can avoid misunderstandings which, many times, lead to malpractice claims. It can start with a communication which the accounting profession calls an Engagement Letter. This letter should outline the scope of the work undertaken, fees to be charged and a confirmation of any important matters discussed at the initial conference. Should the lawyer not undertake to represent a person after an initial conference, a letter so stating should be written to the non-client. Many times such a letter will avert future problems. Send copies of correspondence to the client and he will know that his case is receiving attention. Should you reach any oral understandings with a client, confirm such understandings by letter to avoid future misunderstandings.

Admit Ignorance

A lawyer who wishes to avoid malpractice claims should not be afraid to admit to himself that some matters are beyond his competence or expertise. This is particularly true of matters that involve the law of other jurisdictions. Do not hesitate to either refer a matter to other counsel or associate other counsel. When properly presented to the client, such a procedure is acceptable. To retain such a case is a disservice to the client and to the lawyer.

Everyone who performs a service as agreed is entitled to be paid as agreed. This applies to lawyers, other professions, tradesmen, etc. However, take a long look at the client and his reasons for non-payment before instituting a suit to recover fees. Quite frequently these suits are answered by a counterclaim and the "unbillable time" clock starts running. This should be considered before instituting a suit to collect fees.

Mr. Swanston *of the American International Group is an attorney with broad experience in the area of Legal Malpractice.*

New Programs of the United States Court of Appeals for the Ninth Circuit

On October 1, 1981, the United States Court of Appeals for the Ninth Circuit, already the largest geographic circuit, became the largest federal circuit in the number of case filings and judges. Unfortunately, the Ninth Circuit also has the largest backlog of any circuit and over the last two years experienced a 42% increase in the number of filings. In an effort to increase substantially the number of cases decided each year and thereby reduce delay and better serve the bar, the Ninth Circuit has recently adopted a package of innovations. These were the outgrowth of a year-long study conducted by the Federal Judicial Center at the request of the court. The three major components of the package are: (1) each active circuit judge will sit on 13% more oral argument panels each year; (2) the court will decide approximately sixty cases a month without oral argument; and (3) prebriefing conferences will be conducted in civil cases arising from the Northern District of California. The Court expects to expand the prebriefing conference project to other districts.

Submission Without Argument Program

The Court will decide approxi-

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District Court Implements Changes

Effective May 3, 1982, the District Court for the Third Judicial District will implement the following changes:

1. **Reorganization of Master Calendar**

   The Master Calendar has been slightly reorganized into seven formal departments.

   Department I is the Calendaring Department responsible for daily case assignments; hearing motions on criminal cases; call of the calendar; preliminary hearings; and, preindictment hearings. A judge is assigned to this department on a semi-permanent rotating basis.

   Department II is designated as the Criminal Department responsible for arraignments; setting of call of the calendar dates; and, bail hearings. A judge is assigned to this department on a weekly rotating basis.

   Department III is designated as the Civil Department responsible for miscellaneous hearings such as FED, defaults, small claims, judgment debts, etc., plus warrant application duty from 1:00 - 1:30 p.m. A judge is assigned to this department on a weekly rotating basis.

   Department IV through VII are designated as Criminal Trial Departments. Each morning between 8:30 and 9:30 these departments will handle change of pleas. Jury or non-jury criminal trials will follow. Judges are assigned to these four departments on a weekly rotating basis.

2. **Disqualification of Judge**

   The court has adopted a policy requiring that all Judicial Disqualification pursuant to Civil Rule 42 or Criminal Rule 25(d) be in writing. Form TC-120 is available in the Calendaring Judge courtroom, the receptionist desk, or Calendaring Office, Room 224 and may be filed in the courtroom or Calendaring Office before any hearing if timely. This policy is in accordance with the provisions of Civil Rule 42c.

3. **Scheduling**

   .Change of Pleas

   A maximum of four change of pleas will be scheduled each day for the four trial departments. Efforts will be made to coordinate the daily schedules of any one prosecu-

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Unalaska/Dutch Harbor Bar Association

February 4, 1982

The winter meeting was a tribute to defense attorneys and their clients throughout the state. **Joel Bolger**, a special defense attorney from Barrow, showed the cool calm composure of a highly tauted trail attorney when confronted with a police investigation.

The episode began the evening prior to the start of his trial, when Bolger rammed a police car with intent to eliminate a state witness. Unknown to the special defense attorney the cop car was not occupied at the time, so he was also highly suspected of being somewhat under the influence.

The police following several reliable tips located Bolger at QH[1] during the bar meeting. Hog Island members immediately invited the two officers in, and waived any warrant requirements for their good ole buddy. Undaunted, the special defense attorney asked if his Heineken could remain with him while he briefly spoke to the cops in the bedroom. Thirty minutes later, the police returned with a lengthy confession from the special defense attorney from Barrow.

When Bolger crawled out of the bedroom after the cops, Phil "Mistrial" Weidner heard him begging for a summons instead of a warrant: "Please just give me a call rather than arresting me." After the laughter subsided, the special defense attorney from Barrow said, "I thought I was innocent" and "Boy, they really did a good job."

Deep fat-fried halibut and king crab were served with Heineken. The special defense attorney from Barrow wasn't very hungry.

Bolger confession is attached for skeptics.

ROLL CALL: **Present:** Olson, Bolger, Weidner, Halter, Moody, Krumm, Valdez, (voting members) Anderson, Hawkins, Hayes, McGlashen's, Brown, and McCasland (ex-officios).

Absent: Marty Beckwith-Graham/just returned from honeymooning. Monson/last seen chasing dogs in Eureka area. He is on his way to Nome to personally check on John Vacek's membership application.

OLD BUSINESS:

Another shocking letter was received from **Ross Cushman.** Hog Island says: "Don't get mad, get even Cushman."

Our CLE program was a huge success. **Marty "Frontier Justice" McCasland** also known as "Walrus" McCasland presented a 3-credit survey on the "days of yore" as a frontier cop in Dutch Harbor. He also gave a 2-credit short course on Vietnamese justice as it applies to cannery personnel. Some of our members showed a little concern when "Frontier" was waving around a 3-inch magnum 12-gauge with a 40-inch barrel, but they were able to successfully complete both courses. This reflects higher scores than in past CLE programs, and is a significant sign of improvement for our membership.

NEW BUSINESS:

John Vacek's Request for "emeritus" membership did not go well. Weidner said: "No beer, no membership." Halter said: "He had plenty of time to send the case of Heineken." Unknown said: There's a rumor that he slept with the D.A.'s victim the night before one of his trials." Olson said, "We're spending too much time on Vacek." TABLED.

It was decided that a letter issue to the Tanana Bar requesting that they communicate with **Randall Burns** in Anchorage for us. Olson wanted it made clear that this certainly did not mean that we recognize those frozen curs from Fairbanks either. AGREED.

