

The Alaska

BAR RAG

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Dignitas, Semper Dignitas

March 1979 \$1.00

Ninth Circuit

Nearly a third of the members of the Alaska Bar Association replied to the Bar Poll which was submitted in regard to the applicants for the current vacancies on the U.S. District Court of Appeals for the Ninth Circuit.

The Bar Poll was mailed in great haste by the Alaska Bar Association offices because the deadline for turning in applications was February 19th and the Commission met to consider which applicants to personally interview less than ten days after that time.

In order to assure that every candidate who was applying from Alaska was on the Bar Poll, we waited until nearly the last day for applications to be turned in to mail the Bar Poll to the bar members and we counted votes even up to the last day the Commission met so that we could give the Commission the most updated figures we had available.

The categories which were used to rate the candidates were taken directly from a Justice Department directive which informed the Commission which character and ability traits were to be considered in selecting qualified candidates to suggest to President Carter to fill the current vacancies.

Although this was a departure from the normal procedure of rating a candidate either qualified or unqualified, it seemed to give the Commission a great deal of information and allowed it to balance a candidate's ratings in one category with those in another.

There was some misunderstanding regarding the category of health. On the Bar Poll itself, that term was defined to mean mental and physical health and the capability of carrying on sustained difficult intellectual problems.

We were asking members to rate people's mental and/or physical stamina for the job. It was one of the most important criteria listed by the Justice Department in considering candidates.

The Justice Department felt that the job was physically as well as mentally demanding, and that many people were uninformed that the job of U.S. Court of Appeals judge was not an easy retirement home, but rather an extremely strenuous and demanding position for which a person should only be considered if he or she is capable of exerting the necessary energy.

The Commission will meet again in Portland on March 23rd, 24th and 25th to interview the following applicants:

Alaska—Robert Boochever, James Von der Heydt and James Fitzgerald.
Washington—Robert F. Utter, James P. Connelly, Charles Z. Smith, Betty B. Fletcher, Jerome Farris, George Shields, Dale Green and Vernon Pearson.
Oregon—George M. Joseph, H.S. Belton Hamilton, Betty Roberts, Otto R. Skopil, Cleveland C. Corv, Kenneth Roberts, and Hans A. Linde.

From these applicants, it will select no more than twelve names to recommend to President Carter to fill the existing vacancies on the court. There are ten vacancies on the Ninth Circuit; three or four will be filled from this list of twelve, the others from the southern part of the circuit.



Outgoing President of the Tanana Valley Bar Association, Judge Hugh Connelly (left) receives a gift of appreciation from his successor, Ralph Beistline. No, it's not a dead fish but a gavel.
Photo courtesy of Andy Kleinfeld

Tanana Bar Elects Officers

At its February 16, 1979 meeting, the Tanana Valley Bar Association elected new officers. The new officers are:

Ralph Beistline	Bob Groseclose
President	Treasurer
John Link	Jim DeWitt
Vice President	Secretary

President Beistline was elected on the strength of his performance as secretary a few years earlier and on his epic poem, "Ode to a Chena Burger."

The Tanana Valley Bar Association presented an inscribed gavel to its outgoing president, Judge Hugh H.

Connelly, to thank him for his services during the previous year. Judge Connelly's term as president was characterized by a novel sobriety at the local association's weekly meetings, and ended with a budget surplus, two remarkable achievements, as anyone who has attended a meeting will recognize.

Judge Connelly was the first member of the judiciary to serve as president of the local bar. He states he plans to return to an active role as chairman of the legislative committee of the Tanana Valley Bar Association.

Summary of Poll Results

A total of 321 members of the Alaska Bar Association responded to the unofficial poll concerning applicants from this state for the vacancies on the Ninth Circuit Court of Appeals.

These are the results of that survey:

Justice Robert Boochever—Character: superior, 213; average, 59; poor, 8. Health: superior, 158; average, 76; poor, 0. Ability: superior, 173; average, 97; poor, 17. Experience: superior, 210; average, 71; poor, 4. Temperament: superior, 189; average, 75; poor, 21.

Judge James Von der Heydt—Character: superior, 133; average, 111; poor, 14. Health: superior, 85; average, 113; poor, 2. Ability: superior, 93; average, 122; poor, 48. Experience: superior, 162; average, 98; poor, 10. Temperament: superior, 105; average, 106; poor, 52.

Judge James Fitzgerald—Character: superior, 241; average, 33; poor, 4. Health: superior, 113; average, 88; poor, 20. Ability: superior, 217; average, 62; poor, 5. Experience: superior, 241; average, 38; poor, 3. Temperament: superior, 233; average, 40; poor, 6.

A. Lee Petersen—Character: superior, 50; average, 114; poor, 28. Health: superior, 48; average, 90; poor, 10. Ability: superior, 15; average, 96; poor, 81. Experience: superior, 14;

average, 80; poor, 101. Temperament: superior, 30; average, 106; poor, 53.

Carolyn Jones—Character: superior, 38; average, 63; poor, 22. Health: superior, 47; average, 56; poor, 6. Ability: superior, 19; average, 54; poor, 56. Experience: superior, 8; average, 29; poor, 94. Temperament: superior, 19; average, 56; poor, 45.

Justice Warren W. Matthews—Character: superior, 132; average, 93; poor, 16. Health: superior, 134; average, 106; poor, 19. Experience: superior, 59; average, 150; poor, 42. Temperament: superior, 95; average, 103; poor, 40.

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ERRATA

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Fed May Regulate State Bar

by Ken Jarvi
President

The first step toward Federal regulation of the practice of law is now underway. On January 16, 1979, the Federal Trade Commission submitted a draft questionnaire to the General Accounting Office for approval which, if and when approved by the GAO, would be sent, under the FTC's compulsory practice, to the fifty State Bar Associations. The stated purpose of the questionnaire is "to determine whether or not providers of legal services are subject to acts or practices which are unfair, deceptive or anti-competitive in violation of the Federal Trades Commission Act."

Harry Garfield, a staff attorney in the Federal Trades Commission Regional Office in Boston, spearheaded the Agency's move to look at the legal profession. He spoke to the National Conference of Bar Presidents at the February 1979 mid-year meeting of the American Bar Association in Atlanta. His remarks included the statement, "[T]here is ample basis within the doctrines of pre-emption and federalism for saying that the FTC can effect state regulations." He advised that the FTC had budgeted \$20,000 for this investigation and suggested that state bar officials should be able to answer the questions with 30 hours of work. He admitted that "the questionnaire is very detailed." Indeed, it is, for it is fifteen pages long, and includes 57 questions, not the least of which is Question 17:

"Unless provided in response to one of the other questions in this Questionnaire, provide copies of all position papers, minority reports, committee reports, the latest drafts of unfinalized reports, minutes, policy statements, transcripts, opinions, decisions, correspondence, memoranda, studies, surveys, filing requirements, filing statements, articles and materials prepared for or disseminated at all seminars, workshops, and similar programs sponsored, or conducted by your Bar Association, and all similar documents in the possession of your Bar Association (whether prepared by your Bar Association or another entity) which relate, directly or indirectly, to the formation, operation, marketing and activities of alternative legal delivery systems in your jurisdiction, and any documents which discuss the benefits or detriments to the public which may result from alternative forms of delivery of legal services, including legal clinics and group plans."

Ron Kull, Executive Director of the Alaska Bar Association, estimates that it will take 200 to 300 hours to complete the questionnaire on behalf of the Alaska Bar Association.

The questionnaire has eight major areas of inquiry: the admissions process, disciplinary structures, restrictions on advertising, restrictions on legal clinics, control over unauthorized practice of law, restric-

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Jarvi

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tions on pre-paid legal plans, requirements of mandatory CLE, existence and operation of lawyer referral programs, and existence and type of minimum fee schedules.

In a speech to the 1979 Western States Bar Conference held in San Diego, California, William Reece Smith, Jr., President of the National Conference of Bar Presidents, suggested six courses of action were available to deal with the FTC investigation. He said that State Bar Associations can: 1) ignore the questionnaire; 2) send the questionnaires to the State Supreme Court to respond to it; 3) seek judicial review of the General Accounting Office's approval of the questionnaire; 4) answer the questionnaire; or 6) reply to the questionnaire and plan for further rule making or enforcement activity from the FTC.

Mr. Smith suggested that courses 1 and 2 were ill-advised and action under 3 was unlikely to produce positive results because the GAO does not decide jurisdictional questions, but only decides whether the questionnaire is burdensome and duplicitous. The GAO can only be reversed for an abuse of discretion.

Mr. Smith advised that if course 4 is chosen, an action contesting FTC jurisdiction, then some immediate steps are necessary. Within 10 days of the date the questionnaire is issued, the State Bar must move to quash or limit the subpoena. He suggested this step before the FTC was necessary to exhaust administrative remedies. Next, if the State Bar is going to pick the forum, it must commence a declaratory judgment suit and seek to enjoin the FTC from proceeding.

In the event no answer to the questionnaire is made the FTC picks the forum and that forum classically is the U.S. District Court in Washington, D.C.

As of this writing, the FTC had not formally issued the questionnaire. Thus, the 10 day time limit to quash or limit the questionnaire has not begun. What course of action to pursue must be decided by the Board of Governors of the Alaska Bar Association, presumably (if the FTC does not force the issue from a time standpoint) at the March 29, 30 and 31 meeting in Juneau. Your comment on how to deal with the spectre of Federal regulation is invited.

