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The Alaska BAR RAG

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Fairbanks Convention Wins Rave Reviews

Most if not all of the participants in this year's annual Alaska Bar Association Convention at Fairbanks seem to agree that the Tanana Bar hosted one of the best outings since the Nome Convention when a bread salesman was mistaken for a Federal Appellate Judge simply because:

1. He was sober; and
2. He was wearing a suit

CLE

Although the meeting, features several distinguished speakers and national authorities who no doubt significantly added to the store of legal knowledge of the members attending the various seminars and lectures, it was Anchorage Attorney Richard McVeigh who captured the hearts, minds and savings of those in attendance at the Round-the-Clock Continuing Legal Education seminar in the hospitality rooms of the Traveler's Inn in Fairbanks. Another CLE highlight occurred out on the manicured lawn in front of the hotel, when the Bar Associations own CLE director Deborah O'Reagan held an ever growing number of enthusiastic attorneys spellbound with her presentation of warm-up exercises for the annual foot race.

Night Life

On the lighter side of the program, participants were treated to an outdoor salmon bake, followed by an evening at Fairbanks attorney—John Link's famous Palace Saloon. The floor show featured the lovely and talented Miss Millie (The Alabama Filly) as well as the renowned Can-Can cuties and Boom-De-Ay Boys. Following the floor show, Fairbanks attorneys, Dick Madson, Dick Savell, Dave Call and Fleur Roberts along with legal secretary Gloria Hartzman put on a hilarious, bawdy series of comic sketches based on the history of the law including: the creation of lawyers by God; the decision by lawyers to appoint the first judge ("what harm could it do?"); the first divorce; the discovery of the contingent fee and plea bargaining. Eschewing contemporaries as targets of their satiric barbs, the players concentrated on persons who have been dead for milleniums offering offense only to those on-lookers who were Christians, Jews, non-believers or persons of good taste.

Behind the Scenes

In an exclusive Bar Rag Interview following the convention, Dick Madson explained the Genesis, Exodus and Leviticus of the group of players and the discovery of their material:

> "You can't write good stuff without good Scotch (although this isn't exactly true for the Irish). Like Handel when he wrote his famous 'Messiah', we were inspired by God. God made us do it. Also Glenlivet single malt. Blends, we have found, tend to muddle our thinking. This was a religious experience. Something guided our fingers and ball points across those yellow pads. We had a couple of read-throughs before the performance. Problems with costumes maybe, but no casting problems. Hey! We were born for the stage. As a result of this experience we have been booked for a club date in Peoria. After that, who knows?"

THEY SHOOT HORSES, DON'T THEY?

Moore to Supreme Court

Popular Anchorage Judge Undergoes Apotheosis

Anchorage Superior Court Judge Daniel Moore Jr., was named by Governor Bill Sheffield on Sunday, July 10th, 1983 to replace Justice Roger Connor on the Alaska Supreme Court. Moore has served on the Anchorage Superior Court Bench since February of 1981 when he was named to that position by former Governor Jay Hammond.

A resident of Alaska for 26 years, Moore received his law degree from the University of Denver in 1961. Thereafter he spent 19 years as a trial lawyer in Anchorage before going on to the Superior Court Bench.

The Judicial Counsel recommended besides Moore, Anchorage attorney Michael Thomas and Fairbanks attorneys Millard Ingraham and Andrew Kleinfeld. In making his appointment Governor Sheffield stated "this is one of the toughest decisions I have to make as a Governor ... all of the candidates that were forwarded to me by the Judicial Counsel were exceptionally qualified and all the nominees were exceptionally good candidates for the Supreme Court ..." Moore ranked first among the 11 candidates for the office in the Alaska Bar Association Poll. Thomas was ranked in fourth place with Ingraham fifth and Kleinfeld seventh.

3rd Annual Bar Assoc. Picnic

The Third Annual Anchorage Bar Association summer train-tour and picnic is still scheduled for Sunday, July 31, 1983.

The Bar Association has once again chartered an Alaska Railroad train to transport those revelers willing to part with personal transportation to and from the picnic site at Snyder Park, Wasilla. Snyder Park is on the shore of Lake Lucille and more or less directly across the Parks Highway from the D&A Supermarket.

In addition to the train ride, featured attractions included: the Anchorage Attorneys' Softball League championship game (play-off are to occur the week of July 25th and the winners will play each other on July 31st); a sumptuous repast catered by Barry's Fingerlake Lodge including your choice of steak, chicken, hot dogs, and all the usual accompaniments; liquid refreshments both hard and soft; possible musical entertainment and possible visits from llamas. Definitely planned was the highly successful sawdust child enrichment scheme.

The highly reasonable charge for the picnic is the lesser of FIVE DOLLARS ($5.00) per individual or TEN DOLLARS ($10.00) per family.

The train left Anchorage at 10:00 o'clock A.M. and riders were provided with doughnuts and juice. It made a stop at North Birchwood at 10:45 o'clock A.M., departed North Birchwood at 11:00 o'clock A.M. and arrived at Snyder Park at 11:45 o'clock A.M. Returning, the train departed Snyder Park at 4:00 o'clock P.M. arrived at North Birchwood at 4:45 o'clock P.M., departed North Birchwood at 5:00 o'clock P.M. and arrived at Anchorage at 5:45 o'clock P.M.

INSIDE

Interview: Judge Ralph Moody

by Judith Bazeley

This reporter was instructed to interview the Hon. Ralph Moody "quickly" due to his "impending retirement." When I telephoned Judge Moody's secretary, Donna Dotson, and explained to her that I wanted to interview the judge before he retired, she said, "Who said he's retiring?' 'He told me that I would be the first to know after him." I backpedalled and said that I obviously had incorrect information and asked if I could nonetheless interview the judge. Judge Moody was gracious enough to find time in his busy calendar shortly before Memorial Day weekend to grant the interview. It began with Judge Moody asking me, "So, who says I'm retiring?"

Judge Moody has been on the Superior Court Bench in Anchorage for 21 years. He was appointed in 1962 by Gov. William Egan and was one of three superior court judges, the other two being Judge Fitzgerald and Judge Ed Davis.

Judge Moody graduated from the University of Alabama Law School in 1940. He had earlier attended the University of Alabama for three years as an undergraduate student, but interrupted his studies to take two years off to work for the Army Corps of Engineers on the Tennessee Tom Bigby River Canal Survey. He pointed out the canal project is still not finished. When asked why he quit college as an undergraduate, he said that he needed money during the depression to continue his education. He made $90 per month working for the Corps of Engineers and was still able to save money. I asked him what his thoughts are when he hears litigants in his courtroom state that they need $3,000 per month to meet living expenses. Judge Moody confessed that at times it seems somewhat lavish compared to the amounts of money he earned and needed while going school.

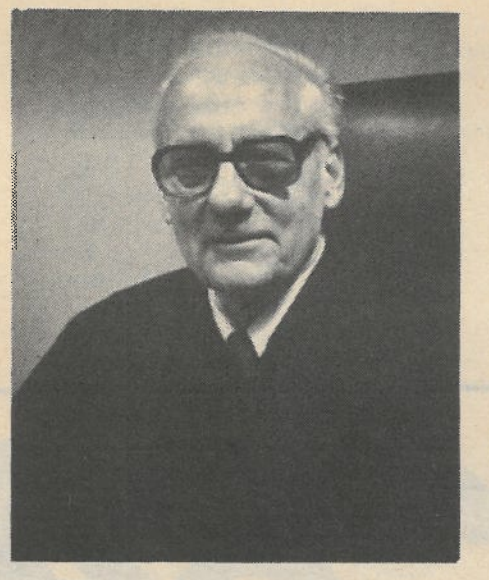
His work for the Corps of Engineers was not the judge's first employment. During summers while in high school, he worked in Chunchula, Alabama, earning fifty cents a day mixing mortar for bricklayers, pumping gas with a hand pump, and servicing automobiles—doing all three jobs at the same time.

In 1983 when he could again afford to attend, Judge Moody returned to school and graduated from law school in 1940. During his college years, he had been in the National Guard and had been paid $1.00 per week for drill. He found this money useful for covering his school and living expenses. The week after his graduation from law school the National Guard mobilized because of World War II, at first for two weeks and then later for two months. The Alabama National Guard was then nationalized and put on Louisiana maneuvers. In all Judge Moody served in the armed forces from November of 1940 to June of 1946.

In October of 1941, he entered Signal Corps Officer Candidate School, became a second lieutenant in January of 1942, was commissioned and served as personnel officer in the same school from which he had graduated, then served as an adjutant. In 1944, he became a company commander, organized a Signal Corps heavy construction batallion, and became its executive officer.

In late 1944, while assigned to the 15th Army, Judge Moody was sent to Europe as Signal Heavy Construction Corps. Following that duty, he was sent to the Phillipines to anticipate the Japanese invasion. After Japan's surrender, his battalion was routed to New Guinea and then to Manila, where they had to wait from August until November to return home because of the lack of transportation because there were people who had been waiting to be transported from the Phillipines for far longer than they.

By 1946, Judge Moody was back in the United States and considering an Army career. He had lost most of the contacts he had made in Alabama, and the Army had shipped him to the New Jersey area on his return. He learned that the Office of Price Administration in Washington, D.C., had an opening for an investigator for Anchorage or Honolulu. He applied for the position and designated Honolulu—but was assigned to Anchorage as the Honolulu position had already been filled. He was sent to Juneau for two weeks training. There he met one of the other trainee's, whose boyfriend was looking for an attorney to work for the Real Estate Division of the Corps of Engineers. He met this man, was offered the job, and gave notice to the Office of Price Administration before he had actually begun working as an investigator;



JUDGE RALPH MOODY

although, since he had given two weeks notice, he did work two weeks. He arrived in Anchorage in July 1946, and worked for the Real Estate Division of the Corps of Engineer until 1947.

In 1947, he went to work as U.S. Attorney, a job he got through Ray Plummer, and he thinks that Bob Boocheever was the U.S. Attorney in Juneau at that time. In order to take the job, he took a reduction in salary of $1,000 per year. He was then earning $3,750 per year. In taking the job, he filled the vacancy of J. Earl Cooper. He stayed in that position until 1951 doing a great variety of legal work, both criminal and civil, trials in both the territorial and federal courts.

In 1951, he set himself up in private practice for a few months as a solo practitioner, then in a firm with Paul Robinson and Wendell Kay until 1954. Both Robinson and Kay were in the legislature, and Judge Moody remained in Anchorage essentially to "hold the fort" and "had lots of business." He believes that next to Davis, Renfrew, and Hughes his firm was the largest firm in Anchorage at that time. The firm eventually broke up because Judge Moody's two partners were so politically involved. However, the parting was amicable, and each formed a separate firm.

From 1954 to 1957, Judge Moody practiced with Dave Talbot and George Yeats. In 1957, he was elected to the legislature and served in the last territorial and first state legislature. During the first term of the state legislature in 1970 he was appointed Attorney General by Governor Egan. He served as Attorney General until his appointed to the bench by Governor Egan in 1962.