Judge Moody won the "Mr. Congeniality" award for the week. The voting was close but Krumm and Weidner threw their support behind him at the last minute.

Hog Island commends the forthrightness and courage shown by our Senators in their recent vote to retain **Hohman.** The following firm positions were *unanimously* adopted by Hog Island.

First: All senators except Hohman should be suspended.

Second: The capitol should be moved to wherever Hohman happens to be residing. Don't worry, we've got a lot of dough.

Fred Valdez was commissioned to leak these resolutions to Satch Carlson, and to send a letter to the Senate copying George Hohman, Juneau Correctional Center.

Vic Krumm was fined $50 for being from the same place where our senators are supposed to be working.

$50 was donated to **David Monson's** Iditarod team. He owed a $75 fine, so we deducted the donation and he now owes $25. Please pay this promptly.

In a special session at the airport Judge Moody moved that Fred Valdez be expelled. When he returned from the Elbow Room the night before, he slept with his clothes on. Over Valdez's objection that he was cold, Olson, Moody, Krumm, Halter & Weidner voted for expulsion. If he would have slept in someone else's room with clothes either on or off, the voting may have been different.

Respectfully submitted this 4th day of February, 1982 in Dutch Harbor, Alaska.

Joel Bolger's Confession

February 4, 1982

Had beers tonight but okay to state what happened yesterday. Met people at 7:00 p.m. arrived on plane, at Irene's watched TV, looked at transcripts. Had one beer 6:00-6:55, prob. 6:30-6:55. Jail didn't feel under influence D.O.B. 2-16-55, Box 429, Barrow, AK 99723, 852-2520 office, 852-3024 home. 1 Beer, drove incident to motel, come home.

Paul Olson on State

Met guys, ran into car, at 6:55 pm, talked to Dow right away — went to Carl's then to P.D. Jim Lomer talked to, told S. Martin to make accident report, beer w/supper S.W. corner a SM. took to talk to Paul Olson.

February 9, 1982

Tanana Bar Association
Bairflanks, Alaska

Dear Members of the Tanana Bar:

The Hog Island Chapter of the Unalaska/Dutch Harbor Bar Association requests that you assist us in communicating with **Randall Burns** and his bunch in Anchorage.

It is well understood around here that the Alaska Bar has no authority "West of Akutan." Since Burns has not apologized for suspending one of our members, this is our last ditch effort to avert open hostilities. You may be interested to know, that David Monson, our distinguished member that Burns suspended, is now temporarily residing in your area, near Eureka. Any action you deem necessary to protect your own would be appreciated too. We have alerted our parent organization in Hawaii.

Our members want it clear that we certainly do not recognize your organization either, but that for the limited purpose of speaking with Anchorage we ask for your help.

We also apologize for sending you **Jeff Wildridge,** a former Dutch Harbor member. He was summarily kicked out of this locale. We would understand if you refused our request for this reason alone.

We await your reply.

Cordially Yours,
Vernon Halter
President
Hog Island Chapter

MacArthur Foundation Awards $535,000 to ABA Court Project

CHICAGO, Feb. 2 — The **John D. and Catherine T. MacArthur** Foundation has awarded a $535,000 grant to the American Bar Association Fund for Public Education to support the work of the Action Commission to Reduce Court costs and Delays.

The grant is for the three-year period which began November 1, 1981. This is the second grant awarded by the MacArthur Foundation for the Action Commission, which is working to identify, develop and test procedures to reduce litigation costs and delay and to encourage lawyers and bar associations to improve litigation effectiveness.

The Commission's major program areas include:

Telephone conferenced hearings in lieu of in-person appearances for a variety of court business. A major two-year study of the use of telephone conferencing to conduct pretrial and motion hearings in both civil and criminal cases began in 1981 in selected trial courts in New Jersey and Colorado. Technical assistance in this area is also being provided to a number of other courts nationwide.

Economical litigation procedures for trial courts combining strong case management with limited discovery rules. A first experiment was begun in Kentucky in late 1980, and other state sites are being prepared for future programs.

Expedited appeals procedures relying on increased oral argument rather than extensive written briefs as the primary vehicle for presenting an appeal. Two appellate courts — one in California and one in Rhode Island — have adopted this approach for selected appeals. Additional courts are planning for similar programs in the coming year.

Other Action Commission programs include a multiple-witness presentation of court testimony and the use of videotape to record certain witnesses' testimony in criminal and civil cases for introduction at trial. The Commission has completed evaluations of two programs involving court-annexed mediation of prisoners' civil rights complaints, and has conducted a preliminary study of the use of non-judge judicial officers.

In announcing the grant, **Leonard S. Janofsky,** Chairman of the Action Commission and past president of the Association, said: "The MacArthur Foundation has already provided the stimulus for a well-integrated assault on problems of cost and delay common in our nation's courts. This new award will provide the necessary core support for projects and research vital to the courts and the nation. It will demonstrate what can be done with support and collaboration from the private sector."

Understanding Depositions

by J. B. Dell

Civil Practice as it is — series #3

Most attorneys are aware only of the most formalistic aspects of the use and handling of depositions. Herewith is an insider's guide to some of the more pragmatic concerns faced by the civil practitioner.

Selecting a Court Reporter

Generally speaking, court reporters can be divided into two groups: (1) the strict constructionalists (Williston approach) and (2) the liberalists (Corbin view). Their differences can be illustrated in the way they transcribe simultaneous testimony.

Corbin approach:

Mr. Smith: Could you tell me at what time you first noticed that your back was in extreme pain?

Mr. Jones: Objection. Calls for speculation.

Witness: It was Sunday September 21st at 2:30.

Mr. Smith: He is able to answer the question.

Williston approach:

Mr. Smith: Could you tell me at what time you first noticed that your back was in extreme pain?

Mr. Jones: Objection . . . Calls

Witness: It was Sun . . ,

Mr. Smith: He is able . . .

MrJones: . . . for speculation.

Witness: day, September 21st at. . .

Mr. Smith: . . . (inaudible) . . . question.

Witness: (inaudible) thirty.

Differences can also be seen in how faithfully they transcribe various noises made by witnesses and attorneys during the deposition. An example of the Williston approach follows:

Mr. Smith: Uhhhh. Can you give me any uhhhmm reason why yur --- whatcha call ---- uh doctor released your to . . . burp . . . work after yur second . . . sniff . . . visit to the physical . . . cough . . . therapist?

Making Objections

Most depositions begin with one attorney saying, "Shall we agree to the usual stipulations, gentlemen?" Everyone agrees. Unfortunately, no one knows what this means. Only one case exists on point, where the court held that the expression relates to an old common law practice where plaintiff's counsel was given the first shot at asking out the court reporter for lunch.

A more troublesome difficulty is the manner of dealing with an attorney who makes every possible objection during questioning even though the rules clearly state that all objections are preserved for trial except those going to form. If several admonitions fail to deter this behavior, spilling coffee on his pants usually proves effective.