Federal Courts Address Question of Competency

In a nationwide survey, forty-one percent of the federal trial bench concluded that there was a serious problem with respect to the competence of attorneys practicing in the United States District Courts.

As a result, the Judicial Conference of the United States formed a committee, chaired by the Honorable Edward J. Devitt, Chief United States District Court Judge, to determine whether in fact such a problem existed.

The preliminary Devitt Committee report concludes not only that there is a problem but also that responsive remedies are necessary. Preliminary proposals which will be finalized and submitted to the Judicial Conference in 1980 include as a precondition to practice in Federal courts for those not already admitted:

1. A written examination covering the Federal Rules of Civil and Criminal Procedure, the Rules of Evidence and the Rules of Appellate Procedure; and

2. Formal trial experiences in either actual or simulated trials.

The Committee is also recommending that an attorney performance

review committee be established in each district to aid attorneys experiencing inadequacy in the trial arena.

A public hearing on the recommendations is scheduled for April 5-6, 1979 at the United States Courthouse, San Francisco, California.

Each hearing is scheduled to begin at 10 a.m. and will continue until all have been heard. It may be necessary, however, to limit remarks to a designated amount of time.

Written comments should be submitted prior to the hearings to allow the Committee members the opportunity to familiarize themselves with the speaker's point of view. However, an effort should be made to avoid repetition of written testimony at the hearings.

Any person who wishes to be heard and/or receive a copy of the Committee's Report should notify the Judicial Conference Standards Committee, Office of the General Counsel, Administrative Office of the United States Courts, Washington, D.C. 20544, Attention: Cathy A. Catterson, Legal Assistant, Telephone (202) 633-6127.

National Conference of Bar Presidents

Ken Jarvi, President, and Donna Willard, President-Elect, represented Alaska at the Mid-Year meeting of the American Conference of Bar Presidents, which was held in conjunction with the American Bar Association Meeting in Atlanta, Georgia.

Of primary importance was the subject of the Federal Trade Commission investigation which is reported elsewhere in this issue.

Also on the program were discussions concerning trends affecting the future of the legal profession, the implications of lawyer advertising, solicitation and related specialization, the growing import of prepaid and group legal services, sound fiscal management for bar associations, implementation of national substantive law standards, standards for practice in federal courts, bar sponsored plans of malpractice insurance and developments in the private market, court congestion and delay and the role of the organized bar.

The ideas and concepts garnered from the meeting will be addressed by the Board of Governors of the Alaska Bar Association during the coming months.

Anchorage Women Lawyer's Association Panel Discussion Announced

At its April 4th monthly meeting at noon at the Tea Leaf Restaurant in Anchorage, Alaska, the Anchorage Women Lawyer's Association will hold a panel discussion on the subject of women attorneys and jury trials.

The panel of speakers will be composed of Judge Victor Carlson, Dana Fabe of the Public Defender's office, Donna Willard, President-Elect of the Alaska Bar Association, speaking as an attorney in private practice; and a district attorney whose name has not yet been announced.

Elections for officers of this association will be held at the following monthly meeting on May 2, 1979.

American Bar Mid-Year Meeting

The American Bar Association's House of Delegates made a number of far reaching decisions at its mid-winter meeting held in Atlanta in February.

Approved were model standards for policing and disciplining unethical lawyers which also provide for trust funds to be audited whenever there is probable cause to believe that the accounts have not been properly handled or maintained. The House defeated a stronger proposal to allow random audits without probable cause.

A proposal by the Board of Governors of the American Bar Association to ease opposition to cameras in the courtroom was rejected by the House.

However, a new code of justice for juvenile offenders was approved. Its features include right to representation and right to six member juries in serious cases, specific sentences, guidelines for handling trials and appeals, and standards governing custody and detention.

A furor among the media was caused by Warren Burger, Chief Justice of the United States, when he refused

to allow electronic coverage during his "State of the Judiciary" address. He apparently prides himself as one public official who has the nerve to oppose the Press. Burger's stance is not the policy of the American Bar Association.

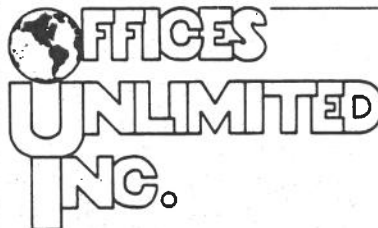
Other action taken by the House included reforms in the criminal justice standards and recommended changes in the federal criminal code with respect to anti-trust violations.

William Reece Smith Jr. of Tampa, Florida, was nominated as President-Elect. The election will take place at the Annual Meeting in Dallas in August.

News Flash!

Two Alaskan Jurists Reach Final Selection

Justice Robert Boochever and Federal District Court Judge James Fitzgerald are among the nine finalists whose names have been selected to go to President James Carter from which he will select three new members of the Ninth Circuit court of appeals.



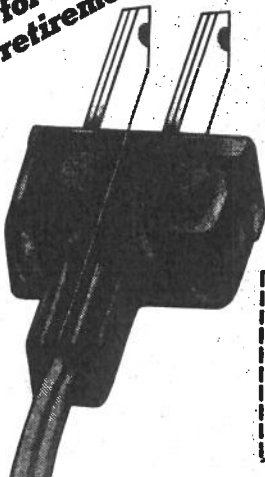
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Ethics Opinions

Ethics Opinion #78-3

The Board of Governors, at its December 2, 1978 meeting, approved Ethics Opinion #78-3 which provides as follows:

The Committee has been asked the following question: Is there a conflict of interest if a law firm represents a defendant in an action filed on behalf of a plaintiff by an attorney that, before trial, joined the defendant's law firm?

It is our understanding that the facts are these: Attorney A, an employee of Alaska Legal Services Corporation in a certain rural community, was retained by the plaintiff in an action for divorce, which also contained an issue of child custody. Attorney A consulted with the plaintiff, prepared the necessary documents, and initiated the action for divorce, and proceedings to secure custody of the children for the plaintiff. Prior to trial, Attorney A terminates his employment with Alaska Legal Services Corporation, and becomes an employee of the partnership of Y & Z, attorneys. The defendant had previously retained the firm of Y & Z as counsel.

The partnership of Y & Z maintains an office in that same community, but it is our understanding that Y & Z are themselves only present part of the time. Attorney A is the only attorney employee in the partnership in the subject community. We have been asked to assume that Attorney A does not disclose or otherwise take advantage of any confidential communication to which he may be privy as a result of his previous representation of the plaintiff. In this factual situation, is the firm of Y & Z required to withdraw from the representation of the defendant?

The Code of Professional Responsibility properly counsels that the "... decision by a lawyer to withdraw should be made only on the basis of compelling circumstances..." EC2-32. However, an attorney is required to withdraw from employment, after proper compliance with the rules of the court, when "he knows or it is obvious that his continued employment will result in violation of a disciplinary rule." DR 2-110(b)(2). If a lawyer is required to withdraw from employment, he is required to take all reasonable steps to avoid foreseeable prejudice to the rights of his client. DR 2-110(a)(2).

The primary ethical consideration which presents itself in this matter is whether the employment of Attorney A by Y & Z creates an appearance of impropriety in the subject child custody case.

It is clear that Attorney A could not personally undertake the representation of the defendant, for such representation would present a specific breach of his duty to preserve the confidences and secrets of plaintiff under Canons 4 and 9 as set out in our Opinion 75-2, (App. by Bd. of Gov. October 17, 1975). In that prior

opinion, we quoted from ABA Opinion 165, August 23, 1936, which interpreted former Canon 6 as preventing acceptance of professional employment against a former client

...which will or even may require him to use confidential information obtained by the attorney in the course of (such former employment). (emphasis in the original)

The question of whether or not the firm of attorneys, Y & Z, by whom Attorney A is now employed, is disqualified, was, no doubt, posed because of the hardship to defendant, particularly if Y & Z is the only law firm in the community so that he or she must now retain counsel from the next nearest city which may be hundreds of miles distant. The question also raises implications regarding the mobility of attorneys in Alaska, particularly in communities in rural Alaska, where the prospect of such possible conflicts is high.

Notwithstanding these legitimate and somewhat unique concerns, the Committee is impelled to determine that the firm of Y & Z must withdraw from the subject litigation.

The continued representation of defendant by the firm Y & Z would create an irresistible appearance of disclosure by Attorney A of the confidences and secrets of plaintiff as prohibited by a combination of Canons 4 and 9. It is well settled that an

attorney may not accept litigation against a past client if such requires that the attorney contest the same issue for which he previously was an advocate in the prior litigation. Nor may a partner of such attorney accept such litigation even though he was not a partner at the time of the prior litigation.

ABA Formal Opinion 33.

A similar result was reached in ABA Informal Decision C-493 (November 22, 1961) in which the Committee stated:

[The former] Canon 6 also is designed to make it unethical to divulge confidences in situations where there may be conflict of interests between clients. This has been interpreted to prevent a lawyer from representing a client when there has been prior disclosure of confidences to himself or another member of his firm by a person who has an adverse interest to the proposed client in the litigation which the client proposes to undertake.