In his reminiscing about his years in the legal profession, Judge Moody said he wishes he had "made notes." He does have, however, certain memories that stand out. When he was Assistant U.S. Attorney, he and the other assistant U.S. Attorneys had to attend calendar call, even though there was no judge to try the cases. Because they all had to show up calendar call became something of a social occasion. A case fee of $50.00 was allowed, and Judge Moody moved for $50.00 for a certain case he was handling. The judge handling calendar call stated that Moody would get the $50.00 and that it was all he was worth. The remark caused considerable mirth among the other people attending the call.

Judge Moody says he looks forward to going to work every day and has enjoyed the trial bench for all of the years he has sat on it. He says there are bad days and times, but also the good ones. He says he tries to encourage people not to be too serious. "A funny situation relaxes everyone."

During our interview and while the jury was deliberating in the Rodriguez trial, I asked him whether a trial of its length and so highly publicized was a drain on him. He said that it would have been very hard on him physically and mentally during his first few years on the bench but that by now he is accustomed to trials of such length. He said, "The first five years on the bench are the hardest. If you haven't found yourself, you aren't going to do it."

Judge Moody said that when he was first on the bench, "Every case was a major case—I was trying cases and writing decisions 24 hours a day. In those days, we didn't take time off to write decisions. That had to be done in our spare time." Remembering the workload in the early days caused Judge Moody to observe that in his opinion, from informally monitoring Supreme Court opinions, up until ten years ago the court had been affirming better than 80% of the Superior Court opinions; and, now the rate is 45% to 50%. Judge Moody, however, does not offer any explanation for the disparity.

He does feel that the court has gotten bigger, more organized, but maybe less efficient. "The court system is so big that people do not know what others are doing or appreciate it, and there has been a great loss of personal and daily contact as it is physically impossible to communicate well."

Returning to the question of Judge Moody's retirement, he stated that if he ever does retire, he suspects he would be unable to do "nothing." He is an early riser and has always had something to do. He would like to keep his hand in the legal field. He would like to remain in Alaska working in some legal capacity.

His hobbies are gardening and, up until a few years ago, hunting and fishing. Until 1977, he owned a fishing boat. He still occasionally fishes on charters and hunts. He swims at the Captain Cook and gets some form of daily exercise, including playing with his dog, a Boston terrier, for at least an hour a day.

Judge Moody thought the story of

[continued on page 3]

Law Enforcement in Alaska

by Russ Arnett

Law enforcement has not always been a problem in Alaska. During the first seventeen years after the Treaty of Cession Alaska had no government at all.

Wickersham in *Old Yukon* gives the following report from Circle City.

"Notwithstanding the want of organized government justice was not unknown, as the following case will show. A young woman appealed to the miners at one of the camps to compel a dance hall fiddler to marry her and to pay hospital and other bills resulting from her surrender in reliance upon his promise and his subsequent repudiation of it. A miners' meeting was called at which the miners from the nearby creeks appeared in numbers and elected a judge and a sheriff. A warrant was issued and the fiddler was brought before the assembly. The trial was prompt. The plaintiff told her story and the defendant was heard in ominous silence. At the close of all the evidence a miner from the creeks offered the following verdict which, without debate, was unanimously adopted:

'Resolved, that the defendant pay the plaintiff's hospital bill $500.00, and pay the plaintiff $500.00, and marry her as he promised to do, and that he have until 5 o'clock this afternoon to obey this order; and, Resolved further, that this meeting do now adjourn till 5 o'clock. ...'"

In the Eskimo villages law enforcement was mostly accommodation with local custom. The most severe and feared punishment was banishment from the village.

More recently, law enforcement was to a large extent in the hands of the four U.S. Marshals and their deputies. Oscar Olson was a deputy in Anchorage when the jail was a converted barracks located behind the old Federal Building. One day an inmate escaped by kicking out the board wall, and was having a drink on Fourth Avenue. Oscar soon located him, and did not take the matter lightly. "You do that once more and I'll put you in the single cell."

Another inmate in the old jail was required for many months to cut wood for the stove. After he was released the jailers discovered he had deliberately cut the pieces a couple inches too long for the stove.

The U.S. Marshal visited a prospector who for many years had been living in Kotzebue with an Eskimo woman. They had kids from infancy in ascending order to adulthood. He asked the miner whether he had ever considered marrying the woman. The miner paused and then answered, "You know, I never thought of that."

My friend, a former Nome Chief of Police, was more direct and told all the cohabitating malefactors within Nome that they must marry. He later said with pride that of the eight or so couples involved nearly all stayed married.

There was a deputy at Kodiak who had a reputation for roughing up the persons whom he arrested. One night a fight broke out in a fisherman's bar and he waded in with gusto. Suddenly someone turned out the lights. When the deputy went down half the fisherman in the bar gave him a kick.

One of the marshal's duties was enforcing the prohibition laws. One held a jug of whiskey as evidence. When the case finally came to trial it was discovered that the whiskey had mysteriously vanished, and the jug contained only water.

When the Highway Patrol (predecessor of the State Troopers) was formed, the chief purpose was to aid motorists and others in need. Carrying snowshoes was suggested by the legislators. In the evolution of the Highway Patrol it was decided that the patrolmen must be a minimum of six feet tall, but there were no requirements that they also be mental giants.

The Alaska Supreme Court recently had a case where the alleged prostitute fiddled a little with the officer on the bed before he made the arrest. Years ago a police officer in Anchorage had his whatzis laved by the girl, at which time he disingenously drew his gun and arrested her at gunpoint.

An Anchorage bar owner of Swedish extraction was drunk and disorderly in his own bar when a single officer arrived. The officer couldn't quiet him down and told the bar owner he was running him in. The bar owner said "I'm not going, and you aren't big enough to make me." The officer then pulled out his sap and advanced. The bar owner said. "That just made the difference. Let's go."

New Director of Judicial Council

Frank L. Bremson, the new Director of the Alaska Judicial Council, having been appointed in December, 1982, has been reviewing the Council's present research projects since his arrival January 17, 1983, and is considering possible new direction concerning the selection and evaluation of persons nominated for judicial vacancy appointments and judicial election.

Mr. Bremson, age 40, comes to the Alaska Judicial Council with quite a lengthy and impressive background. He received his Bachelor of Arts degree in English from Hobart College, Geneva, New York in 1964, and his Juris Doctor from Georgetown University Law Center, Washington, DC in 1969. In 1980, Mr. Bremson was a Fellow at the Institute for Court Management for the Court Executive Development Program in Denver, Colorado.

Prior to the acceptance of his new position in Alaska, Mr. Bremson was the Regional Director of the North Central Regional Office of the National Center for State Courts since 1977, wherein he provided management consulting services to state judicial systems and was responsible for office administration and for project development management and control for an eleven-state region. While in St. Paul, Minnesota, at the National Center for State Courts, Frank Bremson directed research and conducted training in areas of organization and administration, court personnel recruitment and evaluation, equal employment opportunity and affirmative action, court system planning, records case flow and jury management, information systems development and facilities design. The various grant, contract, and consulting projects in which he was involved are too voluminous for a more detailed description.

From 1974 through 1976 Mr. Bremson served as the Director for the Court Management Project of the Bar Association of Greater Cleveland in Cleveland, Ohio. This project was designed to facilitate the application of modern business techniques and technologies to problems of court system management and administration. From 1971 through 1973, while the Associate Director of the Administration of Justice Committee, a non-profit criminal justice from agency in Cleveland, Mr. Bremson directed a series of planning conferences for judicial, law enforcement, and regional criminal justice planning commission leaders.

The legal community of Alaska, looking forward to Mr. Bremson's progressive direction of the Alaska Judicial Counsel and its projects, would like to take this opportunity to formally extend its welcome to Frank L. Bremson.

Judge Ralph Moody

[continued from page 2]

Judge Chris Cook's Polish fighting chicken would be of particular interest to Bar Rag readers. The Polish fighting chicken was awarded to Judge Cook as the winner of the libel and slander show at the 1982 Bar Convention. However, Judge Cook had left town before the awards were presented. Judge Moody was designated as the stake holder of Judge Cook's award. When he called Judge Cook to tell him that he had a Polish fighting chicken for him, Judge Cook asked him if he had a hangover. Judge Cook said that he would come by when he was in Anchorage to pick up the chicken, which was about four months ago. Judge Cook and Judge Carlson came up to Judge Moody's office and took the chicken, which Judge Moody immediately missed upon his return to his chambers. His staff informed him that the two judges had taken the chicken to send it back to Bethel. However, shortly thereafter, the chicken was returned to Judge Moody's chambers when Judge Cook decided it was too fragile for shipment to Bethel, all of which causes Judge Moody to observe that the future of that particular chicken is in doubt.

Guest Editorial

The other day, a Judge (who has also been in Alaska for a few years) and I came to the conclusion that during the last few years there had been a change in the practice of law in Alaska and we didn't think it was necessarily for the better. Maybe it's the same scene throughout America. Seventy to eighty percent of the attorneys seem professional, friendly and of the fabric that we remembered from yesteryear. But both of us concluded that something was missing in the other twenty or thirty percent of our brethren. Maybe bigness has come to Alaska; it just doesn't seem like we are a family anymore. The brotherhood of attorneys (which includes sister attorneys also) seems to have lost its earlier closeness and kinship. Discontent and insecurity seems to have invaded our profession. It doesn't mean we didn't fuss among ourselves back when, at times we did.

I left Alaska for a short period of time, (1970-1974) and when I returned, a fairly prominent attorney was describing his version of the practice of law in Anchorage. He avoided talking about his contact with other counsel, but when I asked him why he wasn't more involved with the profession and other lawyers, his answer took me aback. "If they leave me alone, I'll leave them alone." I remember thinking how negative he was. I'm beginning to wonder if against the backdrop of what I'm seeing in Alaska, his philosophy isn't an appropriate one.

I don't know from where this negativism comes, although I'm aware that lawyers have been mistrusted and reviled for centuries. Even **Shakespeare** hated lawyers. But I enjoyed practicing law in the late '50's and in the 60's. No one stood toe to toe and fought harder for our respective clients than **Bob Parrish** and I. I hated him and I loved him and I respected him and I think others in that day and age also had their adversaries and yet felt pretty much the same way. But today it seems the popular thing is to attack lawyers, even if the ones attacking lawyers are lawyers. I'm not criticizing the attorney who, in good faith, brings a warranted charge against another attorney who has committed malpractice. I am voicing disgust with the ttorney who levels such serious charges that are doubtful or razor thin, and are coupled with other motives. **Gary Spence**, a country lawyer from Wyoming has written an interesting book called "Gunning for Justice, My Life and My Trials" and among other things he says:

> The American trial lawyer is frightened to death. He is being attacked from every side. The Justice Department wants his scalp as a white collar criminal. The strike force wants to make felons of criminal trial lawyers. He is in great demand. Judicial Committees attack him. The American public has taught to hate him. He is like the gorilla. He is fast becoming the only other primate who will live and sleep in his own dung because he has lost the pride.

All that has to be done with the above quote is to substitute "Alaska" for "American."

It is a popular thing to condemn lawyers. It's popular to break their spirit, to break their hearts, and if they react to this criticism, justice will take a kick in the pants. Contrary to the media's contention, lawyers are human. Again, quoting from Mr. Spence to see what's happening, "makes me want to cry."

Charging lawyers with malpractice is a fast growing area of law. Some sources view this development with great satisfaction. I think it's just further intimidation that the individual lawyer has come to be subject to, and some lawyers have already surrendered and taken off into other professions or trades.