Reviewing the Deposition

The rules provide that a witness may review a deposition and make changes before signing. Previously, most attorneys believed that the Alaska Supreme Court held in *Continental Ins vs. Bayless & Roberts* that witnesses could make substantive changes as well. Making such changes, though, is likely to lead to embarrassing cross examination at trial, especially since depositions are taken under oath. Some commentators have suggested instead, that where possible, the question should be changed rather than the answer, leaving the witnesses response technically unaltered. Example:

Before:

[continued on page 11]

RANDOM POTSHOTS...

[continued from page 4]

that there is no survivability for anyone in an all-out war and very little chance of containing a war once nuclear weapons come into play.

Ironically, in this situation, greatly enhanced strength has a negative effect on deterrent strategy. The stronger one sees the adversary, the more value there is for the weaker to consider the first strike or shave that hair trigger further resulting in thinner control systems and a greater potential for "unintended response."

Conventional Buildup

In this situation, it is not surprising that some senior hawks, not bound by the need to be loyal to an established policy, have been advocating some rethinking of standard positions. A recent article in Foreign Affairs joined McNamara, Bundy, Kennan and Gerard Smith (Chief U.S. delegation Strategic Arms Talks, '60-'72) in urging us to concur with the Soviets in a declaration of "no first use" in Europe. This, in the short term, has always seemed more advantageous to the Russians who enjoy numerical superiority in men and tanks. There is no doubt implied in the proposed declaration a more significant commitment to deployment of conventional forces.

The American nuclear umbrella in Europe has permitted our European allies to be self-indulgent in preparedness vis a vis the Soviets. The industrial power of Europe, committed to a stronger conventional force, is strong enough on its own to provide a credible deterrent to adventurism by the Soviets.

Warsaw Strength

The Warsaw Pact forces, while numerically superior, are, after all, made up in substantial part of nationalities which have rebelled time and again against their Russian masters. The frequent exaggerations by some administration spokesmen of the strength of this force and denigration of NATO alliance capability must be interpreted in the light of the need to defend a policy position in disarray under attack.

But the overriding problem is that we cannot get into launching nuclear rockets around Europe without expecting that the whole course of events will quickly escape human control.

Democratic Opening

The return to an examination of the fundamentals of national and international security strategy has had one great advantage. An opening for democratic participation is now present that did not exist when the assumptions were set and a tiny elite of security specialists could argue the fine tuning of comparative military systems. Though technical information still abounds, all you really need to know to understand national security policies is in the public domain.

A Lawyer's Role

What is now involved is primarily an assessment of the larger strategies for coexistence, dispute resolution and catastrophe avoidance. The doctors have now begun to wake us up to some illusions about survivability in the event of catastrophe. But the heart of how to get out of the present jam is meat and potatoes to the legal profession. We could not commit "pro" a more "bono publico."

Notice of Transfer

William H. Pittman was transferred to inactive status in the Alaska Bar Association on April 13, 1982, by Order of the Alaska Supreme Court. Mr. Pittman is not eligible to practice law in Alaska until he is reinstated to active status by the Supreme Court of the State of Alaska.

ALASKA BAR ASSOCIATION
Richard J. Ray
Bar Counsel and
Disciplinary Administrator

THE SUPREME COURT OF THE STATE OF ALASKA

In the Matter of Attorney)
)
GEORGE VOGT)
)

File No. 5699

OPINION

[No. 2481 - April 2, 1982]

From the Disciplinary Board of the Alaska Bar Association.

Attorney George Vogt was convicted on his plea of nolo contendere to two counts of failing to file a state income tax return. This crime is a misdemeanor under AS 43.20.335(c).[1] Under Alaska Bar Rule 23(a) this court is required to suspend an attorney forthwith upon receipt of a certificate demonstrating that the attorney has been convicted of a serious crime.[2] Marvin S. Frankel, Bar counsel for the Alaska Bar Association, transmitted such a certificate respecting Vogt's convictions. We thereupon entered an order requiring the Bar Association and Vogt to brief the question whether Vogt's convictions were serious crimes within the meaning of Bar Rule 23. Both parties have filed briefs, both of which take the position that the convictions are not serious crimes. We agree.

[continued on page 15]

Resolution

WHEREAS, there is an Alaska constitutional requirement that the Alaska judiciary be members in good standing of the Alaska Bar Association; and,

WHEREAS, the Alaska judiciary is currently required to pay dues equal to the dues paid by other active members of the Alaska Bar Association; and,

WHEREAS, the Alaska judiciary benefits somewhat less from membership in the Alaska Bar Association than practicing active members in the following manner:

> Continuing Legal Education programs that are produced are generally geared more for the practicing lawyers than for judges.
>
> The Client Security Fund does not directly benefit a judge as it does practicing active members.
>
> Other functions of the Bar Association, including but not limited to processing of grievances and discipline, are geared to protect the general public from impropriety from active practicing members, rather than from judges.

AND,

WHEREAS, the bar associations of many other states either require no dues or reduced dues for judges:

NOW, THEREFORE, BE IT RESOLVED that the dues for all judges in the State of Alaska whose judicial employment requires membership in the Alaska Bar Association shall be at a reduced rate not less than one-half (1/2) of the rate charged other active members.

4/1/82 Dan Moore
4/1/82 Karl Johnstone
4/1/82 Mark Rowland
4/1/82 Douglas J. Serdahely
4/1/82 Milt Souter
4-1-82 Stan Oitus
4/1/82 Ralph Moody
4/1/82 Richard Foley
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JUDGE JOHN GRAY (Continued from previous issue)

When the question of Martin's arrest came up, Judge Gray was certain that the escape and recapture had occurred on Canadian territory and wrote to the Canadian Minister of the Interior informing him of this. In the meantime, the American Secretary of State wrote a formal note of protest to the British Ambassador in Washington, and the problem escalated. Some consideration had been given earlier to having an actual survey made of the border, but the cost of the survey was prodigious and expert advice suggested that it would take from 3 to 7 years to complete. Since an overall survey was out of the question, the British Colonial Office instructed the Governor General of Canada to have a survey conducted in the area of the Stikine River so that the dispute which had arisen over Martin's arrest could be resolved.

Border Location

Accordingly, instructions were given to a Canadian Surveyor, **John Hunter** on March 3, 1877 to proceed to the Stikine and determine the exact border location and if Martin had indeed been re-captured on American territory. The two governments agreed to accept the survey which placed the border at a distance of 24.74 miles from the mouth of the river. Martin had been re-captured in U.S. Territory and he was released from custody.

This ended the first chapter in the boundary controversy, and Judge Gray considered this a partial victory since the basic measurement had been made from the mouth of the river. In other areas, he was convinced that the coastal range was much closer and this would cut down on American Territory. He proceeded with a new interpretation for the Treaty of 1825 and found a receptive audience. In the summer of 1884 he submitted a report to the Executive Council of British Columbia which was formally adopted and forwarded to the Dominion Government in Ottawa.