It is also true that it is not what the lawyer may have learned in the previous lawyer-client relationship but what others, the bar and the public, may have thought was learned that prevents assuming a new lawyer-client relationship with a former opponent.

The Alaska Supreme Court in *Aleut Corp. v. McGarvey*, 573 P.2d 473

(Alaska 1978), has confirmed this position, holding

We believe that an attorney may not represent a third party against a former client where there exists a substantial possibility that knowledge gained by him in the earlier professional relationship can be used against the former client, or where the subject matter of his present undertaking has a substantial relationship to that of his prior representation.

It is well established that where one member of a firm is disqualified from representing a client all are.

Ethics Opinion #78-5

The Board of Governors, on January 29, 1979, approved the following Ethics Opinion:

E.O. #78-5

The problem presented is whether it is ethical for an employee of Alaska Legal Services to refer ineligible clients and fee-generating cases to individual lawyers within the community rather than to the statewide lawyer referral office in Anchorage.

DR2-103 is the applicable rule regarding recommendation of professional employment. In particular, DR2-103(A) states that a lawyer is not prohibited from being "recommended, employed or paid by, or cooperating with, one of the following offices or organizations that promote the use of his services...if there is no interference with the exercise of independent professional judgment in behalf of his client." The section then proceeds to list the organizations from which a lawyer is not prohibited from being

recommended, including one operated or sponsored by a governmental agency (such as the federally funded Alaska Legal Services Corporation). Although the rule is stated in terms that a lawyer is not prohibited from accepting a recommendation from an organization like ALSC, it would seem to follow therefrom that an employee of ALSC is not prohibited from recommending the lawyer.

Although it was primarily concerned with the fee arrangements of legal aid societies, ABA Informal Opinion No. 1334 lends support to this conclusion. In that opinion, one of the questions presented was whether a legal aid society could accept a client and then refer the matter to private counsel who, in turn, is compensated by the legal aid society. It was ruled that "no Disciplinary Rule forbids a lawyer with a legal aid society from making such a reference or forbids a lawyer from receiving such a reference on any fee-basis that is mutually satisfactory and that is not clearly excessive or illegal." Obviously, there are differences between the situation addressed in the opinion and the present problem. In the opinion, the legal aid society had already accepted the client, whereas in the present situation, the referrals are being made to persons determined to be ineligible to receive benefits from ALSC. Also, in the opinion, the fees of the lawyer referred to by the legal aid society were paid by the society, rather than the client himself. However, such differences do not prevent the conclusion that an employee of such a legal aid society is not prohibited from referring a client to another lawyer, since the same rationale used by the

[continued on page 8]

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President's Column

by Donna C. Willard
President-Elect

THE PRICE

Nominating petitions for three vacancies on the Board of Governors are currently being circulated, thus making timely an article on what service as a Board member entails and what the cost associated with the position can be.

★ ★ ★ ★

Quite aside from the hours devoted to Committee work and other Association endeavors which form the basis for election to the Board, the individual who is successful must expect the following:

- 1) A minimum of six Board meetings per year, each of at least two days duration;
- 2) Numerous conference telephone calls, each ranging from one-half to three hours in length;
- 3) Hours of preparation for each meeting and conference call in order to become familiar with the subject matter;
- 4) Substantial time reading materials from around the nation in order to keep current with imminent and potential issues facing lawyers in general and those of us in Alaska in particular.
- 5) Dozens of phone calls from other Board members, constituents, Bar staff and the public; and
- 6) Involvement in the Committees to which each Board member is assigned.

★ ★ ★ ★

The listing could be continued, but the point to be underscored is that substantial, uncompensated time must be expended if the obligations undertaken are to be fulfilled. Exactly what that commitment entails will vary depending on the person and the positions which he or she holds.

However, a realistic range would be four hundred to seven hundred hours per year. When that figure is multiplied by an average hourly rate, it is immediately apparent that both the Board member and the firm with which he or she is associated are paying a substantial price for that person's participation in Association affairs. Also to be considered is the potential loss of clients, as well as miscellaneous expenses such as xerox, secretarial and telephone bills which are invariably in the nature of a voluntary contribution. Finally, per diem simply will not cover the costs of lodging and meals when a Board member attends a meeting in a location other than his or her hometown.

★ ★ ★ ★

Further worthy of note is the criticism that the Board inevitably receives whether it be by way of litigation or anonymous letters labelling its members as "effete, blue nose snobs." It is a fact of life and must be handled.

Of course the position also offers infinite intangible rewards, including above all, the camaraderie which is developed with the other Board members, friendships which will last a lifetime.

In essence, the message is, if you're not prepared, or your firm will not allow you, to devote the considerable time and attention which the position demands, don't run. It is a price which you, your firm and your family must be willing to pay. It must give you personal satisfaction. You must enjoy it. But merely for a line in Martindale-Hubbell, or for fame and glory, it isn't worth it!

"Random Potshots"

by John Havelock

"Elected Attorney General"

The perennial buds of interest in improving government by electing more people are seen peeping through the snow in Juneau once again. Perhaps the state Attorney General, for instance, should be elected; but first examine the functions he (maybe she sometime?) performs.

The Attorney General is the champion of the people, the scourge of petty bureaucrats, forcing state officers to do their duty. This is certainly a popular view of the role of the Attorney General, if not an accurate one in this state.

As Mr. Flavin's annual report reminds us, we have another state officer, the ombudsman, who performs this function. Maybe we should beef up Mr. Flavin's authority a bit (several sacred cows are purposefully fenced off from his scrutiny), give him the title Attorney General and elect him. It is unlikely that a person who avoids flamboyance as assiduously as Flavin would ever get elected but there is a good case to be made for electing champions of the people.

In many states, the Attorney General is elected and performs functions of that nature. Practically, the elected Attorney General's day is sometimes built around making the governor's life miserable by dramatizing his failures to live up to the law.

In those states, executive authority is often divided among elected school commissioners, highway commissioners and the like. The Attorney General serves an important role in riding herd on all these mini-governors, since when executive authority is so divided, accountability to the people is hard to find.

But that kind of Attorney General is not the principal legal advisor to the governor or the agencies of his administration. You do not take legal advice from a person not of your choosing who has an unseemly interest in your job.

As is the case with a private citizen seeking legal advice, a governor, or any officer exercising independent executive authority, will pick his own lawyer. If you don't give him the money to hire the lawyer, it will be some Charles Kirbo or Clark Clifford entirely outside government. Where you have an elected Attorney General, you also have a governor's counsel.

Alaska once had an elected Attorney General system. Those who now enthuse for his return might wonder why the state's constitutional fathers had so little difficulty in shifting to an elective system.

The last of this breed, the Honorable J. Gerald Williams, asserted his

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jurisdiction, on the basis that his elected term had not expired, well into the first year under the new constitution. Mr. Williams was (and is) a man of great personal strength, wit, and voice. If Teddy Roosevelt had been going up San Juan Hill with Gerry Williams, there is little doubt that the latter would have led the charge regardless of T.R.'s presence or prerogative.

But could he be counsel to the governor? Impossible. John Rader took on that role, in lieu of the more glamorous title, pending Mr. Williams' departure later in 1959.

The Alaska Attorney General also renders written opinions on the meaning of specific sections of the law to legislative officers and to officers under the executive authority of the governor.

A formal opinion is not quite the same thing as advice. In this case, the executive officer is not asking for counsel relating to the legal environ-

ment of a variety of proposed actions before him. What is sought is a declarative statement of the law which the executive officer can use as a survey marker by which to chart his course.

This function of the Attorney General is quasi-judicial in nature. In some states, Massachusetts for example, some public officers may ask the Supreme Court for an advisory opinion on a carefully framed, set question. The courts of Alaska are prohibited from making rulings except in case of an "actual case or controversy."

In the Alaska situation, the Attorney General performs a useful function for the executive branch by giving advisory opinions upon the law which are used by executive officers and which may be useful to members of the general public.

It is sometimes said that the "opinion of the Attorney General" is "just another lawyer's opinion." This is not entirely true when the Attorney General is acting in this mode. The Attorney General's opinion is binding on executive officers in the performance of their duty, much as the rulings of a lower court.

The executive officer who acts contrary to such an opinion may find himself being sued personally for misconduct by the state and, unless it is a friendly test case, may look only to his personal pocket for legal defense and the payment of damages. "Criminal Prosecution, a Political Function?"

Most state officers who carry the title "Attorney General" are elected. They also perform significantly different functions from the Attorney General of Alaska, one of a handful of appointed attorneys general.

Many people argue that the Attorney General of Alaska should be elected because his power is so great. If our Attorney General was elected,

[continued on page 8]

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Bills & Notes

by Norman C. Gorsuch
Legislative Counsel

March 5, 1979

During the month of February, the Senate moved rapidly to push all bills which will be passed this session out of Committee and into the Rules Committee for calendaring. Senate President Clem Tillion (R-Halibut Cove) has set time limits by which bills must be in the Rules Committee or else they will not be calendared for action this session. Similarly, Tillion has given the House leadership a deadline of March 15 for the passage of House Bills and transmittal of these bills to the Senate. He has stated that any bills which pass the House after March 15 will not be considered by the Senate this session. It is expected that some last minute bills will be passed after these cutoff dates because of emergencies. Both the Senate and House leadership are looking toward an adjournment date of April 24th which would make the session approximately 100 days long. Most observers believe that the legislature will adjourn sometime in early May at the latest.