There is no consolation for the judges either. They are getting every bit as much criticism as the lawyers—especially in Alaska. Indeed, no one is immune. I've even heard some nasty things about the Board of Governors and the Judicial Council and there are some people who aren't too sure about some of those Paralegals, (or are they called "Legal Assistants" now?).

Maybe we're coming into a new era. Maybe the change of administration might help. Maybe once the economy strengthens and we don't have as large a migration to Alaska as has occurred over the past few years, things might ease. To paraphrase Gary Spence one more time, I say the lawyers of Alaska are being shamelessly kicked and stomped and beaten and battered. And I for one, think we should be taking another look at what's happening. And that's the point, my fellow lawyers. Before we continue to be a party to the demeaning of the profession any more than the media, and others are gleefully in the process of doing, let's re-examine what's happening and disconnect the self-destruct button.

Henry J. Camarot

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President's Report

by Andy Kleinfeld

After counting the days, now I need count only the hours until leaving office. The non-office of former president of the Alaska Bar Association is one I eagerly seek. Here is a summary of what the bar did this year.

Keeping Randall

The most important thing I did was to take **Randall Burns** out for beer before my formal selection as president-elect, and ask him whether he planned to stay on as executive director through my term. When he said "yes," I kept the beer coming and made him repeat his promise to stay on, numerous times in varying language, with sufficient emphasis so that everyone in the bar would be a witness to his perfidy if he quit.

Randall administers our bar association with the highest degree of skill, and would be extremely difficult to replace. While Randall and I often disagree on issues, and while I agree with **Jerry Wade**'s argument in the last *Bar Rag* that because of Randall's skill we may tend to delegate too much authority from board to staff, nevertheless the bar now operates more efficiently than it ever has. It would be very hard to maintain our level of performance without Randall Burns.

Discipline

The most important achievement of the year was speeding up the discipline process. It was unacceptable that discipline cases typically languished a year and a half or more before resolution. It is unfair to lawyers wrongly charged for unmerited grievances to hang over their heads for so long. It is unfair to the bar and the public for legitimate grievances to languish for 18 months or more before action.

We made discipline the number one item on the agenda for each board of governors meeting. Before each meeting, Randall and I harassed bar counsel to get some cases ready for resolution by the board. We asked area hearing committees to attempt to write their findings and recommendations on the same day as they held their hearing, instead of circulating the documents, when the cases were simple enough to allow this procedure. We have, on an experimental basis, sometimes ordered simultaneous filing of briefs and simultaneous filing of reply briefs. This leads to fewer and shorter extensions.

Most important, the board of governors doubled our prosecution staff, from one lawyer to two. We now have bar counsel, **Eric Ostrovsky**, and 1½ secretaries handling grievances. We increased our direct expenditure on discipline by 50%, from $134,000 to $202,000.

The program has succeeded. We now are plowing through the backlog, and closing new cases in as little as two months. We produce a higher quality of justice. Board meetings are improved by the focus on discipline instead of administrative issues. I hope that eventually we can emulate the four-month criminal process in speed.

Travel

Since our bar dues are already shockingly high, it seemed essential to fund this expansion of discipline without an increase in dues, and without upsetting our long-term financial plan. This was accomplished, in significant part, by greatly reducing travel expenses for board members. We passed a board resolution that only the president should go to "show the flag" meetings, and only the president-elect should go to training programs. Then we cut these down.

I refused to attend the Western States Bar Convention, because it was held in the Virgin Islands instead of in a western state, and obtained board ratification for this decision. It pained me to do this during the year in which **Donna Willard** became president of the Western States Bar Association, but she concurred with our disapproval of the location, and had herself attempted to persuade her predecessor to hold the convention in a western state, in accord with a prior resolution of the association. No board members were funded for travel to Hawaii.

Substantial travel money was also saved on board meetings. We cut them down from three days to two and sometimes one, held them in Anchorage to minimize the number of members traveling, and held them by teleconference when the agenda did not justify the expense of travel and per diem. By working from 8:00 a.m. to 6:00 p.m., and having lunch brought in when necessary, we were able to accomplish our business. This had the additional benefit of making it more feasible for small firm private practitioners to run for the board and participate fully.

After deep slashes in the board and officer travel budget, we then hacked away at every trip, and underspent our budget by $8,000.

CLE

Our second major change in direction was in the Continuing Legal Education program. The CLE program was slanted too much toward very lengthy, high tuition programs, increasingly out of reach of young attorneys, both because of the tuitions and because of the time required out of the office. Limited demand meant that despite the high tuitions, the programs often lost money.

We changed this. The bar has implemented a program to make a large library of videotapes available to all the lawyers in the state, by mail, for $10 per head. Our excellent new C.L.E. coordinator, **Deborah O'Regan**, and the CLE co mmittee, have put on a large number of C.L.E. programs, both in Anchorage and in the smaller communities, lasting between an hour and a half and a half day, with tuitions ranging from nothing to $35.

The CLE changes succeeded. Our expenditure and income on CLE are both $7,000 over budget. This means that on a net basis, the program cost no more, yet was far more productive. Many more lawyers participated in CLE programs with no increase in expense. We have already put on 15 CLE programs in 1983, mostly for less than $50, while cutting our CLE budget.

Bar Foundation

Third, we restructured our independent charitable foundation, the bar foundation. The bar foundation was burdened with a very large and cumbersome administrative structure. Consequently, its board had difficulty assembling a quorum, and had been slow to put the bar foundation money into an interest-bearing account during the months when high yields were available and to deposit contributions.

An in-person meeting of the foundation board would have consumed $5,000 to its $16,000 total assets in travel and per diem.

In order to relieve the board of responsibilities which it was structurally incapacitated to discharge, the board of governors in its capacity as the foundation membership adopted a bylaw, which stripped the bar foundation down to a three-person board membership. We facilitated use of bar staff by the board to carry out administrative functions. We held the necessary foundation meeting by teleconference, at no

[continued on page 6]

All My Trials

by Gail Roy Fraties

I'm sure there is general agreement between the prosecutors and the defense bar that crime is a growth industry, but I didn't realize how rapidly things had escalated until I returned to State employment recently. My first prosecution case was an armed robbery, and in preparation for the presentation of evidence I phoned one of the investigating officers, APD Patrolman Thomas W. Hume, at his home just before he went on the midnight shift.

You See One ...

"Tom, we're going to trial next week on those armed robbers you apprehended last March," I said, naming the defendants, "and I'd like to get together with you to prepare you for your testimony."

Hume sounded cautious. "Can you refresh my memory a little bit?" he wanted to know.

"Sure, that's the one where the three perps dragged some dude out of the Monkey Wharf, held him up with a Uzi assault rifle, and then beat hell out of him. One of the three robbers used a sword cane, the gunman had a banana clip in the Uzi with 25 slugs in it, and the other idiot was wearing a gorilla mask."

There was a brief silence from the officer's end as he digested this information. "I'm not sure, Mr. Fraties," he replied, "I'd have to look at my report. Can you give me a few more details?"

We finally got it all straightened out, and I hasten to add that Officer Hume is a good investigator and deservedly respected officer. It's obvious, however, that he has a lot on his mind.

Watts Defensive Driving

To those of us who get most of our violence, much less sex, on late-night Visions, it might seem difficult to forget such a bizarre facts situation in a short period of time, but street cops are accustomed to casual violence in one form or another. Anchorage private investigator Gary Veres, known to my readers as a former training officer in the notorious Watts district of Los Angeles, told me a story just the other night that is illustrative of this phenomenon.

"I was riding with a veteran for a change," said Gary (whose heart-rending problems with his trainees have been described in other columns), "we were going along an alley and I saw this wino laying among some trash barrels with his poor little thin legs sticking out in the road. John was driving, and I told him to watch out for this individual." (Gary used a more descriptive street term, but his heart was obviously in the right place.)

He continued. "I knew John wasn't listening to me, so I warned him again. He didn't slow down then either, and I was getting desperate. I ended up shouting right in his ear, but somehow he didn't understand me."

Gary's powers of vivid description, as ever, were equal to his story, which quickly reached a shattering climax.

GARY: *"JESUS CHRIST, JOHN, SLOW DOWN, YOU'RE GOING TO HIT —"*

SQUAD CAR TIRES (front and rear): *"KA-BUMP, KA-BUMP."*

OFFICER ROGERS: *"Say what?"*

"God help us, Gary, did the poor man get badly hurt?" I wanted to know.

"Just broken legs," he replied calmly. We reported it as a hit-run."

I remarked that it all sounded somewhat like justice west of the Pecos, and Gary agreed. However, the night shift in Watts was hectic enough to make such incidents seem routine. "It was like fishing in a hatchery," he recalls, "all you had to do for some excitement was hit the red lights."

Seven at a Blow

The responsible citizens were equally violent—I suppose in self-defense. Gary expounded on this phenomenon with his recollection of a Watts liquor store owner who got tired of being robbed by the local denizens, thirsty and otherwise. One night a robber caught him in a bad mood and got blown away with a .357 magnum, which had been concealed under the counter for that very purpose.

The police were quick to seize upon this opportunity to encourage citizen participation in law enforcement, and praised the doughty proprietor to the skies, awarding him a police commendation medal for his valor. Greatly encouraged, he apparently killed five more attempted perpetrators in the space of four short years, each time receiving favorable and complimentary attention from the authorities, as well as the heady privilege of seeing his name and picture in the public press. However, the Watts armed robbers—a hardy breed—were undaunted.

One summer evening the proprietor received a threatening phone call, obviously from someone who was unaware of his impressive kill ratio. "Listen carefully, man," said a menacing ghetto voice, "you're being watched—and in ten minutes, I am coming to your store. I'm going to order a bottle of Chivas, and if you don't put all your money in the sack with it, I'll blow your sorry ass away. If I don't get you, my partner will—he's got you in his sights right now."

This information affected the combative store owner like a relaxing week in the country, and he whistled to himself as he checked the loads in his pistol and prepared to greet his visitor. Soon, a dignified gentleman in a three-piece suit entered the store and popped the fatal question.

"May I have a bottle of Chivas Regal, please?" he asked, in a soft and cultivated voice.

"Those were his last words," said Gary. "The owner shot him right between the eyes, and called us—just like the other six shootings. It was his M.O."

I was horrified. "Did he get the right man?" I wanted to know.

"I don't really know," Gary replied. "We searched the body and he didn't have any weapons on him. He didn't have any criminal record either—I think he was a CPA with Price Waterhouse."

"What happened to the store owner," I inquired—knowing from experience that an O. Henry twist of some sort was in the offing.

"We just gave him another commendation," Gary replied, with a faint smile. "It was like that Ring Lardner story—no one wanted to knock him, he was the champion."

Beyond Plea Bargaining

The defense bar will be pleased to know that the ban on plea bargaining imposed by former Attorney General Avrum M. Gross has not prevented the prosecutors from giving embattled defense counsel a break on a case-by-case basis. A situation that springs to mind was my encounter with the small but powerful Pat Doogan, a felony prosecutor in the Fairbanks office. Pat, as ever, was the soul of courtesy as I unburdened my heart to him in an impassioned plea for clemency.