Alternate Theories

Judge Gray's report contended that the actual starting point for the Boundary discussed in the Treaty should have been Cape Chacon and that the line would then have proceeded straight up the Duke of Clarence Strait and intersected with the mainland in the vicinity of Burroughs Harbor on the Behm Canal. He contended that the use of the term "Portland Canal" had been interpolated by a later translation of the treaty, and that none of the boundary definitions made sense by any other construction. Another theory advanced was that the line of measurement in every instance should begin at the headwaters of each channel or coastal sinousity. This interpretation would have placed much of Alaska south of Wrangell in Canada, given Canada all of the upper Lynn Canal area, and reduced American possessions in the Alexander Archipelago to the islands and a very narrow coastal strip.

Separate Surveys

In the meantime the American Government had instructed certain reconnaissances to be made in Alaska by the military authorities, with a view to clarifying whether or not a coastal mountain range existed. They found that it did not, but consisted rather of several hundred miles of mountains and peaks of equal height. Both the British and American Governments seemed receptive to cooperating in conducting a survey to identify the boundary line. In July, 1892 the British and American Governments agreed to appoint a joint commission to make a preliminary evaluation. Dr. **T.C. Mendenhall,** Superintendent of the U.S. Coast and Geodetic Survey was the American representative. The joint Commissioners could not agree on how the survey should be conducted, so each proceeded separately. They agreed not to recommend a boundary, but merely to record essential geodetic data that could be used in the preliminary consideration for drawing a border. Up to this point at least the British Government did not agree with the interpretation of Judge Gray concerning the beginning point for the boundary, and conceded that the Portland Canal had been properly identified. In their view, there might even be an arguable American claim for ownership of both sides of the Canal, and at one point had even considered offering to purchase the mainland shore.

Gold Discovery

The results of the survey report submitted by the joint commissioners was to be considered by a further joint body consisting of representatives of Britain, Canada, and the United States. In the meantime, an official map of British Columbia was published in 1895 which depicted the boundary line as ascending Clarence Strait, and otherwise accepting the interpretation of Judge Gray.

The march of events however was rapidly overtaking the pace of diplomatic activities. The discovery of gold in the Klondike in 1896 brought a surge of activity into the Lynn Canal. Skagway and Dyea boomed. More than 100,000 persons were enroute or had arrived from West Coast ports and no one was certain where the boundaries between the two countries lay. Skagway was occupied by the Royal Canadian Mounted Police Commissioner for the Yukon Territory, and he was only displaced by the arrival of a contingent of U.S. troops which stayed on to build the only permanent garrison in Alaska at Fort William H. Seward in Haines.

Bitter Rivalry

There was an exchange of diplomatic notes and discussions between governments. There was bitter and tense rivalry between the port communities of San Francisco, Seattle, Vancouver, and Victoria to control access and trade with Alaska and there was much discussion about alien laws and customs duties to complicate the situation further. The United States was in unquestioned possession, and felt that their position and interests were clear and could be safeguarded. The British Government through their Ambassador in Washington was prepared to concede the upper reaches of the Lynn Canal to the United States and to fix the boundary inland above Dyea and Skagway at the passes. This conciliatory attitude was bound to achieve results and a joint protocol was signed between the two nations in May 1898 providing for the appointment of a Joint Commission to fix the boundary as well as settle other disputes between Canada and the United States.

East Coast Interests

The terms of the protocol were exceedingly broad and included fisheries disputes in both the Atlantic and Pacific, customs conventions, alien work laws, arrest and prosecution of citizens of one country in the territory of the other, and last but most important, the Alaska-Canadian Boundary. The English delegation was composed primarily of Canadians with the Prime Minister of Canada heading the group. The representative of Great Britain was **Lord Herschell,** Lord Chancellor of England. The American delegation was headed by **Senator Fairbanks** of Indiana and consisted of persons who represented east coast interests almost exclusively. None of the American delegation was well informed about the nature of the boundary dispute in Alaska.

Canadian Contentions

The Canadian delegation had Judge Gray as a technical adviser, and it soon became evident that they were prepared to arbitrate almost every issue in controversy and make important concessions on all questions except the boundary dispute. Lord Herschell was the most recalcitrant member of the British delegation, advancing the Canadian contentions with lawyer-like zeal. An impasse was looming almost from the start.

The stumbling block was the upper Lynn Canal. The Canadian delegation insisted that the upper reaches including Skagway, Dyea, and Pyramid Harbor, the present site of Haines, should be ceded to Canada. Even Sen-

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BYLAW CHANGES...

[continued from page 2]

Law Sections. Taking over the responsibilities of the operation of all standing committees will be the Secretary. The proposed changes are specifically set out below.

ARTICLE VI. Section 3.

PRESIDENT-ELECT. It shall be the duty of the President-Elect to render every assistance in cooperation with the President and provide him with the fullest measure of counsel and advice. In the event of the resignation of the President or his inability to act, the President-Elect shall fulfill the duties of the President. The President-Elect shall succeed as President, upon the expiration of the terms for which the President was elected, or upon a vacancy in the office of President, whichever occurs first. **The President-Elect shall be the Board Liaision to all local bar associations.** (Amended May 19, 1978 and February, 1982.)

Section 4.

VICE-PRESIDENT. The Vice-President shall fulfill the duties of the President in the absence of the President and the President-Elect. The Vice-President shall be responsible for the operation of all [COMMITTEES], **Executive Committees of the Substantive Law Sections,** except as the President shall otherwise direct. (Amended May 19, 1978, February, 1982.)

Section 5.

SECRETARY. The Secretary shall attend all meetings of the Board of Governors and shall record the proceedings of all such meetings. The duties of the Secretary may be performed by an Executive Director appointed by the Board. **The Secretary shall be responsible for the operation of all Committees, except as the President shall otherwise direct.** (Amended February, 1982.)

Board Proposes Changes to Article VII Bylaws

The Board of Governors has determined that the substantive law sections of the Alaska Bar Association are functioning as proposed. Consequently, the Board proposes amendment to the Association Bylaws Article VII to officially establish Sections as an activity of the Association. The specific proposed Bylaw additions are set out below.

ARTICLE 7, COMMITTEES and SECTIONS.

Section 3. Substantive law sections. The Board shall establish sections in areas pertinent to the practice of law and shall define the powers, duties, functions and scope of each section.

The substantive law sections shall be administered by a five-person executive committee with membership in the section open to all active members bar dues will be budgeted to the first section joined by a member. A member may join additional sections at a registration cost of $5.00 per year.

The executive committees of each section shall be limited to five members originally appointed by the President to serve three year terms on a rotational basis. Initially, the appointments of one member shall be for terms commencing July 1, 1981 and shall be for one year, the appointment of two members shall be for two years, and the appointment of two members shall be for three years. Thereafter, the section membership shall elect from its membership to fill vacancies on the executive committee. Elections shall be held during the annual convention of the Association.