Chief Justice Rabinowitz delivered the State of the Judiciary speech to the legislature in joint session. He urged the legislature to pass the legislation establishing an intermediate Court of Appeals to relieve the case load burden of the Supreme Court. In addition, he also urged that the legislature pass an eight percent judicial pay increase. He requested an additional District Court Judge for Anchorage, a Superior Court Judge for Anchorage and a Superior Court Judge for Kotzebue. If the Kotzebue Superior Court post is created, he proposed that the District Court post in Nome would be abolished, leaving two superior Court Judges for Northwest Alaska. Rabinowitz also pledged the judiciary would work closely with the judicial council to further analyze and explore alleged racial bias in criminal sentencing. The Chief Justice also mentioned that the Court System is considering proposing the creation of a conflicts office in the Governor's office to handle guardian ad litem and public defendant conflicts appointments. The proposed office would reduce legal fees as well as administrative time of the Court.

The House passed a measure appropriating \$90,000 to the Judicial Council, which, along with a citizens advisory committee, will explore the alleged existence of racial bias in criminal sentencing practices.

House Bill 85, a bill which would alter the current procedure utilized by the Board of Governors on bar examination failure appeals is now lodged in the House Rules Committee. The sponsor of the bill, Rep. Joe McKinnon (D-Anchorage), is expected to discuss his concerns which generated the introduction of this bill with the Board of Governors at its meeting in Juneau at the end of March.

The Senate Judiciary Committee has passed out Senate Bill 98 which would allow individuals who possess a bachelor of laws degree from non U.S. Universities, a common degree abroad, to be eligible for entrance into the clerkship program after one year of training in an accredited U.S. law school.

The House Commerce Committee has heard extended testimony from both suppliers and title companies on the proposed revision to the lien law which has been introduced by Rep. Fred Brown (D-Fairbanks), chairman of the House Commerce Committee. Rep. Brown indicated that he did not plan any extensive work on the bill until early March. The bill would effectively repeal the legislation passed last year which revised the priority

and method of perfecting liens. The so called ad hoc review committee bill which is made up of recommendations from an interim committee made up of suppliers, title companies and others has also been introduced. This bill makes minor changes which would facilitate the administration of the new lien law passed last session.

Rep. Bill Parker (D-Anchorage), has introduced HB 252, an act relating to the qualifications and selection of jurors. The bill would repeal the current exemption from jury service for attorneys and all the other exemptions. However, a deferral of jury service provision has been added. In addition the bill contains some procedural changes for the selection and qualifications of jurors. The bill is currently in the House Judiciary Committee.

Rep. Terry Gardiner, Speaker of the House, (D-Ketchikan) has introduced a bill appropriating \$85,000 to the Department of Law for devising and implementing a training program on the revised criminal code. This bill has been reviewed and passed out by the Judiciary Committee. The Committee recommended that priority of training be given to district attorneys, public defenders and other public employees in the criminal justice system.

Sen. Ed Dankworth (R-Anchorage), has introduced SB 229, an act altering the current exclusionary rule and amending Rule 26(g) of the Rules of

Criminal Procedure.

Other bills introduced of interest relate to compensation for criminal injury (SB 77), immunity and protection of witnesses (SB 78), recovery of expenses from the State on hearing or appeal of disputed tax payments (HB 105) removal of the exemption for banks and financial institutions from the State anti-trust law (HB 250) and increasing the number of Superior Court judges (HB 266).

Coming Events

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

Vested and Other Interests

by Russ Arnett

Sir Stafford Cripps left the top of our profession in England for a distinguished political career as Chancellor of the Exchequer in the postwar Labor government. He said the reason he tired of the Law was that he eventually concluded he was only recovering money from one capitalist for another capitalist, both of whom had plenty already.

I long ago concluded that the most able lawyers usually end up representing vested interests. Before statehood, Wendell Kay publicly addressed a verse entitled "Oh, Sweet Bard of the Salmon Can" to a lawyer in Southeastern. The rejoinder, also in verse with copies to the bar, was in no way inferior in literary or didactic quality.

At least one Alaskan lawyer died in the saddle. The lady was heard to say "Me thought him comin' but him goin'." In life the lawyer had ably and faithfully represented mining interests both in court and in the legislature. From this truly Alaskan biography we all can learn that in representing a vested interest it is best if people think you are doing one thing when in fact you are doing something entirely different.

The next lesson we can learn from history is that sometimes it is even more advantageous to represent a vested interest than to be a vested interest. George Grisby's law partner was charged with the offense of accepting the earnings of a prostitute because he owned a building allegedly used by prostitutes. When his partner showed the complaint to George, George's first question was "Now as your lawyer, and not as your partner, what are the circumstances?"

In Territorial days, the national political parties often sent to Alaska appointees who were supposed to educate Alaskans politically. One was appointed by the Interior Department to be in charge of its legal matters in Alaska. Because he weighed some twenty-two stone and the Solicitor's office was several flights up, he only got to the office on rare occasions. When he wished to travel from Anchorage to Fairbanks, the Alaska Railroad would couple on a special parlor car for him sine pecunia. In it, he once remarked, "We Republicans know how to live." From this, we lawyers can learn the not unimportant lesson that "When representing vested interests, if feasible, espouse the principles of the party in power."

During most of my practice I have been a one man firm and have known the disadvantages of representing the little guy. I know what it is like when the secretary is due. I also know what it is like when the secretary is overdue.

There must be an ethical test for the importance of legal problems measured by the immediate effect on individuals. I think threat of jail, adoption, divorce, bankruptcy, a small probate, and the purchase of one's first home are more important legal problems by any objective standard than would be dealing with "green goods" or security issues which are great favorites with Wall Street firms.

Russ Arnett is an Anchorage attorney in solo practice. He was admitted to the Alaska Bar in 1955. He received an LLB at Northwestern University in Evanston, Illinois. He is a past president of the Anchorage Bar Association (1966-1967) and a former member of the Board of Governors.

Letters to the Editor

Restaurants

Dear Editor:

Might a frozen brain from the northern climes offer a suggestion? A vacuum of knowledge exists for the travelling attorneys from the State of Alaska which is only made more extreme by the increasing numbers of new members in our ranks. To the attorney travelling to a city outside of his home base, a question of where to obtain a good meal is most acute. It is common however, for the attorney arriving in a city only to find that yesterday's dream is today's ptomaine palace. (Being from Fairbanks, I can speak from firsthand knowledge—remember the ode to the "Chena Burger.")

Why not recruit members from every location in the state proud enough to offer some information about those restaurants which, if not good enough to write home about, are also not bad enough to call the Health Department about. I think a monthly column highlighting places that we can look forward to visiting in areas around the state would add flavor to your Rag.

Sincerely yours,
Richard D. Savell

Law Clerk Judges

Gentlemen:

Recently Fairbanks' Court System has joined Anchorage by crowning court law clerks as "Acting District Court Judges."

Of course, the use of law clerks has advantages and disadvantages. Some of the latter may be highlighted by the enclosed dialogue between Gus and Johnny.

Sincerely,
A. Nonnymus

GUS AND JOHNNY

On my way to court today I met my old friend Johnny. Johnny is a Sourdough from way back and has known some hard times. "Hello Johnny," I said, "how's times treating you?" Johnny pulled out a cigar, lit up and

beamed "Real fine, real fine, Gus," he said, "y'know my son just graduated from law school and is back up here." "Why I didn't know that Johnny" I said. "I suppose he will be eating beans for awhile till he gets started—but in a few years..." "No nothing like that Gus" said Johnny, "he's a judge ya know."

I shook my head in disbelief. "I thought you said he just got out of law school."

"That's right, he went to work right away for the court system as a clerk and for y' know it he's a judge!"

"A real judge?" I asked.

"Sure, he was all excited about it—I saw him at the house this morning. He found out he's a judge last night and he has a trial tomorrow. He's got his own courtroom, a real black robe and everything—even one of them little hammer things!"

But Johnny," I asked, "if he has less experience than anybody else in the local bar, how come they don't get someone with more experience?"

"Well," Johnny beamed, "that's the thing, to be a judge, the legislature has to create a position; the applicant has to be found eligible by the judicial council and be appointed in a rather long process. That takes a lot of time and money. This way when the work piles up they can dispense with all that stuff. Besides, who knows the difference anyway? You put a robe on a fella, everyone calls his y' honor, what else do you need?"

"But Johnny," I asked, "don't you need some moxie to be a judge? I mean, don't you have to be kind of up on the law and know the sort of tricks attorneys can play?"

"Hell Gus," chuckled Johnny, "what's in a word. It's 'overruled' or 'granted'."

"Well, I suppose after a while on the bench he'll learn," I said, "besides, a judge's pay is good and I know how it is for us all."

"Oh Hell," it ain't the pay," said Johnny. "M' boy has it all figured out. They only pay his clerk's wages, but that don't matter. It's only for a year. He says the experience is good. After all, what better place to learn the nuts and bolts of it than from the bench?"

UNCLE STAN

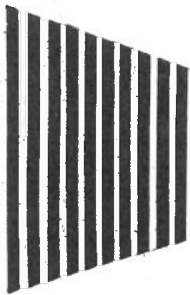


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The Gentle Art of Judo

By Steve Dunning

Some years ago the *New Yorker* magazine ran a cartoon series "Dreams of Glory." The drawing I remember best depicted a small boy with a calmly disdainful expression effortlessly hurling a couple of enormous "bad guys" violently through the air. It was captioned simply "Jui-Jitsu."