My client was a recidivist child pornographer, and needed all the help he could get, as Pat agreed. The most damaging thing in the Government's case was the collection of some two to three hundred pictures of what seemed to be roughly half the juvenile population of greater Fairbanks, all of whom managed to be seated on or around my client's face in various stages of disarray, and a variety of compromising postures. Pat, although he would not plea or charge bargain, was magnanimous. "I'll tell you what I can do, Gail," he stated. "Let's circulate the pictures among the jurors during voir dire, and I'll give you a free challenge to anyone who faints or throws up."

What Price Glory?

Many of my readers have asked for news of Joseph D. Balfe, former District Attorney of Anchorage, presently the Department of Law's representative to the Department of Public Safety. As some of you know, Joe used to be a highway patrolman in Oregon—where he once received the Governor's medal of commendation for valor. The true story of that award, however, was never revealed before I got a few drinks into him on a recent hunting trip and asked him about it.

"There was really nothing to do," he replied. "I was about four hours into the day shift outside Portland, Oregon, and I had parked my unit by the side of the highway to watch the traffic. It seemed like a long shift, and I was bored. While checking the license plates of the passing cars against a hot sheet of stolen vehicles which had just been distributed, I spotted this late-model Cadillac with a 19-year-old kid driving it—and sure enough, there was the license number on my list."

Joe accepted another drink and continued. "I knew that if I just drove up alongside him and waved him over, he'd stop the vehicle and surrender peacefully."

"So that's what you did, I suppose," asked our mutual friend and hunting companion, former Chief Investigator for the Department of Law, Dale W. Cheek.

"No," Joe replied reflectively, "I sneaked right up behind him and hit him with the red lights and siren. He took off like a jackrabbit, just as I knew he would."

"How far did he get?" Dale wanted to know.

"He made it all the way to downtown Portland," said Joe. "We had a high-speed chase in excess of a hundred miles an hour until we reached the downtown area. Both of us were weaving in and out of dense traffic, dodging pedestrians and running stoplights. He finally lost it, and went through the front window of a three-star restaurant. I still had to chase him two blocks before I could get the cuffs on him."

Twenty-five thousand dollars in damage and several TV appearances later, Officer Balfe accepted his medal from a grateful government and—greatly encouraged by his meteoric rise in law enforcement—applied to Williamette University Law School (night division), the start of a distinguished career in prosecution.

"That was kind of hard on the kid, wasn't it?" (Dale is a Libra.)

Joe considered the question. "DE MINIMUM NON CURAT LEX," he said.

Changing of the Guard at the ABA Board of Governors

There are currently twelve members on the Alaska Bar Association's Board of Governors. The term of office for each member is three years. Because the terms are staggered the election or appointment of one-third of the Board members occurs each year. This year Board seats were open in the First Judicial District and the Third Judicial District as well as one at-large position.

Only active members of the Alaska Bar who resided in the Third Judicial District were eligible to vote in the election for the Board of Governors Third Judicial District seat. Candidates for the two Third Judicial District vacancies were Judith J. Bazeley, R. Stanley Ditus, Gail Roy Fraties, C. R. Kennelly, Robert J. Mahoney, and Paul S. Wilcox. Since no candidate received a majority of the ballots cast, a run-off election was held between the three candidates receiving the highest number of votes in accordance with the Bar Association Rules. The top three nominees for the Third Judicial District were Judith Bazeley, Gail Roy Fraties, and Robert J. Mahoney. The two candidates receiving the highest number of votes in this run-off election were Ms. Bazeley and Mr. Fraties. Judith Bazeley will replace Board member Karen L. Hunt, and Mr. Fraties will replace Board member Hugh G. Wade.

Art Peterson ran unopposed for the First Judicial District seat, as did his alternate, Rick Robertson. Because there was no opposition, ballots were not mailed to the First Judicial District constituents. The Alaska Bar anticipates it will formally appoint these persons to the Board in the near future.

There was one at-large seat vacancy for which every active member of the Alaska Bar was eligible to vote. Listed on the ballot were the following nominees: Albert (Harry) Branson, Richard D. Burke, James D. DeWitt, Alan J. Hooper, John R. Lohff, Philip P. Weidner. Because no candidate received a majority, there was a run-off election between Harry Branson and Philip Weidner. Harry Branson, having received a majority of the votes cast, will replace Board member William P. Bryson.

As a result of these recent elections and appointments, the current status of the Board of Governors is as follows: **Officers:** Andrew J. Kleinfeld, President; Mary Kay Hughes, President-elect; Harold M. Brown, Vice-President; Niesje Steinkruger, Secretary; Ronald W. Lorenson, Treasurer. **Board Members (Attorney):** Harry Branson (replacing William P. Bryson); Bruce E. Gagnon; Judith Bazeley (replacing Karen L. Hunt); Gail Roy Fraties (replacing Hugh G. Wade). **Board Members (Non-attorney):** Lew M. Williams of Ketchikan, Glenda Straube of Fairbanks, and another non-attorney member yet to be appointed by Governor Sheffield.

President's Report

[continued from page 4]

expense, during a recess in a board meeting. We are now soliciting applications for membership for the new, three-person board.

Board Meetings

Fourth, we reduced faction and strife within the board of governors. One means was excluding political questions and minor administrative matters from the board agenda. The most bitter board disputes had sometimes been on matters which the board did not have to treat at all, such as whether to support or oppose bills and resolutions in the legislature and congress. Our statutory authority to treat such issues was dubious. There is a substantial First Amendment problem when an integrated bar takes positions on political issues. There is also a practical problem of maintaining good working relations within the board of governors after debate on these issues.

A second technique was channeling debate to minimize people's feelings of being steam-rollered. After one or two persons speak in favor of a proposition, I generally ask for argument on the other side before calling on additional proponents. If the matter is extremely important, I go around the table and elicit the views of every board member. Otherwise there is a tendency, if the first two or three speakers are all on the same side, for the rest of the board to feel that the result is a foregone conclusion, bite their tongues, and go along resentfully with what they perceive as a consensus, even when it is not. This technique is unnecessary in a large group, but helpful in a small one. Despite the long work days, we now have excellent collegial relationships on the board of governors, and disappearance of old factional hostilities.

Law Review

The *UCLA Alaska Law Review* had not satisfied the bar, and a resolution at the 1982 convention directed the board to solicit proposals for a new publisher of the *Law Review*. We solicited proposals from all the accredited law schools in the United States, including UCLA. We have selected Duke Law School to publish the *Law Review*. Professor **Walter Dellinger**, whom you heard speak, will preside over it. **Bruce Gagnon, Mary Hughes** and I will serve on the law review board. We hope that it will provide first-rate service to the bar and criticism of appellate decisions.

Mary Takes Charge

We are no longer the smallest bar in the United States. There are now seven or so smaller bars. The rapid growth and volatility of our bar make it a challenging one to direct. While I have done my best, my best is a very long distance from perfect. I wish the greatest success to my very able successor, **Mary Hughes.**

Legal Services Board of Directors Election Results

The Third Judicial seat on the Alaska Legal Services Board of Directors has been filled by Connie J. Sipe as a result of a Third Judicial District area-wide election open to active members of the Alaska Bar therein. Her opponents were David P. Frank and William J.S. Wong. Since only Annalee McConnell was nominated to the alternate's seat, Ms. McConnell's name will be submitted to the Board of Governors for its consideration for the Third Judicial District ALSC alternate position.

Only one regular Board seat was open in the First Judicial District. Because Will Shendell requested reappointment and there was no opposition for the seat, no election was held and it is anticipated that Mr. Shendell will be appointed in the very near future.

What About the Kids?

by Sally Lauster

NOTE: *Family Connection is a family counseling agency which includes the Families in Transition Unit to serve the needs of divorced, separated and remarried families. Originally the project was funded with federal grant money as a two-year demonstration project; it has proved its effectiveness within the Anchorage community and now, in its third year, is funded by the Municipality of Anchorage.*

Your calendar reads, "9:00—Michael Smith—divorce." You sigh. Michael and his wife have been separated for three months and you have seen him twice before. You are making little progress in the way of settlement decisions because custody disagreements are keeping tensions high and agreements low. Michael's wife, Janet, is having trouble controlling their 15-year-old daughter, Josie. Since the separation, Josie has done poorly in school, she stays out late at night, and her parents suspect she's smoking pot. When Josie does not come home, Janet calls Michael and they end up fighting over whose fault it is, what to do about it, and then they rake over the old marital hurts for good measure.

It's 9:00 and Michael arrives on time in his usual dejected, depressed manner. He seems to be going through the motions. You try to get down to business and find he has a new problem to share: Janet has been verbally running him down in front of the kids and now his 11-year-old son, Ted, is showing anger toward his father and refusing to spend time with him. Michael is concerned about his relationship with his son and angry with his wife for "turning Ted against me." After a few more attempts to get down to settlement business, you realize Michael's depression and anger need to be dealt with before he can make long-lasting legal decisions.

"Michael," you begin, "I can sympathize with your problems. They're not easy to deal with when you have so many decisions to make. It seems to me you need to straighten out some of these personal issues before we can accomplish anything here. I can recommend a counseling agency, Family Connection, that works with divorcing families to help them with just these kinds of issues. They help with parenting skills to control kids' behavior and can help you and Janet learn how to work together as co-parents in a more business-like manner —they'll help you separate out all the old marital issues so you can deal with the kids. They support having kids in contact with both parents after divorce and will support your efforts at parenting. Are you interested?

Michael agrees he seems to need some help and asks for more information. You explain the agency works with the whole family and will probably want to meet with Michael and kids on the first visit, asking that Janet contact them for an appointment of her own. Later, if the parents feel they can handle it, the whole family may meet together. The cost, you explain, is 1/10 of 1% of the client's annual income (as Michael makes $40,000/year, this comes to $40/hour) and improvement on most problems will occur within 6-8 sessions, meeting once a week. Michael accepts the phone number, asking if the counselor will be a man or a woman. You explain that he can request either, but may have to wait a little for the counselor to be free. You also assure him of the qualifications of the counselors, who have master's degrees in either counseling psychology or social work, and considerable experience in family counseling. You put Michael on your calendar at this time next month and bid him goodbye.

Michael, Ted and Josie have their first appointment with the Families in Transition unit at Family Connection the following week. In the waiting room Michael fills out the Client Information Form while his kids glance through magazines on the table. Shortly a counselor greets them and leads them to a quiet, private room for their session.

The counselor gets more family data through an interview with the family members. The counselor then spends a short time with just Michael, sending the kids to the waiting room. He then reverses this, and interviews the kids alone. Back together, he reviews what he feels they have each asked to get from counseling, and suggests "homework" for each member of the family, a task designed to help them toward their goals. A contract is made over price, number of sessions, and meeting times, all of which can be renegotiated if necessary. The family is told of the 24-hour crisis line in case something unexpected comes up between sessions. The counselor urges Michael to have Janet make an appointment for herself and the kids and Michael agrees to consider a session with the whole family together, although he is dubious that this would be helpful.