At each annual meeting of the Association, the chairperson of each substantive law executive committee, or his designee, shall meet with the President-Elect and/or the Board and shall provide the Board with a proposed agenda for the committee's business for the year commencing on the first day of July next following.

All executive committees shall file with the Board such reports from time to time as shall be requested by the President or the Board. Written annual reports shall be delivered to the Board at least thirty (30) days before the annual business meeting. A written or oral report shall be presented to the membership of the section at the annual business meeting.

No action, report or recommendation of any section shall be binding upon the Association unless adopted and approved by the Board.

Anchorage Attorney- Artist to Open One-Man Show

Former Anchorage attorney **Ed Nolde** will open a solo watercolor show at The Gallery, in Anchorage, on Monday, June 7. Since he began painting in 1978, Nolde's work has been included in half a dozen statewide juried art exhibitions and purchased for the collections of many lawyers, doctors, corporations and individuals.

The show will feature watercolors of landscapes and shells, both portrayed by suggestion and summary rather than by photographic detail. Nolde's style is largely self-taught.

Nolde took his B.A., in economics, and his J.D. at the University of Virginia. He practiced for four years in Virginia as a Vista in legal services and as a state assistant attorney general in consumer protection. He moved to Alaska in 1978 and worked for two years with Hedland, Fleischer and Friedman, during which time he helped establish the "Arts Law" category within the Bar Association's Lawyer Referral Program. In 1980 he began his own private practice in order to have more time for art, and in 1981 he made the art a full-time occupation.

In addition to teaching watercolor classes, he has co-taught, for Anchorage Community College, a new course entitled "The Business of Being an Artist." He has also lectured on the same topic for the Small Business Administration and the Institute of Alaska Native Arts.

Nolde's watercolors will be featured from June 7 through June 19 at The Gallery, 817 West 7th Avenue, Anchorage. The public is invited to meet the artist and former attorney at the opening reception on Monday, June 7, from 5:00 to 7:00 PM.

UNDERSTANDING DEPOSITIONS...

[continued from page 8]

Mr. Smith: How fast were you going?

Witness: 75 mph.

After:

Mr. Smith: How fast was the plaintiff going?

Witness: 75 mph.

Avoiding Depositions

Where your client's case lacks serious merit you should try to avoid depositions. Unfortunately, only a few postponements will be tolerated by opposing counsel before he'll be whipping up motions for sanctions. As a final measure, the following practice is to be recommended.

Have your client omit bathing one week prior to the deposition. Request that the deposition be held in the smallest court reporting office in town (preferably with no windows). Have your client bring a filthy handkerchief which will rest on the table except when used to wipe drool from his face. Have him go to the bathroom at least four times an hour and wheeze a lot. Not only will the deposition be terminated quite quickly, but your client will usually not be invited to another one.

New Bond Forfeiture Procedure Announced

Effective immediately, the following procedure concerning the handling of bonds is adopted:

All Bonds which have been forfeited for more than 90 days from the date of this memo must be paid immediately by the responsible party. The Clerk shall prepare a list of these outstanding payments and forward them forwith to the responsible parties.

Parties may make formal application to the Court to reinstate or exonerate any bond forfeited within one year of that forfeiture. If the Court orders the return of monies forfeited, the Clerk will make necessary arrangements for the return.

Once computer processing of bonds has commenced, parties will be notified weekly of all forfeitures. A grace period of 120 days from the date of forfeiture will be granted, however, all forfeitures must be paid within the 120 days.

The practice of using corporate or surety bonds to guarantee satisfying judgments will be discontinued. This and any other unusual practice concerning bond forfeitures shall be referred to the Area Court Administrator for his review and approval.

Only one bond shall be allowed per action. The practice of utilizing a bond for more than one action will not be allowed.

Corporate bonds cannot be used to satisfy the fine in Judgments.

Mark C. Rowland
Presiding Judge
Third Judicial District

Talkeetna Library Needs Law Books

The Talkeetna Public Library Board has embarked on an innovative experiment. It's objective is to establish a legal reference section in the community library. The move was initiated after a petition in the area which has 400 registered voters indicated that at least 100 persons were interested.

Thus far the legal section of the Talkeetna library is comprised of Black's Law Library and a 1974 edition of United States Code Annotated. The library board is interested in acquiring law books, a set of state statutes and any other law books which anyone might be interested in donating. Cash contributions would also be welcome.

Because the library is an extension of the State's public library system, tax credits are available to those who contribute.

For more information and/or donations, contact Dave Parker, Box 381, Talkeetna, Alaska 99676.

JUDGE JOHN GRAY...

[continued from page 10]

ator Fairbanks could understand that was untenable, and the American Secretary of State recognized even more cogently that no concession of this nature could expect to be approved by the Senate.

Screams of Outrage

A subcommittee proposed a compromise which seemed acceptable. The United States would cede Pyramid Harbor a strip of land on which a railroad could be constructed into the interior, and a townsite itself. The territory would be transferred under a lease agreement with the proviso that any American goods could be shipped through the harbor and on the railroad with the same customs privileges as British goods. This latter point seemed to be unacceptable to the Canadians, but it might have been worked out were it not for the fact that West Coast newspapers received word of the proposed settlement in February 1899. Screams of outrage flooded in from California, Oregon, and Washington, as well as Alaska itself. Seattle, in particular, had significant economic interests in the future of Alaska and was apprehensive of the potential offered by Victoria and Vancouver as entreports for all future Alaska trade. The Seattle Chamber of Commerce mounted a professionally orchestrated campaign in Congress and in the heady atmosphere of the just concluding Spanish American War, found much support.

Panama Canal

At the same time that cries could be heard in Congress about the sellout in Alaska, the Canadians became more intransigent. The Canadians felt, reasonably, that they had a trump card and that Great Britain would back them up. The United States at this point in time wanted, above all else, to build an Isthmian Canal. The Spanish American War showed the need for a more rapid deployment of American naval power as was demonstrated by the Battleship Oregon's transit of the Straits of Magellan. But in order to build a Canal, England and the United States would first have to agree to abrogate the Clayton-Bulwer Treaty which had been signed in 1850 and provided for joint construction and control of the Canal, and its nonfortification along the same lines as the Suez. England was more than willing to abrogate the Treaty and recognized that the temper of the United States was conducive to unilaterally constructing the canal in defiance of the treaty. England felt however, that a concession with respect to the construction of the Canal should be returned by agreeing to the Canadian position in the boundary dispute. The British Ambassador **Lord Pauncefote** put the question to Secretary of State Hay, and when a favorable reply was not forthcoming the joint commission adjourned in February 1899 with nothing accomplished.