Well, it doesn't quite work like that. Neither Jiu-Jitsu nor its more modern descendant, Judo, will instantly immunize the 97 pound weakling against the 240 pound sandkicker. Judo is not magic. It is, however, a fascinating combative sport, a profitable mental discipline, an art of some utility in self-defense, good healthy exercise, and a helluva lot of fun.

★★★★

Judo has been defined as "a kind of wrestling with clothes on," which is not a bad capsule description. The object of the game is for a single unarmed man to defeat a single unarmed opponent without doing him serious injury. The techniques used are of two general types: "throws" and "holds." The throws are the spectacular ones. A really good throw is instantly recognized, even if you never saw Judo before. After some struggling over grips and the like, and perhaps a few foot-and-body fakes, there is a sudden, smooth whirl of motion and one of the contestants comes down on his back with a resounding crash. At that point, the match ends. One perfect throw wins all the marbles.

★★★★

If the throw is not quite perfect, or if it doesn't go off at all and both competitors fall, the "holds" come into play. These are either hold-downs (pinning techniques), armlocks, or chokes. The idea of a hold-down is to put your opponent on his back and maintain control of him for 30 seconds. In a choke or armlock, the object is to gain a punishing hold which he cannot break, thus forcing him to give up and resign the match. If you choke him unconscious, of course, you win.

Judo is derived from the ancient art of Jiu-Jitsu, a system of hand-to-hand combat developed by the Japanese Samurai. Jiu-Jitsu is by no means a sport. It is a soldier's art, and its purpose is killing, crippling, or capturing an enemy in way. It survives today as a useful means of self-defense, but many of its techniques are dangerous if practiced at full speed.

★★★★

In the late 19th century Jigoro Kano, a Japanese educator who was a master of Jiu-Jitsu, conceived the idea of modifying that art into a system which could be at one and the same time a sport, a method of physical conditioning, and a discipline for self-improvement. The result is modern Judo. In 1882, Kano founded the Kokokan, the first Judo school, which still exists today in Tokyo.

What Professor Kano did was to eliminate from competition the most

dangerous Jiu-Jitsu techniques, adopt the more scientifically sound of the others, invent a few more himself, create a system of contest rules, and ground his whole method of teaching upon principles of courtesy, sportsmanship, mental discipline, and physical fitness. Through a full understanding of the essence of Judo, he said, the practitioner helps himself to become the kind of person who can contribute something of value to the world. This he maintained, is "the final goal" of Judo training.

★★★★

Despite the spread of Judo beyond its parent culture, Kano's ideals survive. Senior ranks help juniors, and the juniors cooperate with the seniors. Rival clubs and instructors help each other. Judo is probably the only sport practiced in the Western world in which **nobody** argues with the officials. (What, never? Well—hardly ever!) Kano's slogan, "Mutual Welfare and Benefit," is a real force in this game.

So, of course, is its formalistic Japanese heritage. Competitors salute each other by bowing at the beginning and end of each match. One also bows upon stepping on and off the mat, to show respect for the *dojo* (the Judo gym) as a place of learning. Students and instructors bow to each other at the beginning and end of each class, and, in most clubs, bow together toward "the place of honor" where Professor Kano's portrait is hung, in memory of the great man. There is a rather rigid rank structure, comprising six "kyu" or "student" grades and ten "dan" or "master" (black-belt) grades, in which promotions are awarded on the basis of knowledge, experience, ability, and time and effort contributed to the sport. In a Judo class or practice session, the senior rank present is normally expected to take charge, and the juniors accept his leadership. (All very formal and even a bit feudal, but it works.)

★★★★

The vocabulary of the sport is likewise Japanese, which explains those strange sounds you'll hear the referee gargling at the contestants from time to time. In fact, if you take up Judo seriously, you will learn quite a bit of that interesting Oriental tongue, although your subject matter may seem somewhat limited. You won't be able to ask the way to the restroom, but you will discover how to describe a lot of combative techniques. The quality of pronunciation, of course, varies. The chief instructor at our club, for instance, speaks Japanese with a distance Carolina accent!

★★★★

Who participates in Judo? Just about anybody. There are classes and competitive divisions for men, women, boys, girls, and older practitioners. The only real requirement is that one have reasonably full use of the usual number of arms, legs, etc. In any fair-sample of Judoists, one may find anyone from the doctor and the lawyer to the butcher, the baker and the candlestick maker. The only hierarchy recognized is the hierarchy of the Judo belt, and the janitor throws the president of the bank—providing he can catch him off balance!

There is an active Judo program in Alaska, with five clubs in the Anchorage area alone. During the winter, a tournament is held about once a month, a big event being the State Championships at Fur Rendezvous time in Anchorage. Drop in and watch—it's a fine spectator sport, and you may get to see a few of your friends and acquaintances being thrown around!

Steve Dunning is an attorney in private general practice in Anchorage. He holds a Second Class Brown Belt in Kokodan Judo, and is an assistant instructor at Nikan Dojo in Eagle River.



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**ALASKA BAR ASSOCIATION TRUST FUND
REPORT ON EXAMINATION OF
FINANCIAL STATEMENTS
YEAR ENDED DECEMBER 31, 1978**

February 1, 1979

The Trustees
Alaska Bar Association Trust Fund
Anchorage, Alaska

We have examined the balance sheet of the Alaska Bar Association Trust Fund as of December 31, 1978, and the related statement of operations and changes in fund balance for the year ended December 31, 1978. Our examination was made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the aforementioned financial statements present fairly the financial position of the Alaska Bar Association Trust Fund at December 31, 1978, and the results of its operations for the year then ended in conformity with generally accepted accounting principles.

TERRY L. PETRUSKA, C.P.A.

**ALASKA BAR ASSOCIATION
TRUST FUND
BALANCE SHEET
December 31, 1978**

ASSETS	
Cash	\$4,706
LIABILITIES AND FUND BALANCE	
Insurance premiums received in advance	\$3,297
Administrative fees payable to Alaska Bar Association	1,409
Total Liabilities	4,706
Fund balance	\$4,706

See notes to financial statements.

**ALASKA BAR ASSOCIATION
TRUST FUND
STATEMENT OF OPERATIONS AND
CHANGES IN FUND BALANCE
Year Ended December 31, 1978**

Revenues (Note 2):	
Insurance premiums	\$16,380
Administrative fees	1,429
	<u>17,809</u>
Expenses (Note 2):	
Insurance premiums	16,380
Administrative fees	1,429
	<u>17,809</u>
Excess of revenues over expenses	\$ 0-

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**ALASKA BAR ASSOCIATION
TRUST FUND
NOTES TO FINANCIAL STATEMENTS
Year Ended December 31, 1978**

1. Organization:

The Trust Fund was organized March 11, 1976 pursuant to a trust indenture entered into by the Alaska Bar Association and its members. Operations began April 1, 1976.

The purpose of the Trust is to provide and maintain a broad range of health and welfare benefits for the Association's members, their employees and families through insurance policies issued by licensed insurance carriers. These benefits were available to the Association's members through the Association's Group Insurance fund prior to the organization of the Trust Fund.

2. Significant Accounting Policies:
The following is a summary of the Trust Fund's significant accounting policies:

Insurance Premiums

Insurance premiums are recognized as revenues at the time the premiums are due and payable to the insurance carriers. Amounts received from subscribers in excess of amounts immediately due and payable to the carriers are deferred until the premium due date.

Administrative Fees

Administrative fees collected from subscribers are recognized as income when collected. At the time the fees are collected an expense is recorded to recognize the administrative support provided by the Alaska Bar Association.

Income Taxes

The Alaska Bar Association Trust Fund is subject to income taxation as a complex trust as defined by the Internal Revenue Code. A provision for income taxes will be provided should the Trust have taxable income in the future.

ANNOUNCEMENT

Judith J. Bozeley and Kathleen Harrington will be opening their law practice on April 3, 1979.

Bozeley & Harrington, Attorneys at Law,
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ALASKA STATUTES



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Bar Foundation

February 1, 1979

The Board of Directors
Alaska Bar Foundation, Inc.

I have verified the activity of the Alaska Bar Foundation, Inc. for the year ended December 31, 1978. In addition, cash bank balances were confirmed and verified as of December 31, 1978.

As such, the following balance sheet as of December 31, 1978 and statement of revenues and expenses and changes in fund balance for the year ended December 31, 1978 accurately reflect the financial position of the Alaska Bar Foundation, Inc. as of December 31, 1978.

Sincerely,
Terry L. Petruska, C.P.A.

**BALANCE SHEET AT
DECEMBER 31, 1978**

Cash in savings and savings certificates	\$6,102
	<u>\$6,102</u>
Accounts payable-Alaska Bar Association	\$ 263
George F. Boney Memorial Fund-	
Unappropriated	5,739
	<u>\$6,102</u>

**STATEMENT OF REVENUE AND
EXPENSE AND CHANGES IN
FUND BALANCE FOR THE YEAR
ENDED DECEMBER 31, 1978**

Interest Income	\$ 332
Excess of revenue over expenses	332
Fund balance-beginning of year	5,407
Fund balance-end of year	\$5,739

**Nominations Open For
Three Board of Governor's
Seats**

The Alaska Bar Association has circulated petition forms for three openings on its Board of Governors. To date the following names have been submitted: First District Bart Rozell, Second and Fourth District—John Van Winkle, Dick Savell, Third District—Edgar Paul Boyko, Keith Christenson, Bill Donohue, Rick Helm, Elizabeth Kennedy, Fritz Pettyjohn, Wayne Ross, Dale Walthers, Ron West, Phil Nash.