In the weeks that follow, Michael, Janet, Josie and Ted meet at Family Connection, sometimes together, sometimes just adults, or maybe one parent with kids, depending on the problem they had agreed to work on. Janet and Michael find that in the counselor's presence, it is easier to communicate, and the counselor is able to point out both positive and negative aspects of their relationship, supporting the healthy parts and helping change behavior in the destructive areas. Janet learns about the "putdown game," a "pain game" of divorce that she has been playing and which had affected the relationship between Ted and his dad. She has been working on recognizing when she badmouths Michael and is trying to stop. She also realizes, after several sessions, that she has been relating to Josie more as a peer because of her own emotional needs during the divorce. Josie's misbehavior is an indication both of Josie's own grieving and her inability to handle her mother's emotional problems at the same time. Janet is learning to call up adult friends when she feels the need to talk instead of turning to her daughter.

Michael has been working on relating more to his children, which he admits is uncomfortable for him. He has always left most of the parenting to Janet and finds that being alone with his kids is unsettling. One of the counseling sessions was devoted to helping the three of them communicate their needs to each other and to work out visitation schedules and activities that satisfy them all.

Both Michael and Janet are learning to communicate as co-parents on a new level. They are systematically sorting out the old emotional marital problems and concentrating on building a new business relationship around the children's needs. Janet finds it pleasant to have a break from parenting responsibilities when Michael has the kids; her faith in his ability to parent is growing. Michael has indeed been improving the quality of his parenting, learning to be more than a "Disneyland dad" and gaining confidence with each contact with his son and daughter. He is also learning about quality of contact, and how frequently he can be with his kids in creative ways, not just on weekends, but weeknights, at basketball games and school activities, for special lunches, etc. He is also learning how to include Ted's and Josie's friends in their activities.

Ted and Josie are also happier, although during the first sessions they were quiet and Josie was somewhat sullen. Ted came around first, pleased to find that his dad was interested in attending his basketball games. His mother had a talk with him, explaining that the divorce was between the grown-ups only and that Ted certainly had every right to love his father and spend time with him. Ted seemed to be just waiting for the go-ahead from Mom in order to relate better to his dad. Josie warmed up a little more slowly to the whole idea of counseling and initially her behavior worsened. She even ran away one night and Janet had called the crisis line at Family Connection. Now, however, it is becoming clear that Josie is relieved to have her parents in agreement; they have set reasonable rules with consequences when the rules are broken. The rules have been enforced consistently by both parents. Josie is free to finish her grieving.

The month has passed, and when you and Michael meet, he seems less depressed and more decisive than before. Michael reports that communication with his wife is improving; they are starting to separate out what their own needs are from those of their children. The two of you are able to make some progress in legal decisions to be made, but Michael says he would like to wait a few more weeks to make the final decision about custody. He and Janet have been able to approach the subject a few times and he feels they may be able to come to an agreement by using their new communication skills. You assure Michael that you are ready at any time to advise him or to communicate on his behalf with Janet's attorney and you calendar him for next month at his usual time.

Michael, Janet, Ted and Josie are on their way to changing the crisis of divorce into a growth process in which they recognize their own strengths. The reorganization of the family after separation is never easy, but with early intervention in the process by an agency that supports the child's right of access to both parents, this family is learning new ways of communicating and coping. The legal decisions are still to be made by Michael, Janet and their respective attorneys, but new attitudes and co-parenting skills learned in counseling have helped diffuse the anger and they can now form a clearer picture of what they want and how to negotiate to come to an agreement.

The Smith family is an example of what early intervention in the divorce process can accomplish in a relatively short time. When a family is in crisis, it is more receptive to suggestions and new methods of behavior than at other times. Another common situation is the client that keeps returning to your office after the divorce has been finalized. This is an indication that the situation is not satisfactory; often more litigation merely escalates the problems, where counseling might help to mitigate much of the negativity. Because of attorneys' contact with divorcing and divorced individuals, and their chance to gather assessment information in the course of their interviews, the legal community represents an excellent referral source for individuals who fail to seek out community counseling resources on their own initiative. Attorneys should be especially alert to signs of children acting out, excessive arguing, and emotional crisis. Remember that acting out on the part of children can be both an indication of the normative grieving process and/or a reaction to poor co-parenting—kids "caught in the middle" of parents fighting. Particularly with the new interest in sharing custody of children, Family Connection feels it has a valuable contribution to make toward stabilizing separating families.

In addition to the family counseling which the Smith family experienced, Family Connection offers therapeutic groups for children 8-18, and groups for

[continued on page 10]

Fairbanks Convention Pictures

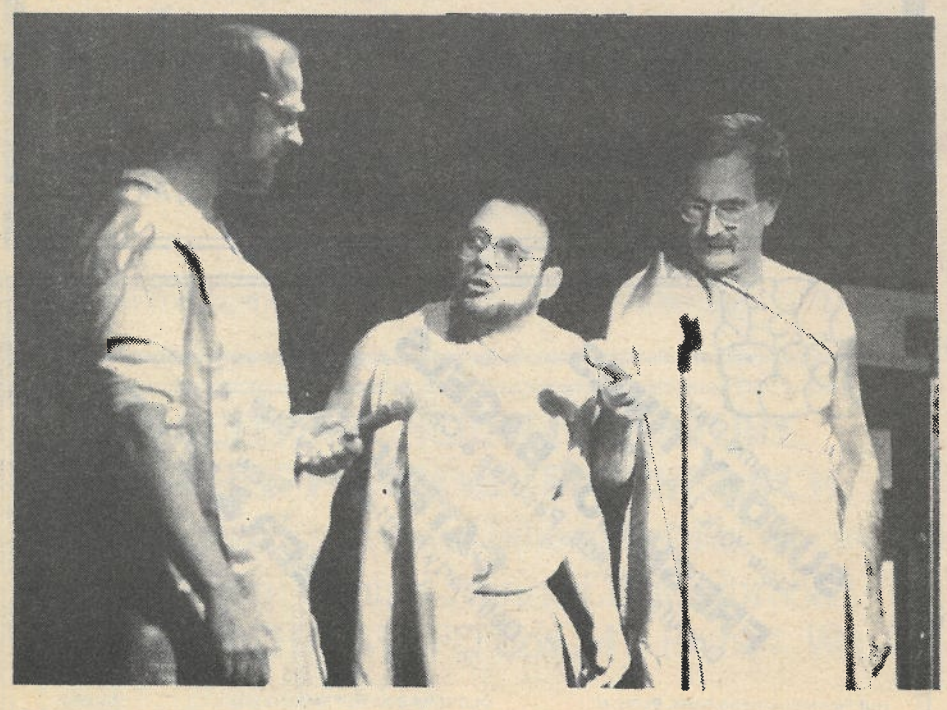
by Ken Roberts

IN THE BEGINNING

MISS MILLI

TROUBLE

WHOLESOME ENTERTAINMENT



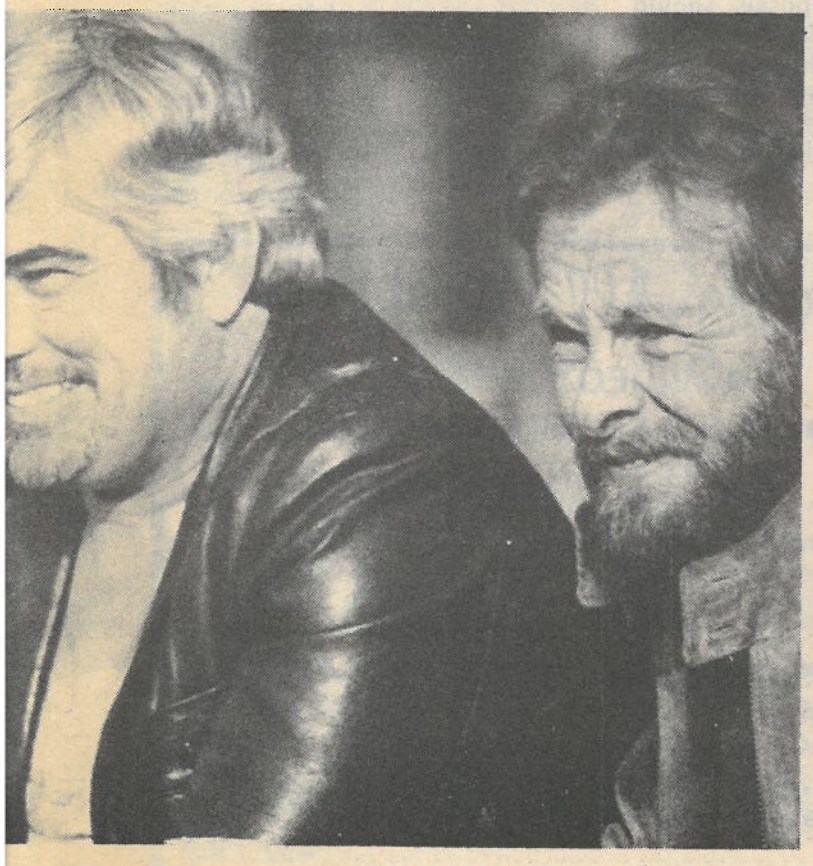
DEBATE

NOT SO WHOLESOME ENTERTAINMENT

LOCAL COLOR

OLDEST LIVING MEMBER

REFLECTIONS



IN THE CROWD

A PLACE IN THE SUN

MEMORANDUM

TO: *Gerry Dubie, Manager*
Material Operations

FROM: *J. Justin Ripley*
Superior Court Judge

DATE: *March 17, 1983*

SUBJECT: *Bird Bombardment*

While many of us on the trial bench feel it to be an inevitable part of our professional lives that we are dumped upon from time to time, I, for one, am inclined to accept such treatment only from the appellate courts. For this reason I take pen in hand this bright morn of Erin to call to your attention a situation which is unpleasant, unwholesome, unsightly, unsanitary, unnerving and in short, unacceptable.

I speak, of course, of the pigeons that roost in various places throughout the parking facility, most particularly above my automobile, and the great green gobbetts of grime and germs which they routinely deposit upon the hood, windshield, top and sides thereof.

Being as stupid as they are, they did not discover this roosting place until last year. Through that spring, summer and fall I suffered in relative silence, and contented myself with such measures as removing the nest they built and washing and sweeping away the mess on the floor.

Winter brought a new and additionally demeaning variation to the contest between bench and bird. I suspect that in January and February a rumor was abroad that I had finally crumpled under the pressure and had lain down the melancholy burden of sanity, for I was twice observed by early-rising courthouse personnel creeping through the frigid dawn without my coat (it impairs the throwing motion as I'm sure you can appreciate) armed with snowballs and seeking a clear shot at my winged adversary.

I abandoned this exercise because of the disapproving glances of those birdlovers, the probable damage I was doing to the judicial image, the second degree frostbite to my left index finger, the aggravation of a handball-related elbow injury and the fact that although I drilled that black and grey devil twice, he seemd to be enjoying the game. Think, Gerry, what it does to your day to have a pigeon you don't even like fly out of the rafters at the sound of your car and perch like Edgar Allen Poe's Raven upon the key card switch box delightfully cooing in anticipation of the morning's "flutter and dodge" drill.

Now, with spring, they are back in full-feathered force. As of yesterday, the nest was back in place, and with the warmer weather and more available food the decorations my Rabbit wears will soon take on their summertime consistency which appears to be a combination of rotten seal brains and epoxy.

In short, Gerry, resorting again to Edgar Allen Poe, "so that pigeon, never flitting, still is sitting—still is sitting ..." (Read in such additional letters as you will.)

And what to do?