Troubled Border

The stage in the boundary dispute was proposed by Great Britain. They suggested that the issue be submitted to an international Tribunal, much in the same manner as the North Pacific Seal Controversy had been resolved, notably in Britain and Canada's interests. President McKinley seemed agreeable, but once again the concession demanded would be the cession of Pyramid Harbor, irrespective of the outcome of the arbitration. Secretary of State Hay was anxious to reach a settlement because there were increasing incidents along the troubled border which might lead to armed conflict. With the presidential elections of 1900 on the horizon however, he was unwilling to make any commitments.

Boer War

The outbreak of the Boer War in 1900 brought a new equation into the Alaska controversy. England suffered a series of military disasters intially, and was depending on Empire solidarity for assistance in terms of manpower and money. The War however was not popular even in England, and international sympathies were with the Boers. Britain saw the need to consolidate its international position with the United States, particularly in view of the fact that a Bill had been introduced in Congress to authorize construction of the Canal. The Clayton-Bulwer Treaty was superseded by the Hay Pauncefote Treaty which was approved by the U.S. Senate in 1902. America would build the Canal, and would even be able to control and fortify it. It appeared that the climate was now favorable in the administration to arbitrate the boundary issue. President McKinley however had been assassinated and **Theodore Roosevelt** now headed the American Government.

Arbitration

President Roosevelt was basically sympathetic to British interests, but he was extremely reluctant to go forward with an International Arbitration of the boundary dispute because he recognized the pressures which would be brought to bear on England by the Canadian interests. He would have preferred that the matter be placed in abeyance until after the successful conclusion of the Boer conflict. The English Government however was pressing for a settlement and Roosevelt agreed reluctantly to a six-member arbitration group to be composed only of representatives from Canada, England, and the United States. He would not agree to participation by any other nations.

The composition of the arbitral group agreed on, a treaty was signed on January 24, 1903 and ratified by Congress in February. The dispute was to be settled by a "judicial commission" three members of which were to be nominated by the United States, one by England and two by Canada. President Roosevelt's view of the question was reflected by the manner in which he went about selecting the American representatives. After first approaching two members of the Supreme Court, who refused, he proceeded to appoint Senator **Henry Cabot Lodge** of Massachusetts, a close personal friend and notorious anglophobe, Senator **George Turner** of Washington State, and his Secretary of War, **Elihu Root.** The Senate was satisfied, the British were unhappy, and the Canadians were outraged. At first they sought to protest, but they were informed that the Treaty had been approved by the British Cabinet, reluctantly, and it would be useless to oppose it.

No Cession

From the very beginning President Roosevelt refused to use the term "arbitration" panel. He felt that there was nothing to arbitrate and the American claims in Alaska were so strong and had been unchallenged for such a long period of time, that the result of American participation was a foregone conclusion. He told the British Ambassador point-blank that he would instruct the American Delegates that they were not to cede any vital interests of the United States or one foot of territory. the only unknown equation was **Lord Alverstone** the Lord Chancellor of England who had been appointed as the sixth member of the panel. He was chosen as President of the Tribunal.

Oral Argument

Written briefs were submitted by the parties including extensive atlases of maps and copies of all correspondence relating to the original treaty of 1825 and every significant letter or document that had been generated since then, including the multitudinous contributions of Judge Gray. Oral arguments began to be heard in September, 1903 in London. The American position was that the maps which had been used when the Treaty was formulated in 1825 supported their position and that American occupation of the disputed territories had been acquiesced to by the British for over 30 years. The British however were directing their arguments primarily to Lord Alverstone and were advancing a legal proposition that would rest primarily upon a strict interpretation of the words of the Treaty. They also contended that by agreeing to the organization of the Joint Commission of 1898-99, the American Government had relinquished any dependence upon the Vancouver Maps.

Roosevelt Letter

Both Senator Lodge and Secretary Root observed Lord Alverstone closely and felt that he was being impressed by the legal arguments. They were confident however that their position could rely on political pressure as well, for strength. President Roosevelt had earlier written to Justice Holmes of the Supreme Court who was vacationing in England and had told him that if the Tribunal failed to reach a decision and was deadlocked, he intended to reinforce the military garrisons in Alaska, to strengthen his hold on the disputed territory and to resist any attempt to dislodge American occupation by force. He told Justice Holmes that the letter could be shown to **Joseph Chamberlain,** the Colonial Secretary. The letter in question has since been reprinted in the collected correspondence of President Roosevelt but it omits the last paragraph in which the rather intemperate threat was made. Holmes and others however have alluded to its contents and reported to Roosevelt that he had had an interview with Chamberlain in a purely unofficial capacity.

Chamberlain Response

> "He expressed regret at the attitude and said that so far as he had examined there seemed to him to be a reasonable case on the other side. I said that I knew nothing about the question although experience had led me to regard most things as open to argument. He thought it would have been a step forward for this world if men with wholly open minds had been appointed. As to this particular controversy he did not care much but England had to back up Canada. . . . He was amiable, but considered the implications of your letter as exceedingly grave and to be regretted."

Both Senator Lodge and Secretary Root also approached the American Ambassador who had already received instructions from President Roosevelt to inform the British Prime Minister that a failure to resolve the controversy would not find him conducive to further discussions. Two days after the visit from the American diplomat, Prime Minister Balfour was closeted

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NEW PROGRAMS...

[continued from page 7]

mately 25 percent of its cases without argument through a "screening program. The judges will undertake this program in addition to participating in an increased number of argument sittings. The screening program is modeled after the procedures that have been used for many years by the Fifth Circuit. A two-stage process has been developed to insure that only cases that will not benefit from oral argument will be selected for the program.

First, all cases are reviewed by staff attorneys as soon as the briefs are filed and only those that meet one of the criteria in Fed.R.App.P. 34(a) will be initially selected for the program. Fed.R.App.P. 34(a) provides that:

> Oral argument will be allowed unless
> (1) the appeal is frivolous; or
> (2) the dispositive issue or set of issues has been recently authoritatively decided; or
> (3) the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument.

If a case is determined to be suitable for submission, the Clerk's Office will send a letter to both counsel pursuant to Local Rule 3(a) notifying them that their case has been tentatively selected for submission without argument. The letter will advise counsel that they may present to the court, by letter, any reasons why argument would be helpful. The case will be sent to a screening panel of three circuit judges along with any objections received from counsel and the staff attorney's memorandum. The staff will not prepare draft dispositions.

Second, any one of the three judges on the screening panel may require oral argument. See Fed.R.App.P. 34. In that event the case will be returned to the Clerk to be placed on the next available oral argument calendar.

All submitted cases will be decided by three Ninth Circuit judges. (Due to the effort to make inroads on the backlog, most other panels in the recent past have included a senior judge from another circuit or a district judge.) There will be eight screening panels. All 23 active judges will participate and two senior judges will share the final position. The judges on each panel will be selected randomly and the panels will sit together for six months.