Nominations close on April 4, 1979. Ballots will be counted on April 27, 1979.

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Potshots

[continued from page 4]

with the same powers he now has, ironically, his power would be enormously increased.

Under Alaska's unique "strong executive" system, all executive power is centralized in the governor. Even the Attorney General's powers are exercised through structured delegation.

From a constitutional perspective, the governor can, for example, make his own legal determinations and tell the Attorney General to shut up. Every Alaskan governor has felt the urge to do so at one time or another. That urge is usually constrained, however, by reluctance to buck a professional judgment.

Whether the public, in its calmer moments, wants a professional judgment or a political judgment, should determine whether the Attorney General or any other executive officer should be elected.

The Alaska Attorney General exercises unique prosecution powers. Is this a function that should more

strongly reflect political over professional judgment?

In almost all states (Rhode Island is another logical exception) prosecution is handled by local District Attorneys either appointed by the court or, as in most jurisdictions, elected.

Alaska is strongly influenced by this decentralized tradition though it never used the elected D.A. system. In that regard, Alaska follows the U.S. system of appointed prosecutors, familiar from Territorial administration.

The Attorney General has the power to manage prosecution like a super-district attorney, but in practice he has confined himself largely to matters of personnel and financial support for prosecution. Under the Alaska circumstances, the management of prosecution has been guided by professional and not political standards to an extent unknown in the other states.

The creation of a criminal division has laid a foundation for uniform standards of statewide application for case management and guidelines for the exercise of discretion, following the U.S. model, but without changing

the overall emphasis on decentralized and professional management.

The elected district attorney has a venerable role in American history. It is a history replete with instances of corruption. Remarkably, while many private attorneys have been disbarred since statehood, there has never been an instance of prosecutorial corruption.

The tendency to corruption starts in the financial exigencies of elections and misunderstanding of the professional obligations of prosecutors by the public. Those who support a District Attorney for election find it natural that he should devote himself to prosecuting crimes of special interest to his supporters such as "crimes" suspected of members of the other party. But this is the beginning of "bought" justice.

Around election time the elected D.A. may also be moved to "make an example" out of someone charged with a heinous offense even if, after the election, the conviction is reversed as a result of excesses in his zeal. At any time of year the elected prosecutor is tempted to special understanding of the peccadillos of friends and relatives of well-heeled contributors.

Presumably, when not swayed by the outcry of a heated moment, the public wants steady, fair, evenhanded, reasonably priced, prosecution; in short, professional prosecution. Elections, particularly in a transient community, are won by people who are professional at winning elections.

While a case may be made for electing state officers such as the Attorney General, the issue is far more complex than it first appears. The duties of the office can vary widely. It is the nature of a duty that should determine the manner of selecting the office holder.

Variations in the Attorney General's responsibility are synchronized with the powers of other executive officers of the state. You can't change one without affecting all the others. Now we could elect the Attorney General and, following the city manager system, have an appointed governor.

[The writer has served as an Assistant Attorney General, Deputy Attorney General and Attorney General of Alaska.]

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Lanier gave Arnold Palmer three tips to improve his timing.



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Ethics Opinions

[continued from page 3]

Ethics Committee in Informal Opinion No. 1334 is equally applicable under the present circumstances, i.e., no Disciplinary Rule forbids a lawyer with a legal aid society from making such a reference.

An obvious concern with such a conclusion is the solicitation of such referrals by private lawyers. However, Disciplinary Rules 2-103(B) and 2-103(C) would address the activities of such lawyers. DR2-103(B) states that except by paying dues to certain approved organizations, a lawyer shall not give anything of value to anyone to recommend his employment or as a reward for having made a recommendation resulting in his employment by a client. Additionally, DR2-103(C) states that a lawyer may not request anyone to recommend him, except he may request referrals from a referral service approved by a bar association. Any violation of these two rules would subject the offending lawyer to disciplinary proceedings, which would appear to be more appropriate than prohibiting employees of a legal aid society from making such recommendations on a good faith basis.

In conclusion, no Disciplinary Rule is necessarily violated by the referral by employees of the Alaska Legal Services Corporation of ineligible clients to private lawyers rather than to the statewide lawyers referral program.

CLE Courses Offered Statewide

Institutes on the Alaska Rules of Evidence, Basic Estate Planning, and Professional Update Conference have been scheduled for this Spring by the Alaska Bar Association's Committee on Continuing Legal Education.

All courses have been approved for the CLE discount for legal malpractice insurance.

The Evidence course will be held May 10 in Juneau, May 11 in Anchorage and May 12 in Fairbanks.

Prof. Stephen A. Saltzburg of the University of Virginia School of Law who served as the reporter for the committee on the new rules, will lead the presentations at each of the locations on the schedule.

Other speakers will be Judge James R. Blair, Fairbanks; Alexander Brynner, U.S. Attorney, Anchorage; Judge Victor D. Carlson, Anchorage; U.S. District Judge Samuel P. King, Honolulu, and Patricia J. Gullufsen, Assistant Attorney General, Juneau.

Although at this writing the rules have not been approved by the Alaska Supreme Court, indications are that the rules will be approved with a summer effective date.

The rules, although in many respects closely paralleling the Federal Rules of Evidence, do contain some significant differences that Alaska attorneys should be aware of.

Each registrant at the institutes will receive a complete set of the new rules, with commentary.

The Basic Estate Planning course is scheduled for June 1, and June 2 in Anchorage.

The course will be geared to educate the general practitioner, and will include significant changes in the law brought about by the passage of the Revenue Act of 1978.

Speakers at the institutes will be Prof. Terry L. Crapo of the J. Reuben Clark Law School, Brigham Young University, Provo, Utah; John H. Bengtson, Lewiston, Idaho, and Bill Lawrence, Anchorage.

The Professional Update Conference will be held in conjunction with the Annual Meeting of the Alaska Bar Association, June 6-9 at the Sheffield House in Sitka.

Topics at the conference will be a review of significant legislation passed by the 1979 Alaska Legislature, a review of significant decisions by the Alaska Supreme Court, a discussion of the new federal bankruptcy act and reviews of new laws affecting business, torts practice and criminal practice.

Speakers will include Norman Gorsuch, Juneau; Rhonda Butterfield Fairbanks, and Kenneth P. Jacobus, Judge J. Douglas Williams, II, Donna C. Willard, Bernard P. Kelly, Joseph Balfe, Michael Rubenstein, William P. Bryson, Wayne C. Booth, Walter Garretson, Hoyt Cole and Steve C. Hillard, all of Anchorage.

The CLE Committee also has voted to schedule fall courses on the new Bankruptcy Act, the Alaska Lien Law and the new Alaska Criminal Code.

At this writing, only the Bankruptcy course has been definitely set. It will be held Sept. 8 in Anchorage. Speakers will be Prof. Lawrence P. King of New York University Law School, Gerald K. Smith, Phoenix; J. Ronald Trost, Los Angeles, and Judge J. Douglas Williams, II, Anchorage.

Terry Fleischer, CLE chairman said any member of the Association having ideas for other courses should contact either him or Ronald L. Kull, Executive Director.

Macie's Gun (Part II)

OR

"What's a Nice Milwaukee Boy Doing In A Place Like This?"

by Wayne Anthony Ross

Several issues ago I told about Macie's gun, a custom .458 magnum rifle. I related Macie's run-in with a brown bear during which Macie suffered the first of a series of heart attacks which eventually took his life and about how I came to acquire the rifle from Macie's widow. After owning the rifle for several years I am wondering if there is something about the rifle that attracts bears...

Simpson Bay is located about 10 minutes flying time north of Cordova. There is a Forest Service cabin there. There also is a great abundance of bears. I know.

★★★★

In 1972, a friend of mine, Bob Rink, and I decided to try and get some geese and deer hunting in and around Prince William Sound.

We checked with the Forest Service in Cordova and while in the office there, Trooper Ron Cole, then stationed in Cordova, stopped in. We got to talking and he advised us to try Simpson Bay where, he said, there was a good supply of deer and geese. "Take a big gun along though," Ron advised. "There are a lot of bears over there."

We departed the next morning for Simpson Bay. Bob had my 30-06 and a shotgun and I took a Browning automatic 12-gauge and Macie's .458. We each had a .45 revolver and hoped to get a deer with these.

The first night after dinner, we went out from the cabin towards a small stream to fill up our water bottles. On the way we had something very big follow along beside us in the woods keeping just out of the light of the lantern. From the sounds of the trees being knocked down, we were sure it was a bear. Elephants aren't indigenous to Prince William Sound.

The next day we hunted geese and deer, without success. About 4 p.m. we returned to the cabin. Bob decided to take a nap while I hiked up to a small lake behind the cabin. I grabbed the Browning 12 gauge figuring that I might get a shot at a goose up at the lake, but then remembering the incident of the night before, and Trooper Cole's warning about bears, I changed my mind and took the .458.