I have considered and rejected such solutions as shotgunning, poisoned seed corn, tethering an owl or installing a mongoose. For a start, the nest must be removed and the floor area swept. Further I suggest the ledge(s) be washed with bleach or some other solution to remove the droppings which I suspect tend to make the messy little monsters feel at home. Further, I suggest that the ledge area be sealed off with plywood so that they have no space to land. Only in that way will the next-builders relocate.

I will certainly cooperate with this process by moving my automobile, meeting with you in the roost to further explain the situation, if required, and agreeing to write you no more letters on this subject (provided the birds go away).

Finally, Gerry, I feel I must share with you an uneasy feeling I have had for some time, which feeling is ripening into a suspicion. You will, I am sure, recall recent letters from various judges in which complaints were voiced about defects in the functioning of the physical plant. One of the letters appeared to indicate a suspicion that Judge Shortell was at the bottom of those troubles. Well, Gerry, someone is feeding those pigeons ...

What About the Kids?

[continued from page 7]

parents to learn how to help their children through the divorce process. The focus of the kids' group is to express feelings about divorce, have contact with other kids in the same situation, and identify and avoid "pain games" that divorcing parents often play.

Counselors are also available to speak to groups and organizations about divorce and co-parenting issues. Such requests are welcome. The number to call for any of these services is 279-0551.

Sally Luster is a recent graduate of the University of Alaska, Anchorage in the Bachelor of Social Work department. Her practicum for the fall and spring semester involved work in the community through the Families in Transition Project at Family Connection. This article was part of her learning experience. She now works at Family Connection as a Volunteer Counselor.

A Major Improvement, the Rules Should Be Adopted

by M. Peter Moser

[References are to Final Draft, Model Rules of Professional Conduct (Pullout Supplement, Nov. 1982 A.B.A.J.), as further amended Feb. 1983, and Model Code of Professional Responsibility (ABA 1980).]

The Model Rules have been developed carefully over more than five years of analysis and public debate. Lawyers across the entire spectrum of the profession have made suggestions which have helped to form the final product. The ABA House of Delegates, following intensive study, has amended some of the proposed Rules. The Rules as amended provide clearer, more comprehensive and better defined guidelines for lawyer conduct than does the Model Code. As a consequence, the Rules help the general practitioner to resolve ethical dilemmas far more quickly and accurately than is possible using the Model Code. These are some of the reasons why the Model Rules provide better ethical guidelines and should be adopted by the ABA House of Delegates.

This response to Professor Freedman's article points out that his criticisms of the Model Rules are overstated mainly because they overlook what the Rules and accompanying Comments specifically say, omit any comparison of specific Rules provisions to provisions of the Model Code, and fail to consider decisional law in relation to the Rules and the Code.

There should be no "extremely serious" problem as is feared by Professor Freedman from "confusion" as a result of some states adopting the Model Rules "with countless changes" and others retaining their old Codes. This argument for retaining the old Code presupposes that all states' Codes now are the same, which is not the case. Instead, there are significant differences among the states in the Code provisions that govern lawyer conduct. For instance, the 1974 ABA Model Code amendment to DR 7-102(B)(1), adding the "privileged communication" exception to the requirement that a lawyer disclose the client confidences if necessary to rectify a fraud, has been adopted in no more than four or five states.

Regulation of lawyer advertising and solicitation also differs widely among the states. Indeed, one benefit of the Model Rules is that the advertising and solicitation proposals should achieve greater uniformity than with the Code because the Rules regulate lawyer advertising in a rational manner that, unlike the Code provisions applicable in some states, is constitutionally supportable. See In re R.J.J., 455 U.S. 191 (1982).

The Model Rules do not radically change the substance of the Model Code. In fact, the Rules build on existing ethical standards, including some that are not stated in the DR's and are imposed by disciplinary agencies and courts. An ABA Ethics Committee review has shown that most ABA ethics opinions which are out of date require updating because of changes in standards made when the Model Code was adopted or amended rather than because of changes proposed by the Model Rules.

For all of these reasons, variations between jurisdictions should create no more problems than exist now. Indeed, because the Model Rules are clearer and are accompanied by Comments and better indexing, state-by-state variations, as well as changes from the Code, will be more readily identifiable.

The problems faced by the lawyer whose client perpetrates a fraud or perjury during the representation are among the most difficult problems a lawyer ever will have to resolve. The resolution where client confidences are involved is not governed by disciplinary standards alone. The evidentiary attorney-client and work-product privileges, the client's Fifth, Sixth and Fourteenth Amendment rights, and the lawyer's potential personal involvement in crimes and frauds determine the course that must be followed to a greater extent than a code of lawyers' ethics ever can do. Yet Professor Freedman fails to suggest how, as a practical matter, a lawyer should cope with these facts in resolving the problem of client fraud or perjury.

Blind adherence to Model Rule 1.6 (Confidentiality) or to the privileged information exception to Model Code DR 7-102(B)(1) as a shield to protect the lawyer from complicity, and the client from discovery, where the client uses the lawyer's services to perpetrate a fraud can lead to serious trouble. The lawyer who does not caution the client, where appropriate, that other law may force disclosure of matters that the Rules or Code says are confidential, misleads the client and fails to adhere to standards of competent counseling. This necessary advice should not be disparaged by calling it a "Miranda warning".

Differences among the states' judicial determinations and the lack of definitive statements by the Supreme Court create special problems in the case of the perjurious client. Disclosures of a criminal defendant to his lawyer are likely to be protected by the Sixth Amendment and by the Fifth and Fourteenth, as well. See e.g., Lowery v. Cardwell, 575 F.2d 727 (9th Cir. 1978). The Comment to Rule 3.3 recognizes that these constitutional rights may

[continued on page 11]

A Major Improvement

[continued from page 10]

possibly prevail over the duty to disclose described in the Rule. Model Rules at 21. Professor Freedman, however, goes beyond constitutional requirements. He advocates not only that the criminal defense lawyer should actively assist the client in presenting perjured testimony (a position **not** supported by the ABA Standards for Criminal Justice), but also that this requirement should apply to civil trials. See **The American Lawyers' Code of Conduct**, drafted by Professor Freedman for ATLA's Roscoe Pound Foundation, Illustrations 1(i) and 1(j) (Public Discussion Draft, 1980) at 109-110. As Professor Wolfram notes in **Client Perjury: The Kutak Commission and The Association of Trial Lawyers on Lawyers, Lying Clients and the Adversary System** (1980 ABA Foundation Res. J.) n. 12 at 965, no such requirement is found in any American authority.

Model Rule 3.3 deals rationally with client perjury problems, requiring disclosure of material facts to courts though the information otherwise would be protected by Rule 1.6 (Confidentiality). The Comment to Rule 3.3 makes it clear, however, that disclosure of client confidences is to be resorted to only if remonstrations with the client to correct the perjury or fraud are unavailing. See Model Rules at 21. This is the rule now applicable in civil trials in a majority of the jurisdictions.

Professor Freedman also misinterprets Model Rule 1.13 by failing to consider the accompanying Comment when he contends that Rule 1.13 forbids lawyers for corporations to disclose perjury where lawyers for individuals must disclose the perjury. The Comment to Rule 1.13 says in pertinent part: "this Rule does not limit the ... responsibilites of the lawyer under Rule 3.3 ..." Model Rule at 16.

Professor Freedman's article also criticizes the Model Rules for not comprehensively governing the conduct of prosecutors and for allowing prosecutors to make public statements while denying defense attorneys the right to respond. These criticisms overlook what Model Rules 3.8 and 3.6 plainly state and omit any comparison of these Rules to the similar standards in Model Code DR's 7-103 and 7-107.

Professor Freeman states, for instance, that the Model Rules "do not deem it unprofessional for a prosecutor" to force a defendant to criminal trial "when the prosecutor knows that he cannot even make a *prima facie* case." This standard is not practicable because it could require a disciplinary hearing each time a prosecutor lost the case on a directed verdict. Moreover, Model Rule 3.8(a) tracks DR 7-103(A) in saying that a criminal prosecutor shall not prosecute a charge that the prosecutor knows is "not supported by **probable cause**." Therefore, the "official blackmail" which Professor Freedman notes is condemned in decisions under the Model Code should prove equally improper under the Model Rules.

The Model Rules actually increase criminal defendants' protection from prosecutorial overreaching when unrepresented by counsel, Rules 3.8 (b) and (c), and extend prosecutors' responsibilities to certain acts of other law enforcement personnel, Rule 3.8(e).

Professor Freedman's criticism of the Rules based on the example of the President and his counsel preparing the "Enemies' List" is misplaced. These and other lawyers involved in Watergate were not acting as prosecutors. Moreover, virtually all of them nevertheless were disciplined under the Code and also would be disciplined under counterparts in the Model Rules, **e.g.**, Rule 8.4 (Misconduct). However, it is foreseeable that government lawyers involved in future coverups like Watergate would assert prohibitions against disclosing client fraud and perjury like those advanced by Professor Freedman as justification for maintaining their silence.

Limitations on prosecutors' public statements also are more clearly defined by Rule 3.6 than by DR 7-107 (Trial Publicity). Rule 3.6(b) specifies actions that ordinarily have a substantial likelihood of materially prejudicing a case and consequently may result in violation of Rule 3.6. One of these actions is the release of a public statement in a criminal case that a defendant has been charged with a crime without including in the statement an explanation that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty. Rule 3.6(b)(6). Therefore, the Model Rules prohibit the prosecutor in Professor Freedman's example from detailing on television all the allegations in the indictment without an explanation about innocence. The Model Code does not require such an explanation.

To be sure, few lawyers agree with every provision of the Model Rules. Yet, as a result of extensive consideration, the Model Rules as now formulated provide standards that a broad cross section of the bar believe should govern their conduct. The choice now is between the Model Rules and a Model Code that virtually everyone has found to be unsatisfactory. There is no choice which can be made between the Rules and a theoretical set of Code improvements yet to be written, such as Professor Freedman proposes.

The Model Rules should be adopted by the House of Delegates in August because they are far superior to the Code in substance and in format and have been considered enough.

(M. Peter Moser practices law in Baltimore, is a member and former chairman of the ABA Standing Committee on Ethics and Professional Responsibility, a member of the ABA House of Delegates, and Chairman of the Attorney Grievance Commission of Maryland. The views expressed are his own.)

Advisory Poll Results

Results of the Board of Governors' Advisory Poll concerning appointment of an Alaskan representative to the Ninth Circuit Judicial Conference are now available. The fourteen candidates and tabulation of votes cast are as follows:

A.K. Abraham	0
Richard D. Burke	23
Warren C. Christianson	23
Dan K. Coffey	38
LeRoy E. DeVeaux	46
Jeffrey M. Feldman	139
John Havelock	55
Olof Hellen	52
Henry L. Holst	0
Kenneth O. Jarvi	71
Richard D. Kibby	15
Allen McGrath	40
William G. Ruddy	50
TOTAL	563

The results have been certified by the Bar Association's Bar Polls and Elections Committee and will be formally presented to the Board of Governors at its June, 1983 meeting in Fairbanks. Because the results are only advisory to the Board, the Board has authority to nominate its own "dark horse" candidate. Moreover, the Board's recommendation is only advisory to the Alaska U.S. District Court Chief Judge James von der Heydt. However, it should be noted that both the Board and Judge von der Heydt usually follow the will of the majority.