Each panel will have the option of processing its cases in either a "serial" or "parallel" fashion. Under the serial method, which has been used by the Fifth Circuit for 13 years, all case materials are sent to the first judges. If the first judge determines that the case does not warrant argument, he or she prepares a draft disposition and forwards all the case materials to the second judge. The second judge then reviews the case's suitability for submission and the first judge's disposition. If the second judge concurs on both points, the case is forwarded to the third judge for similar consideration. Each judge on the panel will be responsible for initiating the disposition in one-third of the cases assigned to the panel.

Parallel processing differs from serial processing in that the case materials will be forwarded simultaneously to all three judges. The panel will then hold a telephone conference on the case to decide whether the case merits oral argument and, if not, the case's disposition.

A case may be decided without argument only if all three judges agree that argument is not warranted. If no party has objected to the case's submission without argument, the case can be decided without argument even if a judge disagrees on the merits. If a party objects to the submission, however, the screening panel's decision must be unanimous. There is no prohibition against publication of a screening panel's decision but the court anticipates that publication will be the exception.

The submission without argument program is an experiment that will terminate in six months unless expressly extended by vote of the court.

Prebriefing Conferences

On November 2, 1981, a Prebriefing Conference experiment commenced in the Northern District of California. Appellants in all civil cases filed after that date are required to file a docketing statement setting forth jurisdictional facts, the issues on appeal, and the standard of review for each issue. Thereafter, a senior staff attorney, designated as the Conference Attorney, will conduct prebriefing conferences in appropriate cases. The primary purposes of the conferences will be: (1) to determine whether this court has jurisdiction; (2) to encourage the parties to settle the case or narrow the issues; (3) to encourage the parties to file shorter briefs and records; and (4) to resolve procedural matters, including briefing schedules and requests for oversized briefs, about which the parties might otherwise have filed motions.

The Conference Attorney will enter an order embodying the matters considered at the prebriefing conference. The Conference Attorney is empowered to order the parties to file briefs shorter than the maximum length permitted by the Federal Rules of Appellate Procedure. All orders entered by the Conference Attorney are subject to review by a judge upon timely objection.

The Prebriefing Conference Program in Northern California is an experiment. The court is, however, presently considering establishing similar programs in other districts in the circuit. A copy of the Prebriefing Conference Program procedures and the docketing statement may be obtained from **Mr. Richard G.R. Schickele,** the Conference Attorney [(415) 556-1394].

Other Innovations

In addition to the above innovations, the court has agreed to two other changes of interest. To reduce judge travel, the court has reduced the number of administrative meetings from 12 to six per year. To facilitate this change the court has increased its delegation to the court Executive Committee to deal with routine administrative matters.

Second, the court has committed itself to publishing fewer dispositions and to shorten the decisions that are published. At the conferences held immediately after oral argument, the panels will determine whether the dispositions of the cases they have just heard should be published.

The court will receive monthly reports on all aspects of the program and will monitor developments in each area closely. Suggestions from the bar will be welcomed on both the submission without argument and prebriefing conference experiments.

JUDGE JOHN GRAY...

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twice with Lord Alverstone who had been invited to spend the weekend at Balfour's country home.

Canadians Hostile

The Commissioners met in private session and on October 20, 1903 the decision was announced. Lord Alverstone's line around the heads of the inlets was accepted by the Americans, but the Lynn Canal was conceded. Haines, Skagway, and Dyea would remain American and the Portland Canal would be considered a joint boundary with the southern shore ceded to Canada. The Canadian Commissioners refused to affix their signatures to the final award documents. The final vote of the Tribunal was four to two with Alverstone voting on the side of the American delegation.

Canadian public opinion was predictably hostile. Judge Gray had done a thorough selling job for his construction of the boundary denominated in the Treaty, but his judicial creativity had floundered on the shoals of British Empire policy. Today, the two communities of Haines and Skagway are quiet backwaters of Alaska that are substantially dependent upon a commerce with the Canadian interior and Dyea has even ceased to exist for all practical purposes. The military garrisons are no longer present and Fort Seward exists primarily as a craft center for Native arts. The sole evidence of the American Armed Forces is only the occasional Coast Guard Cutter. The Portland Canal has failed to develop the promise which had been envisaged for it as a seaport and naval base, and most residents of the area would probably concede that everyone would have been better off if Haines had been ceded to Canada under whatever terms so as to have promoted the construction of a viable railroad system to the interior.

But Canada is not yet prepared to concede that the battle is permanently lost and the ghost of Judge Gray may be resurrected again as the Canadian Parliament considers whether to reopen the boundary issue.

Revisit Brideshead

The second residential seminar on 'Enforcing Patents, Trademarks and Copyrights in Europe' will be held at Hertford College of Oxford University from Sunday, 12 September 1982 to Friday, 17 September. Further details may be obtained from Jennifer Hall, Course Administrator, 25 Queen Anne's Grove, London W4, 1HW, telephone 01-747 0029 or 01- 994 6675: Telex 21120 G, ref 1467.

Hertford College originated with the hall established by Elias de Hertford in 1282. It is the background of Evelyn Waugh's famous novel, *Brideshead Revisited,* recently made into a television series by Granada, which has proved highly popular in the United Kingdom and the United States.

Bursaries are available for legal apprentices and undergraduate university students.

DISTRICT COURT CHANGES...

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Bar Rule 23(b) defines a serious crime. It states:

> (b) The term "serious crime" shall include any crime which is or would be a felony in the state of Alaska and shall also include any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime, involves conduct as an attorney, interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, corruption, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a "serious crime."

Prior to Vogt's conviction, Rule 23(b) contained language enumerating the willful failure to file income tax returns as a serious crime. This language was deleted by the Board of Governors, and the deletion was approved by this court pursuant to Supreme Court Order No. 345 effective April 1, 1979. This amendment can only be read as indicating that the crime of willful failure to file an income tax return was not meant to be encompassed within the term "serious crime" in Bar Rule 23.[3]

Subsection (e) of Rule 23 provides that this court, upon receipt of a certificate of a conviction of an attorney for a crime which is not a serious crime shall refer the matter to the Board of Governors for whatever action it may deem appropriate.[4] We shall make such a reference in this case.

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[1]Repealed by Ch. 113, d§ 46, SLA 1980. AS 43.05.290 (c) (1980 Cum. Supp.) contains substantially the same language as AS 43.20.335(c).

[2]Alaska Bar Rule 23(a) provides:

> Upon the filing with the court of a certificate demonstrating an attorney has been convicted of a serious crime as hereinafter defined, the court shall enter an order immediately suspending the attorney, whether the conviction resulted from a plea of guilty or nolo contendere or from a verdict after trial or otherwise, and regardless of the pendency of an appeal, pending final disposition of a disciplinary proceeding to be commenced upon such conviction.