★★★★

The trail to Milton Lake meandered along a small stream crossing back and over bridges made from single logs. Salmon still splashed in the stream although the run was coming to a close. As I skirted old salmon

bones along the path, I remember thinking that I was glad it was October and not during the peak salmon run because it was clear that many bears had been in the area during the peak of the spawning.

About halfway to the lake the trail led around some bushes taking me out of sight of the stream for a few moments. At that time I heard a substantial amount of splashing ahead and to my left and thought that it sounded as if there might have been some barrier across the stream, causing the salmon to school below the obstruction. I came around the bushes, and the stream returned to view but it wasn't salmon that were causing the splashing.

Instead, there were three bears in front of me. One bear was 60 feet away and looking at me. The second bear was 50 feet away, also looking at me. The third bear was 40 feet away and coming right at me. Instinctively I raised my rifle. As the gun came up I can recall three distinct thoughts. The first one was "This can't be happening to me. This only happens in *Field and Stream* magazine." The second thought was "There are three bear and you have only three cartridges in this rifle." And the third thought was a remembrance of a picture that hangs in Jay Warner, the Court Intake Officer's office. It's a Charles Russel print of a cowboy who has been leading some horses along the rim of an arroyo. The horses are bucking. One bear is dead at the cowboy's feet. The second has a hold of his boot as the cowboy fires his Winchester at the bear. The third bear is still coming.

★★★★

All of these three thoughts raced through my mind in far less time than it takes to tell. The .458 went off. I never felt the recoil. All I knew was that one minute the bear was coming at me full tilt. The next, the bear had cartwheeled over backwards just as if it had run full speed into a brick wall. It never moved.

I thought the noise of the gun would scare the other two bears off. I chambered another round. The other two bears didn't flinch at the sound. One bear started walking towards the side like he intended to try and get around behind me. The other bear started walking towards me. "Ross," I said to myself, "what's a nice Milwaukee boy like you doing here? Get the h— out of here." I started backing up keeping my eye, and the rifle on the bear coming towards me while still trying to watch the one trying to flank me while still trying to watch the one I had hit to make sure it didn't get up again. As I backed up, the bear coming towards me matched me step for step, keeping about 50 feet away. I finally came to one of the log bridges, hot-footed it across, and beat a hasty retreat back to the cabin. By that time, the plane had come in to deposit the third member of our group, Dr. Menard of Wasilla.

"What happened to you?" he said. "You're white as a sheet."

"I just had to shoot a brownie."

I told him.

"Why, you can't do that!" he said. "Brown bear season doesn't open for another week."

"Well," I said, "human season isn't open either and this bear was about to violate."

We discussed the matter and my friends pointed out that the Fish and Game required that a person shooting a bear in defense of life or property had to salvage the hide and skull. Rink and Menard were all in favor of heading back up the trail to skin out my bear. "Listen," I said. "He's got two big friends with him up there, they're both p— at me. Besides, it's getting dark. And I'm not going back up there tonight with two more bears up there."

I don't think that Rink and Menard believed me about three bears at the time but they agreed that we'd wait until morning.

★★★★

Early the next day, we hiked back up the trail to skin out my bear. Menard had a .44 magnum revolver, and Rink had a .45 revolver and the Browning automatic 12-gauge, plug removed, loaded alternately with double 00 buck and slugs. I had a .45 and the .458.

I had read somewhere that in bear country a person should carry a bell or a tin can full of stones to warn the bears away. Don't believe it. The good humor man has a bell on his truck and it certainly doesn't scare the kids away. I think bears hear a noise like that and think it's a dinner bell, and I'll tell you why I think so.

We didn't have a bell or cans with stones so we took some pots and pans and banged them together as we walked up the trail. We also sang bawdy songs figuring Rink's voice is enough to scare anything away.

★★★★

When we got to my bear we paced off the distance from the bear to where I shot from. Eleven steps. Too close for comfort. (I'm sure that if I had had any smaller rifle I wouldn't be writing this story and you wouldn't be reading it. Shame on you, dear reader, for wishing I had had a smaller gun!)

We then started working on skinning the bear. As I was skinning out one of the paws I noticed Rink put the shotgun down to assist Menard on the skinning. "What are you doing?" I asked him.

"Helping you skin the bear," he answered.

"You can help us best by picking up that shotgun and keeping your eyes open. There are still two more bears around here," I told him.

"I'm sure if there were other bears around, we've scared them away with our pots and pans and singing," he replied.

"Bob," I said, "do me a favor and pick up the shotgun and stand guard," I insisted.

Rink complied. He picked up the shotgun, walked up on the bank and started whistling nonchalantly as Menard and I resumed skinning.

Suddenly I heard Rink exclaim "Oh sugar!" (Now that's not really what he said but you may want to read this story to your kids and who am I to try and poison kid's minds with bad language.)

I knew instinctively what he meant. "Go for your gun," I yelled to Menard as I came up with the .458.

Sure enough, here came those other two bears again, running right towards us. Did you know bears can leap over five feet logs? I didn't. Until then.

Up we came with our guns, and here came the bears.

Now I knew Fish and Game might believe defense of life for one dead bear. I was more doubtful that they would believe it with three dead bears, so as the bears came at us we proceeded to insult the bear's parentage no end. We called them every name in the book and then some.

★★★★

"If they get to that log, we'll have to shoot," I said. Just before the log about 50 feet away, they stopped and stood up on their hind legs. Both bears were bigger than the one I shot. It would have made a great photograph but I wasn't about to put the .458 down to take a picture.

After more insults being hurled in their direction (I think Rink even sang a song) the bears dropped down on all fours and disappeared back into the woods.

We quickly finished skinning and got out of there. The plane picked us up and we returned to Cordova.

"How do you know the bear was charging?" Rod Mills asked. (No Miranda rights.)

"Well Rod," I said, "I've thought about that. Perhaps he wasn't. Perhaps he smelled or heard me coming up the trail and just was trying to get away and had the misfortune to run in my direction. Perhaps he was even the Welcome Wagon coming over to welcome me to the neighborhood. I guess I would have never really ascertained his intentions until I allowed him to take a bite out of my leg, but I wasn't about to let him get that close!"

"Were you wearing that hat?" Rod Mills asked, referring to my large Australian Akubra version of a Montana cowboy hat.

I replied that I had indeed been wearing my hat when charged.

"That bear probably saw your hat and your beard and figured you were the south end of another bear going north," Rod Mills explained.

The more I think about it, the more I'm convinced I was being insulted.

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Supreme Court Clerks



Loni Levy (Justice Connor)

Loni, a native of New York City, comes to Alaska from Georgetown Law School where her legal education included extensive experience with the Institute for Public Interest Representation and the Project on Property Rights. She became interested in law while working with such organizations as the National Lawyers Guild, the National Emergency Civil Liberties Committee and the VISTA Bail Project in Philadelphia.

Loni first decided to become a lawyer by clerking for the New York civil rights firm of Rabinowitz, Boudin and Standard (who represented such clients as Daniel Ellsberg and the Berrigans) during 1969-1971. Her studies were interrupted by a move to the South of France, where she lived for three years. During this time she did research on a book *Law and the Rise of Capitalism* (Monthly Review Press, 1977), co-authored with Michael E. Tigar.

A member of the DC bar, Loni is not certain if she will remain in Alaska but is glad she came. She feels that the Alaska Supreme Court has a reputation for innovation and she enjoys the opportunity of participating in the creation of a jurisprudence. If she could wish for one thing it would be: a LEXIS terminal.



Bruce Cohen (Justice Matthews)

Bruce is from New York City. After attending Yeshiva College and the City College of New York he made his way to California where he worked as a teacher and actor. After several years he returned to the east entering Harvard Law School where he graduated cum laude.

He first came to Alaska last year as a summer clerk for Libbey and Daly. After law school he stopped in California to take the bar exam (successfully) and drove up to Anchorage, taking the ferry to Haines. In Alaska he has ranged as far as McKinley and Homer.

Bruce continues to be interested in the theater. He is currently a member of the KSKA First-Nighters and recently played the villain in a radio drama "Angel Street."

He is impressed with the Alaska Supreme Court as willing to enforce individual human rights. Although he likes Alaska, he will probably not remain because of commitments he has outside.



Carla Caruso (Justice Connor)

Born in Chicago, Carla grew up in the San Francisco bay area and decided she wanted to go to law school when she was in the eighth grade. She majored in American Studies at UC Davis, where she also attended law school. During her last year she was a summer clerk for Birch, Horton in Anchorage.

Carla is fourth in a line of Davis graduates to clerk for Justice Connor. She enjoys the wilderness quality of life combined with the good quality of law in Alaska.

Her hobbies include skiing, photography and handicrafts. Among the places she has visited in Alaska are Juneau, Glacier Bay and Mt. McKinley.

[While on a Christmas vacation to California, Carla was severely injured in an automobile accident from which she is presently recuperating. During her absence her position is being temporarily filled by **Grant Callow**, a former assistant Public Defender and clerk to Justice Burke.]