Letters

Dear Mr. Branson:

I am indebted to **William Cook** for sending me two copies of The Alaska Bar Rag (including the issue which reprinted the opinion of the Alaska Supreme Court in *Starry v. Horace Mann Insurance Co.*, "When Is A Fur Not A Fur? Part II").

Your publication is marvelous. I hope it is possible for me to subscribe to it. I would also like to obtain a copy of the issue which contained Part I of "When Is A Fur Not A Fur?"

As mentioned in my enclosed letter to Mr. Cook, the Alaska opinion is kindred to the opinions which were the subject of two of my columns for the Texas Bar Journal. If you would like to use either of these columns for a future Bar Rag, please feel free to do so.

I particularly enjoyed the columns by **Gail Roy Fraties.** Would either you or Mr. Fraties have any objection if I used portions of his column in either the Dallas Bar Association Publication or the Texas Bar Journal? Of course, I would give credit to Mr. Fraties and the Bar Rag. (Have any of Mr. Fraties' columns been published in book form?)

My very best regards.

Yours very truly,
Jerry Buchmeyer

The View From Outer Space (A Bok Report)

by John Havelock

Professor Charles Konigsberg, Professor Emeritus, Alaska Pacific University, recently admonished my class in Natural Resources Law with respect to "reductionist" thinking. Americans, he said, are tragically fascinated with trees at the expense of the forest. His particular target, an old one for Professor Konigsberg, was the Alaskan preoccupation with pet construction projects in ignorant disregard of the aggregate effect of their development on the quality of life. Alaskans, Konigsberg wished, should ask first "what kind of an Alaska do we want 20 years from now?" rather than "what's in it for me here and now?"

Professor K is usually a voice crying in the Wilderness, a place he likes and in which a majority of Alaskans would probably prefer he stay, so it came as a surprise to discover no less an establishment urbanite than Derek Bok, President of Harvard and past Dean and Professor of the Harvard Law School, complaining about the same thing with respect to American law in his 1983 annual report. Because it blows from Mt. Sinai and in a sour note, Bok's blast has been respectfully echoed in news and editorial columns all over the land including those held by lawyers who reply in rounds of *mea culpa*.

President Bok says that our society has given such an exaggerated emphasis to individualism and competition that it has encouraged its citizens "to shoulder aside competitors ... cut corners [and] ... ignore the interests of others in the struggle to succeed." The shortsighted emphasis conflicts with the nobler goals of society to provide its citizens with fairness and decency, i.e., long term procedural and substantive justice. The depth and extent of this conflict, theorizes Bok, gives American law its increasingly gummy viscidity and ubiquity.

The makers of law, says Professor Bok, have attempted to patch the void

Random Potshots

between these principles with a plethora of legislation, regulations and judicial inventions adopted in piecemeal fashion to provide *ad hoc* justice without regard for the look of the whole cloth. They have attempted to bind these fundamental contradictions with a web of procedures, rules of the game intended to mandate greater fairness. They have enhanced accountability by identifying interests and, on paper, widening access to dispute resolution systems. To meet the exigencies of particular cases, judicial ingenuity has made the whole law a jungle penetrable only through use of expert, specialized guides. A forest has been planted, tree by tree, by concentrating on the resolution of the particular disputes, through adversarial techniques, without regard for how this will affect the general public or the larger consequences.

Not all of us will be as alarmed or surprised at this as Professor Bok professes to be. Are we not dealing also with the necessary implications of a fundamentally pluralistic society? We do not agree on substantive or distributional justice. The distribution of power mandated by such disagreement will inherently produce particularistic law. The growth of regulation as an implication of preventive law was noted with approval by Bok's precursor, Dean Pound. Is Bok looking back on a rosier day that isn't there, an era marked more by the exercise of unchecked power? Hearing Bok's attack on excessive procedures, lawyers will remember Holmes' aphorism to the effect that at bottom the history of liberty is a history of the development of procedures.

Having convinced himself that we and he are lost in a jungle of law, Bok tends to err through his own brand of particularism, striking at the objects closest to him or most familiar. Still, all in all, it is good to be drawn up to the interplanetary view of the legal world which he presumes for himself.

Predictably, Dean Bok's description of the American legal mess has attracted the most attention in the press rather than his diagnosis or cures. We all can recognize it to some degree: the quantitative growth of law on all subjects, the growth in the number of lawyers (doubled since 1960), the increased costs of legal services resulting in an increased proportion of the GNP being devoted to legal services and proportionately decreased access by the poor despite the push for legal services and public defense. (Unsurprisingly, for an Establishment figure, President Bok lets the market system off rather lightly for its contradictory application to the meting of justice.)

Surprisingly, Bok does not think that litigation has risen at an extraordinary rate, but his observation relies on the distinction between cases filed and cases tried. The rise in trials, he supposes, has not been disproportionate to the growth of the whole economy. But a few pages later he assays that the total bill for legal services does not depend so much on the size of fees as it does "volume of litigation," at this point in his essay presumably galloping.

In President Bok's dyspeptic view, the law is wasteful of human resources and doesn't accomplish (in full) what it purports to do. Perversely for a professor of law, Bok's pet waste is the number of talented students who go into law rather than, as he suggests, business, public service, engineering or secondary education (the last presumably involving a triumph of principal over poverty). Though he later castigates law students as "ambitious college seniors who cannot think of anything else they want to do," he deplores the fact that 40 percent of all Rhodes scholars go to law school and that law schools cream the top off the college boards. Maybe these students know something Dean Bok doesn't.

The core of Professor Bok's philosophy of waste is borrowed from the Japanese (though me thinks I heard it before I heard of them): "Engineers make the pie grow larger; lawyers only decide how to carve it up." Professor Konigsberg should take Professor Bok to the woodshed. Which does he think is the greater issue for this society? While one can make an argument that increased production can temporarily assuage some of the world's ills, surely in an affluent society or even a not so affluent society, "who gets what" and on what terms has more to do with the quality of life and social transquility than gross productivity. Find us an economist or a lawyer who can show us how to get off the treadmill that demands an endless geometric progression in GNP to avoid economic disaster! Why does President Bok urge his legal minions to abandon law for engineering and business when the American defense industry, with its recipes for Armageddon, soaks up the best and brightest of these, particularly the engineers and scientists?

Dean Bok's second core complaint is that the law which absorbs so much talent doesn't work, hedging his bet by assuring us that if his observations "are even half true, our legal system leads to much waste of money that could be put to better purpose." Who will argue that? What human system does not, pray tell, fall short by half of what it promises? His particular targets for half-truths include antitrust law, federal labor relations law, OSHA and personal injury. For ought I know, he is on the mark with the first two, his own fields of practical expertise, though his cures amount to modest tinkering. He joins, on antitrust, a timely voice in aid of President Reagan's efforts to repeal or amend the provisions allowing treble damage suits. He embraces also an unidentified "leading expert" in the suggestion that 75 percent "of all antitrust decisions have no demonstrable effect in furthering accepted economic goals." I'm not sure what this standard encompasses, but if antitrust suits are producing substantially bad or meaningless results, isn't it the substantive law that needs changing?

In supporting his proposition that there has been "no reduction in accident rates resulting from the mass of regulations on work place safety," Professor Bok cites his colleague Stephen Breyer [Regulation and its Reform (1982)], (Professor Bok footnotes sparingly), yet I found nothing in Professor Breyer's work that would lead one to conclude that he does not believe OSHA is valuable regulation. In the introduction to his topic, Breyer cites some studies from the early 70's but mostly by way of illustrating critics' charges which are not examined in the body of his text. Bok is ready to let us swallow it whole. A May Anchorage newspaper account cited statistics showing major improvements in industrial safety this year (maybe a forest effect from a lot of little OSHA trees?). It is a big jump from a finding that some studies have found that no effects are found, in a particular time period and setting, from some regulations, to conclude that regulation of occupational safety is a massive waste of time.

As he strays further from his own field of practice, Professor Bok gets into boggier ground. He cites from a Daedalus article a tale of a teacher who

[continued on page 13]

Pot Shots

[continued from page 12]

wouldn't complain about misconduct of students because "there were no witnesses," opining that a "sterile, legalistic system" produced the result. But wasn't the real problem the teacher's ignorance about rules of evidence not the rules themselves? Having taught law to dozens of high school teachers, including social studies teachers, I can personally testify to the profound ignorance of the average teacher on the subject of law.

"Criminal defendants are herded through the courts at a speed that precludes individual attention, leaving countless accused to the mercy of inexperienced counsel who determine their fate in hasty plea bargaining with the prosecution." No doubt this is true of a few jurisdictions sometimes (and with some lawyers and some kinds of cases) but even as a picture of justice in the major metropolitan areas it is a badly overdrawn picture. As applied to Anchorage or Sioux City it just isn't true. The error is that a particular problem is being used to support the proposition that the system as a whole isn't working.

"Every study of common forms of litigation, such as medical malpractice [medical malpractice?!], tenant evictions or debt collections reveals that for each successful suit there are several others that could be won." A few paragraphs ago we were complaining about the increasing volume of cases filed.

Bok identifies as the causes of these problems not the root causes in values which he described earlier but the remedies lawmakers have applied, the procedures in which we circumscribe rights including, most injuriously, the indiscriminate application of the adversary system as a fact finding method. Worse, we do not stop to examine what we do (except perhaps in a few studies showing OSHA regulation is ineffective) and finally there is no coordinated effort to oversee the whole. We are all busy working on the trees.

By leaving the premis root causes alone (which might lead him, for example, to call for a revival of leadership and education in humanistic values), Bok eschews radical reform while urging a radical problem. His is a call for better bandaging. He cannot condemn the quiltwork which binds our society together without an alternative. But since we then must start with our uncountable conflicts, he is left only with reductionist solutions, which may be as it should be. But if that is the case, why such a doomsday pronouncement on the cancerous growth of law and its performance failures?

Despite his extraterrestrial view, Bok's prescriptions are familiarly discussed reforms: simplify rules and procedures (who could argue?—like "cutting the waste out of government"), expand no fault in personal injury, provide greater access for the poor and middle-class via more public funding of legal services (Reagan won't hear that one), group legal plans, reduce adversary element in "ordinary folk's" litigation (i.e., small claims rules), expand paralegal practice, and more evaluation of the effect of laws. As examples of fields presumably needing evaluation most acutely, Bok picks personal liability (Breyer has done a lot mroe on that one), environmental protection and employment discrimination law. He emphasizes the need to address whole bodies of law rather than criticism focusing on a particular case or subsection, for example.

When he comes back to legal education, Bok's prescription is provocative. Chief Justice Burger's perennial appeals for more practical training in litigation, which (Justice Burger's pejorative attack on the existing bar aside) would probably be endorsed by most lawyers, Bok claims will compound the problem. Instead he urges a greater emphasis on negotiation and mediation skills and in that he is surely correct.

The reason all those good claims go unpursued is that so many lawyers don't do well in processing a claim quickly, before it is filed. I do not share Professor Bok's generalized concern about the "countless victims who are forced to accept inadequate settlements or give up any attempt to vindicate their legal rights" (who are to be compared with those malfactors who grind unjustly high verdicts from insurance companies and their ratepayers). Whether a compromise is a fair one depends upon one's point of view, but my own experience in practice exposed me to too many lawyers who seemed to view the adversary process not as a system to be used as sparingly as possible to bring about a result as favorable to the parties (who were often in the middle on ongoing personal and business relationships) as possible, but as an opportunity to vindicate the system and the client's point of view, an objective that was as often successful as not. On the criminal side, most of us could identify a few "mad dog" prosecutors who appeared to be prepared to get that conviction as if the conviction itself were more important than a fair disposition from the perspective of the parties at interest.