[3]As so interpreted the amendment is consistent with those court decisions which have held that conviction of willful failure to file an income tax return does not necessarily involve moral turpitude, a disciplinary pre-requisite. In re Fahey, 505 P. 2d 1369, 1370 (Cal. 1973); Matter of Cochrane, 549 P.2d 328, 329 (Nev. 1976); Kentucky State Bar Ass'n v. McAfee, 301 S.W.2d 899 (Ky. 1957); Cincinnati Bar Ass'n v. Leroux, 242 N.E.2d 347 (Ohio 1968); In re Corcoran, 337 P.2d 307 (Or. 1959); In re Molthan, 327 P.2d 427 (Wash. 1958); In re Weisensee, 224 N.W.2d 830 (S.D. 1975). There are, however, contrary authorities. In re Bass, 274 N.E.2d 6 (Ill. 1971); Rheb v. Bar Ass'n of Baltimore City, 46 A.2d 289 (Md. 1946); In re MacLeod, 479 S.W.2d 443 (Mo. 1972); State ex rel. Nebraska State Bar Ass'n v. Tibbels, 92 N.W.2d 546 (Neb. 1958); State Board of Law Examiners v. Holland, 494 P.2d 196 (Wyo. 1972).

[4]Alaska Bar Rule 23(e) provides:

> Upon receipt of a certificate of an attorney for a crime not constituting a serious crime, the court shall refer the matter to the board for whatever action it may deem warranted, including the institution of a formal proceeding before a hearing committee in the appropriate disciplinary area, provided, however, that the court may in its discretion make no reference with respect to conviction for minor offenses.

OPINION...

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tor or defense counsel before the same judge. Change of pleas will be scheduled for any date requested, if available, but change of pleas will not be scheduled at the last moment for the next day unless calendaring is notified by 3:00 p.m. the day before and a judge is available without exceeding the four per judge limit.

.Calendaring Office — Room 224, Telephone 264-0649

To expedite the scheduling of change of pleas and to be assigned a hearing judge, the calendaring office should be contacted as soon as it is known that a plea is going to be entered.

Changes, or "add one's" will not automatically be made to the following day's calendar.

4. **Civil Matters**

During the month of May the court will convert the Master Calendar to an Individual Calendar system for civil cases. For those cases in which the attorney files Memorandum to Set Civil Case for Trial (Form 159) a Notice of Trial Setting Conference/Judge Assignment will be sent to all attorneys of record. Following the receipt of the Notice of Trial Setting Conference/Judge Assignment, any Judicial Disqualifications (Form 120) must be filed. Following the Assignment of Judge and Trial Date, any pretrial motions must be scheduled before the trial judge.

5. **Information on Criminal Matters**

For case information prior to arraignment the Criminal Division at telephone number 264-0476 can be contacted. For case scheduling information after arraignment, the District Court Calendaring Office at 264-0462 can be contacted.

ACLU Meeting

The Alaska Chapter of the ACLU will meet on May 22 from 3 to 6 p.m. in the Kuskokwim Room of the Sheraton Hotel for its annual meeting.

CLE SPEAKERS...

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jury selection. These topics will serve as vehicles for discussing the theory of communication in the courtroom. Professor Strait, a graduate of Yale Law School, teaches trial advocacy, federal courts and jurisdiction, professional responsibility and ethics, and criminal and constitutional law. He was in private practice in San Francisco from 1969-70; was Reginald Herbert-Smith Community Lawyer Fellow in Portland, Oregon from 1970-72; and a public defender in Seattle from 1972-75. In 1981 and 1982, he served on the faculty of NITA of the North, the Alaska Bar's nine-day trial advocacy institute held at the Alyeska Resort in Girdwood.

Professor Strait also maintains an active civil litigation practice.

Child Custody

Carol S. Bruch, Professor of Law at the University of California, Davis, will present a program on "Child Custody," from 2:00 - 5:00 p.m. in a section of the Ballroom. This program, which is open to attorneys in dom rel, and professionals in the social services and mental health professions, will cover: forms of custody; the Uniform Child Custody Jurisdiction Act; and mediation. It is a timely program in light of the child custody legislation pending in Alaska.

A much sought after speaker, Professor Bruch has lectured and published extensively on the topics of child custody, divorce, and domestic violence. She serves as a consultant on the California Law Revision Commission, and has helped draft legislation on community property for the state of California. A graduate of Boalt Hall, UC, Berkeley, she served as law clerk for United States Supreme Court Justice William O'Douglas.

Litigation

"Getting into Court and Staying There: Perspectives on Jurisdiction, Pleading, and Discovery in the 80s," will be presented from 2:00 to 5:00 p.m. in the Ballroom, by UC, Davis **Professor John B. Oakley.** This program is designed for lawyers in litigation, as well as for those not actively engaged in civil litigation who *must* remain informed about developments in the litigative process in order to assess their impact on client interests. The emphasis of the course will be on trends rather than on details. It will discuss recent developments concerning: the choice of the proper court in which to commence and defend litigation; the detail demanded in a competently drafted complaint or answer; and the tolerance of costs and delays in the discovery process.

Professor Oakley has taught at UC, Davis since 1975, specializing in civil procedure, federal jurisdiction and the legal process. A graduate of Berkeley, and of Yale Law School, he was law clerk for a federal district court judge, and for a Chief Justice of the Supreme Court of California prior to entering teaching. While teaching he has actively engaged in complex civil litigation. He is author of *An Introduction to the Anglo-American Legal System* (West, 1980) and *Law Clerks and the Judicial Process* (University of California Press, 1980).

Close Examination

Leroy J. Tornquist, Dean and Professor of Law at Willamette College of Law, will present a 90-minute lecture on "The Heart of Cross Examination," at 2:00 p.m. in the Yukon Room. This lecture will deal with the how and why of cross examination, and cross examination of expert witnesses.

Prior to joining Willamette, Dean Tornquist was Visiting Professor at McGeorge School of Law from 1977-1978, and served as Associate Dean of Loyola College of Law from 1971-77. He was in private practice from 1966-77 with the firm of King, Robin, Gale, and Pillinger in Chicago.

At Willamette, Dean Tornquist teaches evidence, civil procedure, and trial practice.

Video Tape

Also on Thursday, there will be a videotaped presentation of the program "Off the Record: An Informal Discussion Between the Bench and the Bar," from 9:00 to 12:00 noon, in the Yukon Room. Highlights of the live program which was held on February 27th at the Anchorage Courthouse, will be featured.

This video C.L.E. consists of a series of panel discussions by several Superior and District Court Judges from the Third Judicial District, on the topics of domestic relations, criminal law, writing problems, the settlement conference, and the trial setting order.

Registration fee for the 1982 Annual Convention is $130. It includes: admission to any and all (if possible) of the C.L.E. functions, to the Thursday, evening Libel Show, and the Joint Bench/Bar session on Wednesday afternoon. For additional information contact **Jennifer Abbott,** C.L.E. Coordinator, at 272-7469.