Jan DeYoung (Justice Burke)

Jan is a graduate of the University of California, Davis, Law School and a member of the California bar. As an undergraduate she majored in English, attending Cal State L.A., Santa Rosa Junior College, and Pasadena City College. Her original goal was to be a legislative assistant and she attended law school to further this ambition. She enjoyed the relaxed atmosphere of Davis and became interested in Alaska through a number of her friends who had done work here.

Jan likes a small community "where you can get to know people." She has traveled in Southeast and the Kenai peninsula where she saw her first moose. Although she doesn't know whether she will remain in Alaska after her clerkship is over, she has taken the Alaska bar exam and is awaiting the results.

She enjoys her work, despite the isolation, and finds satisfaction in taking part in an important process. Her hobbies include going to the movies, reading mystery novels, cooking and hooking rugs.



Sue Mason (Justice Burke)

Sue graduated from the University of North Carolina Law School (Chapel Hill), is a member of the North Carolina bar and is currently awaiting the results of the February Alaska bar exam.

Sue majored in German as an undergraduate at Hollins College and did graduate work in German literature at Chapel Hill. Following that, she taught school for one year and then worked for six years as a bilingual secretary for a European machinery manufacturer.

She decided to go to law school for several reasons, the challenge, a younger sister already in law school, and after being a juror in a murder case, the feeling that she could have done a better job as counsel.

Her first visit to Alaska was in 1975, when she spent three weeks in Anchorage. During the summers of 1976 and 1977 she worked as a law clerk for Court System staff counsel Susan Burke.

After her clerkship ends, Sue hopes to stay in Alaska, which she considers "an exciting place where people are more open to new experience, more friendly, and less private than in the South."



Nelson Page (Justice Matthews)

Nelson Page is from Oregon. He majored in Political Science, attending Portland State and the University of Oregon at Eugene. Wanting to get out of the Northwest, he decided on George town Law School where he was involved in their clinical program and on law review.

The summer before law school Nelson worked for Ralph Nadar. He has also served as a summer clerk for a Portland law firm. Before coming to Alaska, he stopped in Oregon long enough to take and pass, the Oregon bar exam.

Nelson has seen Anchorage, Seward, Ketchikan and Juneau. He considers Alaska "an exciting place an open state where people operate on a more human level, are more pleasant, also more direct."

He enjoys his clerkship, though admits it is "lots of work." His outside activities include running, downhill and cross-country skiing and "trying to re-create a life outside law school."

Next month, Juneau and Fairbanks clerks.

Gallus Domesticus and Other Fowl Things

by H. Dumpty Savell

You too can be a gentleman farmer, feed your family and enjoy yourself tremendously at the same time with very little expense. If you wish to follow through with some of the release mechanisms discussed in the "attorney stress" seminar in Hawaii and are so inclined, why not try raising chickens this summer? In just twelve weeks, your dinner table can be adorned with your own *Gallus domesticus*, the like of which has never been found in any Alaskan market. And, in as little as sixteen weeks, you can enjoy a delicacy that is nearly extinct and most assuredly unknown to the majority of readers and their families—the fresh egg.

I am not in the position to compare my poultry adventures with the rearing of children, but with chickens too, the beginning is the most difficult. Chicks, like children, must be taught to eat and drink, fed often and kept warm. After four or five weeks, however, they are, if your geographic location permits, on their own. My first exposure to chicks resulted from a couple visiting our home for cocktails around Easter time, accompanied by a brown paper bag that echoed the peeps and chirps from within. Their "cute" joke led me to conclude that if I were to hassle with six, why not ten more?

My first brooder box was a cardboard box, ashtrays for feed and water, and a goose-neck lamp for warmth. Encouraged by the 100 percent survival, I found myself starting the next year with 100 day-old chicks and five day-old turkeys. The ideal start for a beginner should be between one dozen and twenty-five chicks.

Chicks can be obtained from a local feed store or by mail (yes, by mail and guaranteed 100 percent live delivery). At birth, chicks are equipped to survive without food or water for seventy-two hours. To start their non-stop digestive machines, just dip their beaks in water; they will take it from there. The only choice if you want meat is to start with Cornish-Cross, the specially bred heavy meat bird, with the highest feed to meat conversion ratio. At twelve weeks, dressed out Cornish-Cross, without giblets, have tipped my scale at 7½ pounds! Twenty-five straight run (mixed male and female, usually 50/50) can be obtained from Allen Hatchery, Inc., P.O. Box 46, Windsor, Missouri 65360 for \$13.00 for \$4.20 postage and handling. (Send for their free catalog). Locally, these chicks should cost around 70 to 80 cents each. The unit price declines as quantity increases—100 cost approximately \$30.00. Your cost is not in the chick, however, but in

the bird.

Your choice of breed depends on whether you are after meat or eggs. The commercially popular layers are small (less space, more eggs) but senseless for meat production. A good compromise for eggs and meat is a "heavy" breed layer, which is even suitable for a hardy, cold weather climate. "Straight run" will give you approximately one-half cockerels and one-half pullets so you can use the former for meat, the latter for eggs. And, your past biology lessons notwithstanding, you do not need a rooster to get eggs!

Rather than a cardboard box, a wood frame with a half inch hardware cloth/screen is recommended. Remember, whatever goes in must come out and they do eat a lot. In this manner, you can simply change the paper underneath without disturbing the chicks. A clamp-on light or hanging light bulb is all you need for warmth. An anti-roosting trough is inexpensive and keeps the chicks from fertilizing their feed and an auto-flow base for an inverted mayonnaise jar is less than \$1.00 and all you need for water. Anything you need can be built or bought—your choice is the balance between energy and expense. For the next four and one-half to five weeks, about the only benefit aside from fascination in watching them, will be the constant sound of spring in your home. With the chirping, we found ourselves looking outside expecting birds in green trees—but found only snow.

Before long the little balls of down will have increased in size geometrically and, as feathers appear, they will be ready (as you will be anxious) to be put outside. From here, nature takes over. Placed in a fenced-in area, they will get exercise and food. Chickens eat anything—bugs, grass, garden scraps, weeds, table scraps, and even their own waste. Thus, their diet can be supplemented and your feed bill reduced. The picture we have seen so often of chickens scratching around the farmhouse, unconfined yet hanging around all the time may be unrealistic for Alaska. Fencing can keep your chickens in and away from your garden and keep dogs and other varmints out and away from your chickens.

With your chickens outside, the real work is over. Equipment exists so that you need only tend to the feed and water once a week. You can lean back, enjoy, and observe the workings of their pecking order and society—in many ways, a microcosm of ours. You will come to identify some of your birds as aggressive, some unassuming, some inquisitive, and some talkative. You will also learn

that the music of crowing roosters (yes, music!) is not performing just in the morning and, that chickens take dust baths, a comical sight, to cleanse themselves.

You must have the inclination, but if you do, you probably cannot lose. You will not necessarily save money; the cost will not be that far from what you pay in the market, but the quality cannot be surpassed. You stand to gain tremendous enjoyment, cheap entertainment, high quality home grown food, fresh eggs and a constant source of humor for joking friends. Recommended reading as a good starting handbook: *Chickens in Your Backyard*, by Rick and Gail Luttmann, Rodale Press, Inc., Emmaus, Pennsylvania 18049, \$3.95 (also available from Allen Hatcheries).

H. Dumpty Savell practices law in Fairbanks, Alaska under the name of Richard D. Savell in the law firm of Aschenbrenner and Savell.

Bar Resolution Deadline

Pursuant to Article VIII, Section 5, of the By-Laws of the Alaska Bar Association, notice is hereby given of the deadline for submission of resolutions to be considered at the Annual Meeting of the Alaska Bar Association.

The business meeting will be held on Saturday, June 9 at the Sheffield House in Sitka.

No resolution may be introduced for consideration at the Annual Business Meeting unless it is signed by at least 10 active members of the Association, or sponsored by a local Bar Association. Such resolutions must be received in the office of the Association at least 30 days prior to the opening date of the Annual Business Meeting and shall immediately be submitted to each local Bar Association for consideration. Any resolution not so processed shall be considered at the Annual Business Meeting only if 35 members in attendance at such meeting sign a petition urging consideration of the resolution.

The Nose (Knows The News)

BELIEVE IT OR NOT: A District Court Judge in Anchorage declared himself a "hung" Judge in a non-jury trial...one wag thought he should have gone into chambers and given himself the Allen charge.

PEKING DUCKED: Most members were disappointed when Art Snowden, Adm. Director of Courts, did not journey to China with Gov. Hammond's party as planned. They couldn't wait to see what innovative Chinese court customs he would have returned with. Instead Art stayed in Anchorage to welcome his new sone Arthur Neilan Snowden born February 17, 1979. Congratulations Art and Dianne!

NITE CLUB NOTES: The Embers called to inquire if Harry Davis, Fairbanks D.A. was ill. They haven't seen him in their establishment lately.

THEIR FINEST HOURS: One of our members when informed the Anchorage Police were on strike, was heard to say, "How can you tell?"

BARE FACTS DEPARTMENT: Would all those members of the Board of Governors who went skinny dipping the night of January 30, on Kauai please raise their hands—you too Bill Garrison!

LAW FIRMS WE'D LIKE TO SEE FORMED: Norman, Saxon, Call, King, Henri; Trickey and Luce.

CONGRATULATIONS: To Anchorage attorney Brock Shamberg and his wife Janice on the birth of their daughter Yaela Louise on December 28th, 1978.

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