Bok is also correct in faulting the emphasis on craftsmanship and mandarin skills in the legal curriculum over understanding the law as a social, economic and political system, an omission which he contends produces lawyers less sensitive to the responsibilities of the bar for legal reform. I would buy that, too, given a few exceptions. What section of the Alaska bar has produced a recommendation for an overhaul of any field of law?

I think Bok is all wet on the effect of the proliferation of lawyers. Where does he think those extra lawyers are going, except into public administration and business? Yes, they may mostly be organized in law firms, but they are contributing to the pie cutting process which would otherwise be left to businessmen or engineers or others untrained in pie cutting. Even assuming Bok is correct, he omits one principal cure.

Legal education should be made available to a wider public at a variety of levels. We have produced a culture of legal illiterates, unsocialized to the collective responsibilities of citizenship. The nation was produced by a democratically inclined aristocracy that was as well or better informed with respect to its collective responsibilities than the graduates of any contemporary law school. The Fathers established a constitutional system whose premis was that those who followed would be educated to share their informed commitment to the Commonweal. American education, including our legal education now, disappoints that expectation. President Bok is right as to root causes.

Until we address them we should be content with terrestrial diagnoses and cures. The public hires lawyers because our system of general education does not equip non-lawyers to deal with even relatively modest legal aspects of their lives and work. The law schools will have their full when the demand for such services goes down.

In the meantime, unlike some other professions and graduate courses of study, it is the path of upward mobility for the less privileged, a chance for its students to acquire skills that enable their practitioner to participate in the life of the country on a broad basis. I have yet to hear more than a handful of law graduates out of hundreds I have known, whether in law or other occupations, complain about their choice of law as a field of graduate study. So, measured by satisfaction of this sector, the law schools are doing something right.

Poems

At the Air Show In Manzanar (July 4, 1943)

by David Stark

—Was this the America
we knew, had known—

Years after the air show in Manzanar
my father shot clay pidgeons
at dusk over dying fruit trees
while we watched at the
orchard's edge
devouring the cool green pears . . .

Now, I show my son the guard
shack,
pagoda crafted in brown stone,
where the soldiers cupped their
eyes as the B-29
plowed the thin blue sky
toward the Pacific.

I tell him of the wind,
the busses' glass chipped by sand,
their faces fused to the windows,
silhouetted by a cold sun,
as we gathered in the streets
to watch them
go north to Manzanar.

How later,
we saw them from the highway,
the ten thousand of them,
no more strange than fenced cattle
in a field,
just blurred shapes in the distance,
bent over sprouting fruit trees,
planted in the earth no larger
than twigs.

And how sweet the pears tasted
those first years after the war's end,
as we harvested the ripe fruit
and let the roots
turn back into stone.

How we even took my parents'
house from them
at auction
and ransacked the attic as boys
finding headlines: TWO JAPS
ESCAPE: ONE KILLED
that crumbled beneath our
impatient fingers
like yellow leaves.

And how it was that day: the
thunder of the planes
coming low over the brown sage
at the air show,
the air show in Manzanar,
and how their faces must have
appeared
to the pilots
looking down into the leaves:
clusters
of dark fruit
among the green trees.

Picking Time

by Mary McBurney

Once the fog had left the morning,
we climbed the hills outside of town
and searched the dusty bushes
for their autumn harvest.

Midnight pearls and sanguine drops,
(remnants of a ripened summer)
bright among the dying leaves,
clinging fast to sweetened time.

The snapping twigs beneath our feet;
our steaming breath before our faces,
I followed you into the thickets
dodging thorns and grasping vines.

Reaching for each minute fruit,
(the slightest pull between ripe and
waste)
we lined our baskets with their color,
bruised and sweet,
the short-lived jewels of a season's
passing.

Respite

by Clifton Bates

News flies by like the days.
Sober officials, screaming peasants,
natural disasters and maniacs;
they're all a steady chain.
While the world builds on one hand
and crumbles in the other.
Even the maniacs
have their own policy.

Dolled-up men
traipsing up the avenue
with their own special walks.
Combed roosters
in polyester threads
with clothing store receipts
and dirty neon in their pockets.
They have their route.

Thirty people in the bar
and not a sign of life.

Bring me that bottle
it's been many days
I'm ready to admit
I gotta change my ways.
I gotta do what I gotta do
I do gotta do gotta
just like you too.

So here's to here
and here's to there ...
do gotta do gotta
don't even care.

Saw me red chickymunk
Saw sin too
said I saw a yella skunk
off in the blue.

Ol art is out the window
but I gotta belly fulla food
I guess it is a sin though
to run around here nude.

I ain't been able
to sing any kinda song
things are so unstable
things are just all wrong.

But here I celebrate
with nothin' but some gin.
Celebrate the sorry state
that I've got myself in.

So I take another swig
and I wildly kick my clothes
and I dance a little jig
as I thumb my drunken nose.

Judicial Logic: Birds & Ponies

by Jerry Buchmeyer

Sometimes judicial reasoning is For The Birds—as demonstrated by the fowl attack of a supposed[1] Canadian decision: *Regina v. Ojibway*, 8 Criminal Law Quarterly 37 (Ontario Supreme Court 1965).

The facts, as usual, were undisputed. **Fred Ojibway**, an Indian, was riding his pony through Queen's Park on January 2, 1965, sitting on a downy feather pillow instead of his saddle (which he had pawned). The pony fell and broke a leg, so Ojibway shot the pony and ended its misery. Although he was following Indian custom[2] Ojibway was promptly charged with a violation of § 2 of the *Small Birds Act* (Rev. Stat. Ontario 1960, chap. 724, § 2), which provides:

> "Anyone maiming, injuring or killing small birds is guilty of an offence and subject to a fine not in excess of two hundred dollars."

The magistrate acquitted Ojibway, holding that "he had killed his horse, not a small bird," and had not violated the Small Birds Act even though the pony had been fortuitously saddled with a feather pillow. The Crown, of course, appealed. And, **Justice Blue** of the Ontario Supreme Court reversed: In light of the Act's definition of "bird"—"a two legged animal covered with feathers"—"there can be no doubt that this case is covered" by the Small Birds Act.

Justice Blue's "well-reasoned" opinion first addressed "several ingenious arguments" raised by counsel for the accused: that even though the animal in question happened to be covered with feathers when shot, it was actually a pony and not a bird; that no bird could neigh like the pony; that the accused could not have ridden a bird, as he did the pony; and that no bird could wear horse shoes. These "ingenious arguments" were given Short Shrift, Indeed:

> "Counsel for the accused ... submitted that the evidence of the expert clearly concluded that the animal in question was a pony and not a bird, but this is not the issue. *We are not in-*

[continued on page 16]

Anchorage Bar Spring Dance Pix

RALPH BOOGIES

THE BEAUTIFUL PEOPLE

by Ken Roberts

TABLE NUMBER 19

DANCIN'

JAMMIN'

Judicial Logic: Birds & Ponies

[continued from page 14]

terested in whether the animal in question is a bird or not in fact, but whether it is one in law. Statutory interpretation has forced many a horse to eat birdseed for the rest of its life.

"Counsel also contended that the neighing noise emitted by the animal could not possibly be produced by a bird. With respect, the sound emitted by an animal are irrelevant to its nature, for *a bird is no less a bird because it is silent.*

"Counsel for the accused also argued that since there was evidence to show accused had ridden the animal, this pointed to the fact that it could not be a bird but was actually a pony. Obviously, this avoids the issue. *This issue is not whether the animal was ridden or not, but whether it was shot or not*, for to ride a pony or a bird is of no offense at all. I believe counsel now sees his mistake.

"Counsel contends that the iron shoes found on the animal decisively disqualify it from being a bird. I must inform counsel, however, that *how an animal dresses is of no concern to this Court.*"

Now, with the underbrush thus cleared[3] Justice Blue was able to dispose of the major issues: was the pony not covered by the Small Birds Act because either (the pony or the Act) were too large or because the pony had four legs:

"Counsel finally submits that the word 'small' in the title Small Birds Act refers not to 'Birds' but to 'Act', making it **The Small Act relating to Birds.** With respect, counsel did not do his homework very well, for the Large Birds Act, R.S.O. 1960, c. 725, is just as If pressed, I need only refer to the Small Loans Act, R.S.O. 1960, c. 727, which is twice as large as the Large Birds Act.

"It remains then to state my reason for judgement which, simply, is as follows: Different things may take on the same meaning for different purposes. For the purpose of the Small Birds Act, all two-legged, feather-covered animals are birds. This, of course, does not imply that only two-legged animals qualify, for the legislative intent is to make two legs merely the minimum requirement. The statute therefore contemplated multi-legged animals with feathers as well. Counsel submits that having regard to the purpose of the statue only small animals 'naturally covered' with feathers could have been contemplated. However, had this been the intention of the legislature, I am certain that the phrase 'naturally covered' would have been expressly inserted just as 'Long' was inserted in the Longshoreman's Act.

"Therefore, a horse with feathers on its back must be deemed for the purposes of this Act to be a bird, and *a fortiori*, a pony with feathers on its back is a small bird."

Ojibway's attorney tried to salvage the case with a rhetorical question: "If the pillow had been removed prior to the shooting, would the animal still be a bird?" So, Judge Blue's opinion in *Regina v. Ojibway*[4] ends with a rhetorical answer: "Is a bird any less of a bird without its feathers?"

Hon. Jerry Buchmeyer

1. This opinion is not offically reported, but it appears in 8 Criminal Law Quarterly 137 (Canada Law Book Co., 80 Cowdray Ct., Agincourt, Ontario). A couple of staff members of the Quarterly wrote the humorous opinion—and then the Editor decided to publish it without indicating that it was a joke.
2. And also the Code of the West; see any Grade B Western Movie (circa 1945-1951), particularly those starring **Lash La Rue, Don "Red" Barry,** or **Bob Steele.**
3. Ojibway's attorney also "relies on the decision in *Re Chicadee*, where he contends that in similar circumstances the accused was acquitted. However, this is a horse of a different colour. A close reading of that case indicates that *the animal in question there was not small bird, but, in fact, a midget* of a much larger species. Therefore, that case is inapplicable to our facts."
4. *Regina v. Ojibway* is cited, with Obvious Approval, in *United States v. Byrnes*, 644 F.2d 107, 112 at fn. 9 (2d Cir. 1981)—a marvelous opinion which is the Swan Song of **Judge Mulligan** of the Second Circuit (and which will be the subject of a future et cetera).

Magistrate Retires

Jess H. Nicholas, magistrate in Kenai since 1960, is retiring August 15, 1983. There will be a retirement party for Jess on Saturday, August 27, at the Sheffield House in Kenai. The party will begin with no host cocktails at 6:00, followed by a prime rib dinner ($19.25 per person) at 7:30. Reservations are required and may be made by calling Robin Hodges, Kenai Clerk of Court, at 283-3110 prior to August 15.